

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Bret Cipes

96-03214

Name of Respondent

Vanguard Brokerage Services

REPRESENTATION

For Claimant: Stephen Murphy, Esq. of the law firm of Pino & Dicks, P.C., Longwood, Florida.

For Respondent: Pauline C. Scalvino, Esq. of The Vanguard Group, Valley Forge, Pennsylvania.

CASE INFORMATION

Statement of Claim filed on: July 29, 1996.

Claimant's More Definitive Statement of Claim filed on: April 7, 1997.

Claimant's Submission Agreement signed on: June 10, 1996.

Statement of Answer filed on: November 12, 1996.

Statement of Answer to Claimant's More Definitive Statement of Claim filed on: May 2, 1997.

Respondent's Submission Agreement signed on: November 11, 1996.

HEARING INFORMATION

On December 10, 1996, January 13, 1997 and April 1, 1997 pre-hearing conferences lasting three (3) sessions were conducted with the panel.

On June 11 and 12, 1997 hearings lasting three (3) sessions were conducted in Tampa, Florida.

CASE SUMMARY

Claimant Bret Cipes asserted the following allegations against Respondent Vanguard Brokerage Services ("Vanguard"): that Vanguard owed a fiduciary duty to him to give him essential information concerning the restructuring of Manville Corporation and the potential impact of the restructuring on securities owned by him and held for him in street name by Vanguard; that Vanguard as a regular business practice gave him important information concerning securities held for him; that Vanguard gave him information concerning Manville that was incomplete; that Vanguard never disclosed to him that the information they regularly provided was limited to certain types of information; and, that Vanguard never stated that the information provided to him could not be relied upon for its accuracy or completeness.

Claimant Cipes further asserted the following allegations against Respondent Vanguard: that Vanguard accepted the obligation to give him complete and accurate information concerning the Manville restructuring and the resulting special dividend; that Vanguard did not give him complete and accurate information when it advised him concerning his Manville warrants during the time Manville was emerging from bankruptcy and paying a large special dividend to its shareholders; and, that as a result of not having complete and accurate information, he lost over \$32,000.00.

Respondent Vanguard denied liability and alleged the following: Vanguard, as a discount broker whose responsibility is limited to executing trades, had no responsibility to communicate to Claimant, company-specific information about one of his investments; Vanguard did not contract to provide such information nor should its course of dealing with the Claimant have led him to believe this information would have been provided; Vanguard only provided information to Claimant which was related to his positions in various securities and to the ability of Vanguard to execute trades for him in those securities; Vanguard had no legal responsibility to communicate information to Claimant that was publicly available and equally accessible to both parties; and, Claimant profited from the sale of the warrants.

RELIEF REQUESTED

The Claimant requested compensatory damages in the sum of \$32,000.00, rescissory damages, legal interest, costs of arbitration including fees, expenses of expert witnesses, and other costs deemed fair and reasonable, attorneys' fees and such other relief as the arbitrators deemed appropriate under the circumstances.

The Respondent requested that the Claimant's claims for damages be denied in all respects and that they be awarded the costs of arbitration, including attorneys' fees.

OTHER ISSUES CONSIDERED & 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. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with NASD Regulation, Inc.

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 Brokerage Services is found not liable and, therefore, all claims against them are hereby dismissed.
- 2) Claimant's requests for compensatory damages, rescissionary damages, legal interest, costs of arbitration including fees, expenses of expert witnesses, and other costs, attorneys' fees and such other relief are hereby denied.
- 3) Respondent's requests for costs and attorneys' fees are hereby denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$2,400.00 (three pre-hearing conferences with the panel x \$400.00 plus three hearing sessions x \$400.00).

- 1) Claimant is hereby assessed \$1,200.00 for which National Association of Securities Dealers Regulation, Inc. shall retain the \$400.00 previously deposited by the Claimant in partial satisfaction thereof, leaving a balance due in the sum of \$800.00.
- 2) Respondent is hereby assessed \$1,200.00.
- 3) Respondent is still owing \$200.00 pursuant to Rule 10333 of the Code of Arbitration Procedure for the previously assessed member surcharge.

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

Concurring Arbitrators' Signatures

Public/Industry

/S/

Albert R. Neville, Jr.
Chairperson

Public

/S/

Charles R. Newcomer, Jr.

Industry

/S/

Dana T. Fogg

Public

7/31/97

Date of Decision: _____