

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

David A. Nelson, as Trustee for the Bettye K. Sopher Trust, (Claimant) v. and Vanguard Marketing Corporation d/b/a Vanguard Brokerage Services, (Respondent)

Case Number: 01-01192

Hearing Site: Chicago, Illinois

REPRESENTATION OF PARTIES

Claimant David A. Nelson, as Trustee for the Bettye K. Sopher Trust ("Nelson"):
Laurence M. Landsman of the law firm Block & Landsman located in Chicago, Illinois.

Respondent Vanguard Marketing Corporation d/b/a Vanguard Brokerage Services
("Vanguard"): Pauline C. Scalvino, Esq. and Susan McGovern, Esq. of Vanguard's Legal
Department located in Valley Forge, Pennsylvania.

CASE INFORMATION

Statement of Claim filed on or about: March 08, 2001

Claimant signed the Uniform Submission Agreement: February 19, 2001

Claimant's Response to Vanguard's Motion to Dismiss: June 01, 2001

Claimant's Supplemental Response to Vanguard's Motion to Dismiss: January 15, 2002

Statement of Answer and Motion to Dismiss filed by Respondent Vanguard on or about:
May 11, 2001

CASE SUMMARY

Claimant David A. Nelson, as Trustee for the Bettye K. Sopher Trust asserted the following causes of action: Breach of Contract; Violation of the Consumer Fraud Act; Breach of Fiduciary Duty; and Negligence.

The causes of action relate to the American Online and Nasdaq 100 stock.

Unless specifically admitted in its Answer, Respondents Vanguard Marketing Corporation denied the allegations made in the Statement of Claim and asserted the following defenses:

NASD Dispute Resolution, Inc.
Arbitration Case #: 01-01192
Page 2 of 4

1. Failure to state a claim upon which relief may be granted;
2. Vanguard acted at all times in accordance with the law and the power given it under the Securities Account Agreement governing the account;
3. Vanguard acted pursuant to the Federal Reserve Board's Regulation T, section 220.8; and
4. Respondents had no fiduciary duty to Claimants as a matter of law.

RELIEF REQUESTED

Claimant David A. Nelson, Trustee for the Bettye K. Sopher Trust requested:

Compensatory Damages	\$ 75,000.00
Punitive Damages	unspecified
Interest	unspecified
Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief if any:	assessment of forum fees to Respondent and any other relief the panel deems just

Respondent Vanguard Marketing Corporation requested:

Other Costs	unspecified
Other Monetary/Non-Monetary Relief if any:	denial or dismissal of claim

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Vanguard did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301(a) of the NASD Code of Arbitration Procedure ("the Code") and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

After considering the Respondent's Motion to Dismiss and all related submissions, the panel denied the Motion.

AWARD

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

1. Respondent Vanguard Marketing Corporation d/b/a Vanguard Brokerage Services is liable for and shall pay to Claimant David A. Nelson, as Trustee for the Bettye K. Sopher Trust the sum of \$20,000.00 as compensatory damages.
2. Parties shall bear their own costs, including attorney's fees.

NASD Dispute Resolution, Inc.
 Arbitration Case #: 01-01192
 Page 3 of 4

3. Any and all relief not specifically addressed herein, including punitive damages, is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

Pursuant to Rule 10332(a) of the Code, NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$225.00
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Member Fees

In accord with Rule 10333 of the Code, member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 600.00
<u>Hearing process fee</u>	<u>= \$1,500.00</u>
Total Member Fees	= \$3,100.00

Forum Fees and Assessments

In accordance with Rule 10332(c) of the Code of Arbitration Procedure, 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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$750.00	= \$ 750.00
Pre-hearing conferences: January 07, 2002	1 session
Three (3) Hearing sessions x \$750.00	= \$2,250.00
Hearing Dates: May 01, 2002	2 sessions
May 02, 2002	1 session
Total Forum Fees	= \$3,000.00

1. The panel has assessed \$375.00 of the forum fees to Claimant David A. Nelson, as Trustee for the Bettye Sopher Trust.
2. The panel has assessed \$2,625.00 of the forum fees to Respondent Vanguard Marketing Corporation d/b/a Vanguard Brokerage Services.

NASD Dispute Resolution, Inc.
 Arbitration Case #: 01-01192
 Page 4 of 4

Fee Summary

1. Claimant David A. Nelson, as Trustee for the Bettye K. Sopher Trust is solely liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$ 375.00
Total Fees	= \$ 600.00
Less payments	= \$ 975.00
Refund Due From NASD Dispute Resolution, Inc.	= \$ 375.00

2. Respondent Vanguard Marketing Corporation d/b/a Vanguard Brokerage Services is solely liable for:

Member Fees	= \$ 3,100.00
Forum Fees	= \$ 2,625.00
Total Fees	= \$ 5,725.00
Less payments	= \$ 3,100.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 2,625.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Thomas Ward, Esq. - Public Arbitrator, Presiding Chair
 Mary Beth Wheeler, Esq. - Public Arbitrator
 Daniel J. Foley - Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/ Thomas P. Ward

May 10, 2002

 Thomas Ward, Esq.
 Public Arbitrator, Presiding Chair

 Signature Date

/s/ Mary Beth Wheeler

May 10, 2002

 Mary Beth Wheeler, Esq.
 Public Arbitrator

 Signature Date

/s/ Daniel J. Foley

May 09, 2002

 Daniel J. Foley
 Non-Public Arbitrator

 Signature Date

 May 10, 2002

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