

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

IN THE MATTER OF)	
)	
Option Funding Group, Limited Partnership,)	
)	
Claimant,)	
)	
v.)	
)	
Sage Clearing Limited Partnership,)	
)	
Respondent.)	
)	DECISION
And)	
)	File No. 94M13
Sage Clearing Limited Partnership,)	
)	
CounterClaimant,)	
)	
v.)	
)	
Option Funding Group, Limited Partnership)	
and James Murphy,)	
)	
CounterRespondents.)	
)	

Representation

For Claimant/CounterRespondents: James J. Moylan, Arnstein & Lehr, Chicago, IL
 For Respondent/CounterClaimant: Matthew D. Wayne, Fishman & Merrick, P.C., Chicago, IL

Pleadings

	<u>Filed On or About</u>
Statement of Claim and Submission Agreement	11-16-94
Answer and Counterclaim and Submission Agreement	01-10-95
Answer to Counterclaim	03-24-95
First Amended Statement of Claim	03-24-95
Answer and Counterclaim to First Amended Statement of Claim	05-04-95
Answer to Amended Counterclaim	05-08-95

Hearing

The named parties appeared at the hearing specified below, and had full opportunity to present arguments and evidence.

Date(s): October 11 and 18, 1995 No. of Sessions: 3

Location: Chicago, IL

Summary of Issues

Option Funding Group, Limited Partnership ("OFG"), a member of the Chicago Board Options Exchange ("Exchange"), alleges that Sage Clearing Limited Partnership ("Sage"), a member of the Exchange, acted as OFG's clearing firm from 1992 to July, 1994. OFG further alleges that during that period Sage charged OFG "Excessive Borrowing Interest" ("EBI"), without the knowledge or agreement of OFG. OFG asserts that it became aware of the EBI charges in late December, 1993 or early January, 1994. OFG further asserts that Sage's principal, Arthur Goldberg ("Goldberg") agreed in March, 1994, to rebate the EBI charges in installments and to cease charging EBI to OFG. OFG alleges that Sage rebated \$19,443.00 in EBI charges on or about March 24, 1994, and \$52,904.59 in EBI charges on or about May 5, 1994. However, OFG alleges that Sage failed to rebate any further EBI charges to OFG. OFG requests an award against Sage in the amount of \$125,823.30 for EBI charges for 1993 and 1994, \$70,997.29 for EBI charges for 1992, and \$40,000 for the equity remaining in OFG's account with Sage when OFG transferred its accounts from Sage in July 1994, plus interest, costs and attorneys' fees.

Sage asserts that OFG and James Murphy ("Murphy"), OFG's general partner, were aware of the possibility of EBI costs from the inception of the clearing arrangement. Sage further asserts that Sage temporarily credited to OFG moneys for 1994 EBI charges and temporarily agreed to stay charging EBI to OFG based on promises made by OFG and Murphy. Sage alleges that in return for EBI relief, OFG and Murphy promised to repay all 1994 EBI relief, to continue the clearing relationship with Sage, and if OFG was selected as the Israeli Index DPM, to clear the Israeli Index through Sage at a price of ten cents per contract. Sage alleges that contrary to the promises made by OFG and Murphy, OFG terminated its clearing agreement with Sage. Sage seeks an award against OFG and Murphy, jointly and severally, in the amount of \$100,952, the total of \$72,348, which is the amount Sage temporarily credited to OFG in 1994 for EBI charges, and \$28,604, which is the amount of EBI charges accrued but not billed to OFG in 1994. Further, Sage seeks an award against Murphy, individually, in the same amount (\$100,952) based on Murphy's fraud in connection with all of the 1994 EBI relief he obtained deceptively for OFG from Sage, plus unspecified punitive damages for fraudulent conduct. In addition, Sage seeks an award against Murphy individually for past and future commissions with respect to the Israeli Index which Sage asserts Murphy promised to clear through Sage. Finally, Sage requests an award of costs and attorneys' fees.

Award*

After due deliberation and consideration of the hearing testimony, documentary evidence, and other submissions of the parties, the undersigned arbitrators, in full and final resolution of all issues in controversy, award as follows:

1. No award is rendered on OFG's claim against Sage for 1992, 1993 or 1994 EBI charges.
2. OFG and Murphy, jointly and severally, are liable to Sage for EBI charges in the amount of \$97,348, which is the sum of \$72,348 for the adjusted and credited 1994 EBI charges and \$25,000 for unassessed 1994 EBI charges. This amount shall be offset against the \$39,792 in equity remaining in OFG's account with Sage. Therefore, after the offset, OFG and Murphy, jointly and severally, shall pay to Sage the amount of \$57,556.
3. If not paid within thirty (30) days of receipt, this award shall bear interest from the date of the award until the date paid at a rate of 8% per annum.
4. No award is rendered on Sage's claim for commissions on the Israeli Index.
5. Sage's request for punitive damages is denied.
6. Each party shall bear their respective costs and attorneys' fees.

Forum Fees

Pursuant to Exchange Rule 18.33, the Arbitrators assess forum fees as follows:

Prehearing held on August 9, 1995	\$ 750
3 Hearing Sessions at \$750 per session	<u>+2,250</u>
Total Forum Fees	3,000
Less Hearing Session Deposits	<u>-2,250</u>
Amount Due to the Exchange:	\$ 750

1. The Exchange shall retain the non-refundable filing fee in the amount of \$750, the hearing session deposit in the amount of \$750, and the prehearing fee in the amount of \$375 previously submitted by OFG.
2. The Exchange shall retain the non-refundable filing fee in the amount of \$750, the hearing session deposit in the amount of \$750, and the prehearing fee in the amount of \$375 previously submitted by Sage.

* Pursuant to CBOE Rule 18.31, all monetary awards shall be paid within thirty (30) days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction.

3. OFG and Murphy, jointly and severally, are liable for and shall pay to the Exchange the sum of \$750 in additional forum fees.

Charles B. Cox
Charles B. Cox, Industry
Arbitrator and Chairman

11/7/95
Date

Tim Feeney
Tim Feeney, Industry Arbitrator

11/7/95
Date

Mitch Schilling
Mitch Schilling, Industry Arbitrator

11/7/95
Date