

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

_____	)	
IN THE MATTER OF	)	
	)	
Sean McGrath,	)	
	)	
Claimant,	)	DECISION
	)	
v.	)	File No. 99M007
	)	
ING TT&S (U.S.) Securities, Inc.	)	
	)	
Respondent.	)	
_____	)	

**Representation**

For Claimant(s): Patrick M. Hincks, Sullivan & Hincks, Oakbrook, IL  
For Respondent(s): Stephen P. Bedell, Gardner, Carton & Douglas, Chicago, IL

**Pleadings**

Statement of Claim and Submission Agreement, filed on or about:	November 15, 1999
Answer and Submission Agreement, filed on or about:	January 21, 2000
Amended Statement of Claim, filed on or about	May 16, 2000
Motion to Dismiss, filed on or about:	May 16, 2000
Answer to Amended Statement of Claim and Counterclaim, filed on or about:	May 25, 2000
Motion for Summary Decision, filed on or about:	June 5, 2000
Response to Motion for Summary Judgment, filed on or about:	June 8, 2000
Response to Motion to Dismiss, filed on or about:	June 8, 2000
Answer to Counterclaim, filed on or about:	June 12, 2000

**Hearing**

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

	<u>Date(s)</u>	<u>No. of Sessions</u>	<u>Location</u>
Pre-Hearing	April 20, 2000	1	Chicago, IL
Pre-Hearing	June 9, 2000	1	Telephonic
Hearing	June 13, 2000	2	Chicago, IL
Hearing	June 14, 2000	2	Chicago, IL
Hearing	June 15, 2000	2	Chicago, IL

**Summary of Issues**

On November 15, 1999, Sean McGrath ("Claimant") filed a Statement of Claim against ING TT&S (U.S.) Securities, Inc. ("Respondent"). The claim arises out of Claimant's employment as a market-maker for Respondent from approximately January 3, 1998 until April 1, 1999. The claim involves

Respondent's payment of Claimant's bonus compensation for fiscal year 1998. In the Amended Statement of Claim, Claimant alleges that Respondent breached the employment agreement between the parties when Respondent refused to pay Claimant the entire amount of his bonus for 1998 by the end of the first quarter of 1999, as specified in the employment agreement. Claimant further alleges that Respondent was unjustly enriched by Respondent's refusal to pay to Claimant the entire bonus and that such refusal violated the Illinois Wage Payment and Collection Act.

Claimant requests an award against Respondent in the following amounts:

- (a) \$92,500 (plus interest from March 31, 1999 to present) for bonus compensation remaining due to Claimant for 1998,
- (b) \$11,000 as the value of 200 ING stock options awarded and not paid to Claimant,
- (c) \$175,000 (plus interest from April 1, 2000) in bonus compensation for the first quarter of 1999,
- (d) punitive damages in an amount no less than twice the actual damages awarded,
- (e) reasonable attorney's fees, expert witness fees, forum fees, costs and expenses, and
- (f) such further relief as the arbitrators determine is just, proper and equitable.

Respondent denies all factual allegations and legal conclusions. Among other things, Respondent asserts that Claimant's request for additional bonus compensation is contrary to the express and implied terms of the employment agreement and denies that Claimant is entitled to any additional bonus and compensation. Respondent further asserts that the Wage Payment and Collection Act ("Act") does not apply and denies any violation of the Act.

In its counterclaim against Claimant, Respondent asserts that Claimant's failure and refusal to pay to Respondent a loan balance in the amount of \$7,500 unjustly enriched Claimant. Respondent further asserts abuse of process based upon the similarity of Claimant's allegations to those asserted in a previously decided arbitration matter, Thomas P. Campbell v. ING TT&S Securities, Inc. Respondent seeks an award against Claimant in the amount of \$7,500 for an unpaid loan balance and \$15,000 in attorney's fees, plus interest and costs. Claimant denies all allegations of unjust enrichment and abuse of process and asserts that the \$7,500 represented an advance toward Claimant's 1998 bonus.

#### **Other Issues Resolved**

At the hearing, the arbitrators denied Respondent's Motion to Dismiss and Claimant's Motion for Summary Decision.

#### **Award\***

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

1. Respondent is responsible for and shall pay to Claimant the amount of \$92,500 for the 1998 deferred bonus compensation.

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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.

2. Respondent shall pay interest on the \$92,500 at the rate of nine percent (9%) per annum from April 1, 1999 until the award is paid.
3. Respondent is responsible for and shall pay to Claimant the amount of \$3,000 for forum fees previously submitted to the Chicago Board Options Exchange ("Exchange") by Claimant.
4. Claimant's requests for the value of 200 ING stock options, bonus compensation for the first quarter of 1999, punitive damages, attorney's fees, expert witness fees, costs and expenses, and any other relief, including the value of unpaid vacation days, are denied.
5. Respondent's counterclaim for an unpaid loan balance, attorney's fees, interest, and costs is denied.
6. Any other requests for relief not specifically addressed herein are denied.

#### Forum Fees

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

Initial Filing Fee – Claim	\$ 1,500
Initial Filing Fee – Counterclaim	500
Pre-Hearing Fees (2 x \$500)	1,000
Hearing Session Fees (6 x \$1,000)	<u>6,000</u>
Total	\$9,000.00

1. Respondent is liable for and shall pay to the Exchange the amount of \$4,900.
2. The Exchange shall retain the \$3,000 (\$1,500 non-refundable filing fee + \$1,500 hearing session deposit) previously submitted by Claimant.
3. The Exchange shall retain the \$1,100 (\$500 non-refundable filing fee + \$600 hearing session deposit) previously submitted by Respondent.

/s/ Fred Teichert	6/27/00
Fred Teichert, Chair and Industry Arbitrator	Date

/s/ Patrick J. McDermott	6/27/00
Patrick J. McDermott, Industry Arbitrator	Date

/s/ Stephen J. Nagy	6/28/00
Stephen J. Nagy, Public Arbitrator	Date