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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

Eugene Pollack

NASD Arbitration
No. 93-00046

Name of Respondent(s)

F.T. Bank & Associates
Vanguard Capital
Frank T. Bank

REPRESENTATION

For Claimant: David C. Hinshaw, Esq., Gansinger, Hinshaw & Buckley, Los Angeles, California

For Respondents: Jeffrey S. Kob, Esq., Miller Milove & Kob, San Diego, California

CASE INFORMATION

Statement of Claim filed: December 29, 1992

Statement of Answer and Affirmative Defenses of Eugene Pollack filed: May 24, 1993

Claimant's Submission Agreement signed: December 18, 1992

Statement of Answer and Counterclaim of Respondents Vanguard Capital, Frank T. Bank and F.T. Bank & Associates filed: April 30, 1993

Respondents' Submission Agreements signed as follows:

Vanguard Capital: April 15, 1993

Frank T. Bank: April 14, 1993

Respondent F.T. Bank & Associates did not file a Submission Agreement.

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HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s): None

Hearing Date(s)/Session(s): December 8, 1994 (two sessions)
December 9, 1994 (two sessions)

Hearing Location: San Diego, California

CASE SUMMARY

Claimant Eugene Pollack (Pollack) alleged that he and Respondents F.T. Bank (Bank) and Vanguard Capital (Vanguard) were sued in June 1991 in the Superior Court of the State of California, County of Riverside, Case Number 64342 by Ruth Hess and Jake Hess (the lawsuit) for alleged misfeasance in connection with the sale of securities to the Hesses by Pollack, Bank and Vanguard. Claimant Pollack further alleged that because he was acting within the course and scope of his duties as an employee and/or agent of Vanguard and/or Bank, he is entitled to indemnity and a defense as to the claims of the Hesses. Mr. Pollack further alleged that he has incurred attorneys' fees, costs and expenses in defending against the lawsuit and pursuing this action, in an amount of approximately \$50,000.00, to be amended and proven at the hearing of this matter, and for which he seeks reimbursement from Vanguard and/or Bank.

Respondents denied any liability to Pollack and alleged that Pollack is not entitled to indemnification because: 1) he was not an employee of Respondents, he was an independent contractor; and 2) even if one were to assume for purposes of argument that Pollack was an employee, he acted outside the scope of his duties owed to Respondents and therefore is not entitled to indemnification.

In their Counterclaim, Respondents Vanguard and Bank alleged that they are entitled to indemnification from Pollack based upon the respective costs that Respondents incurred in defending and settling the Hess matter and pursuant to an independent contract agreement executed by Pollack with Vanguard on or about October 1, 1989.

Claimant Pollack denied any liability with respect to Respondents' Counterclaim and alleged that the Counterclaim has no

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merit pursuant to National Association of Securities Dealers, Inc. (NASD) rules. Mr. Pollack also asserted affirmative defenses.

RELIEF REQUESTED

Claimant Pollack requested a finding that he was acting within the course and scope of his employment or agency for Vanguard, that he be awarded his costs of defense and his attorneys fees incurred in his defense against the lawsuit from plaintiffs by Vanguard, that Vanguard be ordered to indemnify him for the amount paid by Pollack in settlement of this matter, and that Vanguard be ordered to pay Pollack's costs and attorneys fees incurred in pursuing his claim in this arbitration. In addition, Claimant Pollack requested a finding that he was acting within the course and scope of his employment or agency for Bank, that he be awarded his costs of defense and his attorneys fees incurred in his defense against the lawsuit from plaintiffs by Bank, that Bank be ordered to indemnify him for the amount paid by Pollack in settlement of this matter, and requested his costs and attorneys fees incurred in pursuing his claim in this arbitration.

Claimant Pollack further requested that the counterclaims of both Vanguard and Bank for indemnification be denied in their entirety and that Pollack be awarded his costs and attorneys fees in defending the Counterclaim.

Respondents requested that the panel deny any and all claims by Claimant Pollack for indemnification under Section 2802 of the California Labor Code and Section 317 of the California Corporation Code. In the alternative, Vanguard requested indemnification for all costs and fees incurred in defending the Hess matter and in this arbitration of at least \$50,000.00 and in an amount to be proven at hearing. Further, Bank requested indemnification for all costs and fees incurred in defending the Hess matter and in this arbitration of at least \$150,000.00 and in an amount to be proven at hearing. Respondents further requested interest and return of all filing fees and hearing deposits in connection with this arbitration and any other relief which the panel deems just and equitable.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be

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executed in either counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

AWARD

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

1. Respondent Vanguard Capital is solely liable for and shall pay to Claimant Eugene Pollack the sum of \$25,000.00, in satisfaction of Claimant's claims.

2. All claims with respect to Respondents' Counterclaim are dismissed.

3. The parties shall each bear their respective costs including attorney's fees.

FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall refund the \$600.00 hearing session deposit previously deposited by Claimant Eugene Pollack and retain the \$750.00 hearing session deposit previously deposited by Vanguard Capital. Forum fees are assessed against: Vanguard Capital, solely, in the amount of \$1,650.00, calculated as follows: Four hearing sessions times \$600.00/session minus the \$750.00 retained by the NASD.

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

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
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Donald B. McNelley, Esq.	Industry Arbitrator
J.A. Dutcher, CPA	Industry Arbitrator
James F. Schmidt	Industry Arbitrator

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Concurring Arbitrators' Signatures

Donald B. McNelley, Esq.

J.A. Dutcher, CPA

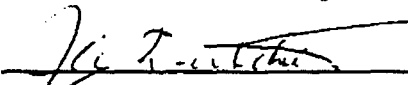
James F. Schmidt
James F. Schmidt

Date of Decision: December 29, 1994

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Concurring Arbitrators' Signatures

Donald B. McNelley, Esq.



J.A. Dutcher, CPA

James F. Schmidt

Date of Decision: 12/9/94

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Concurring Arbitrators' Signatures

Donald B. McNelley
Donald B. McNelley, Esq.

J.A. Dutcher, CPA

James F. Schmidt

Date of Decision: 12/31/94