IN ARBITRATION BEFORE THE CHICAGO BOARD OPTIONS EXCHANGE
HEARING LOCALE, CHICAGO, ILLINOIS

,*	)	CBOE Arbitration No.
	)	
Claimant,	)	99 NM 012
-vs-	)	
	)	
MESIROW FINANCIAL, INC., et.al.	)	Robert B. Morton,
	)	Arbitrator Presiding
Respondents.	)	

A W A R D

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the Rules of the Chicago Board Options Exchange and Arbitration Agreement of the Parties, and having been duly sworn and having duly read the allegations, proofs, pleadings, exhibits and submissions of the Parties, FIND, AWARD AND ORDER AS FOLLOWS:

Claimant, , initially filed his Statement of Claim on or about 7/26/99, against Respondents, AMERITRADE, INC., MESIROW FINANCIAL, INC., and an unnamed independent Amazon floor Broker. On or about 10/15/99, the CBOE Director of Arbitration DISMISSED for want of jurisdiction all claims against AMERITRADE, since AMERITRADE is not a CBOE member and declined to voluntarily submit the claims to arbitration in this forum.

Accordingly, the sole remaining claim then is against MESIROW (and an unnamed independent Amazon floor Broker), as follows: On March 8, 1999, Claimant placed a vertical bull put spread order to buy 10 Amazon ("YZZ") March 110 Puts and Sell 10 YZZ March 120 Puts at a limit net credit of 2 7/8. Exchange records show that the aforementioned spread order was apparently executable at Claimant's 2 7/8 net credit limit price at various times between 1:38pm and the close on March 8, 1999, based on disseminated market quotes for both of the option series. Nevertheless, inexplicably the order was not executed and received a "nothing done". Claimant states he checked the market quotes after the close on March 8, and based thereon simply assumed his order had been filled. Claimant did not otherwise attempt to verify whether or not his order had been filled, until "around noon on March 9th." However, Exchange records also show that on the morning of March 9, 1999, at the opening and at various times during approximately the first hour of trading, the Amazon put spread at issue here was trading at or near the Claimant's requested net credit limit price. When Claimant finally spoke with Ameritrade at noon on March 9, 1999, and found out his trade had not filled, he complained. For unexplained reasons, his complaint with Ameritrade was not

* Claimant requests confidentiality pursuant to CBOE Rule 18.31.

communicated thereafter to Mesirow until two days later. After Claimant's continuing complaints regarding this unfilled trade went unresolved, this Claim was filed.

On 10/16/99, pursuant to a request from the Director of Arbitration, Claimant clarified that his claim for damages were for $2875.00 in lost profits together with his $150.00 filing fee. Subsequently, on 11/23/99, the Arbitrator granted Claimant's request to amend the Claim to add "JOE KNOCH" as additional party Respondent.

In these proceedings, the Claimant represented himself pro se; Respondent Mesirow Financial, Inc. was represented by the lawfirm of Schwartz, Cooper, Greenberger & Krauss; and, Respondent Joe Knoch was represented by his former employer, Anthony DiCrescenzo of ADC Options LLC.

This simplified arbitration was submitted solely on the written pleadings without an oral Hearing, pursuant to CBOE Rule 18.4(f). Accordingly, after a thorough review of all of the pleadings and the exhibits submitted by the parties, the Arbitrator hereby finds as follows:

Although Mesirow and its designated floor Broker for this trade, Joe Knoch, are clearly at fault for failing to execute the Claimant's requested trade on March 8, 1999, they nonetheless cannot be held liable herein as follows:

First, pursuant to CBOE Exchange Circular IC97-74: "A floor broker's liability for a missed order is generally limited to the opening price on the following business day under normal circumstances." In this case, the Arbitrator finds that the opening price on the following business day, March 9, 1999, was at or better than Claimant's specified net credit limit price of 2 7/8, thereby limited damages to nothing under the cited Exchange Rule.

Second, under the well-settled common law principle, Claimant similarly had a duty to mitigage his own damages. Here, the Arbitrator finds the Claimant utterly failed in his obligation to mitigate his own damages. While Claimant says he looked up the market quotes after the close on March 8 and thereby assumed his order was filled, he could (and should) just have easily called Ameritrade to actually confirm his order had (or had not) been filled. Instead, he waited until noon the next day to actually contact Ameritrade about this trade, which is simply inexcusable in the fast-moving options market. Had Claimant exercised due diligence on March 8, he would have been advised his order was dead and had not filled, and he could have easily filled a new identical order at the opening the next morning on March 9 at his specified net credit limit price of 2 7/8 or better. And, contrary to Claimant's concerns, since he would have been advised his order had been killed with a "nothing done", there would have been no danger of a double fill. (In any event, Claimant could have "doubly" insured

against such a double fill, by simply placing an expess cancel of the prior order while simultaneously placing the new order, all before the opening bell on March 9).

Third, under the law the Claimant must establish a reasonable basis for computation of damages; and, they may not be awarded on th basis of speculation or conjecture. E.g: First Nat. Bank v. Shape Magnetronics, 135 Ill.App.3d 288, 90 Ill.Dec. 153 at 156 (1st Dist. 1985). Even assuming arguendo that Respondents could or should be held liable, Claimant's claim for damages here is entirely speculative and uncertain. Even after the Director of Arbitration requested Claimant to specify his damages (which were omitted in the original Statement of Claim), Claimant's 10/16/99 reply letter merely states in conclusory manner that his claimed damages are lost profits in the sum of $2875.00. However, Claimant neither explained how this alleged damage was calculated, nor presented any proof as to when and at what price Claimant could, let alone would, have closed out his requested Option position. While it may have been possible that his spread could have been closed out profitably at some point in time, it seems equally likely Claimant would have held on and sold at a loss, or his options could even have expired worthless.

For the foregoing reasons, the Arbitrator enters his Award in favor of Respondents, MESIROW FINANCIAL, INC. and JOE KNOCH, and against Claimant, . The Arbitrator further denies Respondent Mesirow's request to assess its costs against Claimant, since as noted Respondents were hardly blameless in this matter. Accordingly, each party shall bear its own costs and fees for this arbitration; and, the CBOE shall retain all forum fees previously paid by the parties herein.

This Award is in full and final settlement of all claims submitted in this Arbitration.

April 3, 2000

ENTER:

/s/ Robert B. Morton
ROBERT B. MORTON,
Arbitrator