

NASD DISPUTE RESOLUTION AWARD
NASD DISPUTE RESOLUTION

CASE: 04-02338

William J. Burns, Claimant v. Merrill Lynch, Pierce, Fenner & Smith, Inc., Respondent

ATTORNEYS:

For Claimant William J. Burns ("Claimant") appeared Kathleen P. Toolan, Esq., of the firm Levin, Papantonio, Thomas, Mitchell, Echsner & Proctor, P.A., Pensacola, FL.

For Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Respondent") appeared Luther M. Dorr, Jr., Esq., of the firm Maynard, Cooper & Gale, P.C., Birmingham, AL.

NATURE OF DISPUTE: Customer vs. Member.

DATE FILED: April 5, 2004.

CASE SUMMARY: Claimant alleged that Respondent failed to properly allocate Claimant's portfolio and recommended investments that were unsuitable for his investment objectives. Claimant further alleged that Respondent provided fraudulent analyst reports, which recommended the purchase of, and set target prices for the common stock of companies without any reasonable factual basis. Claimant additionally alleged breach of fiduciary duty, fraud, negligent misrepresentation, negligence, violation of Blue Sky Laws, and breach of contract. Claimant maintained that due to Respondent's actions, his account suffered losses. Claimant's claim involved EMC Corporation Mass, Enron Corp Oregon NPV, Openwave Sys Inc, Tyco Intl Ltd New, Ariba Inc, and AOL Time Warner Inc.

Claim Data

Claim: \$22,846.05
Punitive: Unspecified
Interest: Unspecified
Attorney Fees: Unspecified
Filing Fees: Unspecified
Other: Unspecified

Award Data

Award: \$0.00
Punitive: \$0.00
Interest: \$0.00
Attorney Fees: \$0.00
Filing Fees: \$212.50
Other: \$0.00

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 dismissed in their entirety. 2) All requests for punitive damages are denied. 3) All requests for interest are denied. 4) All requests for attorney fees are denied. 5) All other relief requests are denied. 6) NASD Dispute Resolution shall retain the \$425.00 filing fee that the Claimant deposited previously. 7) Respondent is liable and shall pay claimant \$212.50 as reimbursement of one-half of the filing fee.

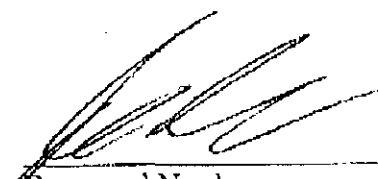
OTHER FEES: Pursuant to Rule 10333 of the Code, Respondent has paid to NASD Dispute Resolution the \$425.00 Member Surcharge previously invoiced.

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ARBITRATOR
Raymond Nardo - Sole Public Arbitrator

AFFIRMATION

I, Raymond Nardo, 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.



Raymond Nardo

3/14/05

Signature Date

March 21, 2005

Date of Service (For NASD-DR office use only)