

AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Merrill Lynch, Pierce, Fenner & Smith, Inc.

and

Case Number 96-00781

Name of Respondent

Brian Stutt

REPRESENTATION OF PARTIES

Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. was represented by Barrett H. Reasoner, Esq. of Gibbs & Bruns, LLP located in Houston, TX.

Respondent Brian Stutt did not file an appearance.

CASE INFORMATION

The Statement of Claim was filed on or about February 22, 1996.

The Submission Agreement of Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. was signed on February 20, 1996 by Frederick T. Cater, Administrative Manager.

Respondent Brian Stutt did not file a Statement of Answer or an executed Submission Agreement.

CASE SUMMARY

In the Statement of Claim, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Claimant") alleged that Brian Stutt ("Respondent") owed Claimant \$4,010.16 for a debit balance in his individual account. Claimant contended that as of January 3, 1995, the Respondent's account had a debit balance of \$4,410.00. In March of 1995, Claimant agreed to allow Respondent to execute a Promissory Note (the "Note") in the amount of \$4,492.00 in order to satisfy his debt. Respondent allegedly executed the Note before a notary public on April 5, 1995. As alleged, Respondent failed to make the first payment due on June 26, 1995 yet Claimant agreed to delay taking action to collect the debt in exchange for a promise that the June and July payments would be made by August 3, 1995. After making the payments due for June and July, 1995, Respondent allegedly failed to make the August payment in a timely manner then failed to make any further payments despite demands by the Claimant. For the alleged breach of the Account Agreement and the breach of the Promissory Note

as well as pursuant to the provisions contained therein, Claimant sought a total of \$4,010.16 for repayment of the Note, pre-judgement and post-judgement interest and reasonable attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrator determined that Respondent Brian Stutt had been properly served with the Statement of Claim pursuant to Sections 10302 and 10314 of the Code of Arbitration Procedure (the "Code").

Respondent Brian Stutt did not file with the National Association of Securities Dealers Regulation, Inc. ("NASD Regulation, Inc.") Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Account Agreement and Section 10301 of the Code of Arbitration Procedure (the "Code") and is bound by the determination of the arbitrator on all issues submitted.

AWARD

Pursuant to Section 10302 of the Code of Arbitration Procedure, a single Public Arbitrator, Richard P. Flake, Esq., was selected to review and determine the matter in controversy between the parties set forth in a submission to Arbitration signed by the Claimant on February 20, 1996.

The Arbitrator, having considered the proof of the Parties, has decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondent Brian Stutt is hereby liable for and shall pay to Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. the sum of \$4,010.16 in compensatory damages plus simple interest on this amount at a rate of 6% per annum from October 1, 1995 until paid in full;
2. That Respondent Brian Stutt is hereby liable for and shall pay to Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. the amount of \$500.00 in attorneys' fees. In deciding to award attorneys' fees, the undersigned arbitrator considered the pleadings and the provisions contained in the Account Agreement and the Promissory Note;
3. The parties shall bear their own costs except for forum fees addressed below; and
4. Any relief not specifically granted is hereby denied in its entirety.

FORUM FEES

Pursuant to Sections 10332 and 10333 of the Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the filing fees in the amount of \$575.00 and shall retain

the \$100.00 member surcharge. Respondent Brian Stutt is hereby liable for and shall pay to Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. the amount of \$575.00 as reimbursement of the filing fees.

AFFIRMATION

I, Richard P. Flake, Esq., 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.

Richard P. Flake, Esq.
Arbitrator Richard P. Flake, Esq.

December 17, 1996
Dated

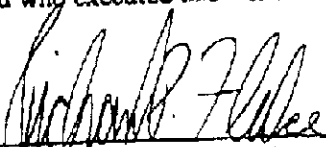
Date served by NASD Regulation, Inc.: December 17, 1996

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the \$100.00 member surcharge Respondent Brian Stutt is hereby liable for and shall pay to Claimant Merrill Lynch, Pierce, Fenner & Smith, Inc. the amount of \$575.00 as reimbursement of the filing fees.

AFFIRMATION

I, Richard P. Flake, Esq., 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.



Arbitrator Richard P. Flake, Esq.

12/16/96
Dated

Date served by NASD Regulation, Inc. _____