

**IN ARBITRATION
UNDER CHAPTER XVIII OF THE RULES
OF THE CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED**

IN THE MATTER OF)

Jerome A. Foreman,)

Claimant,)

v.)

File No. 92-M-10

LIT America, Inc., as survivor)
of Rialcor/Shatkin Securities Corp.,)
Maurice Perlstein and)
Richard D. Kushnir,)

Respondents.)
_____)

AWARD

Summary

Jerome A. Foreman ("Claimant") submitted a Statement of Claim in the captioned dispute on or about October 14, 1992. LIT America, Inc. ("LIT"), as survivor of Rialcor/Shatkin Securities Corp. ("Rialcor/Shatkin"), Maurice Perlstein and Richard D. Kushnir (collectively referred to as "Respondents") filed an Answer on or about December 22, 1993. On or about February 4, 1993, Respondents filed a Motion to Dismiss. On or about June 17, 1993, Claimant filed a First Amended Statement of Claim ("Amended Claim"). On or about July 16, 1993, Respondents filed a Statement of Answer and Defenses to Amended Claim ("Amended Answer") and a Motion to Dismiss Amended Claim.

The captioned controversy, which arose on or about October 16, 1987, and continued in the weeks immediately thereafter, involves the clearing relationship between Claimant and Rialcor/Shatkin. In the Amended Claim, Claimant alleges that Respondents repeatedly failed to properly report and/or clear Claimant's trades and misled Claimant with respect to the positions in his account with Respondents. Claimant further alleges that such failure and misinformation caused Claimant to forego making trades that would have produced sizable profits and to make other trades that resulted in a large debit in Claimant's account. Claimant further alleges that Respondents exacerbated the situation by refusing to allow Claimant to trade out of his unbalanced inventory in a timely manner and, thereby, caused Claimant's losses to increase. Claimant further alleges that Respondents prevented Claimant from making numerous extremely profitable trades and, thereby, caused sizable loss of profits to Claimant. Finally, Claimant alleges that Respondent's inappropriately charged Claimant approximately \$15,000 interest on the clearing account debit caused by Respondents. In the Amended Claim, Claimant requests the following damages as a result of the alleged misconduct:

1. Count I, "Breach of Contract", of the Amended Claim seeks an award in the amount of \$2,480,540.50 against LIT for Rialcor/Shatkin's alleged breach of the market-maker clearing agreement between Claimant and Rialcor/Shatkin's.
2. Count II, "Promissory Estoppel", seeks an award in the amount of \$2,480,540.50 against LIT for Rialcor/Shatkin's alleged failure to fulfill its promise to report and clear Claimants' trades accurately.
3. Count III, "Misfeasance", seeks an award against Respondents in the amount of \$2,480,540.50 for Respondents' alleged breach of their duty to report and clear Claimant's trades with ordinary and reasonable care.
4. In the alternative to Count III, Count IV, "Misfeasance: Punitive Damages", seeks an award against Respondents in the amount of \$2,480,540.50 in compensatory damages and \$250,000,000.00 in punitive damages for Respondents' alleged willful and wanton breach of their duty to report and clear Claimant's trades with ordinary and reasonable care.
5. Count V, "Negligent Misrepresentation: Claimant's Stock Position Error by Respondents", seeks an award against Respondents in the amount of \$2,480,540.50 for Respondents' alleged breach of their duty to exercise due care in making representations to Claimant concerning material facts about his inventory of stocks.
6. In the alternative to Count V, Count VI, "Negligent or Intentional Misrepresentation: Claimant's Stock Position Error by Respondents: Punitive Damages", seeks an award against Respondents in the amount of \$2,480,540.50 in compensatory damages and \$250,000,000.00 in punitive damages for Respondents' alleged willful and wanton breach of their duty to exercise due care in making representations to Claimant concerning material facts about his inventory of stocks.
7. Count VII, "Negligent Misrepresentation: Reporting and Clearing Accuracy", seeks an award against LIT in the amount of \$2,480,540.50 for Rialcor/Shatkin's alleged breach of its duty to exercise due care in making representations to Claimant to induce Claimant to have Rialcor/Shatkin report and clear Claimant's trades.
8. In the alternative to Count VII, Count VIII, "Negligent or Intentional Misrepresentation: Report and Clearing Accuracy: Punitive Damages", seeks an award against LIT in the amount of \$2,480,540.50 in compensatory damages and \$250,000,000.00 in punitive damages for Rialcor/Shatkin's alleged willful and wanton breach of its duty to exercise due care in making representations to Claimant to induce Claimant to have Rialcor/Shatkin report and clear Claimant's trades.
9. Count IX, "Breach of Fiduciary Duty: Hiring, Supervision, and Firing", seeks an award against Respondents in the amount of \$2,480,540.50 for

Rialcor/Shatkin's alleged negligent breach of its duty to carefully select and supervise workers to perform Claimant's work and its duty not to retain any unfit workers to perform Claimant's work.

10. In the alternative to Count IX, Count X, "Breach of Fiduciary Duty: Hiring, Supervision, and Firing: Punitive Damages", seeks an award against Respondents in the amount of \$2,480,540.50 in compensatory damages and \$250,000,000.00 in punitive damages for Rialcor/Shatkin's alleged willful and wanton breach of its duty to carefully select and supervise workers to perform Claimant's work and its duty not to retain any unfit workers to perform Claimant's work.
11. Count XI, "Breach of Fiduciary Duty: Performance of Work", seeks an award against Respondents in the amount of \$2,480,540.50 for Rialcor/Shatkin's alleged negligent breach of its duty to act with reasonable and ordinary care, skill, and diligence in performing Claimant's work.
12. In the alternative to Count XI, Count XII, "Breach of Fiduciary Duty: Performance of Work: Punitive Damages", seeks an award against Respondents in the amount of \$2,480,540.50 in compensatory damages and \$250,000,000.00 in punitive damages for Rialcor/Shatkin's alleged willful and wanton breach of its duty to act with reasonable and ordinary care, skill, and diligence in performing Claimant's work.
13. Count XIII, "Breach of Exchange Rules", seeks an award against Respondents in the amount of \$2,480,540.50 for Respondents' alleged breach of Exchange Rule 4.1.
14. In the alternative to Count XIII, Count XIV, "Breach of Exchange Rules: Punitive Damages", seeks an award against Respondents in the amount of \$2,480,540.50 in compensatory damages and \$250,000,000.00 in punitive damages for Respondents' alleged willful and wanton breach of Exchange Rule 4.1.
15. Count XV, "Interference With Business", seeks an award against Respondents in the amount of \$2,480,540.50 for Respondents' alleged wrongful breach of their duty not to improperly interfere with Claimant's actual and prospective contractual relations and not to improperly interfere with Claimant's business and business relationships.
16. In the alternative to Count XV, Count XVI, "Interference With Business", seeks an award against Respondents in the amount of \$2,480,540.50 in compensatory damages and \$250,000,000.00 in punitive damages for Respondents' alleged willful and wanton breach of their duty not to improperly interfere with Claimant's actual and prospective contractual relations and not to improperly interfere with Claimant's business and business relationships.

17. Count XVII, "Interference with Contractual Relations: Closing of Hutton Spreads", seeks an award against Respondents in the amount of \$349,725.00 for Respondents' alleged wrongful breach of their duty not to improperly interfere with Claimant's contractual relations by making the performance of contracts in certain "Hutton Spreads" more expensive or burdensome and by making it extremely difficult for Claimant to close said contracts.
18. In the alternative to Count XVII, Count XVIII, "Interference with Contractual Relations: Closing of Hutton Spreads: Punitive Damages" seeks an award against Respondents in the amount of \$349,725.00 in compensatory damages and \$35,000,000.00 in punitive damages for Respondents' alleged willful and wanton breach of their duty not to improperly interfere with Claimant's contractual relations by making the performance of contracts in certain "Hutton Spreads" more expensive or burdensome and by making it extremely difficult for Claimant to close said contracts.
19. Count XIX, "Interference with Prospective Contractual Relations: Closing of Hutton Spreads", seeks an award against Respondents in the amount of \$349,725.00 for Respondents' alleged wrongful breach of their duty not to improperly prevent Claimant from acquiring prospective contractual relations by making it extremely difficult for Claimant to close any of Claimant's "Hutton Spreads" with E.F. Hutton.
20. In the alternative to Count XIX, Count XX, "Interference with Prospective Contractual Relations: Closing of Hutton Spreads: Punitive Damages", seeks an award against Respondents in the amount of \$349,725.00 in compensatory damages and \$35,000,000.00 in punitive damages for Respondents' alleged willful and wanton breach of their duty not to improperly prevent Claimant from acquiring prospective contractual relations by making it extremely difficult for Claimant to close any of Claimant's "Hutton Spreads" with E.F. Hutton.
21. Count XXI, "Interference with Prospective Contractual Relations: Trading Other Than Closing of Hutton Spreads", seeks an award against Respondents in the amount of \$1,127,250.00 for Respondents' alleged wrongful breach of their duty not to improperly prevent Claimant from acquiring prospective contractual relations by making it extremely difficult for Claimant to do any other trading.
22. In the alternative to Count XXI, Count XXII seeks an award against Respondents in the amount of \$1,127,250.00 in compensatory damages and \$110,000,000.00 in punitive damages for Respondents' alleged willful and wanton breach of their duty not to improperly prevent Claimant from acquiring prospective contractual relations by making it extremely difficult for Claimant to do any other trading.

In addition, all Counts seek an award of interest, attorneys' fees, costs of arbitration, and other reasonable expenses.

In the Amended Answer, Respondents deny any and all alleged misconduct. Among other things, Respondents assert that:

1. Rialcor/Shatkin did not promise or agree to serve as a guarantor for discrepancies between Claimant's calculations and the documentation supplied to Claimant. In accordance with normal industry practice and custom, as a market maker Claimant was responsible for his own positions.
2. Claimant breached his obligation to Respondents to identify the nature and magnitude of the discrepancy between his calculations and the documentation supplied to him and to work with Respondents to identify the source of discrepancy before taking a more exposed position.
3. Claimant assumed the risk of loss by freely and voluntarily choosing to engage in trading in an extraordinarily chaotic market on the basis of his sheets without definitively reconciling the discrepancy between his personal calculations of his positions at the conclusion of the prior day's trading and the position originally reflected on his account sheets.
4. Respondents had an absolute privilege to insist that Claimant reduce the risk by liquidating his positions on an orderly basis in a manner consistent with Chicago Board Options Exchange rules and industry norms.
5. Claimant's alleged damages arising out of profitable trades Claimant might have made, without properly accounting for losing trades Claimant might also have made, and offsetting positions Claimant might also have taken, are speculative in nature and are not recoverable as a matter of Illinois law.
6. Claimants requests for punitive damages are outrageous and constitute an abuse of the arbitration process.

Respondents request that all counts be dismissed with prejudice. Respondents further request an award of attorneys' fees, costs, and other reasonable expenses.

Pre-Hearing

Upon Respondents' request, a pre-hearing conference was held on December 6, 1993, to consider the Motion to Dismiss Amended Claim ("Motion") by Respondents and other matters relating to discovery. As agreed at the pre-hearing, Claimant submitted a Response to the Motion on January 4, 1994, and Respondents submitted a Reply Memorandum on January 11, 1994. Additionally, Claimant submitted a Response to Respondents' Reply on January 21, 1994. Upon review and consideration of the pre-hearing transcript, and all documents referenced herein, the panel of appointed arbitrators dismissed all claims for punitive damages by order dated January 31, 1994.

Hearing

Claimant, represented by Blake H. Schubert, Esquire, of Oak Park, Illinois, and Respondents, represented by Thomas J. McCarthy, of Jenner & Block, Chicago, Illinois, appeared at four (4) hearing sessions on October 17, 18, 19, and 20, 1994, respectively, in Chicago, Illinois and had full opportunity to present arguments and evidence. At the conclusion of Claimant's case in chief, Claimant acknowledged having had sufficient opportunity to present his case in chief. Respondents made a Motion for Dismissal for Claimant's failure to prove his case and failure to prove any basis for liability. Arguments on the motion to dismiss were presented by both parties.

After due deliberation and consideration of the hearing testimony, documentary evidence, and other submissions of the parties, and after the Claimant having been given the full opportunity to present evidence, the undersigned arbitrators, in full and final resolution of the matter in controversy, found against Claimant on all of his claims based on the evidence presented in claimant's case in chief, and therefore, did not require Respondents to present further evidence.

Forum Fees

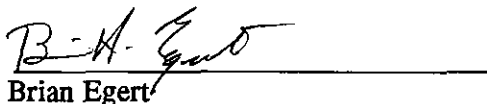
By letter dated November 12, 1992, the Director of Arbitration waived the non-refundable filing fee in the amount of \$1,500.00 and the hearing session deposit in the amount of \$1,500.00 due from Claimant at the time of filing the claim. Pursuant to Chicago Board Options Exchange ("Exchange") Rule 18.33, the undersigned arbitrators assess forum fees as follows:

1. The Exchange shall retain the pre-hearing fee in the amount of \$1,000.00 and the adjournment fee in the amount of \$1,000.00 previously paid by Respondents.
2. Claimant is responsible for forum fees in the amount \$6,000.00 (4 hearing sessions times \$1,500). Payment is waived pursuant to the Director of Arbitration's letter of November 12, 1992.



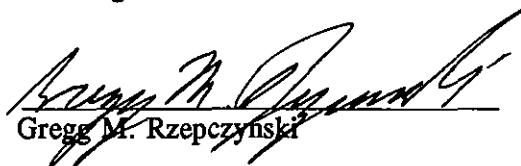
Peter C. Guth, Chairman

12-19-94
Date



Brian Egert

12/19/94
Date



Gregg M. Rzepczynski

12/19/94
Date