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**Award**  
**NASD DISPUTE RESOLUTION**

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In the Matter of the Arbitration Between:

Name of Claimant  
J.T. White

Case Number: 02-01088

Names of Respondents  
Merrill Lynch, Pierce, Fenner & Smith, Inc.  
Thomas L. Ellis  
Marshall Emerson

Hearing Site: New Orleans, LA

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**REPRESENTATION OF PARTIES**

J.T. White, hereinafter referred to as "Claimant", appeared pro se.

For Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("MLPFS"), Thomas L. Ellis ("Ellis"), and Marshall Emerson ("Emerson"), hereinafter collectively referred to as "Respondents": Daren A. Luma, Assistant Vice President & Counsel, MLPFS, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: February 25, 2002.  
Claimant signed the Uniform Submission Agreement on: February 15, 2002.  
Statement of Answer filed by Respondents on or about: May 7, 2002.  
Respondent MLPFS signed the Uniform Submission Agreement on: May 7, 2002.  
Respondent Ellis signed the Uniform Submission Agreement on: April 26, 2002.  
Respondent Emerson did not file an executed Uniform Submission Agreement.  
Claimant's request to amend the Statement of Claim filed on or about: April 21, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: fraud; unsuitability; failure to observe industry rules and practices; failure to follow instructions; improper supervision; and, negligence. The causes of action relate to the purchase of AIM High-Yield C Category, Fidelity Advisor High-Yield B Category, and MFS High Income B Category bond funds in Claimant's account.

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 of \$74,956.00, costs, attorneys' fees, and such fair and equitable

relief as the undersigned arbitrators (the "Panel") deemed just.

Respondents requested dismissal of the Statement of Claim, that all fees and costs of this arbitration be borne by Claimant, expungement of all references to the above-captioned arbitration from Respondents Ellis and Emerson's registration records maintained by the NASD Central Registration Depository ("CRD"), and such other and further relief as is deemed just and proper.

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

On or about May 15, 2003, the Panel issued an order which granted Claimant's request to amend his statement of claim.

Respondent Emerson did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

The parties 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, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondent MLPFS is liable and shall pay to Claimant compensatory damages in the sum of \$21,132.00 plus interest accruing at the Florida statutory rate from October 1, 1999 until the date of payment of the Award.

Respondent MLPFS is liable and shall pay to Claimant costs in the sum of \$1,000.00.

Respondent MLPFS is liable and shall pay to Claimant the sum of \$225.00 representing reimbursement of the claim filing fee previously paid by Claimant to NASD Dispute Resolution.

The Panel recommends the expungement of all references to the above-captioned arbitration from Respondents Ellis and Emerson's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondents Ellis and Emerson must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Claimant's claims against Respondents Ellis and Emerson are dismissed, with prejudice.

Any and all claims for relief not specifically addressed herein are 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

#### **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, Respondent MLPFS is a party.

Member surcharge = \$1,100.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$1,700.00

Total Member Fees = \$3,550.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

February 5 and 6, 2003, adjournment by all parties. The Panel waived the adjournment fee.

#### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were assessed during these proceedings.

#### **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 a single arbitrator @ \$450.00 = \$1,350.00

Pre-hearing conferences: January 7, 2003 1 session

February 4, 2003 1 session

May 15, 2003 1 session

One (1) Pre-hearing session with Panel @ \$750.00 = \$ 750.00

Pre-hearing conference: October 11, 2002 1 session

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

Hearing Dates: May 22, 2003 2 sessions

May 23, 2003

1 session

Total Forum Fees	= \$4,350.00
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The Panel has assessed the total forum fees of \$4,350.00 to Respondent MLPFS.

### Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during this proceeding.

### Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$	225.00
Total Fees	= \$	225.00
Less payments	= \$	225.00
Balance Due NASD Dispute Resolution	= \$	0.00

Respondent MLPFS is solely liable for:

Member Fees	= \$ 3,550.00
Forum Fees	= \$ 4,350.00
Total Fees	= \$ 7,900.00
Less Payments	= \$ 3,550.00
Balance Due NASD Dispute Resolution	= \$ 4,350.00

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

## ARBITRATION PANEL

Daniel Eugene Bivins, III	-	Public Arbitrator, Presiding Chairperson
Frederick H. Bruce	-	Public Arbitrator
Charles A. Bosworth, III	-	Non-Public Arbitrator

### Concurring Arbitrators' Signatures

/s/  
Daniel Eugene Bivins, III  
Public Arbitrator, Presiding Chairperson

Signature Date

/s/  
Frederick H. Bruce  
Public Arbitrator

\_\_\_\_\_  
Signature Date

/s/  
Charles A. Bosworth, III  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

June 30, 2003  
Date of Service (For NASD Dispute Resolution office use only)

May 23, 2003

1 session

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Total Forum Fees = \$4,350.00

The Panel has assessed the total forum fees of \$4,350.00 to Respondent MLPFS.

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No administrative costs were incurred during this proceeding.

**Fee Summary**

Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 225.00
<u>Total Fees</u>	= \$ 225.00
<u>Less payments</u>	= \$ 225.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent MLPFS is solely liable for:

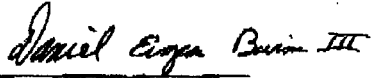
<u>Member Fees</u>	= \$ 3,550.00
<u>Forum Fees</u>	= \$ 4,350.00
<u>Total Fees</u>	= \$ 7,900.00
<u>Less Payments</u>	= \$ 3,550.00
Balance Due NASD Dispute Resolution	= \$ 4,350.00

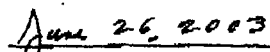
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**Concurring Arbitrators' Signatures**

  
Daniel Eugene Bivins, III  
Public Arbitrator, Presiding Chairperson

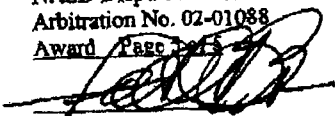
  
June 26, 2003  
Signature Date

**Charles A. Bosworth, III**  
Non-Public Arbitrator

6/24/03  
Signature Date

**Date of Service (For NASD Dispute Resolution office use only)**

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Arbitration No. 02-01088  
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Frederick H. Bruce  
Public Arbitrator

6/26/03  
Signature Date

Charles A. Bosworth, III  
Non-Public Arbitrator

                      
Signature Date

                      
Date of Service (For NASD Dispute Resolution office use only)