

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Merrill Lynch Pierce Fenner & Smith Inc

96-01988

Name of Respondent

Ronald L. Sabott

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on May 8, 1996, Claimant Merrill, Lynch, Pierce, Fenner & Smith, Inc., through its representative, Lisa S. Kahn, Esq., of the law firm of Davis, Graham & Stubbs LLP, located in Denver, CO, alleged that Respondent Ronald L. Sabott ("Respondent") is liable to it for breach of contract related to his failure to pay the debit balance in his account despite repeated demands. Claimant further alleged that in November 21, 1994, Respondent opened an account with it and entered into a Capital Builder Account Agreement. Claimant also alleged that pursuant to the contract, Respondent agreed to pay all debit balances in the account on demand with interest. Claimant contended that on July 21, 1995, Respondent wrote a check on the account which Claimant paid in the amount of \$7,500.00. Claimant further contended that it paid Respondent because he had previously deposited a check which would have been sufficient to cover the July 21 disbursement had the check not been returned for insufficient funds. Claimant also contended that numerous unsuccessful attempts were made to get payment. Claimant asserted that under the contract, the parties agreed to resolve all dispute through arbitration. Claimant further asserted that it provided Respondent the opportunity to select the forum and since he did not respond, it chose to arbitrate at the NASD.

Respondent Ronald L. Sabott did not file an Answer to the Statement of Claim.

RELIEF REQUESTED

Claimant Merrill, Lynch, Pierce, Fenner & Smith, Inc. requested \$7,357.49 in actual damages, interest, costs, attorney's fees and other relief the arbitrator deems fit.

Respondent Ronald S. Sabott did not file an Answer to the Statement of Claim.

OTHER ISSUES CONSIDERED AND DECIDED

Pursuant to Section 10302 of the NASD Code of Arbitration Procedure, the Respondent Ronald L. Sabott was sent the Statement of Claim via regular mail and was given an opportunity to respond which he failed to do. In addition, an overdue answer notice and notice of the identity of the arbitrator were sent via certified mail and the signed return receipt card is on file with the NASD.

Pursuant to the by-laws of the NASD, the arbitrator determined that Respondent had notice of the claim, and was required to submit to this arbitration proceeding; and is, therefore, bound by the arbitrator's ruling and determination.

AWARD

Pursuant to Section 10302 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Gilbert L. McSwain, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on May 7, 1996 and not by the Respondent as is required by Sections 10301 and 10302.

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

1. The Respondent Ronald L. Sabott is liable and shall pay to Claimant Merrill, Lynch, Pierce, Fenner & Smith, Inc. \$7,357.49 in actual damages.
2. The Respondent Ronald L. Sabott is liable and shall pay to Claimant Merrill, Lynch, Pierce, Fenner & Smith, Inc. interest at the rate of 9% per annum from May 6, 1996 to date of payment of the award.
3. The Respondent Ronald L. Sabott is liable and shall pay to Claimant Merrill, Lynch, Pierce, Fenner & Smith, Inc. \$2,863.75 as reimbursement of attorney's fees and costs pursuant to the contract entered into by the parties.
4. The \$575.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. The Respondent Ronald L. Sabott is liable and shall pay to Claimant Merrill, Lynch, Pierce, Fenner & Smith, Inc. \$575.00 as reimbursement of the filing fee.
5. All other relief requests are denied

AFFIRMATION

I, Gilbert L. McSwain, 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.

A handwritten signature in cursive script, appearing to read "Gilbert L. McSwain", written over a horizontal line.

Signature of Arbitrator

DATE OF DECISION: **October 7, 1996**