

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

_____)	
IN THE MATTER OF)	
)	
Kottke Associates, Inc.,)	
)	
Claimant,)	DECISION
)	
v.)	File No. 96 M 05
)	
Joseph Hornberger,)	
)	
Respondent.)	
_____)	

Representation

For Claimant(s):	Lloyd Kadish, Lloyd Kadish & Associates, Ltd., Chicago, Illinois
For Respondent(s):	Arthur W. Hahn and Sean M. Berkowitz, Katten Muchin & Zavis, Chicago, Illinois

Pleadings

Statement of Claim, filed on or about:	May 16, 1996
Answer, filed on or about:	June 24, 1996

Hearing

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

Date:	September 9, 1997
Location:	Chicago, Illinois
No. of Sessions:	Two (2)

The named parties appeared at pre-hearings on February 24, 1997 and July 29, 1997.

Summary of Issues

Kottke Associates, Inc. ("Kottke") asserts that it entered into a contract, dated August 28, 1995, with Joseph Hornberger ("Hornberger") to financially support Hornberger's trading in SPX options. Kottke further asserts that pursuant to the contract Hornberger agreed to trade on a "delta neutral" basis and agreed to specific risk parameters, including reporting and account review requirements. Kottke alleges that Hornberger breached the contract during December 1995 by exceeding the risk parameters established under the contract. Kottke further alleges that

during the same period Hornberger intentionally made misrepresentations and misstatements to disguise the true value of his trading account. Kottke avers that Hornberger's breach of the contract caused Kottke to be damaged in the amount of \$110,170.16.

Hornberger acknowledges the terms and provisions of the contract, but alleges that the risk parameters had been exceeded on numerous occasions prior to December 1995 with the knowledge and approval of Kottke. Hornberger denies all allegations of misrepresentations and misstatements.

Relief Requested

Kottke requests an award against Respondents in the amount of \$110,170.16 in compensatory damages, plus the fees and costs of bringing the matter to arbitration. Hornberger requests dismissal of the claim and an award of attorney's fees and costs in defending the arbitration.

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. Hornberger is responsible for and shall pay to Kottke the total amount of \$75,000.00 in compensatory damages.
2. No award is rendered for pre-award interest, costs or attorneys fees.
3. If the award is not paid within thirty (30) days of receipt, the award shall bear interest from the date of the award at the rate of eight percent (8 %).

Forum Fees

Pursuant to Chicago Board Options Exchange ("Exchange") Rule 18.33, the Arbitrators assess forum fees in the total amount of \$3,800.00 as follows:

1. The Exchange shall retain the non-refundable filing fee in the amount of \$750.00 previously submitted by Kottke.
2. The Exchange shall retain the adjournment fee in the amount of \$600.00 previously submitted by Hornberger for the adjournment of the hearing session scheduled for April 21, 1997.
3. Liability for the hearing session fees in the amount of \$1,500.00 (two sessions x \$750.00) and the pre-hearing fees in the amount of \$1,000.00 (two pre-hearings x \$500.00) is divided equally between the parties.
4. The Exchange shall retain the hearing session deposit in the amount of \$750.00 previously submitted by Kottke. Kottke shall pay to the Exchange the sum of \$500.00.

* 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.

5. Hornberger shall pay to the Exchange the sum of \$1,250.00.

<u>/s/ Charles B. Cox</u>	<u>09/29/1997</u>
Charles B. Cox, Chairperson and Industry Arbitrator	Date
<u>/s/ Sondra C. Rabin</u>	<u>09/29/1997</u>
Sondra C. Rabin, Industry Arbitrator	Date
<u>/s/ Richard R. Taylor</u>	<u>09/30/1997</u>
Richard R. Taylor, Industry Arbitrator	Date