

NASD DISPUTE RESOLUTION AWARD
NASD DISPUTE RESOLUTION
CASE: 03-06103

Laurence Pilgeram CUST, Claimant v. The Vanguard Group, Respondent.

ATTORNEYS:

Claimant, Laurence Pilgeram CUST, ("Claimant"), appeared pro se, Goleta, CA.

Respondent, The Vanguard Group, ("Respondent"), appeared through its in-house counsel, Brian T. Donadio, Malvern, PA.

NATURE OF DISPUTE: Customer v. Non-Member.

DATE FILED: August 21, 2003.

CASE SUMMARY: Claimant alleged that Respondent was negligent, committed fraud, failed to utilize his second wire redemption option request signed on October 1, 2002, and breached its fiduciary duty. Claimant's claim involved Vanguard's High Yield Tax Exempt Bond Fund No. 0044. Claimant maintained that due to Respondent's actions, his account suffered financial losses.

ARBITRATOR'S REPORT: See Exhibit 'A'.

Claim Data

Claim: \$22,772.65
Punitive: \$2,225.00
Interest: Daily at six percent (6%) to total \$4.17 per day
accruing from 10.17.02
Attorney Fees: Unspecified
Filing Fees: \$425.00
Other: \$275.00

Award Data

Award: \$.00
Punitive: \$.00
Interest: \$.00

Attorney Fees: \$.00
Filing Fees: \$.00
Other: \$.00

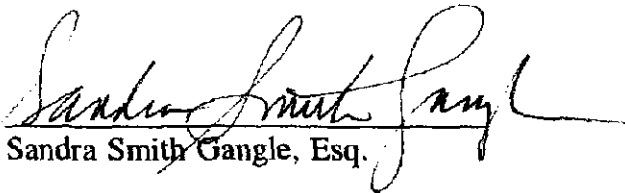
AWARD: The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) The claims of the Claimant are dismissed without prejudice in their entirety. 2) All requests for punitive damages are denied. 3) All requests for interest are denied. 4) All requests for attorney fees are denied. 5) All other relief requests are denied. 6) NASD Dispute Resolution shall retain the \$425.00 filing fee that the Claimant deposited previously.

ARBITRATOR

Sandra Smith Gangle, Esq. - Sole Public Arbitrator

AFFIRMATION

I, Sandra Smith Gangle, Esq., do hereby affirm, upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.


Sandra Smith Gangle, Esq.


Signature Date

September 16, 2004
Date of Service (For NASD-DR office use only)

RE: Laurence Pilgeram v. The Vanguard Group, Inc., Case No. 03-06103

Dear Ms. Segura or Ms. Oberfell:

Thank you for forwarding to me the letters of Laurence Pilgeram, Claimant, dated July 2, 2004, and Attorney Brian T. Donadio, representative of The Vanguard Group, Inc., dated July 6, 2004. Those letters had been sent to you in response to my letter, dated May 5, 2004, in which I requested additional information from the parties, to assist me in determining whether I have jurisdiction, as an NASD arbitrator, to decide the Claimant's claim against Vanguard Group.

Having carefully reviewed the letters from Mr. Pilgeram and Attorney Donadio, and having reviewed the file materials and the NASD Code of Arbitration Procedure, I now conclude that I do not have jurisdiction to decide the Claimant's Claim and must dismiss the claim.

Section 10301 (a) of the Uniform Code of Arbitration provides as follows:

(a) Any dispute, claim or controversy eligible for submission under the Rule 10100 Series, between a customer and a member and/or associated person arising in connection with the business of such member or in connection with the activities of such associated person shall be arbitrated under this Code, as provided by any duly executed and enforceable written agreement or upon the demand of the customer.

In reviewing the file materials, I do not find any written agreement to arbitrate, signed by any representative or employee of The Vanguard Group, Inc. Likewise, there is no submission agreement indicating that the Vanguard Group, Inc. has voluntarily submitted Mr. Pilgeram's dispute to arbitration before NASD.

More importantly, however, in his letter of July 6, 2004, Attorney Donadio states that The Vanguard Group, Inc. is *not a member* of the NASD. Mr. Donadio's statement is supported by the sworn affidavit of Marianne C. Meyer, Senior Manager in the Compliance Department of the Vanguard Group, Inc., dated January 5, 2004. In her affidavit, which is in the record, Ms. Meyer states that the Vanguard Marketing Corporation, of which Vanguard Brokerage Services is an operating division, is a member of NASD, while The Vanguard Group, Inc. is *not a member of NASD*.

Since The Vanguard Group, Inc. is *not a member* of NASD, Section 10301(a) of the Code does not apply to the relationship between Mr. Pilgeram and The Vanguard Group, Inc.

Ms. Meyer also stated in her affidavit, "There is *no agreement* between The Vanguard Group, Inc. and Dr. Pilgeram imposing arbitration as a means of dispute resolution."

Mr. Pilgeram has failed to offer adequate proof contradicting Ms. Meyer's affidavit. He asserts that, following a telephone call he made to an 800 number of Vanguard on August 27, 2003, to request "wording or documentation defining the coverage of [his] account with them under the agreement to arbitrate controversies," an unidentified person sent him a form describing arbitration. The document he received does not clearly reference his mutual fund account, nor does it show that The Vanguard Group, Inc. has agreed to arbitrate controversies with him that might arise under his mutual fund account.

Since the arbitrator is not persuaded that the parties agreed to arbitrate disputes arising under Mr. Pilgeram's mutual fund account with The Vanguard Group, Inc. in the NASD Dispute Resolution Forum, the arbitrator has no jurisdiction or authority to decide the merits of Mr. Pilgeram's claim. Therefore, pursuant to NASD Code of Arbitration Section 10305, the arbitrator dismisses Case No. 03-0613 and refers the parties to their judicial remedies, without prejudice to any claims or defenses available to either party.

Very truly yours,



SANDRA SMITH GANGLE, J.D.

Arbitrator