

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Marc F. Jones, Claimant v. Vanguard Capital, Gregory Serras and Carole P. Serras, Respondents

Case Number: 00-05597

Hearing Site: Los Angeles, California

REPRESENTATION OF PARTIES

For Claimant:

J. Paul Gignac, Esq.
Arias, Ozzello & Gignac, LLP
Santa Barbara, California

For Respondents:

Kenneth J. McArthur, Esq.
Troy and Gould
Los Angeles, California

CASE INFORMATION

Statement of Claim filed: December 18, 2000

Claimant's Uniform Submission Agreement signed: December 18, 2000

Joint Statement of Answer filed by Respondents Vanguard Capital and Gregory Serras:
February 9, 2001

Statement of Answer filed by Respondent Carole P. Serras: None filed

CASE SUMMARY

Claimant alleged breach of employment contract and underpayment of commissions in the form of Software.com common shares.

Respondents Vanguard Capital and Gregory Serras denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

RELIEF REQUESTED

Claimant's requested the greater of \$4,942,315 plus interest at 10% per annum, commencing November 15, 2000, or an amount equal to the closing price of 54,588 common shares of Openwave Systems, Inc. to which the Software.com was converted, or the actual shares to the extent they remained in the possession of Respondents.

Respondents Vanguard Capital and Gregory Serras requested dismissal of Claimant's Statement of Claim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

On November 20, 2001, the panel dismissed without prejudice Respondent Carole Serras upon a finding that she did not file with NASD Dispute Resolution, Inc. a properly executed submission agreement and was not required to submit to arbitration pursuant to the Code.

Respondents Vanguard Capital and Gregory Serras did not file with the NASD Dispute Resolution, Inc. properly executed submission agreements but are required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

After considering the pleadings, testimony, and evidence presented at the hearing, and the post-hearing submissions, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) All the of the Claimant's claims are denied in their entirety.
- 2) The parties shall bear their own respective costs, including attorney's fees.
- 3) All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 600.00
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events which gave rise to the dispute, claim, or controversy. Accordingly, the member firm Vanguard Capital is a party and the following fees are assessed:

Member Surcharge	= \$ 2,500.00
Pre-Hearing Process Fee	= \$ 600.00
Hearing Process Fee	= \$ 4,500.00
Total Member Fees	= \$ 7,600.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or Panel. The following fees are assessed:

(1) Pre-hearing conference session with a single arbitrator @ \$ 450/session	= \$ 450.00
Pre-hearing conference: August 22, 2001 1 session	
(3) Pre-hearing conference sessions with the Panel @ \$1,200/session	= \$ 3,600.00
Pre-hearing conferences: July 9, 2001 1 session	
October 18, 2001 1 session	
November 27, 2001 1 session	
(8) Hearing sessions @ \$1,200/session	= \$ 9,600.00
Hearings: December 3, 2001 2 sessions	
December 4, 2001 3 sessions	
December 5, 2001 3 sessions	
Total Forum Fees	= \$ 13,650.00

1. The Panel assessed \$6,225.00 of the forum fees to Claimant Marc F. Jones.
2. The Panel assessed \$7,425.00 of the forum fees jointly and severally to Respondents Vanguard Capital and Gregory Serras.

Administrative Costs

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and sundry other requests.

Marc F. Jones requested 218 photocopies @ \$.50:	= \$ 109.00
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Fee Summary

1. Claimant, Marc F. Jones, is charged with the following fees and costs:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$ 6,225.00
<u>Administrative Costs</u>	= \$ 109.00
Total Fees	= \$ 6,934.00
<u>Less payments</u>	= \$(1,800.00)
Balance Due NASD Dispute Resolution, Inc.	= \$ 5,134.00

2. Respondent, Vanguard Capital, is charged with the following fees and costs:

Member Fees	= \$ 7,600.00
<u>Less payments</u>	= \$(5,123.00)
Balance Due NASD Dispute Resolution, Inc.	= \$ 2,477.00

3. Respondents, Vanguard Capital and Gregory Serras, are charged jointly and severally with the following fees and costs:

<u>Forum Fees</u>	= \$ 7,425.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 7,425.00

All balances are payable to NASD Dispute Resolution, Inc. and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

William A. Husa

Non-Public Arbitrator, Presiding Chair

Michael W. Burnett

Non-Public Arbitrator

Montgomery G. Griffin Esq.

Non-Public Arbitrator

Concurring Arbitrators' Signatures

William A. Husa

William A. Husa
Chair, Non-Public Arbitrator

12-21-01

Signature Date

Michael W. Burnett
Non-Public Arbitrator

Signature Date

Montgomery Griffin, Esq.
Non-Public Arbitrator

Signature Date

12-21-01

Date of Service


ARBITRATION PANEL

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<i>Montgomery G. Griffin Esq.</i>	-	<i>Non-Public Arbitrator</i>

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