

**N.A.S.D. REGULATION AWARD**  
**NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.**

CASE: 99-02894

Robert E. Freeman, claimant vs. Robert C. Skalski and Vanguard Marketing Corporation, respondents.

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**ATTORNEYS:**

Claimant Robert E. Freeman ("Claimant"), appeared Pro Se., Green Valley, AZ

For Respondents Robert C. Skalski and Vanguard Marketing Corporation (collectively "Respondents"), Pauline C. Scalvino, Esq. of the Vanguard Group, Vorge Valley, PA.

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**DATE FILED:** June 25, 1999

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**CASE SUMMARY:** Claimant alleged that after requesting an account transfer, Respondents failed to transfer the necessary forms needed for the investment of the mutual fund. Claimant further alleged that this neglect resulted in financial loss.

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**Claim Data**

Claim: \$22,260.00  
Interest: Unspecified

Filing Fees: Unspecified

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**Award Data**

Award: \$15,127.03  
Interest: Interest at the rate of 8%  
Per annum from 4/29/99 until payment  
of award.  
Filing Fees: \$425.00

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**AWARD:** The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) Respondents are jointly and severally liable and shall pay to the claimant \$15,127.03. 2) Respondents are jointly and severally liable and shall pay to the Claimant interest at the rate of 8% per annum from April 29, 1999 until payment of the award. 3) All other relief requests are denied. 4) The \$425.00 filing fee previously deposited with the National Association of Securities Dealers Regulation, Inc. by the Claimant, shall be retained by NASD Regulation, Inc. 6) Respondents are jointly and severally liable and shall pay Claimant \$425.00 as reimbursement of the filing fee.

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**OTHER FEES:** Pursuant to Rule 10333 of the Code, Respondent, Vanguard Marketing Corporation has paid to NASD Regulation, Inc. the \$400.00 Member Surcharge previously invoiced.

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ARBITRATOR'S REPORT: I find that both Respondents were negligent in processing claimant's account transfer. It is undisputed that claimant signed the transfer forms on March 25, 1999, and delivered them to Skalski, sold his Fidelity positions on March 30, 1999 and instructed Respondent Skalski to arrange for transfer of the proceeds on March 30, 1999. It is also undisputed that Skalski and Vanguard (I use "Vanguard" to include Vanguard Marketing Corporation and affiliates through which it obtains, holds and processes accounts) did not send the transfer request to Fidelity until April 21, 1999, despite Skalski's knowledge that Claimant had liquidated his positions at Fidelity in reliance on Vanguard's receiving and investing the proceeds in a reasonably prompt manner.

Because Claimant chose, in effect, to rescind the transfer of his account, and because he states that he would not have liquidated his Fidelity positions without Skalski's recommendation, I conclude that the appropriate measure of damages for Respondents' negligence is the amount which would have been required to place claimant in the position he would have been in had the transfer never occurred or had the securities been transferred rather than liquidated. Accordingly, damages are awarded against Respondents in the amount of the cost of repurchasing Claimant's Fidelity positions on April 29, 1999, less the proceeds from the sales on March 30, 1999 as follows:

\$(46,547.47) From Respondents' Supplemental Exhibit B

9,612.00 Adjusted for EAGL per Claimant's 5/5/00 letter.

52,062.50 Adjusted for MEL per Claimant's 5/5/00 letter.

0.00 No adjustment for PLDPRB - Exhibit B appears to account for all 1,000 shares.

15,127.03 Total

Also awarded is prejudgment interest on the damages at 8% per annum, compounded annually, for the period April 29, 1999, through the date of payment by respondents. As of May 23, 2000, interest amounts to \$1,299.66 and, thereafter, additional interest accrues at the rate of \$3.58 per day.

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**AFFIRMATION**

I, Alan C. Friedberg, 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.

Alan C. Friedberg  
Alan C. Friedberg

07/11/00  
Date of award