

**NASD DISPUTE RESOLUTION AWARD**  
**NASD DISPUTE RESOLUTION**

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CASE: 04-01448

Allan D. Ross, Claimant v. Merrill Lynch, Pierce, Fenner & Smith, Inc., Respondent

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**ATTORNEYS:**

For Claimant Allan D. Ross ("Claimant") appeared Wm. Jemison Mims, Jr., Esq., of the firm Levin, Papantonio, Thomas, Mitchell, Echsner & Proctor, P.A., Pensacola, FL.

For Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Respondent") appeared A. Inge Selden, III, Esq., of the firm Maynard, Cooper & Gale, P.C., Birmingham, AL.

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**NATURE OF DISPUTE:** Customer vs. Member.

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**DATE FILED:** May 3, 2004.

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**CASE SUMMARY:** Claimant alleged that his claim arises out of Respondent's fraudulent analyst reports, which recommended the purchase of, and set target prices for the common stock of companies without any reasonable factual basis. Claimant further alleged that Respondent committed fraud, negligent misrepresentation, breached its contract, breached its fiduciary duty, was negligent, and violated Blue Sky laws with respect to certain securities purchased by Claimant. Claimant maintained that due to Respondent's actions, his account suffered losses. Claimant's claim involved shares of EMC Corp. and Enron Corp Oregon NPV.

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**ARBITRATOR'S REPORT:** In this action Claimant alleges fraud, negligent misrepresentation, breach of contract and fiduciary duty, negligence, and violation of Blue Sky laws with respect to certain securities purchased by Claimant from Respondent. This matter, having been submitted for decision under the Simplified Arbitration Rules of NASD Dispute Resolution on the basis of the submissions of the parties, the arbitrator, after careful review of Claimant's Statement of Claim, Respondent's Answer, the exhibits, and other documents submitted by the parties orders as follows: 1) All claims in the Statement of Claim against Respondent are hereby denied. 2) Claimant and Respondent shall each bear its respective costs, including attorney fees. NASD forum fees shall be paid by Claimant and member fees by Respondent. Arbitrator fees and all other NASD fees and expenses shall be paid half by Claimant and half by Respondent.

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**Claim Data**

Claim: \$8,514.00  
Punitive: Unspecified  
Interest: Unspecified  
Attorney Fees: Unspecified  
Filing Fees: Unspecified  
Other: Unspecified

**Award Data**

Award: \$.00  
Punitive: \$.00  
Interest: \$.00  
Attorney Fees: \$.00  
Filing Fees: \$.00  
Other: \$.00

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**AWARD:** The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) The claims of Claimant are denied in their entirety. 2) All requests for punitive damages are denied. 3) All requests for interest are denied.

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4) All requests for attorney fees are denied. 5) All other relief requests are denied. 5) NASD Dispute Resolution shall retain the \$325.00 filing fee that the Claimant deposited previously.

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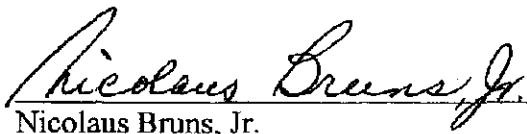
OTHER FEES: Pursuant to Rule 10333 of the Code, Respondent has paid to NASD Dispute Resolution the \$325.00 Member Surcharge previously invoiced.

ARBITRATOR

Nicolaus Bruns, Jr. - Sole Public Arbitrator

AFFIRMATION

I, Nicolaus Bruns, Jr., do hereby affirm, upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.

  
Nicolaus Bruns, Jr.

  
Signature Date

February 2, 2005  
Date of Service (For NASD-DR office use only)