

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Joseph F. Torti

93-03512

Name of Respondents

Olde Discount Corporation
Robert Fairbrothers

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on September 9, 1993, Claimant Joseph F. Torti, who appeared Pro Se, alleged that on May 29, 1991 he turned over his portfolio to Respondent Robert Fairbrothers, Registered Representative at Respondent Olde Discount Corporation, which was cash in the amount of \$5,833.59. Claimant further alleged that since he is legally deaf and cannot communicate by telephone when buying and selling securities, whereby, he visited Respondent Robert Fairbrothers at the Rhode Island office of Respondent Olde Discount Corporation, at which time, Respondent Robert Fairbrothers' first trade for Claimant was 300 shares of Sybase at \$23.50 for a total \$7,000.00 on May 29, 1992 on margin. Claimant contended that Respondent Robert Fairbrothers sold his Sybase after four days for a price of \$26.00, a two and a half point gain whereby Claimant was both happy and confused about this fast sale, at which time, Respondent Robert Fairbrothers explained that Sybase looked like it was going to go down, so he sold whereby Claimant felt he had earned his trust. Claimant further contended that Respondent Robert Fairbrothers next trade was a purchase of 500 shares of Rasterops at 15.75 on June 11, 1992 for a total of almost \$8,000.00, which was also purchased on margin, whereby Respondent Robert Fairbrothers told Claimant he was going to try to get a quick two point gain with Rasterops. Claimant asserted that he visited Respondent Robert Fairbrothers sometime in June prior to his departure to Florida, at which time, the Rasterops stock was stable between \$10.00 and \$11.00 whereby Claimant told Respondent Robert Fairbrothers if it does go down to at least get him off margin. Claimant further asserted that before he left for Florida he told Respondent Robert Fairbrothers that he wanted to give him a TDD, which is a tele-typewriter that deaf people use to communicate by telephone whereby it was a portable model weighing about 2 lbs., small enough to fit in any desk drawer and is battery operated, at which time, Respondent Robert Fairbrothers declined to accept the

TDD and since Respondent Olde Discount Corporation did not have the ON-LINE trading service, Claimant would be unable to communicate directly with Respondents while in Florida. Claimant further alleged that while he was in Florida he noticed the price of Rasterops was around four or five dollars, at which time, Claimant visited the Florida office of Respondent Olde Discount Corporation to inquire about his account whereby they contacted Respondent Robert Fairbrothers in Rhode Island to find out how much money his account was on margin and he was advised that it was less than \$1,600.00 whereby Claimant figured he was borderline and should be ready for a margin call. Claimant further contended that at no time did Respondent Robert Fairbrothers advise the broker in the Florida office that Claimant was on margin right then and subsequently on Claimant's return, he was surprised to discover that his stock was sold for the margin, which left him 50 shares. Claimant further asserted that Respondent Robert Fairbrothers' mismanagement of his account together with Respondent Olde Discount Corporation's failure to have access to contact their deaf customers, caused Claimant to sustain financial loss.

Respondents Olde Discount Corporation and Robert Fairbrothers, by and through their in-house counsel Lisa S. Fildes, maintained that Respondent Olde Discount Corporation's policy prohibits its brokers from exercising discretionary authority over customer accounts whereby Respondent Robert Fairbrothers did not have discretionary authority over Claimant Joseph F. Torti's account. Respondents further maintained that Respondent Robert Fairbrothers provided information and recommendations to Claimant upon which he could make an informed decision, whereby the ultimate decision lies with the customer. Respondents contended that among the stocks Respondent Robert Fairbrothers discussed with Claimant were Sybase and RasterOps whereby Claimant received Respondent Olde Discount Corporation's Research Reports on these companies and pursuant to their policy, the confirmation of Claimant's May 29, 1992 purchase of Sybase indicated that the order was solicited, indicating that the stock purchase was recommended by the broker; however, the ultimate decision to buy rested with the customer. Respondents further contended that by June 2, 1992, Sybase had risen from the purchase price of 23 1/2 to 26 whereby Claimant wanted to sell despite Respondent Robert Fairbrothers recommendation to hold the investment and the confirmation of this sale was appropriately marked "unsolicited". Respondents asserted that like Sybase, Claimant's purchase of RasterOps on June 4, 1992, was on margin whereby margin account holders are required to maintain certain minimum equity levels in their accounts and if the market value of the securities in the declines, additional collateral may be required whereby Claimant Joseph F. Torti had experience investing on margin and states that he had received and met an earlier margin call in March, 1992. Respondents further asserted that Claimant admits having received the margin letter at his home, but because he was in Florida, he was unable to determine the precise nature of the letter and he claims he went to Respondent Olde Discount Corporation's Ft. Lauderdale, Florida branch and spoke with a broker there. Respondents further maintained that Respondent Robert Fairbrothers agrees that Claimant spoke with a broker in Ft. Lauderdale about Claimant's account; however, Respondent Robert Fairbrothers contends that the exact amount of the margin debit and call were made clear to Claimant at that time. Respondents further contended that the

clarity of the margin call letter cannot be disputed but regardless of whether Claimant received the letter or understood the letter. Respondent Olde Discount Corporation had the undisputed right in its sole discretion to liquidate the position without prior notice to the customer whereby the customer acknowledges and accepts Respondents right to liquidate, and is reminded of that right in the margin call letter. Respondents further asserted that it is the customer's responsibility to monitor his margin account and any loss suffered by Claimant, including loss of potential profit on his Sybase and RasterOps transactions were due to his action or lack thereof.

RELIEF REQUESTED

Claimant Joseph F. Torti requested the sum of \$10,000.00 in actual damages.

Respondents Olde Discount Corporation and Robert Fairbrothers requested the claim be dismissed in its entirety.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Alfred J.T. Rubega, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on September 2, 1993, by the Respondent Olde Discount Corporation on October 15, 1993 and by the Respondent Robert Fairbrothers on October 5, 1993.

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

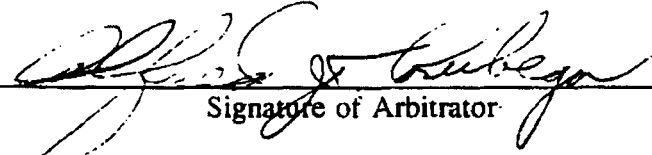
1. Respondent Olde Discount Corporation is liable and shall pay to the Claimant Joseph F. Torti the sum of \$5,000.00 in damages.
2. Respondent Robert Fairbrothers is liable and shall pay to the Claimant Joseph F. Torti the sum of \$2,500.00 in damages.
3. The parties shall bear their respective costs.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Joseph F. Torti shall be retained by the NASD, Inc. Respondents Olde Discount Corporation and Robert Fairbrothers are jointly and

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severally liable and shall pay to the Claimant the sum of \$150.00,
as reimbursement.

AFFIRMATION

I, ALFRED J.T. RUBEGA, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: March 2, 1994