
Modified Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

John H. and Elaine C. Berninger,
Claimants

Vs.

Thomas G. Glaser,
William Kelly Montgomery, and
Brian M. Zaid,
Respondents.

Case Number: 01-00544

Hearing Site: Cincinnati, Ohio

REPRESENTATION OF PARTIES

John H. Berninger, of Cleves, Ohio, represented Claimants John H. and Elaine C. Berninger ("the Berningers"), hereinafter referred to as "Claimants".

Respondent Brian M. Zaid ("Zaid"), Esquire, of Vanguard Capital, San Diego, California, represented himself.

Respondent William Kelly Montgomery ("Montgomery") of Minneapolis, Minnesota, represented himself.

Respondent Thomas G. Glaser ("Glaser"), of Batesville, Indiana, did not appear at the hearing and was not represented by counsel.

CASE INFORMATION

The Statement of Claim was filed on or about February 1, 2001.

Both Claimants signed the Uniform Submission Agreement on January 15, 2001.

Zaid's Statement of Answer was filed on or about April 18, 2001.

Zaid signed the Uniform Submission Agreement on April 17, 2001.

Montgomery's Statement of Answer was filed on or about April 19, 2001.

Montgomery signed the Uniform Submission Agreement on April 16, 2001.

Glaser did not file a Statement of Answer or a Uniform Submission Agreement.

CASE SUMMARY

Claimants alleged that Respondents erroneously duplicated an order to buy 200 shares of common stock in Vignette Corp. ("VIGN"), resulting in the purchase of 400 shares instead of 200.

Unless specifically admitted in his Statement of Answer, Zaid denied all allegations set forth in the Statement of Claim and asserted the following affirmative defenses: failure to state a cause of action, laches, estoppel, unclean hands, contributory and/or comparative negligence, failure to mitigate, bad faith and assumption of the risk.

Unless specifically admitted in his Statement of Answer, Montgomery denied all allegations set forth in the Statement of Claim and asserted the following affirmative defenses: contributory and/or comparative negligence and failure to mitigate.

RELIEF REQUESTED

Claimants requested the following relief:

Compensatory Damages	\$29,460.00
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Zaid requested that the Statement of Claim be dismissed in its entirety.

Montgomery requested that the Statement of Claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

On or about September 28, 2001, Respondent Brian M. Zaid (on behalf of Vanguard Capital, which was not named as a party to the arbitration) filed a Motion to Dismiss. On or about October 10, 2001, Claimants filed a Response to the Motion. The undersigned Panel deferred ruling on the Motion until after the telephonic hearing on the merits. As to Vanguard Capital, the Motion is denied as moot, because Vanguard Capital is not a party to the arbitration. Pursuant to the award below, the Motion is denied as to Brian M. Zaid.

Respondent Thomas G. Glaser did not file with NASD Dispute Resolution, Inc., a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and, is bound by the determination of the Panel on all issues submitted.

Respondent Thomas G. Glaser was not present or represented at the telephonic hearing. However, the Panel finds that he received service of the Statement of Claim and proper notice of the hearing. Therefore, he is bound by the determination of the Panel on all claims submitted in the Statement of Claim.

AWARD

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

1. Respondents Thomas G. Glaser, William Kelly Montgomery and Brian M. Zaid, purchased 400 shares of Vignette Corp. ("VIGN") stock on March 29, 2000, instead of the 200 shares ordered by Claimants John H. and Elaine C. Berninger. This purchase resulted from an inadvertent error on the Respondents' part, which Claimants brought to the Respondents' attention in a timely manner. Accordingly, the transaction should be reversed.
2. Respondents Thomas G. Glaser, William Kelly Montgomery and Brian M. Zaid, are jointly and severally liable for, and shall pay to Claimants John H. and Elaine C. Berninger, the sum of \$36,060.00 (Thirty-six Thousand Sixty Dollars and No Cents).
3. Claimants John H. and Elaine C. Berninger shall return to Respondents Thomas G. Glaser, William Kelly Montgomery and Brian M. Zaid, 200 (Two Hundred) shares of common stock in Vignette Corp. ("VIGN"). If Claimants no longer own 200 shares of VIGN, Claimants shall provide to Respondents the sales confirmation slip(s) reflecting the net proceeds received by Claimants as a result of the sale of the first 200 shares of VIGN stock sold by Claimants. In that event, Respondents shall not pay the sum awarded in paragraph 2 above, but shall instead pay to Claimants the sum of \$36,060.00 (Thirty-six Thousand Sixty Dollars and No Cents) less the net proceeds of the sale of the stock as demonstrated by the sales confirmation slip(s) from the first 200 shares sold.
4. The 30-day period in which Respondents Thomas G. Glaser, William Kelly Montgomery and Brian M. Zaid are required to pay either the amount awarded in paragraph 2 above or in paragraph 3 above, shall be tolled until the date when they receive either the 200 shares of VIGN stock or the sale confirmation slip(s) ordered to be produced by Claimants John H. and Elaine C. Berninger.
5. Respondents Thomas G. Glaser, William Kelly Montgomery and Brian M. Zaid, are jointly and severally liable for, and shall pay to Claimants John H. and Elaine C. Berninger, the sum of \$150.00 (One Hundred Fifty Dollars and No Cents) as reimbursement of the non-refundable filing fee paid by Claimants to NASD Dispute Resolution, Inc. This

sum shall be paid within 30 days of the date of service of this award.

6. Except as otherwise specified herein, each party shall bear its own costs and expenses.
7. Any and all relief not specifically addressed herein is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$ 150.00
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Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm, Vanguard Capital, employed the associated person(s) at the time of the event(s) giving rise to the dispute.

Member Surcharge	= \$ 600.00
Pre-hearing Process Fee	= \$ 600.00
Hearing Process Fee	= \$1,000.00

Forum Fees and Assessments

The Panel has the authority to assess forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the Panel that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with single arbitrator x \$450	= \$ 450.00
Pre-hearing conference: September 21, 2001 1 session	

One (1) Hearing session x \$450	= \$ 450.00
Hearing Date: November 7, 2001 1 session	

Total Forum Fees	= \$ 900.00
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The Panel has assessed all forum fees to Respondents Thomas G. Glaser, William Kelly Montgomery and Brian M. Zaid, jointly and severally.

FEE SUMMARY

1. Claimants are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 150.00
Total Fees	= \$ 150.00
<u>Less payments</u>	= \$ 600.00
Refund Due from NASD Dispute Resolution, Inc.	= \$ 450.00

2. Vanguard Capital is solely liable for:

<u>Member Fees</u>	= \$2,200.00
Total Fees	= \$2,200.00
<u>Less payments</u>	= \$1,200.00
Balance Due to NASD Dispute Resolution, Inc.	= \$1,200.00

3. Respondents Thomas G. Glaser, William Kelly Montgomery and Brian M. Zaid, are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 900.00
Total Fees	= \$ 900.00
<u>Less payments</u>	= \$ 0.00
Balance Due to NASD Dispute Resolution, Inc.	= \$ 900.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Louis F. Solimine, Esq.

Public Arbitrator

Arbitrator's Signature

Louis F. Solimine
Louis F. Solimine, Esq.
Sole Public Arbitrator

February 20, 2002
Signature Date

February 21, 2002
Date of Service

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SEE SUMMARY

1. Claimants are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 150.00
<u>Total Fees</u>	= \$ 150.00
<u>Less payments</u>	= \$ 600.00
<u>Refund Due from NASD Dispute Resolution, Inc.</u>	= \$ 450.00

2. Vanguard Capital is solely liable for:

<u>Member Fees</u>	= \$2,200.00
<u>Total Fees</u>	= \$2,200.00
<u>Less payments</u>	= \$1,200.00
<u>Balance Due to NASD Dispute Resolution, Inc.</u>	= \$1,200.00

3. Respondents Thomas G. Glaser, William Kelly Montgomery and Brian M. Zaid, are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 900.00
<u>Total Fees</u>	= \$ 900.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due to NASD Dispute Resolution, Inc.</u>	= \$ 900.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Louis F. Solimine, Esq.

Public Arbitrator

Arbitrator's SignatureLouis F. Solimine, Esq.
Sole Public Arbitrator

2.20.02

Signature Date

Date of Service (For NASD-Dispute Resolution office use only)