

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

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In The Matter Of	)	
	)	
Randall L. Swanson,	)	
	)	
Claimant	)	DECISION
	)	
v.	)	File No. 01M007
	)	
Ronald Bruder,	)	
RMB & Associates, L.P., and	)	
Bruder and Associates,	)	
	)	
Respondents.	)	
_____	)	

**Representation**

For Claimants: Timothy J. Carey and David Porteous, Lovells, Chicago, Illinois  
For Respondent: Ted S. Helwig, Katten Muchin Zavis Rosenman, Chicago, Illinois

**Pleadings**

Statement of Claim and Submission Agreement, filed on or about:	December 24, 2001
Answer and Submission Agreement, filed on or about:	February 12, 2002
CounterClaim, filed on or about:	February 12, 2002
Answer to CounterClaim, filed on or about:	February 27, 2002

**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>
May 19, 2003	2	Chicago, Illinois
May 20, 2003	2	Chicago, Illinois
May 22, 2003	2	Chicago, Illinois

**Summary of Issues**

On December 24, 2001, Randall L. Swanson (“Claimant”) filed a Statement of Claim against Ronald M. Bruder, RMB & Associates, L.P. (“RMB”), and Bruder & Associates, Inc. (“BAI”) (collectively “Respondents”) containing several counts. The dispute arises out of the business activities and relationships of the Claimant and Respondents, as well as a dispute over the disposition of assets and liabilities resulting from the dissolutions of RMB and BAI. The first count sought an accounting of all books and records of both RMB & Associates, L.P. (“RMB”) for the purpose of determining: (1) Claimant’s proportionate share of the financial assets, liabilities, and capital accounts of RMB and (2) any

other monies due and owing to Claimant related to the dissolution of RMB. The second count sought an accounting of all books and records of Bruder & Associates, Inc. ("BAI") for the purpose of determining: (1) Claimant's proportionate share of the financial assets, liabilities, and capital accounts of BAI due and owing to Claimant; (2) repayment of a \$300,000 loan Claimant claims was made to RMB in May of 1998; and, (3) any other monies due and owing to Claimant related to the dissolution of BAI. The third count alleged a breach of fiduciary duty against Respondents Ronald Bruder and BAI. The fourth count alleges a breach of fiduciary duty against Respondent Ronald Bruder in relation to Claimant's position as a minority shareholder of BAI. Finally, the fifth count sought the issue of a constructive trust to preserve the proceeds from Respondent Ronald Bruder's sale of RMB. Claimants also sought punitive damages and accrued interest on disputed funds. At the hearing, Claimant specified that damages for equity interest and the loan plus interest should be \$1,071,820 and that the total damages for Swanson's interest in RMB should be either \$2,258,340 or \$2,323,053, depending on which calculation method the arbitrators employ.

In Respondents' answer, filed with the Exchange on February 12, 2002, Respondents assert that Respondent, Ronald Bruder, acted within his rights as the controlling partner of both RMB and BAI in accordance with the terms of the applicable partnership agreements during the course of the dissolution of both RMB and BAI. Respondents further argue that Claimant's requests for accountings of RMB and BAI are inappropriate because Respondents previously provided Claimant with accountings of RMB and BAI and because Respondents have satisfied all outstanding obligations to Claimant.

Concurrent with the filing of Respondents' Answer, Respondents filed a counterclaim against Claimant alleging that Claimant breached his fiduciary duty to Respondents in the manner in which Claimant conducted the affairs of RMB. Specifically, Respondents allege that Claimant (1) lied to Respondent Ronald Bruder about the state of the partnership; (2) failed to take reasonable action to avoid significant losses in a trading position of Weatherford Oil Exploration "Weatherford"; and, (3) violated a firm policy by leaving a subordinate alone on the trading floor that contributed to the trading losses in Weatherford. Respondent sought damages in an amount equal to 65% of the losses, which were approximated at \$1,000,000, incurred by RMB as a result of the trading losses incurred in the Weatherford position. Respondent amended his counterclaim at the hearing to reflect a total demand of \$516,718.

#### **Award\***

After due deliberation and in 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:

1. The panel awards Claimant compensatory damages in the amount of five hundred seventy six thousand eight hundred fourteen and 00/100 Dollars (\$576,814.00).
2. The panel awards interest to Claimant in the amount of thirty five thousand eight hundred ninety and 00/100 dollars (\$35,890.00).
3. The panel denies Respondent's counterclaim.

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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.

4. All forum fees, totaling \$12,500 incurred in this matter, shall be shared equally among both Parties.

**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	\$1,000
Hearing Session Fees ( 6 x \$1,500)	\$9,000
Pre-Hearing Session Fees (2 x \$500)	\$1,000
Adjournment Fee (1 x \$1,000)	Waived
Total	\$12,500

1. Responsibility for the forum fees, totaling \$12,500, is assessed equally between the parties.
2. The Exchange shall retain the non-refundable filing fees submitted by both Claimant and Respondent in the amounts of \$1,500 and \$1,000, respectively along with the hearing sessions deposits previously submitted by Claimant and Respondent also in the amounts of \$1,500 and \$1,000, respectively.
3. Claimants shall submit \$3,250 to the Chicago Board Options Exchange, Incorporated.
4. Respondent shall submit \$4,250 to the Chicago Board Options Exchange, Incorporated.

/s/ John Koltes  
John Koltes, Chairman and Industry Arbitrator

May 30, 2003  
Date

/s/ Daniel Baldwin  
Daniel Baldwin, Industry Arbitrator

May 30, 2003  
Date

/s/ Michael Lyons  
Michael Lyons, Industry Arbitrator

May 30, 2003  
Date