

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

**Name of Claimants**

Michael W. Monchino and Donna K. Monchino;  
Michael W. Monchino for Matthew T. Monchino, Minor.

92-04375

**Name of Respondents**

Vanguard Discount Brokerage Services, a  
division of Vanguard Marketing Corporation;  
Zaheer T. Husain;  
Richard J. McHale;  
Timothy P. Holmes;  
Scott Ramsey;  
Karl Kohl.

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**REPRESENTATION**

For Claimants: Michael W. Monchino, Donna K. Monchino and Michael W. Monchino for Matthew T. Monchino, Minor ("Monchino") were represented by Michael W. Monchino.

For Respondents: Vanguard Discount Brokerage Services, a division of Vanguard Marketing Corporation ("Vanguard"), Zaheer T. Husain ("Husain"), Richard J. McHale ("McHale"), Timothy P. Holmes ("Holmes"), Scott Ramsey ("Ramsey") and Karl Kohl ("Kohl") were represented by Richard J. McHale, Compliance Manager, Vanguard Discount Brokerage Services, Valley Forge, Pennsylvania.

**CASE INFORMATION**

Statement of Claim filed: December 31, 1992.

Claimants' Submission Agreement signed on: December 22, 1992.

Statement of Answer filed by Respondents on: March 5, 1993.

Respondent Husain's, McHale's, Holmes', Ramsey's and Kohl's Submission Agreements signed on: March 2, 1993.

Respondent Vanguard did not file an executed submission agreement.

### **HEARING INFORMATION**

Pre-Hearing Conference:    None Held.  
Hearing Date/Sessions:    January 10, 1994 for One (1) session.  
Hearing Location:            St. Louis, Missouri.

### **CASE SUMMARY**

Claimants alleged that Respondents failed to pay the quoted price of a security. Claimants specifically alleged that:

1. On April 22, 1992, Monchino received a phone call from Husain to discuss the Florida Federal S & L-Cash Compounder CDs in his accounts. Husain advised that if the CDs remained with the bank, the interest rate would be reduced to 3.75%, but that Monchino could cash in and have the funds transferred to their Vanguard Prime MM Accounts. Husain advised Monchino that the CD was 80.08 per unit. Monchino accepted the quote and opted to have the sums placed in the respective Vanguard Prime MM Accounts;
2. In early May, Monchino received his monthly statements which revealed that Monchino had received 69.03 per unit instead of the 80.08 quoted by Husain. Monchino called Husain, who advised that the computer still showed a price of 80.08 and could not explain why the lesser price was received. Subsequent phone calls were made to Kohl and Ramsey who could not provide an explanation;
3. Eventually, Monchino received a verbal explanation, but waited several weeks before a written explanation was received. On June 29, 1992, Holmes sent to Monchino a letter explaining that the misquote was the result of the purchase of the bank, a reduction in rates that was not well communicated to the public, and the difficulty in obtaining limited information from Wheat, First Securities, the clearing broker. Monchino was unsatisfied with the explanation and Holmes suggested that he write a letter to Vanguard requesting settlement of his dispute;
4. On July 20, 1992, Vanguard, through McHale, responded to Monchino's letter by blaming him for purchasing the security. Further correspondence from Vanguard on August 17, 1992 and Wheat, First on September 5, 1992 failed to correct the problem.

Respondents denied owing Claimants any reimbursement pursuant to the Claim, alleging that:

1. The Certificates of Deposit were purchased at another investment firm and subsequently transferred into the Vanguard accounts. Vanguard's responsibility to timely report events affecting their securities is not unlimited;
2. The erroneous price was taken from Vanguard's clearing agent's record keeping system. The value was not updated because the security did not trade and pricing was difficult to obtain;
3. Vanguard always provided Monchino with the most up-to-date information available, were always cooperative, and did not refuse to correspond with him; and
4. Claimants are not entitled to the higher value because there was not a variable price situation and the CD was not negotiable.

#### **RELIEF REQUESTED**

Claimants requested entry of an award against Respondents in the sum of \$3,867.50 plus interest, costs and other damages permitted.

Respondents requested that the claim be dismissed in its entirety.

#### **OTHER ISSUES CONSIDERED & DECIDED**

On November 30, 1993, Claimants filed a Motion to Amend the Statement of Claim to include as a party respondent Vanguard Discount Brokerage Services. Respondents did not object. On January 10, 1994, the Arbitrator granted the Motion.

Respondent Vanguard Discount Brokerage Services, a division of Vanguard Marketing Corporation, did not file an executed submissions agreement, but appeared and testified at hearing, and voluntarily submitted to arbitration.

The parties have agreed that a handwritten, signed Award may be entered. In this case, the parties have agreed to receive a conformed copy of the Award while the original remains on file with the NASD.

#### **AWARD**

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

1. Respondent Vanguard Discount Brokerage Services, a division of Vanguard Marketing Corporation, is liable for and shall pay to Claimants Michael W. Monchino and Donna K. Monchino the sum of \$552.50;
2. In addition, Respondent Vanguard Discount Brokerage Services, a division of Vanguard Marketing Corporation, is liable for and shall pay to Claimant Michael W. Monchino, for Matthew T. Monchino, Minor, the sum of \$3,315.00;
3. The claims against Respondents Zaheer T. Husain, Richard J. McHale, Timothy P. Holmes, Scott Ramsey and Karl Kohl are hereby dismissed with prejudice and denied in the entirety;
4. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
5. Any relief request not specifically granted is hereby denied.

**FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) Hearing Session x \$200.00 per session = \$200.00.

The National Association of Securities Dealers, Inc. shall retain the \$75.00 claim filing fee and refund the \$200.00 hearing session deposit previously deposited by the Claimants. Respondent Vanguard Discount Brokerage Services, a division of Vanguard Marketing Corporation, is liable for and shall pay to the NASD the sum of \$200.00 as forum fees.

Fees are payable to the National Association of Securities Dealers, Inc.

Arbitrator's Signature

Name

Date

/s/ Michael J. Hart  
Michael J. Hart  
Public Arbitrator

May 11, 1994

For NASD Use Only  
Date of Decision: \_\_\_\_\_

5/11/94