

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

_____	)	
In The Matter Of	)	
	)	
Pax Clearing Corporation,	)	
	)	
Claimant,	)	DECISION
	)	
v.	)	File No. 03M007
	)	
Michael Moore,	)	
	)	
Respondent.	)	
_____	)	

**Representation**

For Claimants:            Stephen Bedell, Gardner Carton & Douglas, Chicago, Illinois  
For Respondent:         Juliette M. Steffe, Ungaretti & Harris, Chicago, Illinois

**Pleadings**

Statement of Claim and Submission Agreement, filed on or about:	June 19, 2003
Answer and Submission Agreement, filed on or about:	July 24, 2003

**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 10, 2004	2	Chicago, Illinois
February 11, 2004	2	Chicago, Illinois
February 12, 2004	2	Chicago, Illinois

**Summary of Issues**

On June 19, 2003, Pax Clearing Corporation (“Claimant”) filed a Statement of Claim against Michael Moore (“Respondent”). The dispute arises out of negotiations between Claimant and Respondent related to clearing arrangements for a group of traders and broker-dealers (“Affiliated Broker-Dealers”) affiliated with the Respondent. Claimant alleges that Claimant and Respondent entered into a verbal agreement (“Agreement”) in which Claimant would provide, among other things, clearing and execution services and financing to Respondent’s Affiliated Broker-Dealers at agreed-upon rates and terms. Claimant further alleges that, in reliance upon the Agreement and upon representations made by Respondent, Claimant entered into a leasing agreement with a third party for the purpose of accommodating the operations of Respondents’ Affiliated Broker-Dealers. Finally, Claimant alleges that, subsequent to Claimant and Respondent entering into the Agreement and subsequent to Claimant entering into the leasing agreement, Respondent advised Claimant that the Respondent and the Affiliated Broker-Dealers

would not be utilizing Claimant's clearing and execution services. In its Statement of Claim, Claimant requested that the arbitration panel ("Panel") award Claimant: (1) \$800,000 in compensatory damages, which represents Claimant's financial obligations for the term of the leasing agreement; (2) unspecified punitive damages; (3) attorney fees; and (4) any other relief deemed just and equitable by the Panel. At the hearing, Claimant amended their request for compensatory damages to a total of \$244,470.75.

In Respondents Answer, filed with the Exchange on July 24, 2003, Respondent denies that the parties ever entered into any Agreement and denies making any representations that Respondent had decided to transfer any Affiliated Broker-Dealer business to Claimant. In its Answer and at the hearings, Respondent requested that the Panel deny Claimant's claims and award Respondent an amount equal to the attorney fees, costs, and expenses incurred by Respondent in the defense of the Statement of Claim.

### **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. Claimant's demand for compensatory damages is denied.
2. Respondent's demand for attorney fees, costs, and expenses is denied.
3. Claimant shall be responsible for \$5,000 in forum fees.
4. Respondent shall be responsible for \$3,500 in forum fees,

### **Forum Fees**

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

Initial Filing Fee – Claim	\$1,000
Hearing Session Fees ( 6 x \$1,000)	\$6,000
Pre-Hearing Session Fees (1 x \$500)	\$500
Adjournment Fee (2 x \$1,000)	\$1,000
One adjournment fee is waived.	
Total	\$8,500

1. Responsibility for the forum fees, totaling \$8,500, shall be assessed as follows: Claimant shall be responsible for \$5,000 and Respondent shall be responsible for \$3,500.
2. In partial satisfaction of Claimant's forum fees, the Exchange shall retain the \$1,000 non-refundable filing fee, the \$1,000 hearing session deposit, and the \$1,000 adjournment fee deposit, previously submitted to Chicago Board Options Exchange, Incorporated by Claimant.

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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.

3. Claimants shall submit \$2,000 to the Chicago Board Options Exchange, Incorporated, to satisfy the remaining forum fee obligation.
4. Respondent shall submit \$3,500 to the Chicago Board Options Exchange, Incorporated.

/s/ Jonathan G. Flatow  
Jonathan G. Flatow, Chairman and Industry Arbitrator

02/25/04  
Date

/s/ Thomas R. Beehler  
Thomas R. Beehler, Industry Arbitrator

02/24/04  
Date

/s/ Stephen P. Donahue  
Stephen P. Donahue, Industry Arbitrator

02/25/04  
Date