

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

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CASE: 04-08183

James L. Mynes, (Claimant) vs. Merrill Lynch, Pierce, Fenner & Smith, Inc. and Jeffrey D. Summerford, (Respondents)

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**ATTORNEYS:**

For Claimant appeared Richard S. Frankowski of the firm Whatley Drake, LLC, Birmingham, AL.

For Respondents appeared Melinda J. Lucas, Esq. of the firm Maynard, Cooper & Gale, P.C., Birmingham, AL.

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**NATURE OF DISPUTE:** Customer v. Member and Associated Person

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**DATE FILED:** October 29, 2004

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**CASE SUMMARY:** Claimant alleged that Respondents placed him in unsuitable investments, breached their fiduciary duty and acted negligently and fraudulently. Claimant further alleged violations of state and federal statutes, failure to supervise and omission of facts. Claimant maintained that due to Respondents' actions, he suffered financial losses. Claimant's claim involved mutual funds, corporate bonds and certificates of deposit.

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**ARBITRATOR'S REPORT:** See attached Exhibit A.

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**Claim Data**

Claim: \$25,000.00  
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: \$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 Claimant are dismissed in their entirety. 2) All requests for attorney fees are denied. 3) All requests for punitive damages are denied. 4) All requests for interest 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 Merrill Lynch, Pierce, Fenner & Smith, Inc. is liable and shall pay Claimant \$212.50 as reimbursement of one half the filing fee.

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**OTHER FEES:** Pursuant to Rule 10333 of the Code, Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc., has paid to NASD Dispute Resolution the \$425.00 Member Surcharge previously invoiced.

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Award 04-08183

John W. Davis, Esq.

Sole Public Arbitrator

AFFIRMATION

I, John W. Davis, 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.

John W. Davis  
John W. Davis, Esq.

August 3, 2005  
(Signature Date)

August 4, 2005  
Date of Service (For NASD-DR office use only)

**IN ARBITRATION BEFORE  
NASD DISPUTE RESOLUTION**

## RESPONDENTS

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**NASD # 04-08183**

The Claimant alleges that Respondent Jeffrey D. Summerford made unsuitable trades in Claimant's account with Respondent Merrill Lynch, that Respondent Merrill Lynch provided inadequate supervision of Respondent Jeffrey Summerford, that the Respondents did breach their fiduciary duty to Claimant, that they were negligent in the performance of their duty to Claimant, that the Respondents violated federal and state securities laws and regulations and that Respondents did otherwise injure Claimant. Respondents deny the allegations.

Claimants have limited their request for damages to \$25,000. This is a Simplified Arbitration Procedure. An Order was issued by the Arbitrator on June 1, 2005 addressing certain discovery issues. No pleadings or documents have been filed subsequent to that Order. Through misunderstanding, the Arbitrator did not issue his Award immediately following the June 1, 2005 Order. The case is and has been submitted on the documents. An evidentiary hearing is not required because of the amount of the claim.

The Arbitrator has carefully and thoroughly reviewed and considered the pleadings and submitted documents. The Arbitration has also considered the applicable law to this case. Upon such consideration the Arbitrator finds that Claimant has not been able to establish sufficient facts to substantiate his claims and that an award in favor of the Claimant is not warranted.

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July 27, 2005  
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The Arbitrator does therefore find in favor of Respondents and denies Claimant's request for relief, in full.

Filing fees in this matter are assessed 50% against Claimant and 50% against Respondent Merrill Lynch, Fenner, Pierce, Fenner and Smith, Incorporated.

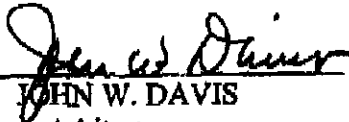
#### **AFFIRMATION**

State of Alabama

County of Montgomery

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

DONE this 27<sup>th</sup> day of July, 2005.

  
JOHN W. DAVIS  
Arbitrator