

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

IN THE MATTER OF)	
)	
George M. Dupper,)	
)	
Claimant,)	DECISION
)	
v.)	File No. 97 M 005
)	
Botta Trading, Inc. and)	
Kevin Luthringshausen,)	
)	
Respondent(s).)	
)	

Representation

For Claimant(s):	Arne R. Rode, Chicago, Illinois
For Respondent(s):	Ted S. Helwig and Thomas J. Meier, Katten Muchin & Zavis, Chicago, Illinois

Pleadings

Statement of Claim and Submission Agreement, filed on or about:	11/24/97
Answer and Counterclaim and Submission Agreements, filed on or about:	12/23/97
Answer to Counterclaim filed on or about:	01/08/98

Hearing

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

Date(s):	April 27 and 28, 1998	No. of Sessions:	2
Location:	Chicago, Illinois		

Summary of Issues

The dispute, claim or controversy arises out of an Independent Contractor Agreement between George Dupper ("Claimant") and Botta Trading, Inc., dated April 15, 1996 ("Agreement"), pursuant to which Claimant acted as a nominee for Botta Trading, Inc. Claimant alleges that Botta Trading, Inc. and Kevin Luthringshausen ("Respondents") terminated the Agreement on or about June 30, 1997, when Respondents terminated Claimant's nominee status and his authorization to trade on the CBOE floor. Claimant asserts that Respondents terminated the Agreement for reasons other than Claimant's refusal or failure to perform under the agreement or Claimant's disloyalty, dishonesty or insubordination. Claimant further asserts that Respondents have prevented him from functioning in the capacity of market-maker for Respondents and from gaining employment with another trading firm, among other things. Claimant

alleges that as a result of Respondents' actions, he has suffered a loss of income and emotional distress and that he faces potential damage to his reputation as a securities trader.

Claimant seeks:

1. a finding that Respondents' terminated the Agreement for reasons other than Claimant's refusal or failure to perform under the agreement or Claimant's disloyalty, dishonesty or insubordination,
2. a finding that the terms of the Agreement, including those that purport to survive termination, are void or, in the alternative, a finding that the restrictive covenant set forth in the Agreement is unreasonably broad and unenforceable,
3. an award against Respondents for unspecified compensatory damages for lost income and financial hardship, and
4. an award against Respondents for punitive damages in an amount of not less than \$50,000.

In counterclaim, Respondents allege that Claimant refused to perform under the Agreement, beginning on or about June 28, 1997. Respondents assert that such refusal entitles Respondents to recover from Claimant net trading losses in Claimant's trading account and certain advances received by Claimant. Respondents further assert that at the time Claimant refused to perform under the Agreement, Claimant's trading account was deficit in excess of \$400,000 and that Claimant had received advances in the amount of \$49,213.53.

Respondents seek:

1. a finding that Claimant terminated the Agreement without justification or, in the alternative, that Claimant's non-performance entitled Respondents to terminate the Agreement,
2. an award against Claimant for advances in the amount of \$49,213.53,
3. an award against Claimant for trading losses in excess of \$400,000, and
4. a finding that the restrictive covenant set forth in the Agreement is valid and enforceable or, in the alternative, that the restrictive covenant is valid and enforceable within a more limited scope.

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, determine as follows:

* 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.

1. We find the Claimant terminated the Agreement. No award is rendered to Claimant for compensatory or punitive damages.
2. We find the Agreement, including the restrictive covenant, enforceable.
3. We award damages to Respondents' against Claimant for draws, expenses and partial trading losses in the amount of \$149,213, with interest at 1% over prime, starting November 24th, 1997.

Forum Fees

Pursuant to Chicago Board Options Exchange, Incorporated ("Exchange") Rule 18.33, the Arbitrators assess forum fees in the total amount of \$2,650.00 representing:

Filing Fees	\$1,000.00
1 hearing session fee	750.00
1 hearing session fee	600.00
1 pre-hearing session fee	300.00
Total	\$2,650.00

The fees are assessed against the parties as follows:

1. Claimant is liable for forum fees in the amount of \$1,000.00. The Exchange shall retain the \$850.00 previously submitted by Claimant. Claimant shall pay an additional \$150.00 to the Exchange.
2. Respondent is liable for forum fees in the amount of \$1,650.00. The Exchange shall retain the \$1,500.00 previously submitted by Respondents, Respondents shall pay an additional \$150.00 to the Exchange.

/s/ Daniel Baldwin
Daniel Baldwin, Industry Arbitrator/Chair

05/07/1998
Date

/s/ Scott Andrews
Scott Andrews, Industry Arbitrator

05/07/1998
Date

/s/ Theodoric Flemister
Ted Flemister, Industry Arbitrator

May 7, 1998
Date