

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Dennis J. Murphy

Case Number: 01-02331

Name of the Respondent

Vanguard Brokerage Services

Hearing Site: Philadelphia, PA

REPRESENTATION OF PARTIES

Claimant, Dennis J. Murphy ("Murphy"), hereinafter referred to as "Claimant": Daniel Bernheim, Esq., Silverman Bernheim & Vogel, Philadelphia, PA.

Respondent, Vanguard Brokerage Services ("Vanguard"), hereinafter referred to as "Respondent": Matthew Walker, Esq., The Vanguard Group, Valley Forge, PA.

CASE INFORMATION

Statement of Claim filed on: April 30, 2001

Claimant signed the Uniform Submission Agreement on or about: April 30, 2001

Statement of Answer filed by Respondent on: July 12, 2001

A representative of Respondent signed the Uniform Submission Agreement: July 12, 2001

Respondent filed an Amended Answer and Motion to Dismiss on: May 13, 2002

CASE SUMMARY

Claimant asserted the following causes of action: negligence in the failure to open a brokerage account and to sell shares of Diversa Corporation stock within a timely fashion when instructed to do so as soon as possible.

Unless specifically admitted in its Answer and Amended Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: that Respondent handled the matter in an appropriate manner; and, that Claimant failed to mitigate damages.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages

\$ 200,579.88

Interest

\$ 12,034.79

Attorneys' Fees

amount unspecified

Other Costs

amount unspecified

Respondent requested that the case be dismissed in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have 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, 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. Claimant is awarded \$137,412.00 in compensatory damages, to be paid by Respondent;
2. No interest is awarded on this amount;
3. Claimant is to tender the shares of Diversa stock back to Respondent for no compensation;
4. The parties shall bear their respective costs and expenses, including attorneys fees, except as Fees are specifically addressed below; and,
5. Any request for relief not specifically addressed herein is denied in its entirety.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$ 300
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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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Vanguard Brokerage Services is a party.

Member surcharge	= \$ 1,500
Pre-hearing process fee	= \$ 600
Hearing process fee	= \$ 2,500

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that

lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel @ \$ 1,125		= \$ 2,250
Pre-hearing conferences:	January 28, 2002	1 session
	January 30, 2002	1 session
Four (4) Hearing sessions @ \$ 1,125		= \$ 4,500
Hearing Dates:	May 14, 2002	2 sessions
	May 15, 2002	2 sessions
Total Forum Fees		= \$ 6,750

1. The Panel has assessed \$ 3,375 of the forum fees to Claimant.
2. The Panel has assessed \$ 3,375 of the forum fees to Respondent.

Fee Summary

1. Claimant, Murphy, is assessed and shall pay:	
Initial Filing Fee	= \$ 300
Forum Fees	= \$ 3,375
Total Fees	= \$ 3,675
Less payments	= \$ 2,250
Balance Due NASD Dispute Resolution	= \$ 1,425
2. Respondent, Vanguard, is assessed and shall pay:	
Member Fees	= \$ 4,600
Forum Fees	= \$ 3,375
Total Fees	= \$ 7,975
Less payments	= \$ 4,600
Balance Due NASD Dispute Resolution	= \$ 3,375

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

ARBITRATION PANEL

Richard W. Bourbon, Esq.	-	Public Arbitrator, Presiding Chairperson
Victor Pachter	-	Public Arbitrator, Panelist
Michael T. Baranowsky	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures

Richard W. Bourbon

Richard W. Bourbon, Esq.
Public Arbitrator, Presiding Chairperson

6/25/02

Signature Date

Victor Pachter
Public Arbitrator, Panelist

Signature Date

Michael T. Baranowsky
Non-Public Arbitrator, Panelist

Signature Date

June 26, 2002

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

Concurring Arbitrators' Signatures

Richard W. Bourbon, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Victor Pachter

Victor Pachter
Public Arbitrator, Panelist

6/26/02
Signature Date

Michael T. Baranowsky
Non-Public Arbitrator, Panelist

Signature Date

June 26, 2002
Date of Service (For NASD Dispute Resolution office use only)


Concurring Arbitrators' Signatures

Richard W. Bourbon, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Victor Pachter
Public Arbitrator, Panelist

Signature Date


Michael T. Baranowsky
Non-Public Arbitrator, Panelist

6-21-02
Signature Date

June 26, 2002
Date of Service (For NASD Dispute Resolution office use only)