

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

IN THE MATTER OF	)	
	)	
Saliba Partners, LLC, John Saliba and Anthony Saliba,	)	
	)	
Claimants,	)	DECISION
	)	
v.	)	File No. 00M006
	)	
LETCO Trading, L.P., Lee Tenzer, Scott Kilrea, John Robinson, Joseph Fahrenbach and Michael Riley,	)	
	)	
Respondents.	)	
	)	

**Representation**

For Claimants: Scott E. Early, Foley & Lardner, Chicago, IL  
 For Respondents: David C. Bohan, Sachnoff & Weaver, Ltd., Chicago, IL

**Pleadings**

Arbitration Complaint and Submission Agreement, filed on or about:	August 23, 2000
Answer and Counterclaim, filed on or about:	October 4, 2000
Claimants' Answer to Counterclaim filed on or about:	October 18, 2000
Respondents' Submission Agreement, filed on or about:	February 2, 2001

**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>
February 5, 2001	1	Telephonic Pre-hearing
February 26, 2001	1	Chicago
February 28, 2001	1	Chicago
March 1, 2001	1	Chicago
March 2, 2001	1	Chicago

**Summary of Issues**

On August 23, 2000, Saliba Partners LLC ("SPLLC"), John Saliba and Anthony Saliba ("Saliba Members") (collectively, "Claimants") filed an Arbitration Complaint against LETCO Trading, L.P., Lee Tenzer, Scott Kilrea, John Robinson, Joseph Fahrenbach and Michael Riley ("Respondents" or "LETCO

Members"). The claim arises out of an agreement between the parties in September 1998 whereby Respondents acquired an aggregate 49% interest in SPLLC, and the Saliba Members retained an aggregate 51% interest in SPLLC ("Agreement").

Claimants allege that Respondents acquired an interest in SPLLC in exchange for a promise to commit \$5 million in capital contributions and to provide, among other things, risk control management for SPLLC's DPM, a trader with at least two years experience for the existing operation, marketing contacts, and assistance in expanding the operation of SPLLC's DPM. Claimants assert that Respondents have failed to perform their obligations under the Agreement. Claimants request that the Arbitrators:

- Rescind the Agreement between the parties, the Subscription Agreements, and the Amendments to the Operating Agreement, dated September 18, 1998 and September 25, 1998.
- Order Respondents to return their 49% interest in SPLLC.
- Order Respondents to return the \$1.2 million disbursements taken from SPLLC.
- Order SPLLC to return the \$1 million capital contribution to Respondents.
- Award SPLLC restitution damages including lost profits in an amount in excess of \$8.5 million.
- Award Claimant John Saliba restitution damages including a management fee in the amount of 30% of annual DPM profits.
- Order such further relief that the Arbitrators deem just.

In their Answer and Counterclaim, Respondents dispute Claimants' recitation of the terms of the Agreement and deny Claimants' allegations that they failed to perform their obligations under the Agreement. In addition, Respondents allege that the Agreement in September 1998 provided, among other things, that the Saliba Members would pay Respondents \$150,000 for taking over the non-DPM BZA account. Respondents assert that Claimants' never made the \$150,000 payment. Respondents request that the Arbitrators deny Claimants' request for relief in its entirety and order John and Anthony Saliba to pay \$150,000 to Respondents.

In Answer to the Counterclaim, Claimants assert that they fully performed the agreement regarding Respondents taking over the BZA account. Claimants allege, among other things, that the Saliba Members and the LETCO Members both agreed to pay \$150,000 into the BZA account. Claimants assert that they have no knowledge as to whether the LETCO Members made the agreed upon payment. Claimants further allege that Respondents failed to accurately calculate the 50% profit distribution from the BZA account in January 1999. Claimants request a daily accounting for the BZA account from September 14, 1998 through January 16, 1999. Claimants further request that the Arbitrators deny Respondents' counterclaim, award the Saliba Members an additional \$75,000 in the event Respondents failed to contribute \$150,000 to the BZA account, and award any portion of the agreed upon 50% split from the BZA account that exceeded the amount distributed to the Saliba Members.

At the hearing, Respondents amended their counterclaim to request \$75,000, rather than \$150,000. In addition, Respondents requested that the Arbitrators, among other things, order the Saliba Members to buyout the LETCO Members' or sell their interest in SPLLC, order the parties to split the profits in the SPLLC DPM account, and order SPLLC to return the Respondents' capital contribution.

### 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 all issues in controversy, have decided as follows:

1. Claimants' request for rescission of the Agreement, the Subscription Agreements, and the Amendments to the Operating Agreement, dated September 18, 1998 and September 25, 1998, is denied.
2. Claimants' request for an order directing Respondents to return the \$1.2 million disbursements taken from SPLLC is denied.
3. Claimants' request for restitution damages including lost profits in an amount in excess of \$8.5 million to SPLLC is denied.
4. Claimants' request for restitution damages including a management fee in the amount of 30% of annual DPM profits to John Saliba is denied.
5. The Saliba Members and LETCO Members must terminate their relationship according to the following procedures. Within seven calendar days from receipt by Certified Mail of this Decision, Saliba Members must notify LETCO Members of their decision to value, or buy or sell the SPLLC DPM. Within seven days of Saliba Members' notification, the valuer has seven days to assign a value and notify the other party of that value. Within seven days of the valuation notification, the non-valuing party must notify the valuer of its decision to buy or sell. Within seven days of purchase or sale notification, the parties must execute the documents necessary to effect the transaction.
6. The parties must submit the buy/sell proposal to the MTS Appointments Committee for approval within 45 calendar days of the decision to buy or sell under paragraph 5.
7. Upon the MTS Appointments Committee's approval, the relationship between the parties shall terminate. SPLLC will return to the LETCO Members \$1 million of their capital contribution. The parties must agree upon an independent third party to mark the SPLLC DPM positions. If the parties cannot agree on an independent third party to mark the positions, the undersigned arbitrators will appoint an independent third party. The Saliba Members and the LETCO Members must split the profits in the SPLLC DPM account 51% and 49%, respectively.
8. Respondents' counterclaim in the amount of \$75,000 is denied.
9. The Saliba Members and the LETCO Members must pay their own attorney's fees. No attorney's fees may be charged to SPLLC accounts.

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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.

### 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	\$750
Pre-Hearing Fees (1 x \$500)	\$500
Hearing Session Fees (4 x \$1,500)	<u>\$6,000</u>
Total	\$8,750

1. All forum fees are assessed against John and Anthony Saliba, jointly and severally.
2. Exchange shall retain the non-refundable filing fees and the hearing session deposits in the total amount of \$4,500 that were previously submitted by the parties upon filing of the initial claim and counterclaim.
3. John and Anthony Saliba shall pay to the Exchange the total amount of \$4,250.
4. John and Anthony Saliba shall pay \$1,500 to Respondents for the \$750 filing fee and \$750 hearing session deposit submitted to the Exchange upon the filing of the counterclaim.

The undersigned arbitrators hereby affirm that they have executed this Decision which is their award in the captioned arbitration.

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Brian H. Egert, Chair and Industry Arbitrator

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Date

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John A. Koltas, [Industry](#) Arbitrator

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Date

\_\_\_\_\_  
Richard R. Taylor, [Industry](#) Arbitrator

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Date