

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

IN THE MATTER OF)	
)	
Jason Urquhart and Doug Urquhart,)	
)	
Claimants,)	
)	
v.)	File No. 12M003
)	
VTrader Pro, LLC and Herbert C. Kurlan,)	
)	
Respondents.)	
)	

Representation

For Claimants: Parker Young and Michael Brown (Figari & Davenport, LLC)
For Respondents: Richard Asche (Litman, Asche & Gioiella, LLP) (withdrew from case on October 13, 2015); Shane Wachtel (Shane R. Wachtel, Attorney at Law) (Counsel for Herbert Kurlan) (commenced November 12, 2015); Respondent Herbert Kurlan was not represented by counsel between October 13, 2015 and November 12, 2015 and Respondent VTrader Pro, LLC was not represented by counsel between October 13, 2015 and November 30, 2015.

Pleadings

- Jason Urquhart and Doug Urquhart Statement of Claim and Uniform Submission Agreement, filed on or about: October 31, 2012
- VTrader Pro LLC and Herbert C. Kurlan Answer and Uniform Submission Agreement, filed on or about: January 11, 2013

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>
November 2, 2015	1	Chicago, Illinois
November 3, 2015	1	Chicago, Illinois

November 4, 2015	2	Chicago, Illinois
November 5, 2015	2	Chicago, Illinois
November 6, 2015	1	Chicago, Illinois
November 30, 2015	1	Chicago, Illinois

Summary of Issues

On or about October 31, 2012, Jason Urquhart and Doug Urquhart (“Claimants”) filed a Statement of Claim against VTrader Pro, LLC (“VTrader”), Herbert C. Kurlan, and Merrill Lynch Professional Clearing Corp, (“MLPC”) (“Respondents”).

Claimants’ Statement of Claim alleged: (i) negligent misrepresentation; (ii) fraudulent inducement and fraudulent concealment; (iii) unjust enrichment; (iv) promissory estoppel; (v) breach of fiduciary duty and good faith and fair dealing; (vi) violations of industry rules and regulations; and (vii) aiding and abetting. More specifically, the Statement of Claim alleges that (i) VTrader at all relevant times was a Broker-Dealer formed for the purpose of operating a joint back office (“JBO”); (ii) Herbert Kurlan was founder, Managing Member and a Series 27 principal of VTrader; (iii) MLPC was a prime broker and VTrader was at all relevant times an MLPC client and participant in MLPC’s JBO operations; (iv) Texas Capital Management LLC (“Texas Capital”) was at all relevant times an “Entrepreneurial Member” of VTrader; (v) Claimants were “Class B” members of Texas Capital; (vi) Respondents maintained the separate trading accounts of Texas Capital’s members, provided all account statements and trade confirmations and exercised sole control over all credit and margin decisions regarding those accounts; (vii) Respondents were aware that Texas Capital and its founder, Michael DeNio, had no compliance monitoring or risk management capability and did not employ staff to oversee or monitor the risks of the investment accounts at Texas Capital; (viii) Respondents failed to fulfill their responsibilities to Claimants by failing to properly supervise and monitor the real-time trading and risk of their investors, including by permitting extension of large margin loans to other customers to acquire positions in illiquid, thinly traded, OTC bulletin board stocks; (ix) on or about September 28, 2011, VTrader at the request and direction of MLPC, seized all of the assets in the Claimants’ trading accounts (valued at approximately \$4,283,000) with Texas Capital, liquidated all of the Claimants’ remaining positions and applied the Claimants’ funds to trading losses incurred by third-parties in other accounts; and (x) Claimants had no knowledge of or involvement in the third-party accounts, were not responsible for risky, illiquid positions and had been assured by Herbert Kurlan that VTrader intended to permit Claimants to withdraw funds in their accounts.

Therefore, Claimants in their Statement of Claim have requested: (i) damages; (ii) pre- and post-award interest in all sums awarded; (iii) all forum fees, Arbitrators’ fees, filing fees, or other hearing fees and costs, and (iv) such other and further relief to which they may be justly entitled.

On or about February 22, 2013, MLPC submitted a letter challenging the ability to arbitrate the claim under Exchange Rule 18.1. On July 3, 2013, the Director of Arbitration issued a decision on the jurisdictional challenge finding that the Exchange had jurisdiction over the matter as it pertains to MLPC. Following an appeal of the jurisdictional decision pursuant to Exchange Rule 18.1(c), CBOE’s Board of Directors reversed the jurisdictional decision on December 10, 2013 and MLPC was dismissed from the matter.

On or about January 11, 2013, VTrader and Herbert Kurlan submitted an Answer in which they contend, among other things, that (i) Claimants do not claim to be members of VTrader, have any contractual relationship with VTrader or have invested any capital with VTrader; (ii) Texas Capital was an

Entrepreneurial Member of, and invested capital with, VTrader; (iii) Texas Capital was permitted to trade using VTrader as its broker and back-office support; (iv) Texas Capital was assigned a sub-account at VTrader and all investment decisions regarding capital in the sub-account were made by Texas Capital; (v) profits and losses in the Texas Capital sub-account were credited or debited to Texas Capital and if Texas Capital or any other Entrepreneurial Member sustained losses which exceeded that member's available capital, such losses had to be borne by other members of VTrader; (vi) VTrader's Operating Agreement expressly provided that "the value of an Entrepreneurial Member's Capital Account(s) will be determined on an aggregate basis and losses in any one account shall be offset with profits or capital in any other such account or accounts"; (vii) during the period Claimants were members of Texas Capital, Texas Capital sustained losses in excess of the capital in the Texas Capital account; and (viii) as required by its Operating Agreement, VTrader applied all of the remaining capital in the Texas Capital sub-accounts to offset Texas Capital's loss. Additionally, Respondents' Answer asserts, as an affirmative defense, that the Statement of Claim failed to set forth a claim for relief.

Award¹

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

1. Claimants' request for compensatory damages and interest is GRANTED, in part, in the total amount of \$3,860,265.
2. Claimants' request for attorney fees is GRANTED in the total amount of \$1,182,205.
3. Claimants' request for punitive damages is GRANTED in the amount of \$360,488.96.
4. Respondent shall pay all filing and forum fees as detailed below.

Forum Fees

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

Initial Filing Fee – Claim	\$1,500
Pre-hearing session Fees (2)	\$1,000
Hearing session Fees (8 x \$1,500)	<u>\$12,000</u>
Total	\$14,500

1. Responsibility for the Initial Filing Fees, totaling \$1,500, shall be assessed as follows: Claimants shall be responsible for \$0.00 and Respondents shall be responsible for \$1,500.00.
2. Responsibility for the forum fees, including both pre-hearing and hearing sessions, totaling \$13,000, shall be assessed as follows: Claimants shall be responsible for \$0.00 and Respondents shall be responsible for \$13,000.

¹ 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. The Exchange shall retain the non-refundable filing fees and the hearing session deposits submitted by Claimants. Claimants initially submitted \$1,500 for the filing fee and \$1,500 for the hearing deposit. Claimants shall submit \$0.00 to the Chicago Board Options Exchange, Incorporated.
4. Respondents shall submit \$3,000 to the Claimants as and for the hearing deposit and filing fee previously paid by Claimants and submit \$11,500 to the Chicago Board Options Exchange, Incorporated.

/s/ Paul Jiganti
Paul Jiganti, Chairman and Industry Arbitrator

February 8, 2016
Date

/s/ Allen Greenberg
Allen Greenberg, Industry Arbitrator

February 4, 2016
Date

/s/ Duncan Robinson
Duncan Robinson, Industry Arbitrator

February 5, 2016
Date