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

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In the Matter of the Arbitration Between:

Name of the Claimant

Nancy L. Rogers, Trustee U/A DTD 10/3/96

Case Number: 02-06244

Names of the Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.

Richard "Dick" Emerson

EWG Group a/k/a Emerson Waller Group

Hearing Site: Orlando, Florida

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Nature of the Dispute: Customer vs. Member, Associated Person and Non-Member.

**REPRESENTATION OF PARTIES**

For Nancy L. Rogers, Trustee U/A DTD 10/3/96, hereinafter referred to as "Claimant": Richard J. Lantinberg, Esq., Cooper, Ridge & Lantinberg, P.A., Jacksonville, Florida.

For Merrill Lynch Pierce Fenner & Smith, Inc. ("MLPFS"), Richard "Dick" Emerson ("Emerson") and EWG Group a/k/a Emerson Waller Group ("EWG"), hereinafter collectively referred to as "Respondents": Brian F. Amery, Esq., Bressler, Amery & Ross, P.C., Florham Park, New Jersey, and Steven G. Hemmert, Esq., Bressler, Amery & Ross, P.C., Miramar, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: October 17, 2002.

Claimant signed the Uniform Submission Agreement on: November 11, 2002.

Statement of Answer filed by Respondents on or about: February 26, 2002.

Respondent MLPFS signed the Uniform Submission Agreement on: March 16, 2003.

Respondent Emerson signed the Uniform Submission Agreement on: March 11, 2003.

Respondent EWG signed the Uniform Submission Agreement on: March 11, 2003.

**CASE SUMMARY**

Claimant alleged the following causes of action: 1) violations of Section 517.301, Florida Statutes, for unsuitable recommendations, over concentration, and misrepresentation and omissions; 2) violations of NYSE Rule 404; 3) breach of fiduciary duty; 4) breach of duties of loyalty, utmost honesty and good faith; and 5) failure to supervise

The causes of action relate to investments in various securities, including shares of stock in Bristol Myers Squibb Co. and First Union Corp. and shares of mutual funds in American Capital World Growth & Inc. FD CL A.

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

### **RELIEF REQUESTED**

Claimant requested: 1) compensatory damages approximately of \$100,000.00 for losses; 2) compensatory damages for commissions and fees charged to Claimant; 3) punitive damages; 4) interest; 5) costs; 6) attorneys' fees; and 7) such other relief the undersigned arbitrators (the "Panel") deemed just and proper.

Respondents requested: 1) dismissal of the Statement of Claim in its entirety; 2) expungement of all references to the above-captioned arbitration proceeding from Respondent Emerson's registration records maintained by the NASD Central Registration Depository ("CRD"); and 3) such other relief the Panel deemed just and proper.

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

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:

1. Claimant's claims, including statutory claims, are denied in their entirety.
2. Claimant's request for attorneys' fees is denied.
3. The Panel recommends expungement of all references to the above-captioned arbitration proceeding from Respondent Emerson's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Emerson must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
4. Any and all claims or relief not specifically addressed herein are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

#### **Filing Fees**

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

The Panel waived the initial claim filing fee in the amount of \$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 member firm and a party.

Member surcharge	= \$1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,700.00

### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments requested during these proceedings for which fees were assessed.

### **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.

There were no injunctive relief fees 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:

One (1) Pre-hearing session with a single arbitrator @ \$450.00 per session	= \$ 450.00
Pre-hearing conference: March 29, 2004 1 session	
One (1) Pre-hearing session with Panel @ \$750.00 per session	= \$ 750.00
Pre-hearing conference: July 25, 2003 1 session	
Four (4) Hearing sessions @ \$750.00 per session	= \$3,000.00
Hearing Dates: April 13, 2004 2 sessions	
April 14, 2004 2 sessions	
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Total Forum Fees	= \$4,200.00

The Panel has assessed forum fees in the amount of \$2,100.00 to Claimant.

The Panel has assessed forum fees in the amount of \$2,100.00 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 not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

**Fee Summary**

Claimant is solely liable for:

<u>Forum Fees</u>	= \$2,100.00
Total Fees	= \$2,100.00
<u>Less payments</u>	= \$ 70.00
Balance Due NASD Dispute Resolution	= \$2,030.00

Respondent MLPFS is solely liable for:

Member Fees	= \$3,550.00
<u>Forum Fees</u>	= \$2,100.00
Total Fees	= \$5,650.00
<u>Less payments</u>	= \$4,300.00
Balance Due NASD Dispute Resolution	= \$1,350.00

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

**ARBITRATION PANEL**

<i>Kathryn M. Welsh, J.D.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>James H. Frank, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Larry G. Kjosa, PhD</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

<u>/s/</u>	<u>April 19, 2004</u>
Kathryn M. Welsh, J.D.	Signature Date
Public Arbitrator, Presiding Chairperson	

<u>/s/</u>	<u>April 16, 2004</u>
James H. Frank, Esq.	Signature Date
Public Arbitrator	

<u>/s/</u>	<u>April 16, 2004</u>
Larry G. Kjosa, PhD	Signature Date

NASD Dispute Resolution  
Arbitration No. 02-06244  
Award Page 5

Non-Public Arbitrator

April 19, 2004

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

**NASD Dispute Resolution**  
**Arbitration No. 02-06244**  
**Award Page 4**

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*Public Arbitrator, Presiding Chairperson*

*Public Arbitrator*

*Non-Public Arbitrator*

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*Kathryn M. Welsh, J.D.*

*Public Arbitrator, Presiding Chairperson*

4-19-04

Signature Date

*James H. Frank, Esq.*

*Public Arbitrator*

Signature Date

*Larry G. Kjos, PhD*

Signature Date

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Signature Date

APR 16 2004

James H. Frank, Esq.

Public Arbitrator

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Signature Date