

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

John Bodnar and Nadine Bodnar, Claimants v. Pacific American Securities, LLC, Vanguard Capital, WBB Securities, LLC, ZA Associates, Inc., and Thomas P. Garrity, Respondents

Case Number: 05-01701

Hearing Site: Los Angeles, California

Nature of the Dispute: Customers v. Members and Associated Person

REPRESENTATION OF PARTIES

For Claimants:

James A. Shalvoy, Esq.
Law Offices of James A. Shalvoy
Manhattan Beach, California

For Respondent Pacific American Securities, LLC:

Mauricio J. Rauld, Esq.
Keesal Young & Logan
Long Beach, California

For Respondent Vanguard Capital:

Jeffrey S. Kob, Esq.
Law Offices of Jeffrey S. Kob
Coronado, California

For Respondent WBB Securities, LLC:

Steven C. Bakerink
M. Larae Bakerink
WBB Securities, LLC
San Diego, California

For Respondent ZA Associates, Inc.:

Robert Agriogianis
ZA Associates, Inc.
Morristown, New Jersey

For Respondent Thomas P. Garrity:

Thomas P. Garrity
In Propria Persona
Oceanside, California

CASE INFORMATION

Statement of Claim filed: March 29, 2005

Claimants' Joint Uniform Submission Agreement signed: March 25, 2005

Statement of Answer filed by Respondent Pacific American Securities, LLC: June 10, 2005

Statement of Answer filed by Respondent WBB Securities, LLC: May 17, 2005

Statement of Answer filed by Respondent Thomas P. Garrity: May 17, 2005

Respondent Pacific American Securities, LLC's Uniform Submission Agreement signed:
June 9, 2005

Respondent WBB Securities, LLC's Uniform Submission Agreement signed: May 26, 2005

Respondent Thomas P. Garrity's Uniform Submission Agreement signed: May 9, 2005

CASE SUMMARY

Claimants alleged breach of contract, negligence, breach of fiduciary duty, and fraud, involving unspecified securities.

Respondent Pacific American Securities, LLC denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim and asserted various affirmative defenses.

Respondent WBB Securities, LLC denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim and asserted various defenses.

Respondent Thomas P. Garrity denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim and asserted various defenses.

RELIEF REQUESTED

Claimants requested \$250,000.00 in compensatory damages, unspecified punitive damages, interest, disgorgement of excess commissions, management fees, and transaction costs, and costs, including attorney's fees, forum fees, and expert fees.

Respondent Pacific American Securities, LLC requested dismissal of the Claimants' Statement of Claim in its entirety and costs, including arbitrator's fees, expert fees, and expenses.

Respondent WBB Securities, LLC requested dismissal of the Claimants' Statement of Claim in its entirety, costs, including attorney's fees, forum fees, and expert fees, and interest as provided by law.

Respondent Thomas P. Garrity requested dismissal of the Claimants' Statement of Claim in its entirety and that the Panel impose penalties on Claimants and their attorney.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents Vanguard Capital and ZA Associates, Inc. did not file with NASD Dispute Resolution properly executed submission agreements, but are required to submit to arbitration pursuant to the Code and are bound by the determination of the Panel on all issues submitted.

On April 12, 2005, Claimants and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On May 26, 2005, Respondent WBB Securities, LLC signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimants shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

On May 27, 2005, Respondent Vanguard Capital filed a Motion to Dismiss or, in the Alternative, Motion for More Definite Statement. On August 12, 2005, Claimants filed an Opposition to Motion to Dismiss or, in the Alternative, Motion for More Definite Statement. On August 18, 2005, Respondent Vanguard Capital filed a Reply to Claimants' Opposition to Motion to Dismiss or, in the Alternative, Motion for More Definite Statement. On August 31, 2005, Respondent Vanguard Capital filed a Sur-Reply to Claimants' Opposition to Motion to Dismiss or, in the Alternative, Motion for More Definite Statement. On August 31, 2005, the Panel and parties held a telephonic pre-hearing conference to hear oral argument on Respondent Vanguard Capital's motion. On August 31, 2005, the Panel issued an Order stating, "After full consideration and deliberation of the written motions and opposition thereto following oral arguments, the Motion to Dismiss Vanguard Capital was granted."

On September 27, 2005, dismissed Respondent Vanguard Capital filed a Motion for Reimbursement of Fees and Costs. On October 18, 2005, Claimants filed an Opposition to Respondent Vanguard Capital's Motion for Reimbursement of Fees and Costs. On November 21, 2005, the Panel and parties held a telephonic pre-hearing conference to hear oral argument on motions including dismissed Respondent Vanguard Capital's Motion for Reimbursement of Fees and Costs. On November 21, 2005, the Panel issued an Order stating that "Respondent Vanguard Capital's Motion for Fees and Costs is submitted and will be considered at the hearing." At the conclusion of the evidentiary hearing on January 25, 2006, the Panel heard oral argument from Vanguard Capital and Claimants regarding the Motion for Reimbursement of Fees and Costs.

Respondent ZA Associates, Inc. did not make an appearance at the evidentiary hearing. Upon review of the file and the representations made by the Claimants, the undersigned Panel determined that Respondent ZA Associates, Inc. was properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

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, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimants' claims are denied in their entirety.
- 2) Claimants are jointly and severally liable to and shall pay Vanguard Capital the sum of \$750.00 as reimbursement for the NASD Pre-Hearing Process Fee.
- 3) The parties shall bear their respective costs, including attorney's fees.
- 4) All other relief requested and not expressly granted is denied, including Claimants' request for punitive damages.

FEEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$ 300.00
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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 that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Pacific American Securities, LLC is a party and the following fees are assessed:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 2,750.00
Total Member Fees	= \$ 5,200.00

The member firm Vanguard Capital is a party and the following fees are assessed:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 2,750.00
Total Member Fees	= \$ 5,200.00

The member firm WBB Securities, LLC is a party and the following fees are assessed:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 2,750.00</u>
Total Member Fees	= \$ 5,200.00

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/Panel. The following fees are assessed:

1 Pre-hearing conference session with a single arbitrator @ \$450.00/session = \$ 450.00
Pre-hearing conference: December 22, 2005 1 session

4 Pre-hearing conference sessions with the Panel @ \$1,125.00/session = \$ 4,500.00
Pre-hearing conferences: July 18, 2005 1 session
August 31, 2005 1 session
November 21, 2005 1 session
January 17, 2006 1 session

5 Hearing sessions @ \$1,125.00/session = \$ 5,625.00
Hearings: January 23, 2006 2 sessions
January 24, 2006 2 sessions
January 25, 2006 1 session

Total Forum Fees = **\$10,575.00**

The Panel assessed \$10,575.00 of the forum fees jointly and severally to Claimants.

Fee Summary

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$10,575.00
Total Fees	= \$10,875.00
Less payments	= \$(1,425.00)
Balance Due NASD Dispute Resolution	= \$ 9,450.00

2. Respondent Pacific American Securities, LLC is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
Less payments	= \$(4,450.00)
Balance Due NASD Dispute Resolution	= \$ 750.00

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

Member Fees	= \$ 5,200.00
Less payments	= \$(2,450.00)
Balance Due NASD Dispute Resolution	= \$ 2,750.00

4. Respondent WBB Securities, LLC is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
Less payments	= \$(5,200.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

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

ARBITRATION PANEL

George M. Wiener	-	Public Arbitrator, Presiding Chair
Edward A. Trabin	-	Public Arbitrator
James P. Murphy	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures:

George M. Wiener
George M. Wiener
Chair, Public Arbitrator

Jan. 28, 2006
Signature Date

Edward A. Trabin
Public Arbitrator

Signature Date

James P. Murphy
Non-Public Arbitrator

Signature Date

1/30/06
Date of Service

ARBITRATION PANEL

George M. Wiener	-	Public Arbitrator, Presiding Chair
Edward A. Trabin	-	Public Arbitrator
James P. Murphy	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

George M. Wiener
Chair, Public Arbitrator

Signature Date



Edward A. Trabin
Public Arbitrator

JAN 30, 2006
Signature Date

James P. Murphy
Non-Public Arbitrator

Signature Date

1/30/06
Date of Service

ARBITRATION PANEL

George M. Wiener	-	Public Arbitrator, Presiding Chair
Edward A. Trabin	-	Public Arbitrator
James P. Murphy	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

George M. Wiener
Chair, Public Arbitrator

Signature Date

Edward A. Trabin
Public Arbitrator

Signature Date


James P. Murphy
Non-Public Arbitrator

6/31/06
Signature Date

1/31/06
Date of Service