

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Name of Claimants

George R. Gross
Andree L. Gross

No. 92-04029

Name of Respondent

Olde Discount Corporation

REPRESENTATION OF PARTIES

For Claimants: Daniel Bukovac, Esq., of Watson, Ess, Marshall & Engasss, Kansas City, Missouri.

For Respondent: Bruce A. Campbell, Esq., of Olde Discount Corporation, Detroit, Michigan.

CASE INFORMATION

Statement of Claim filed: November 27, 1992.

Claimants' Submission Agreement signed: October 6, 1992

Statement of Answer filed by Respondent on: June 4, 1993.

Respondent's Submission Agreement signed on: June 3, 1993.

HEARING INFORMATION

Pre-Hearing conference date: May 28, 1993. One (1) session.

Hearing date: June 17, 1993. Two (2) sessions.
July 7, 1993. Two (2) sessions.

Hearing Location: Kansas City, Missouri.

CASE SUMMARY

Claimants, George R. Gross and Andree L. Gross ("Claimants") alleged: Breach of contract; breach of oral contract; equitable estoppel; promissory estoppel; negligent misrepresentation; breach of fiduciary duty; and conversion by Respondent Olde Discount Corporation ("Olde"). The allegations arose out of a partial tender offer, during the summer of 1989, for Marion Laboratories, Inc. ("Marion") by the Dow Chemical Company ("Dow") and an anticipated stock acquisition transaction involving Merrell Dow Pharmaceutical, Inc. Claimant stated that from August, 1989 through December, 1989, Claimants had purchased 276 put contracts on Marion stock subject to a January 20, 1990 expiration date. Claimants further stated that pursuant to the Marion/Dow transaction, Claimants' Marion put rights had been converted into Marion Merrill Dow, Inc. put rights and Dow contingent value rights. Claimants asserted that Olde had provided them with investment advice throughout their relationship, including advice concerning the Marion puts. Claimants also alleged that even though they made repeated inquiries about the nature of the conversion, Olde failed to provide any requested information until they received their December 1989 account statement reflecting the market value of the puts as being \$220,800. Claimants asserted that in January of 1990, prior to the start of trading, they had placed a sell order personally with Olde. Claimants also asserted that the order had never been executed. The same day, Claimants stated that their account executive had called them and informed them that the puts were in fact worthless. Lastly, Claimants stated that on or about the date for the expiration of the puts, the information requested concerning the conversion of the puts had finally been provided to them.

In its Answer, Olde denied each and every allegation contained in the Statement of Claim. Olde asserted that any damages that Claimants may have suffered were directly attributable to the Claimants' investment decision. Olde further asserted that the scope of the alleged omission or misrepresentation was limited to the knowledge of the mechanical nature of the conversion. Olde next asserted that the conversion had no market effect on the value of Claimants' puts at the date of conversion. Lastly, Olde asserted that the mechanics of the conversion did not proximately cause an adverse movement in the price of the puts.

RELIEF REQUESTED

In each of Counts I through VII, Claimant requested an award in their favor, and against Olde, in the amount of \$40,525.00, interest, Claimants' costs and attorneys' fees herein, and for such other and further relief as is just.

Olde requested that Claimants' claim be completely dismissed.

OTHER ISSUES CONSIDERED & DECIDED

On May 19, 1993, Claimants filed a Request for Pre-hearing Award, or, alternatively, for a Ruling and Conference on Respondent's Failure to File an Answer. After a pre-hearing held with the parties, the panel denied the Request, and allowed Olde to file its Answer to the Statement of Claim.

The parties have agreed that the Award in this matter may be executed by 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 original(s) 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:

Claimants, George R. Gross' and Andree L. Gross' claims are hereby denied and dismissed with prejudice.

OTHER COSTS

Each party shall pay its own costs and attorneys' fees, except as set forth below.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure (the "Code"), the following forum fees are assessed:

1 pre-hearing conference sessions x \$300.00 = \$300.00

4 hearing sessions x \$400.00 = \$1,600.00

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$120.00, and shall retain the hearing session deposit in the amount of \$400.00 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$1,500.00 are assessed against the Respondents.

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

CONCURRING ARBITRATORS

Dated:

Name:

July 12, 1993

/s/Solbert M. Wasserstrom
Solbert M. Wasserstrom
Presiding Chair
Public Arbitrator

July 12, 1993

/s/Leonard S. Jackson, Jr.
Leonard S. Jackson, Jr.
Industry Arbitrator

July 12, 1993

/s/Michael D. Fitzgerald
Michael D. Fitzgerald
Public Arbitrator

Date of Service by the NASD: 7-19-93