

AWARD
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimants

James M. Sarli, Erica Sarli,
Jamie Sarli, Marvin Eisentrout,
and George Bezushko

and

00-00539
Scottsdale, Arizona

Name of Respondents

Merit Capital Associates, Inc.
Wexford Clearing Services Corporation
Matt Wolfgang Zink
Robert Fitzpatrick
Justine Rusin Hurry

REPRESENTATION OF PARTIES

James M. Sarli, Erica Sarli, Jamie Sarli, Marvin Eisentrout, and George Bezushko ("**Claimants**") were represented by John J. Jakubczyk, Esq., Phoenix, Arizona.

Merit Capital Associates, Inc. ("**Respondent Merit**") was represented by William B. Federman, Esq., Drier Baritz & Federman, Oklahoma City, Oklahoma.

Wexford Clearing Services Corporation ("**Respondent Wexford**") was represented by William H. Freilich, Esq., Prudential Securities Incorporated, New York, New York.

Matt Wolfgang Zink ("**Respondent Zink**") was represented by Edward J. Ribadeneira, Esq., Wahl & Ribadeneira, Scottsdale, Arizona.

Robert Fitzpatrick ("**Respondent Fitzpatrick**") appeared *pro se*.

Justine Rusin Hurry ("**Respondent Hurry**") was dismissed from this matter.

CASE INFORMATION

The Statement of Claim was filed on or about February 7, 2000. Claimants' Response to Respondent Wexford Clearing Corp.'s Motion to Dismiss was filed on or about August 2, 2000. Claimants' Reply to Respondent Merit Capital Associates, Inc.'s Answer and Claimants' Answer to

Respondent Merit Capital Associates, Inc.'s Counterclaim was filed on or about August 7, 2000. Claimants' Response to Respondent Fitzpatrick's Motion to Dismiss was filed on or about November 27, 2000. James M. Sarli signed Submission Agreement of Claimants James M. Sarli, Erica Sarli and Jamie Sarli, on January 31, 2000, individually and on behalf of his children Erica Sarli and Jamie Sarli. Submission Agreement of Claimant Marvin Eisentrout was signed on January 31, 2000. Submission Agreement of Claimant George Bezushko was signed on January 31, 2000.

Respondent Merit Capital Associates, Inc. Answer and Counterclaim to Claimants' Statement of Claim was filed on or about July 3, 2000. Robert Fitzpatrick signed Submission Agreement of Respondent Merit Capital Associates, Inc. on July 3, 2000.

Respondent Wexford Clearing Services Corporation filed Response to the Statement of Claim and Motion to Dismiss on or about July 13, 2000. Submission Agreement of Respondent Wexford Clearing Services Corporation was signed on August 7, 2000.

Respondent Matt Wolfgang Zink filed his Answer on or about July 13, 2000. Respondent Zink filed Objection to Respondent Wexford Clearing Corp.'s Motion to Dismiss, Motion for Leave to Amend Answer on or about December 11, 2000. Respondent Zink filed Amended Answer including Cross Claim on or about April 9, 2001. Submission Agreement of Respondent Matt Wolfgang Zink was signed on July 5, 2000.

Answer and Motion to Dismiss was filed by Respondent Robert Fitzpatrick on or about July 6, 2000. Respondent Fitzpatrick's Renewed Motion to Dismiss was filed on or about December 4, 2000. Respondent Fitzpatrick's Motion for a More Definite Statement of Facts was filed on or about March 15, 2001. Submission Agreement of Respondent Robert Fitzpatrick was signed on July 5, 2000.

CASE SUMMARY

Claimants alleged that certain information regarding Compaq LEAP Options, including the requirements for writing covered calls with LEAP Options with LYY and YZD roots. It was alleged that inaccurate information was relayed to Claimants by Respondent Zink. Claimants made the following allegations:

- Respondents gave false and misleading information;
- Respondents failed to follow Claimants' directions;
- Respondents breached a fiduciary trust;
- Respondents failed to cooperate in disclosing information;
- Respondents failed to act in a professional manner; and
- Respondents (with the exception of Respondents Zink and Rusin) have acted in bad faith.

Respondent Merit Capital denied any allegations of wrongdoing in any of the transactions initiated and requested by the Claimants. It was also stated that Claimants were knowledgeable investors who

were in complete control of the trading in their accounts. In its Counterclaim, respondent Merit alleged that Claimants had certain unpaid debit balances remaining in their accounts.

Respondent Wexford stated that its' duties as clearing firm for Claimants' account was strictly limited, by contract, to performing the wholly ministerial, post-execution tasks of processing, clearing and reporting those trades already placed in Claimants' account by Merit Capital. In addition, Respondent Wexford stated that it performed each of its responsibilities timely, reasonably, and in good faith.

Respondent Zink stated that the information provided to him by Respondent Wexford was incorrect. It was stated that Wexford in response to inquiries had stated that Claimants were fully covered on the options in question. Respondent Zink also stated that this claim involves the correct execution of trades based upon incorrect information that was negligently provided by respondent Wexford. In his Crossclaim, Respondent Zink alleged that Respondent Wexford breached its duties by negligently providing incorrect information.

RELIEF REQUESTED

Claimants seek redress in the following ways:

- Restore those stocks and securities held by Claimants prior to liquidation in the number and amount as existing prior to liquidation.
- In the alternative, payments to Claimants of the following amounts plus interest at 15% per annum or whatever the Arbitration panel deems fair and reasonable:
 - James Sarli \$41,800.00 plus interest
 - Marvin Eisentrout \$ 7,376.91 plus interest
 - Jamie Sarli \$ 3,000.00 plus interest
 - George Bezushko \$ 2,000.00 plus interest
 - Erica Sarli \$ 1,000.00 plus interest
- All costs and attorneys' fees.
- Punitive damages, as determined by the Arbitration Panel.

Respondent Merit requested that Claimants take nothing by virtue of their Statement of Claim and that Merit Capital recover its costs, attorneys' fees, and expenses incurred in this matter, as well as be awarded as damages all margin debits remaining in the Claimants' accounts in the approximate amount of \$103,410. Respondent Merit further requested that the Panel enter directions in the award that this claim be expunged from Merit Capital's records maintained by the NASD.

Respondent Wexford requested that it be dismissed from this proceeding.

In the Amended Answer, Respondent Zink requested that Claimants take nothing by virtue of their complaint against him and that he be awarded attorneys' fees and costs incurred in his defense of the claims. In the event that he is found liable in any way to Claimants, Respondent Zink further requested that the Panel enter directions in the decision that this case be expunged from his records maintained by the NASD.

OTHER ISSUES CONSIDERED & DECIDED

Dismissal of Justine Rusin Hurry with Prejudice was filed on or about July 17, 2000.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution, Inc. (the "NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The claims asserted against Respondents Wexford and Zink shall be and hereby are dismissed in their entirety.
2. Respondent Merit Capital shall be and hereby is liable for and shall pay to Claimants James M. Sarli, Erica Sarli, Jamie Sarli, Marvin Eisentrout, and George Bezushko the sum of \$80,000 (**Eighty Thousand Dollars**) which sum is to be offset by Respondent Merit Capital by the amount of the collective debit balances of the five Claimants as such debit balances existed on March 31, 1999, but in no event should such offset exceed the sum of \$62,500 (**Sixty Two Thousand Five Hundred Dollars**). The balance of the award after any offset can be distributed among the individual claimants as they determine.
3. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 225.00
Counter claim filing fee	= \$1,000.00
Cross claim filing fee	= \$ 250.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firms are Merit Capital Associates, Inc. and Wexford Clearing Services Corporation Corporation.

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session(s) with Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference(s): November 14, 2000 1 session	
Four (4) Hearing sessions x \$1,125.00	= \$4,500.00
Hearing Date(s): May 8, 2001 2 sessions	
May 9, 2001 2 sessions	
Total Forum Fees	= \$5,625.00

The Arbitration Panel has assessed \$2,812.50 of the forum fees to James M. Sarli, Erica Sarli, Jamie Sarli, Marvin Eisentrout, and George Bezushko.

The Arbitration Panel has assessed \$2,812.50 of the forum fees to Merit Capital Associates, Inc.

Fee Summary

Claimants, James M. Sarli, Erica Sarli, Jamie Sarli, Marvin Eisentrout, and George Bezushko, shall be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 225.00
<u>Forum Fees</u>	= <u>\$2,812.50</u>
Total Fees	= \$3,037.50
<u>Less payments</u>	= <u>\$ 225.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$2,812.50

Respondent, Wexford Clearing Services Corporation, shall be and hereby is liable for:

Member Fees	= \$4,100.00
<u>Forum Fees</u>	= <u>\$ 0.00</u>
Total Fees	= \$4,100.00
<u>Less payments</u>	= <u>\$4,100.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

Respondent, Merit Capital Associates, Inc., shall be and hereby is liable for:

Counterclaim Filing Fee	= \$1,000.00
Member Fees	= \$4,100.00
<u>Forum Fees</u>	= <u>\$2,812.50</u>
Total Fees	= \$7,912.50
<u>Less payments</u>	= <u>\$6,225.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$1,687.50

Respondent, Matt Wolfgang Zink, shall be and hereby is liable for:

Crossclaim Filing Fee	= \$ 250.00
<u>Forum Fees</u>	= <u>\$ 0.00</u>
Total Fees	= \$ 250.00
<u>Less payments</u>	= <u>\$ 0.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 250.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Edward Thomas Leech - Public/Non-Public, Presiding Chair
Sandra Lynn Slaton, J.D. - Public/Non-Public Arbitrator
Carrie S. Holbrook - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Edward T. Leech
Edward Thomas Leech
Public Arbitrator, Presiding Chair

June 15, 2001
Signature Date

/s/ Sandra L. Slaton
Sandra Lynn Slaton, J.D.
Public Arbitrator

June 18, 2001
Signature Date

/s/ Carrie S. Holbrook
Carrie S. Holbrook
Non-Public Arbitrator

June 16, 2001
Signature Date

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NASD REGULATION

NASD Dispute Resolution, Inc.
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ARBITRATION PANEL

Edward Thomas Leech - Public/Non-Public, Presiding Chair
Sandra Lynn Slaton, J.D. - Public/Non-Public Arbitrator
Carrie S. Holbrook - Non-Public Arbitrator

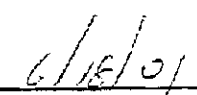
Concurring Arbitrators:

Edward Thomas Leech
Public Arbitrator, Presiding Chair

Signature Date



Sandra Lynn Slaton, J.D.
Public Arbitrator



Signature Date

Carrie S. Holbrook
Non-Public Arbitrator

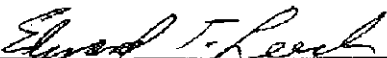
Signature Date

NASD Dispute Resolution, Inc.
Arbitration No. 00-00539
Award Page 7 of 7

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Sandra Lynn Slaton, J.D. - Public/Non-Public Arbitrator
Carrie S. Holbrook - Non-Public Arbitrator

Concurring Arbitrators:



Edward Thomas Leech
Public Arbitrator, Presiding Chair

JUNE 15, 2001
Signature Date

Sandra Lynn Slaton, J.D.
Public Arbitrator

Signature Date

Carrie S. Holbrook
Non-Public Arbitrator

Signature Date

NASD Dispute Resolution, Inc.
Arbitration No. 00-00539
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Concurring Arbitrators:

Edward Thomas Leech
Public Arbitrator, Presiding Chair

Signature Date

Sandra Lynn Slaton, J.D.
Public Arbitrator

Signature Date

Carrie S. Holbrook
Carrie S. Holbrook
Non-Public Arbitrator

6/14/01
Signature Date