

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

_____	)	
In The Matter Of	)	
	)	
Customer,*	)	
	)	
Claimant,	)	DECISION
	)	
v.	)	File No. 98 NM 003
	)	
Merrill Lynch Inc., Marc Patrick	)	
Cassalina and Michael S. Kelly,	)	
	)	
Respondents.	)	
_____	)	

**Representation**

For Claimant(s):	Jerome Olitt, Arbitration & Mediation Specialists, Inc., Stamford, CT
For Respondent(s):	Charles L. Henderson, Merrill, Lynch, Pierce, Fenner & Smith, Inc., New York, NY

**Pleadings**

Statement of Claim and Submission Agreement, filed on or about:	March 30, 1998
Answer and Merrill Lynch Inc.'s Submission Agreement, filed on or about:	April 30, 1998
Michael S. Kelly's Submission Agreement, filed on or about:	June 11, 1998
Marc P. Cassalina's Submission Agreement, filed on or about:	June 15, 1998

**Hearing**

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

Date(s):	November 5 & 6, 1998
No. of Sessions:	4
Location:	New York, NY

**Summary of Issues**

The dispute, claim or controversy involved the assignment of 10 OEX August 830 call option contracts on August 6, 1997. Claimant alleges that Merrill Lynch, Pierce, Fenner & Smith., Marc Patrick Cassalina and Michael S. Kelly ("Respondents") failed to follow Claimant's instructions with respect to managing his short option position and failed to timely notify Claimant when the

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\* Claimants' request confidentiality pursuant to CBOE Rule 18.31.

10 short OEX August 830 call options were assigned to him. Claimant requests an award against Respondents in the amount of approximately \$95,000 for actual damages, interest and commissions charges, plus hearing costs and all fees, including expert witness fees.

Respondents deny all allegations of wrongdoing and request that the arbitrators dismiss the claim. Respondents further request an award of costs and expenses incurred in the defense of the claim.

#### **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 for the Claimant and award as follows:

Respondent Merrill Lynch, Inc. is solely responsible for and shall pay to the Claimant the total amount of \$14,780.00. This amount represents compensatory damages in the amount of \$10,380.00, expert witness fees in the amount of \$3,750.00 and arbitration forum fees in the amount of \$650.00.

#### **Forum Fees**

Pursuant to Chicago Board Options Exchange ("Exchange") Rule 18.33, the Arbitrators assess forum fees in the total amount of \$2,150.00 (\$150.00 filing fee + \$2,000.00 hearing session fees (4 x \$500.00)) as follows:

1. Respondent is liable for and shall pay to the Exchange the sum of \$1,500.00.
2. The Exchange shall retain the non-refundable filing fee in the amount of \$150.00 and the hearing session deposit in the amount of \$500.00 previously submitted by Claimant.

<u>/s/ Richard A. Dice</u>	<u>11/23/1998</u>
Richard A. Dice, Chair and Public Arbitrator	Date

<u>/s/ Richard P. Gitter</u>	<u>11/24/1998</u>
Richard P. Gitter, Public Arbitrator	Date

<u>/s/ Gregg Rzepczynski</u>	<u>11/25/1998</u>
Gregg Rzepczynski, Industry Arbitrator	Date

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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.