

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

In the Matter of the Arbitration Between

Name of Claimant

Benjamin B. Lipton Trust

96-04410

Name of Respondent

Vanguard Brokerage Services

CASE SUMMARY

In a case filed with National Association of Securities Dealers Regulation, Inc. on October 3, 1996, claimant Benjamin B. Lipton Trust ("claimant"), who appeared Pro Se, alleged that respondent Vanguard Brokerage Services ("Vanguard") deprived him of the rightful use of his capital. Claimant further alleged that on September 17 he sold shares of DELL with a specified settlement date of September 20, in the amount of \$122,000.00. Claimant also alleged that on September 26, he called Vanguard to find out why these proceeds were not yet deposited into this money market account ("MM").

Claimant asserted that on September 12, he had notified Vanguard of his request for stock certificates in four stocks held by Vanguard in street name, DELL, MU, CCI, HWP. Claimant further asserted that the Vanguard agent told him that it would take three weeks to get the certificates. Claimant also asserted that when he gave the order for the sale of DELL, the order taker noted that the stock was marked for stock certificates in his name. Claimant also asserted that if Vanguard already had the certificates, they would have been sent to him immediately. Claimant contended that the sell order took place in less than one week since his request for the certificates. Claimant further contended that Vanguard's Supervisor Kearney's answer to him was that he should have notified the order taker of his pending request for the certificates. Claimant also contended that Kearney stated that since he failed to do this, Vanguard had no stock certificate to give to the purchaser of his DELL stock. Claimant alleged that Kearney told him that to cure this matter it would be necessary to send them a signed "power" and return it to Vanguard by mail. Claimant further alleged that the fact is that Vanguard received payment from the Dell sale on a 3 day settlement and had then provided the purchaser with the stock. Claimant also alleged that this handling by Vanguard is a display of an attempted deceit or a stunning ineptitude by a regulated brokerage firm. Claimant asserted that the essential issue involves the withholding of payment and failure to sweep into the his Vanguard MM on and after the normal 3 day settlement date.

Claimant further asserted that during the process of transferring his account to Olde, with stocks not yet locked in the hands of Olde, Vanguard as well as Olde refused to accept the order to sell 2000 shares of Intel. Claimant asserted that on January 24, at 3:37pm, Vanguard declined the order to sell all of his IBM and HWP, stating that the order must be in before 3:35pm, even though he was previously told the order must be in before 3:45. Claimant contended that on January 31, the forms were executed to

transfer all stocks in account from Vanguard to Olde. Claimant further contended that on February 7, he called Vanguard to place sell orders, but was told by Vanguard's Client Service that they could not take the order, because the transfer was confirmed by Olde on February 3. Claimant also contended that he called Olde to place the sell order, but was told that he could not because Olde did not have the stocks from the transfer and that it would take several more days. Claimant alleged that when he placed his sell order on February 7, Intel was trading up 2 points and on Monday February 10, it closed down 6 points.

Respondent Vanguard through its representative and Principal Michael Civitella maintained that all purchases and sale transactions are executed on an unsolicited basis. Respondent further maintained that it does not solicit purchases or sales of securities, all communications regarding Vanguard policies and procedures are communicated to their clients in writing at the time their brokerage accounts are established. Respondent also maintained that upon opening his account, claimant was provided with detailed information concerning Vanguard's policy regarding the settlement of securities transactions in his Vanguard account. Respondent contended that on August 23, 1996, NASD Regulation, Inc. District 9, looked into this matter and decided that no action was warranted.

Respondent further contended that on September 12, 1996, claimant instructed Vanguard to deliver 1,500 shares of Dell Computer Corp ("DELL") to his address on record. Respondent also contended that Vanguard complied with this request and notified their clearing firm to transfer and ship the security as instructed. Respondent maintained that on September 17, while claimant's securities were in the transfer phase, claimant decided to sell 1,500 shares of DELL. Respondent further maintained that because the security had been sent to transfer and was in the process of being registered in claimant's name, Vanguard had to request a stock power in order to make the security negotiable when it was returned to the transfer agent. Respondent also maintained that it did not falsify, manipulate, cover-up or attempt to deceive the claimant in any regard.

RELIEF REQUESTED

Claimant requested \$1,000 in damages.

Respondent Vanguard requested that the claims of claimant be dismissed in their entirety.

OTHER ISSUES CONSIDERED & DECIDED

Pursuant to Rules 10302(k) and 10328(b) of the NASD Code of Arbitration Procedure, claimant's third amendment to the Statement of Claim and Respondent's response dated March 27, 1997 were not considered by the arbitrator, as they had not been submitted in a timely manner.

AWARD

Pursuant to Rule 10302 of the Code of Arbitration Procedure, a single Public Arbitrator, Robert Wachterman, was selected to review the matter in controversy between the parties set forth in Submission to Arbitration signed by claimant Benjamin Lipton on September 30, 1996 and by respondent Vanguard Brokerage Services on December 24, 1996 as required by Rules 10301 and 10302 of the Code of Arbitration Procedure.

And, the Arbitrator, having considered the proof of the parties, had decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of claimant Benjamin Lipton against respondent Vanguard Brokerage Services are dismissed in their entirety.
2. The \$30.00 filing fee previously deposited with the National Association of Securities Dealers Regulation, Inc. by claimant shall be retained by NASD Regulation, Inc.
3. All other relief requests are denied.

AFFIRMATION

I, **Robert Wachterman**, 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


Robert Wachterman

Date of Decision: April 16, 1997