

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

IN THE MATTER OF	)	
	)	
Howard A. Rubin, Individually	)	
and as Trustee,	)	
	)	
Claimant,	)	DECISION
	)	
v.	)	File No. 00NM001
	)	
First Options of Chicago, Inc.	)	
f/k/a/ LIT Clearing Services, Inc.,	)	
	)	
Respondent.	)	
	)	

**Representation**

For Claimant(s):	Lloyd Kadish, Lloyd Kadish and Associates, Ltd., Chicago, IL
For Respondent(s):	Howard Schiffman, Eric A. Bensky, Dickstein Shapiro Morin & Oshinsky LLP, Washington, D.C.

**Pleadings**

Statement of Claim and Submission Agreement, filed on or about:	February 28, 2000
Answer and Counterclaim and Submission Agreement, filed on or about:	May 2, 2000
Answer to Counterclaim, filed on or about:	May 16, 2000
Exhibits to Answer to Counterclaim, filed on or about:	May 22, 2000
Respondent's Motion for Summary Judgment, filed on or about:	November 30, 2000
Claimant's Memorandum in Opposition to Respondent's Motion for Summary Judgment, filed on or about:	December 29, 2000
Reply Brief in Support of Respondent's Motion for Summary Judgment, filed on or about:	January 16, 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>
July 31, 2000	1	Telephonic Pre-hearing
November 10, 2000	1	Telephonic Pre-hearing
December 6, 2000	1	Telephonic Pre-hearing
May 1, 2001	2	Chicago, IL
May 2, 2001	2	Chicago, IL
May 3, 2001	2	Chicago, IL
May 4, 2001	1	Chicago, IL

### Summary of Issues

Howard A. Rubin, individually and as Trustee of the Albert B. Rubin Living Trust ("Claimant"), filed a Statement of Claim against First Options of Chicago, Inc., f/k/a LIT Clearing Services, Inc. ("Respondent") alleging that Claimant made a series of investments through Strategic Income Fund, L.L.C. ("SIF") and deposited \$1,100,000 in accounts that Respondent was to maintain for the benefit of Claimant. Claimant asserts that E. Thomas Jung ("Jung") and his firm ETJ Partners ("ETJ") were to manage the investments of Claimant and other SIF Members. Claimant further asserts that Respondent improperly commingled Claimant's assets with the assets of Jung and/or ETJ. Moreover, Claimant alleges that on or about September 1, 1998, Respondent wrongfully seized Claimant's assets and applied them to deficit balances of Jung and/or ETJ. As a result of Respondent's alleged fraudulent or negligent seizure and conversion of Claimant's assets, Claimant seeks an award of \$1,100,000 in compensatory damages, \$1,750,000 in punitive damages, arbitration costs, and reasonable attorneys' fees. In addition, Claimant requests an award of all dividends and interest payable on the securities wrongfully seized and converted, and an award of interest on the cash wrongfully seized and converted.

Respondent denies responsibility for Claimant's losses. Among other things, Respondent asserts that it is not a proper respondent because it was Jung's trading that caused Claimant's losses, that only ETJ had a trading account with Respondent, and that Respondent had no relationship and owed no duty of care to Claimant. Respondent asserts that the Statement of Claim is frivolous, without basis in fact or law, and/or was filed for an improper purpose. Respondent counterclaims for all attorneys fees, costs, and expenses incurred in this arbitration.

### Other Issues Resolved

On February 1, 2001, the Panel deferred Respondent's Motion for Summary Judgment for consideration simultaneously with the hearing on the merits. During the course of the hearing, the Motion for Summary Judgment was denied.

### 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, award as follows:

Both the Statement of Claim and Counterclaim are denied.

### Forum Fees

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

Initial Filing Fee – Claim	\$ 250
Initial Filing Fee – Counterclaim	250
Pre-Hearing Fees (3 x \$300)	900
Hearing Session Fees (7 x \$1,000)	<u>7,000</u>
Total	\$8,400

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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.

1. Responsibility for the forum fees, totaling \$8,400, is assessed equally between the parties.
2. The Exchange shall retain the \$1,250 (\$250 non-refundable filing fee + \$1,000 hearing session deposit) previously submitted by Claimant and the \$850 (\$250 non-refundable filing fee + \$600 hearing session deposit) previously submitted by Respondent.
3. Claimant shall pay forum fees in the amount of \$2,950 to the Exchange.
4. Respondent shall pay forum fees in the amount of \$3,350 to the Exchange.

<u>/s/ Robert B. Morton</u> Robert B. Morton, Chair and Public Arbitrator	<u>05/14/01</u> Date
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<u>/s/ Peter C. Guth</u> Peter C. Guth, <a href="#">Industry</a> Arbitrator	<u>05/10/01</u> Date
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<u>/s/ John T. Kelly</u> John T. Kelly, <a href="#">Public</a> Arbitrator	<u>05/15/01</u> Date
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