

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

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CASE: 04-02592

Benjamin L. Brown and Sara M. Brown, Claimants v. Merrill Lynch, Pierce, Fenner & Smith, Inc., Respondent

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**ATTORNEYS:**

For Claimants Benjamin L. Brown and Sara M. Brown (collectively "Claimants") 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 Bradley S. Rounsaville, Esq., of the firm Maynard, Cooper & Gale, P.C., Birmingham, AL.

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

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**DATE FILED:** April 8, 2004.

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**CASE SUMMARY:** Claimants 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. Claimants further alleged breach of fiduciary duty, fraud, negligent misrepresentation, negligence, and violation of Blue Sky laws. Claimants maintained that due to Respondent's actions, Claimants' account suffered losses. Claimants' claim involved shares of Cisco Systems Inc., EMC Corporation Mass, and America Online Inc. stock.

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**ARBITRATOR'S REPORT:** Claimants failed to prove by a preponderance of the evidence that they suffered losses as a result of the conduct of Respondent.

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**Claim Data**

Claim: \$19,561.82  
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: \$.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 Claimants 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 Claimants deposited previously. 7) Respondent is liable and shall pay Claimants \$212.50 as reimbursement of one-half of the filing fee.

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**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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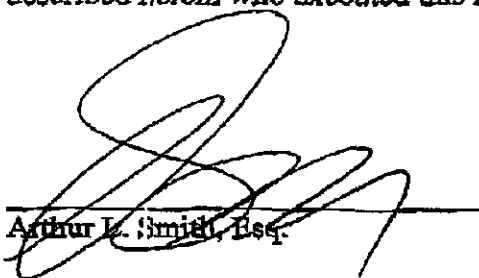
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ARBITRATOR

Arthur L. Smith, Esq. - Sole Public Arbitrator

AFFIRMATION

I, Arthur L. Smith, Esq., 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.

  
Arthur L. Smith, Esq.

Feb 14, 2005  
Signature Date

February 17, 2005  
Date of Service (For NASD-DR office use only)