

**CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED
IN THE MATTER OF ARBITRATION BETWEEN**

Scott Turban,)	
)	
Claimant,)	DECISION
)	
v.)	File No. 94 M 06
)	
)	
Wagner Stott Clearing Corp.,)	
as successor to Securities)	
Option Corporation,)	
)	
Respondent.)	
)	

Representation

For Claimant(s): John A. Washburn, Gould & Ratner, Chicago, IL
For Respondent(s): Peter R. Sonderby, Chicago, IL

Pleadings

Statement of Claim filed: June 23, 1994
Answer filed: August 8, 1994

Hearing

The named parties appeared at the hearing specified below, and had full opportunity to present arguments and evidence.

Dates: 1 December 1994
No. of Sessions: 1
Location: Chicago, IL

Summary of Issues

The dispute concerns the settlement of a class action suit involving the 1985 "going private" merger of Jupiter Industries, Inc. and Jupiter Acquisition Corporation. Scott Turban ("Claimant") held Jupiter Industries, Inc. shares in street name in an account at Securities Option Corporation ("Securities Option"). Said shares were tendered as a part of the aforementioned merger. Subsequently, a class action on behalf of shareholders of Jupiter

Industries, Inc. was filed against Jupiter and others. The class action was settled in late 1989. Claimant alleges that Securities Option received notice of the class action settlement, failed to notify Claimant of the settlement, and failed to forward any relevant information concerning the settlement to Claimant. Claimant further alleges that such failure constituted (i) a breach of contract between Securities Option and Claimant, (ii) a breach of fiduciary duty owed by Securities Option to Claimant, and (iii) a breach of the duty of care owed by Securities Option to one of its customers. Claimant further alleges that Wagner Stott Clearing Corp. ("Respondent"), as successor to Securities Option, is liable for the damages resulting from the failure of Securities Option to forward notice of the Jupiter settlement to Claimant.

In response, Respondent acknowledges it is the successor to Securities Option, but denies any responsibility to Claimant in the subject claim or otherwise. Respondent admits that Securities Option did not notify Claimant of any class action settlement concerning Jupiter or forward information to Claimant with respect to the settlement, but asserts that Securities Option may not have received notice of the class action settlement. Respondent further asserts that Securities Option had no contractual, fiduciary or other obligation to Claimant, a former customer who had closed his accounts in March 1989, concerning a securities position that was closed out in 1985 and the subsequent class action settlement with respect to that securities position in late 1989.

Relief Requested

Claimant seeks an award against Respondent in the amount of \$46,400, plus attorney's fees, filing and hearing fees, and interest from the date of the settlement payments to the other Jupiter shareholders to the date of the payment of an award to Claimant.

Respondent seeks an award against Claimant for attorney's fees and any other fees and expenses incurred in connection with this arbitration proceeding.

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 the matter in controversy, find in favor of the Respondent as follows:

1. There was no breach of contract, fiduciary duty, duty of care, or other responsibility by Securities Options.
2. Respondent's request for attorney's fees is granted. Claimant is liable for and shall pay to Respondent attorney's fees in the amount of \$13,076.52.

* 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 CBOE Rule 18.33, the Arbitrators assess forum fees as follows:

1. Claimant is responsible for forum fees in the amount of \$1,100, which includes the non-refundable filing fee in the amount of \$500 and the hearing session fee in the amount of \$600. The Exchange shall retain the \$1,100 previously submitted by Claimant.
2. Claimant is responsible for an adjournment fee in the amount of \$600 for the postponement of the October 25, 1994 hearing. The Exchange shall retain the \$600 previously submitted by Claimant.
3. Claimant is responsible for and shall pay to the Exchange court reporting costs in the amount of \$225.

Charles B. Cox
Charles B. Cox, Chairman

12/23/94
Date

Theodoric Flemister
Theodoric Flemister

12/29/94
Date

Lynne Howard
Lynne Howard

12/23/94
Date