

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Virginia A. Fogaras (Claimant) v. Merrill Lynch, Pierce, Fenner & Smith, Inc. and  
Michael E. Zweig (Respondents)

Case Number: 01-01498

Hearing Site: Cleveland, Ohio

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Nature of the Dispute: Customer v. Member and Associated Person.

**REPRESENTATION OF PARTIES**

Claimant Virginia A. Fogaras ("Fogaras") hereinafter referred to as "Claimant": James B. Davis, Esq., Newbury, OH.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Michael E. Zweig ("Zweig") hereinafter collectively referred to as "Respondents": Joshua R. Cohen, Esq., Cohen Rosenthal & Kramer, LLP, Cleveland, OH, formerly of Gary, Naegele & Theado, Cleveland, OH. Previously represented by: Peter Bon Viso, Esq., Merrill Lynch, Pierce, Fenner & Smith, Inc., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: March 19, 2001.

Claimant signed the Uniform Submission Agreement: January 2, 2001.

Joint Statement of Answer filed by Respondents on or about: June 11, 2001.

Respondent Merrill Lynch signed the Uniform Submission Agreement: June 11, 2001.

Respondent Zweig signed the Uniform Submission Agreement: April 10, 2001.

**CASE SUMMARY**

Claimant asserted the following cause of action: unauthorized trading. Claimant's claim involved shares of Dell Computer.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$100,000.00, plus interest; punitive damages; costs and expenses; that Respondents be ordered to bear all arbitration

fees; and reasonable attorneys' fees.

Respondents requested that the Statement of Claim be denied in all respects; that the Panel order that all references to this matter be expunged from Respondent Zweig's individual registration records; that Claimant be ordered to pay all fees and costs in connection with the Arbitration; and such other and further relief as is deemed just and proper.

### **OTHER ISSUES CONSIDERED AND DECIDED**

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.

### **AWARD**

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

1. Claimant's claims are denied in their entirety.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Michael E. Zweig's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Michael E. Zweig must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.
3. Any and all relief not specifically addressed herein, including punitive damages and attorneys' fees, is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$225.00
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**Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Merrill Lynch, Pierce, Fenner & Smith, Inc. is a party.

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

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

August 26-27, 2003, adjournment requested by Respondents	= \$750.00
Claimant's share	= \$750.00

October 27-28, 2003 adjournment requested by Claimant	= Waived
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**Forum Fees and Assessments**

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

Three (3) Pre-hearing sessions with Panel @ \$750.00 = \$2,250.00

Pre-hearing conferences:	April 16, 2002	1 session
	July 21, 2003	1 session
	October 3, 2003	1 session

Three (3) Hearing sessions @ \$750.00 = \$2,250.00

Hearing Dates:	July 19, 2004	2 sessions
	July 20, 2004	1 session

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Total Forum Fees = \$4,500.00

1. The Panel has assessed \$2,250.00 of the forum fees against Claimant.
2. The Panel has assessed \$2,250.00 of the forum fees against Merrill Lynch

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 225.00
Adjournment Fee	= \$ 750.00
Forum Fees	= \$2,250.00
Total Fees	= \$3,225.00
Less payments	= \$ 950.00
Balance Due NASD Dispute Resolution	= \$2,275.00

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2. Respondent Merrill Lynch is solely liable for:

Member Fees	= \$3,100.00
<u>Forum Fees</u>	= <u>\$2,250.00</u>
Total Fees	= \$5,350.00
<u>Less payments</u>	= <u>\$3,100.00</u>
Balance Due NASD Dispute Resolution	= \$2,250.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Elmer G. Cowan, Esq.	-	Public Arbitrator, Presiding Chairperson
Jeffrey M. Bain, Esq.	-	Public Arbitrator
Donald W. Rioux	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument in which is my award.

*Elmer G. Cowan*

Elmer G. Cowan, Esq.  
Public Arbitrator, Presiding Chairperson

JUL 27 2004

Signature Date

Jeffrey M. Bain, Esq.  
Public Arbitrator

Signature Date

Donald W. Rioux  
Non-Public Arbitrator

Signature Date

August 5, 2004

Date of Service (For NASD Dispute Resolution use only)

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Public Arbitrator, Presiding Chairperson

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Signature Date

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Jeffrey M. Bain, Esq.  
Public Arbitrator

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Signature Date

  
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Non-Public Arbitrator

8-5-04  
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Signature Date

August 5, 2004  
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Date of Service (For NASD Dispute Resolution use only)