

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

|                               |                 |
|-------------------------------|-----------------|
| _____ )                       |                 |
| IN THE MATTER OF )            |                 |
| Arjent Capital Markets, LLC ) |                 |
| Claimant, )                   |                 |
| v. )                          | File No. 08M002 |
| Marcus Dugaw )                |                 |
| Respondent. )                 |                 |
| _____ )                       |                 |

**Representation**

For Claimant: William E. Montgomery, III  
For Respondent: Gregg M. Rzepczynski, Edward T. Anderson (Gregg M. Rzepczynski & Associates); Paul J. Dugaw (Enbody, Dugaw & Enbody)

**Pleadings**

- Arjent Capital Markets, LLC Statement of Claim and Uniform Submission Agreement, filed on or about: September 10, 2008
- Marcus Dugaw Answer, filed on or about: April 14, 2009

**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 9, 2011  | 1                      | Chicago, Illinois |
| February 10, 2011 | 2                      | Chicago, Illinois |

**Summary of Issues**

On or about September 10, 2008, Arjent Capital Markets, LLC (“Arjent” or “Claimant”), filed a Statement of Claim against Marcus Dugaw (“Dugaw” or “Respondent”), Dugaw Capital Advisers, LLC (“DCA”) and Chehalis Capital Partners, LP (“Chehalis”).

Claimant's Statement of Claim alleged trading activity in Russell 2000 Index ("RUT") options in or around August 2008 that resulted in a debit balance in an Arjent account (the "Account"). Specifically, Claimant alleged that (i) Respondent executed a trader's agreement ("Trading Agreement") with Claimant to establish the Account; (ii) Respondent contributed capital to the Account and began trading the Account; (iii) Respondent intentionally established an unhedged position in RUT options in the Account and failed to properly manage the position, resulting in significant losses on August 8, 2008; (iv) Respondent violated the terms and conditions of the Trading Agreement by exceeding the capital and allowable limits in the account; (v) Claimant took steps to neutralize the Account on August 11, 2008; and (vi) as a result of the foregoing, Respondent owes Claimant \$3,045,111.15, plus interest for the debit balance in the Account.

Therefore, Claimant in its Statement of Claim has requested: (i) damages in the amount of \$3,045,111.15 plus interest; (ii) attorneys' fees (total unknown at the time of filing); (iii) costs and expenses, including filing fees (total unknown at the time of filing); (iv) and for such other further relief as the Arbitration Panel considers necessary under the circumstances.

Under the Chicago Board Options Exchange, Incorporated ("Exchange" or "CBOE") Rule 18.15, the Answer was due on October 10, 2008. The time to file a response was extended until November 10, 2008. On November 7, 2008, Dugaw, DCA and Chehalis submitted a letter challenging the ability to arbitrate the claim under Exchange Rule 18.1. On March 5, 2009, the Director of Arbitration issued a decision on the jurisdictional challenge finding that the Exchange has jurisdiction over the matter as it pertains to Mr. Dugaw, individually. DCA and Chehalis were dismissed from the matter without prejudice. Following an appeal of the jurisdictional decision as it applied to Dugaw pursuant to Exchange Rule 18.1(c), CBOE's Board of Directors affirmed the jurisdictional decision on January 13, 2010.

On or about April 14, 2009, Respondent submitted an Answer that (i) denied that Respondent, individually, executed the Trading Agreement; (ii) denied that Respondent ever acted individually in any of the acts complained of by Claimant, including, but not limited to, contributing capital to the Account and trading in the Account; (iii) asserted that the Account belongs to Chehalis and admits that Respondent executed trades as the general partner of Chehalis; (iv) asserted that Respondent has no duty individually to cure the deficit in the Account; and (v) reasserted Respondent's objection to jurisdiction.

Respondent requested, in the Answer, (i) an Order of Dismissal dismissing all claims against Marcus Dugaw individually and (ii) a summary dismissal based on lack of jurisdiction pursuant to Rule 19.1, 18.3 and 18.7.

#### **Award\***

After due deliberation and in consideration of the hearing testimony, documentary evidence, and other submissions made by the parties, the undersigned arbitrators, in full and final resolution of all issues in controversy, award as follows:

1. Claimant's request for actual damages is GRANTED, in part, in the total amount of \$1,700,000.
2. Claimant's request for interest is DENIED.

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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. Claimant's request for attorneys' fees is DENIED.
4. Claimant's request for expenses and costs, including filing fees, is DENIED.
5. Respondent's request for dismissal is DENIED.
6. Claimant and Respondent shall pay all filing and forum fees as detailed below.

**Forum Fees**

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

|                                    |                |
|------------------------------------|----------------|
| Initial Filing Fee – Claim         | \$1,500        |
| Pre-hearing session Fees (2)       | \$1,000        |
| Hearing session Fees (3 x \$1,500) | <u>\$4,500</u> |
| Total                              | \$7,000        |

1. Responsibility for the Initial Filing Fee, totaling \$1,500, shall be assessed as follows: Claimant shall be responsible for \$750 and Respondent shall be responsible for \$750.
2. Responsibility for the forum fees, totaling \$5,500, shall be assessed as follows: Claimant shall be responsible for \$3,000 and Respondent shall be responsible for \$2,500.
3. The Exchange shall retain the non-refundable filing fees and the hearing session deposits submitted by Claimant. Claimant initially submitted \$1,500 for the filing fee and \$1,500 for the hearing deposit. Claimant shall submit \$750 to the Chicago Board Options Exchange, Incorporated.
4. Respondent shall submit \$3,250 to the Chicago Board Options Exchange, Incorporated.

/s/ Thomas Beehler  
Thomas Beehler, Chairman and Industry Arbitrator

March 11, 2011  
Date

/s/ Alexander Ackerhalt  
Alexander Ackerhalt, Industry Arbitrator

March 11, 2011  
Date

/s/ Mark Grywacheski  
Mark Grywacheski, Industry Arbitrator

March 14, 2011  
Date