

9712112

NASD REGULATION FINAL ORDER

In the Matter of the Arbitration Between

Name of Claimant

Gorlin-Okun, Inc.

96-05225

Name of Respondent

Merrill Lynch Pierce Fenner & Smith Inc.

REPRESENTATION

For claimant Gorlin-Okun, Inc. ("claimant") appeared Michael Okun, President of claimant.

For respondent Merrill Lynch Pierce Fenner & Smith ("respondent") appeared Howard C. Sawransky, Esq., Assistant Vice President for respondent located in New York, New York.

CASE INFORMATION

Claimant's Statement of Claim was filed on: November 21, 1996.

Claimant's Submission Agreement was signed on: November 18, 1996.

A Statement of Answer was filed by respondent on: January 31, 1997.

Respondent's Submission Agreement was signed on: January 31, 1997.

HEARING INFORMATION

Pre-Hearing Conference: May 15, 1997 One Session

Hearing/Session: June 19, 1997 One Session

The hearing was conducted at the offices of NASD Regulation, Inc. located in New York, New York.

CASE SUMMARY

Claimant alleged that, in April, 1984, he purchased a MAC bond (the "bond") in the amount of \$10,000.00 from respondent with a due date of July 1, 1994. Claimant contended that when the bond came due he did not receive his money. In addition, claimant contended that, although respondent claimed that the bond was mailed to him, he never received it. Claimant further

alleged that, contrary to respondent's statement that the security was transmitted to him on June 5, 1984, his account statements showed that the security was in respondent's possession as late as September, 1984.

Respondent contended that its records reflected that claimant took delivery of the bond in 1984 and that claimant was placed on notice that the bond was delivered to him by the October, 1984 monthly account statement. Respondent further contended that claimant, upon receipt of the October, 1984 monthly account statement, had an absolute duty to inform respondent in a timely manner that he did not receive the bond. Respondent alleged that claimant waited more than ten years to notify it that he had not received the bond. Respondent also maintained that it was only required to maintain customer monthly account statements and other official books and records for seven years and that, therefore, it had no records after October, 1984 to reflect the whereabouts of claimant's bond.

RELIEF REQUESTED

Claimant requested \$10,000.00 in compensatory damages.

Respondent requested that the Statement of Claim be dismissed in its entirety and that costs be assessed against claimant.

OTHER ISSUES CONSIDERED & DECIDED

Respondent made a Motion to Dismiss pursuant to Rule 10304 of the Code of Arbitration Procedure (the "Code.") The arbitrator has considered all submissions and arguments made during the hearing and, after due deliberation, has determined to grant respondent's Motion to Dismiss. Therefore, all claims against respondent are hereby dismissed in their entirety.

FORUM FEES


Pursuant to Rule 10332(c) of the Code, the arbitrator has determined that NASD Regulation, Inc. shall retain the \$75.00 non-refundable filing fee and the \$100.00 member surcharge previously deposited and assessed the following forum fees:

1 Pre-Hearing Conference x \$200.00	=	\$200.00
1 Hearing Session x \$200.00	=	\$200.00

1. Claimant be and hereby is liable for the sum of \$200.00, representing one-half of the total amount of forum fees assessed. Claimant previously deposited \$200.00 with NASD Regulation, Inc. and therefore, claimant owes nothing in forum fees.
2. Respondent be and hereby is liable for and shall pay the sum of \$200.00, representing one-half of the total amount of forum fees assessed.

Fees are payable to NASD Regulation, Inc.

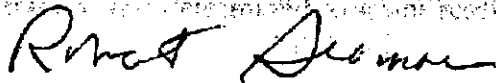
ARBITRATOR'S SIGNATURE



Robert Seaman, Esq.
Chairperson-Public Arbitrator

Date of Award: December 17, 1997

I, Robert Seaman, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.



Robert Seaman, Esq.