

IN THE MATTER OF )  
)  
BHNV Investments, Inc., )  
)  
Claimant/CounterRespondent, )  
)  
v. )  
)  
Kessler-Asher Clearing L.P., )  
)  
Respondent/CounterClaimant. )

File No. 96 M 01

**For Respondent(s):** Stephen P. Bedell, Gardner, Carton & Douglas, Chicago, Illinois

Statement of Claim, filed on or about: March 22, 1996  
 Answer and Counterclaim, filed on or about: May 7, 1996  
 Response to Counterclaim, filed on or about: May 30, 1996

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

## Summary of Issues

BHNV Investments, Inc. ("BHNV") alleges that Kessler-Asher Clearing L.P. ("Kessler-Asher") wrongfully caused the liquidation of positions in BHNV's account on September 6, 1995. BHNV asserts that despite BHNV's history of properly meeting margin requirements and despite BHNV's assertion that sufficient margin would have been deposited to the account, Kessler-Asher ordered the liquidation of the majority of the positions in BHNV's account without giving BHNV a

reasonable opportunity to make a deposit into the account or to adjust positions in the account. BHNV alleges that if, among other things, Kessler-Asher had not wrongfully liquidated BHNV's positions, the account would have profited at expiration by approximately \$144,000.00 to \$244,000.00. BHNV seeks an award against Kessler-Asher in an amount to be determined at hearing, plus interest, punitive damages, attorneys' fees and costs.

Kessler-Asher asserts a counterclaim against BHNV for failure and refusal to pay a debit balance in BHNV's trading account, as of December 1, 1996, in the amount of \$6,468.12. Kessler-Asher seeks an award against BHNV in the amount of \$8,035.62 (i.e., \$6,168.12 debit balance, plus \$300.00 office rent and \$1,567.50 brokerage), plus interest, attorneys' fees and costs.

#### 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 the matter in controversy, award as follows:

1. No award is rendered on BHNV's claim.
2. BHNV is responsible for and shall pay to Kessler-Asher the amount of \$8,035.62 in compensatory damages.
3. BHNV is responsible for and shall pay to Kessler-Asher the of amount of \$8,500.00 in attorneys' fees.
4. BHNV is responsible for and shall pay to Kessler-Asher the amount of \$1,100.00 in arbitration forum fees.
5. If not paid within thirty (30) days of receipt, this award shall bear interest from the date of the award at the rate of 8% per annum.

#### Forum Fees

Pursuant to Chicago Board Options Exchange ("Exchange") Rule 18.33, the Arbitrators assess forum fees in the amount of \$1,908.00 (i.e., \$558.00 court reporter costs + 1 hearing session @ \$750.00 + 1 hearing-session @ \$600.00) as follows:

1. BHNV is responsible for and shall pay to the Exchange \$558.00 for court reporter costs.
2. The Exchange shall retain the hearing session deposits previously submitted by BHNV and Kessler-Asher in the amounts of \$750.00 and \$600.00, respectively.

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\* 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.

The Exchange retains the non-refundable filing fees previously submitted by BHNV and Kessler-Asher in the amounts of \$750.00 and \$600.00, respectively.

/s/ Charles B. Cox  
Charles B. Cox, Chairperson

9/13/96  
Date

/s/ Peter C. Guth  
Peter C. Guth, Industry Arbitrator

9/13/96  
Date

/s/ Mark Kalas  
Mark Kalas, Industry Arbitrator

9/13/96  
Date