

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

_____	)	
In The Matter Of	)	
	)	
DANIEL M. EPSTEIN,	)	
	)	
Claimant,	)	DECISION
	)	
v.	)	File No. 03M008
	)	
SECOND CITY TRADING, L.L.C.,	)	
an Illinois Limited Liability Company,	)	
	)	
Respondent.	)	
_____	)	

**Representation**

For Claimants:	Philip J. Nathanson, Chicago, Illinois
For Respondent:	Ted S. Helwig, Katten Muchin Zavis Rosenman, Chicago, Illinois

**Pleadings**

Statement of Claim and Submission Agreement, filed on or about:	June 27, 2003
Answer, Counterclaim and Submission Agreement, filed on or about:	September 15, 2003
Respondent's Answer to Counterclaim, filed on or about:	October 7, 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>
April 21, 2004	1	Chicago, Illinois
April 22, 2004	2	Chicago, Illinois

**Summary of Issues**

On or about June 27, 2003, Daniel M. Epstein, an individual, ("Claimant") filed a Statement of Claim against Second City Trading, L.L.C., an Illinois limited liability company ("Respondent"). The dispute arises out of an agreement entered into on November 1, 1998, between Claimant and Respondent, which is titled the "SecondCity Trading, L.L.C. Independent Trader Agreement" ("Agreement"). Claimant alleges that, after the parties entered into the Agreement, Respondent, through its representatives, represented to Claimant that Claimant would have the legal right to withdraw from Respondent's firm without financial penalty. Claimant further alleges that Respondent then breached the terms of the Agreement by debiting Claimant's trading account for losses that were not attributable to Claimant and, additionally, that Respondent caused Claimant to incur approximately \$70,000 in trading losses. Further, Claimant alleges that, after withdrawing from Respondent's firm, Respondent was obligated to pay to

Claimant an amount equal to Sixty Percent (60%) of the value of the gains on the Claimant's trading positions, in accordance with the terms of the Agreement. Claimant has requested that the arbitrators award Claimant a total of \$165,256.57, plus costs incurred in the pursuit of this claim. Claimant also has requested that the arbitrators render a declaratory judgment that declares that the liquidated damages clause contained in the Agreement is illegal and unenforceable and that Claimant had the legal right to withdraw from the Respondent's firm.

In Respondent's Answer, filed with the Exchange on September 15, 2003, Respondent denies that it breached the Agreement and claims further that it acted properly and with the consent of Claimant in debiting Claimant's trading account. Respondent also denies that it is responsible for causing approximately \$70,000 in losses in Claimant's trading account. Further, Respondent denies giving Claimant the right to withdraw from Respondent's firm and Respondent also denies that Claimant is entitled to 60% of the balance in Claimant's trading account because Claimant prematurely terminated the Agreement. In Respondent's counterclaim, Respondent alleges that, by prematurely terminating the Agreement, Claimant is liable to Respondent for liquidated damages as provided for under the Agreement and, as such, Respondent should be awarded a total of \$367,623.51, plus expenses and attorney fees incurred in the resolution of this matter. Respondent also requests that Claimant's claim for damages and declaratory judgment be denied.

#### **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 and expenses is denied.
2. Respondent's demand for damages, attorney fees, and expenses is denied.
3. Claimant shall be responsible for \$2,875 in forum fees.
4. Respondent shall be responsible for \$2,125 in forum fees,

#### **Forum Fees**

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

Initial Filing Fee – Claim	\$750
Filing Fee - Counter-Claim	\$750
Hearing Session Fees ( 3 x \$750)	\$2,250
Pre-Hearing Session Fees (1 x \$500)	\$500
Adjournment Fee (1 x \$750)	\$750
Total	\$5,000

1. Responsibility for the forum fees, totaling \$5,000, shall be assessed as follows: Claimant shall be responsible for \$2,875 and Respondent shall be responsible for \$2,125.

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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.

2. In partial satisfaction of Claimant's forum fees, the Exchange shall retain the \$750 non-refundable filing fee and the \$750 hearing session deposit, previously submitted to Chicago Board Options Exchange, Incorporated by Claimant.
3. Claimants shall submit \$1,375 to the Chicago Board Options Exchange, Incorporated to satisfy the remaining forum fee obligation.
4. In partial satisfaction of Respondent's forum fees, the Exchange shall retain the \$750 non-refundable filing fee and the \$750 hearing session deposit, previously submitted to Chicago Board Options Exchange, Incorporated by Respondent.
5. Respondent shall submit \$625 to the Chicago Board Options Exchange, Incorporated to satisfy the remaining forum fee obligation.

<u>s/s Fred Teichert</u> Fred Teichert, Chairman and Industry Arbitrator	<u>05/14/04</u> Date
<u>s/s Christopher Cribari</u> Christopher Cribari, Industry Arbitrator	<u>05/17/04</u> Date
<u>s/s Donald F. Pratl</u> Donald F. Pratl, Industry Arbitrator	<u>05/17/04</u> Date