

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Gregory G. Riggs

96-02735

Name of Respondent

Merrill, Lynch, Pierce, Fenner & Smith, Inc.

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on June 26, 1996, claimant Gregory G. Riggs ("claimant"), who appeared Pro Se, alleged that respondent Merrill, Lynch, Pierce, Fenner & Smith, Inc. ("respondent") failed to pay him the commissions and contest prizes he earned as a result of home equity lines of credit issued by its subsidiary, Merrill Lynch Credit Corporation. Claimant further alleged that he left his employment with respondent on November 18, 1994, and that seven home equity loans were submitted by him that did not officially close prior to his departure. Claimant also alleged that a three day wait rule caused the loans he submitted to close after his departure but that this wait rule was not disclosed to him. Claimant contended that he should have received 25% of the commissions he generated on these transactions. Claimant further contended that in Washington State, it is standard practice to compensate sales representatives for the work they performed, 30 days past the date of their employment severance. Claimant also contended that he performed the work associated with developing the loans and should therefore be compensated accordingly.

Respondent Merrill, Lynch, Pierce, Fenner & Smith, Inc. through its representative and in-house counsel, John McLean, Esq., maintained that claimant resigned before any of the alleged loan transactions were funded. Respondent further maintained that each loan transaction consisted of two distinct steps: 1) the signing of the loan document; and, 2) the funding of the loan by Merrill Lynch Credit Corporation and the simultaneous opening of an Equity Access Account so as to give the borrower immediate access to the money. Respondent also maintained that respondent does not fund loans until 3 days after the signed contract because under federal law the purchaser may rescind it. Respondent contended that it is not standard practice to utilize contracts to pay commissions on any loans that close or become funded within 30 days of severance of employment. Respondent further contended that it objects to Ron Carroll's

testimony because he is not a party to this dispute and he is not an expert witness to standard practices in the Washington State. Respondent also contended that claimant was a Financial Consultant in the financial services industry while Carroll worked in the banking industry and that claimant's broad based conclusions are inappropriate. Respondent asserted that its policy and practice is that Financial Consultants earn production credits and are due compensation only if they are employed by it at the time a transaction is finalized. Respondent further asserted that this policy extends to the awards which claimant seeks as they are part of the compensation on the loan transactions at issue. Respondent also asserted that specific performance is an inappropriate remedy where money damages are adequate as in this case. Respondent maintained that claimant has not offered a monetary value for these award items and should therefore take nothing.

### **RELIEF REQUESTED**

Claimant Gregory G. Riggs requested \$1,995.00 in commissions plus the items he was promised in the promotional material consisting of a \$100.00 gift certificate, full set of Callaway Clubs and the Burton bag.

Respondent Merrill, Lynch, Pierce, Fenner & Smith, Inc. requested that the claims be dismissed in their entirety plus costs.

### **AWARD**

Pursuant to Section 10302 of the NASD, Inc. Code of Arbitration Procedure, a single Industry Arbitrator, Blake Weston, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the claimant on June 21, 1996, and by respondent on August 2, 1996.


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. Respondent Merrill, Lynch, Pierce, Fenner & Smith, Inc. is liable and shall pay to the claimant Gregory R. Riggs \$2,075.15 in actual damages.
2. Respondent Merrill, Lynch, Pierce, Fenner & Smith, Inc. is liable and shall pay to the claimant Gregory R. Riggs simple interest at the rate of 10% per annum from November 30, 1996 to date of payment of the award.
3. The parties shall bear their respective costs and attorney's fees.

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. Respondent Merrill, Lynch, Pierce, Fenner & Smith, Inc. is liable and shall pay to the claimant Gregory R. Riggs \$575.00 as reimbursement of the filing fee.
5. All other relief requests are denied.

**AFFIRMATION**

I, Blake Weston, 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.



Signature of Arbitrator

DATE OF DECISION: December 23, 1996