

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Name of Claimant

Archelon Partners, Inc. and
Charles H. Tall, IV

No. 91-03929

Name of Respondents

First Options of Chicago, Inc. and
Joseph Bernier

REPRESENTATION OF PARTIES

For Claimants: Jonathan N. Eisenberg, Esq. of Kirkpatrick & Lockhart, Washington, D.C., and Howard Suskin, Esq. of Jenner & Block, Chicago, Illinois.

For Respondents: Marshall E. Hanbury, Esq., and Rose Owen, Esq., of Mayer, Brown & Platt, Chicago, Illinois. James Bedell, Esq., First Options of Chicago, Inc.'s current counsel appeared as an observer only.

CASE INFORMATION

Statement of Claim filed on or about: December 10, 1991.

Claimants' Submission Agreement signed: December 6, 1991.

Joint Statement of Answer filed by Respondents on or about: September 4, 1992.

The NASD does not have a record of Respondents having filed Submission Agreements.

HEARING INFORMATION

Hearing dates: August 30, 1993. Two (2) sessions.
August 31, 1993. Two (2) sessions.
September 1, 1993. Two (2) sessions.
October 18, 1993. Two (2) sessions.
October 19, 1993. Two (2) sessions.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimants, Archelon Partners, Inc. and Charles H. Tall, IV, ("Claimants") alleged in their Statement of Claim that Respondents, First Options of Chicago, Inc. and Joseph Bernier ("Respondents"), acting as Claimants' clearing broker, failed to provide Claimants with proper reduced futures margin for certain hedged positions more fully discussed at the hearing of this matter. Claimants further alleged that Respondents misrepresentations implied that Claimants were receiving the best margin terms permitted under applicable exchange requirements. Claimants also alleged that Respondents: Violated disclosure and anti-fraud provisions of the federal securities laws; violated prohibitions against innocent, negligent, and fraudulent misrepresentations and omissions under the law of the State of Illinois; engaged in unjust and inequitable conduct in violation of rules of each of the exchanges of which Respondent First Options of Chicago, Inc. is a member; breached their fiduciary duty; and breached their contract with Claimants.

Respondents, unless specifically admitted in their joint Answer, denied the allegations contained in the Statement of Claim. In addition, Respondents asserted the following affirmative defenses:

1. This cause of action is barred by applicable statutes of limitations.
2. There is no private right of action for alleged breaches of exchange rules.
3. Claimants' purported cause of action is based upon an alleged oral modification of the contract between Claimants and Respondents. The agreements specifically provide that the agreements may be modified only in writing.
4. Claimants failed to mitigate any alleged damages.
5. Claimants cannot recover any amounts as attorney's fees because there exists no contractual provision or legal theory giving rise to such recovery.
6. Claimants' recovery is barred by waiver, estoppel and ratification.
7. The National Association of Securities Dealers ("NASD") has no jurisdiction to hear this controversy and there is no agreement to arbitrate this claim before the NASD.

RELIEF REQUESTED

Claimants requested, in their Statement of Claim, that an award be entered against the Respondents in an amount not less than \$5,800,000.00, prejudgment interest and the costs

of this action.

Respondents requested that the panel dismiss the claim against them and award to them their attorneys' fees, accountants' fees, and all other costs and expenses as provided for in the contracts between Claimants and Respondent First Options of Chicago, Inc.

OTHER ISSUES CONSIDERED & DECIDED

On March 16, 1992, Respondents filed a Motion to Decline Jurisdiction and Request to Dismiss and Refer pursuant to Sections 12(b) and 16 of the NASD Code of Arbitration Procedure (the "Code") asserting that First Options of Chicago, Inc. was a member of the Chicago Mercantile Exchange ("CME") and CBOE at the time of the dispute, and therefore, the parties are required to arbitrate at the CME or CBOE. Claimants filed their Opposition to the motion on April 9, 1992 stating the Respondent First Options of Chicago, Inc. is a member of the NASD, and that the claim arose out of the business of First Options of Chicago, Inc. Respondents filed a Reply on April 16, 1993. After review of the documents, the Director of Arbitration denied the Motion to Decline Jurisdiction and Request to Dismiss.

Respondents did not file with the NASD properly executed submissions to arbitration, but are required to submit to arbitration pursuant to Section 12 of the Code. The Respondents have answered the claim, and have appeared and testified at the hearing, and are therefore bound by the determination of the panel on all issues submitted.

In November of 1993, Respondents made a Motion to Strike Claimants' Claims arising under the Commodity Exchange Act ("CEA"). Claimants filed their Opposition to the Motion to Strike, and Respondents filed a Reply on December 1, 1993. After review of the relevant documents, and deliberation, the undersigned arbitrators denied the motion.

The parties have agreed that the Award in this matter may be executed by counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the original(s) remain on file with the NASD.

AWARD

After considering the pleadings, the testimony, the documentary evidence and testimony presented at the hearing, and the post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, First Options of Chicago, Inc. and Joseph Bernier are jointly and severally liable for, and shall pay to the Claimants, Archelon Partners, Inc. and Charles H. Tall, IV the sum of \$886,000.00 as satisfaction for all of their claims made herein.

OTHER COSTS

Each party shall bear its own respective costs and expenses associated with this arbitration, including attorneys' fees, except as set forth more fully below.

FORUM FEES

Pursuant to Section 43(c) of the Code, the following forum fees are assessed:

10 hearing sessions x \$1,500.00 = \$15,000.00

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$500.00, and shall REFUND the hearing session deposit in the amount of \$1,500.00 previously paid to the NASD by the Claimants.

Additional Forum Fees in the amount of \$15,000.00 are assessed jointly and severally against the Respondents.

Pursuant to Sections 30(b) and 43(c) of the Code, the NASD shall retain the \$1,500.00 postponement fee previously paid by the Respondents.

Fees are payable to the National Association of Securities Dealers, Inc.

CONCURRING ARBITRATORS

Dated:

Name:

January 17, 1994

/s/Michael R. Levinson
Michael R. Levinson
Presiding Chair
Public Arbitrator

January 21, 1994

/s/Lawrence S. Kahn
Lawrence S. Kahn
Public Arbitrator

January 12, 1994

/s/R. Randall Kelsey
R. Randall Kelsey
Industry Arbitrator

Date of Service by the NASD: 1-25-94