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NASD AWARD

9409049

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Joseph Trupiano, Jr. and Patrizia Trupiano

and

93-02049

Name of Respondents

Olde Discount Corporation and Thomas Brehm

REPRESENTATION OF PARTIES

Joseph Trupiano, Jr. and Patrizia Trupiano ("Claimant") were represented by Joseph H. Spiegel, Esq., Southfield, MI.

Olde Discount Corporation ("Olde") and Thomas Brehm ("Brehm")(collectively as "Respondents") were represented by Mark Kowalsky, Esq. of Hertz Schram & Saretsky, P.C., Bloomfield Hills, MI.

CASE INFORMATION

The Statement of Claim was filed on or about May 24, 1993. Submission Agreement of Claimants Joseph Trupiano, Jr. and Patrizia Trupiano was signed on May 18, 1993.

Statement of Answer filed by Respondents Olde Discount Corporation and Thomas Brehm was dated November 22, 1993. Submission Agreement of Respondent Olde Discount Corporation was signed on November 16, 1993 by Bruce A. Campbell.

HEARING INFORMATION

The hearing was held on Wednesday, June 22, 1994 for two (2) sessions, Tuesday, August 2, 1994 for two (2) sessions, Wednesday, August 3, 1994 for one (1) session and Thursday August 11, 1994 for one (1) session in Southfield, Michigan for a total of six (6) sessions.

CASE SUMMARY

Claimants alleged that Respondents violated various federal and state securities laws, breached their fiduciary duty to them, engaged in common law fraudulent misrepresentation, negligent

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misrepresentation, silent fraud, violated the Michigan Consumer Protection Act, and violated RICO. It was specifically alleged that Respondents engaged in the following activities:

- * failed to disclose the nature and scope of risks in the transactions;
- * failed to make a determination as to whether the transactions were suitable under all circumstances then existing;
- * failed to disclose the amount of commissions that would be generated;
- * made material misrepresentations of fact regarding the safety and security of the investments;
- * failed to disclose to Claimants that their funds would be at very substantial market risk;
- * failed to disclose their roles in connection with the transactions;
- * failed to provide disclosure documentation as required (or necessary);
- * failed to provide Claimants with annual reports or prospectuses; and
- * failed to comport their activities to comply with the "prudent man" standard or the "know your customer rule" as is required by law.

Claimants also alleged that Respondent Brehm engaged in the following wrongful acts and course of conduct:

- * engaged in churning;
- * bought and sold unsuitable investments for Claimants' account; and
- * made material misrepresentations of fact and omitted to state material facts necessary to be made in light of all the circumstances.

Claimant further alleged that Respondent Olde failed to properly supervise Respondent Brehm.

Respondents denied the allegations set forth in the Statement of Claim. Specifically, Respondents stated that the Claimants had represented to them that the Claimants had the wealth and sophistication to engage in the type of trading activity ordered in the Claimants' account and that the Claimants received constant and repeated warnings from Respondents regarding the risks of the trading activity. Respondents also stated that any and all investments suggested by Respondent Brehm were authorized by Mr. Trupiano, were suitable and met the Claimants' stated objectives. Affirmative defenses including but not limited to the following were asserted by the Respondents:

- * Claimants have failed to state a claim on which relief may be granted.
- * the claims are barred by the applicable statutes of limitations.
- * the claims are barred by the statute of frauds.
- * failure to mitigate.
- * the claims are barred by the doctrines of laches, waiver, estoppel and ratification.
- * the claims are barred by Claimants contributory negligence.

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RELIEF REQUESTED

Claimants requested that the arbitration panel enter an award against Olde Discount Corporation and Thomas Brehm, jointly and severally for the following relief:

- * compensation for damages incurred as a result of Claimants investments in the amount of \$150,000 to be determined by the arbitration panel;
- * rescission of all fraudulent transactions pursuant to §29(b) of the Exchange Act, 15 U.S.C. §78c(c);
- * \$150,000;
- * interest on \$150,000 from the date of the first investment;
- * exemplary damages;
- * such other just and equitable relief as this arbitration panel deems necessary and proper;
- * Claimants' costs and expenses of this litigation including reasonable attorneys' fees; and
- * treble damages and attorneys' fees pursuant to RICO.

Respondents ask that the arbitrators enter an award providing that they are obligated to pay the claimants \$0 and that the claimants are liable to them for their costs and attorneys' fees incurred in the defense of this claim.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Thomas Brehm did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to §12 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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 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:

1. Respondents Olde Discount Corporation and Thomas Brehm shall be and hereby are jointly and severally liable for and shall pay to the Claimants Joseph Trupiano, Jr. and Patrizia Trupiano the sum of Five thousand five hundred dollars (\$5,500) which amount is inclusive of interest to the date of the award.

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2. Each party shall bear its own costs, expenses and attorneys' fees incurred in this matter not specifically enumerated herein.
3. All relief requested not specifically granted shall be and hereby is denied.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each prehearing conference, if any. There were six (6) hearing sessions x \$750 = \$4,500 in forum fees. Pursuant to §43(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$200 and shall retain as forum fees the hearing session deposit in the amount of \$750 previously deposited with the NASD by the Claimant. Claimants shall be and hereby are jointly and severally liable for and shall pay to the NASD the sum of \$1,500 and Respondents shall be and hereby are jointly and severally liable for and shall pay to the NASD the sum of \$2,250 as the balance due for forum fees. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

/s/ Carole Crosby

Carole Crosby

Public Arbitrator, Presiding Chair

September 6, 1994

/s/ Levi T. Gardner, III

Levi T. Gardner, III

Public Arbitrator

August 26, 1994

/s/ Marshall Schugar

Marshall Schugar

Industry Arbitrator

August 23, 1994