

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Haim Zion

NASD Arbitration
No. 94-1258

Name of Respondent(s)

Olde Discount Corporation

REPRESENTATION

For Claimant: Irving Pfeffer, Esq., San Francisco, CA

For Respondent: Ina Otto, Esq., Detroit, MI

CASE INFORMATION

Statement of Claim filed: April 4, 1994

Claimant's Submission Agreement signed: March 9, 1994

Statement of Answer filed by Respondent: July 14, 1994

Respondent's Submission Agreement signed: No agreement submitted

HEARING INFORMATION

Pre-Hearing Conference: None

Hearing Date(s)/Sessions: January 24, 1995/2 sessions

Hearing Location: San Francisco, CA

CASE SUMMARY

Claimant alleged:

Respondent traded in claimant's account without authorization and in violation of NASD rules. In addition, respondent failed to supervise the activities of its personnel in failing to distinguish between "unsolicited" and "solicited" orders and in permitting the buy-in of a short position without claimant's consent.

Respondent alleged:

Claimant is a sophisticated and aggressive investor who averages close to fifteen (15) trades per month, and who has established himself as a day trader. Claimant placed an order to sell shares of stock "short" in his account. When respondent could no longer continue to borrow the shares on claimant's behalf, it was necessary to buy-in the shares that could not be borrowed. This information is clearly provided for in claimant's executed Investors Account Agreement, and claimant's broker also provided claimant with an additional copy of the language after the buy-in occurred. Respondent acted properly when it could no longer borrow the securities claimant had elected to sell short. The buy-in was classified as "unsolicited" because respondent had not recommended the stock but rather only closed out the position. Claimant, however, took offense to the classification and insisted that it be reclassified as "solicited" to reflect the initiative, not the recommendation, for the buy-in.

RELIEF REQUESTED

Claimant requested damages in the amount of \$10,000.00.

Respondent requested denial of claimant's claim.

OTHER ISSUES CONSIDERED & DECIDED

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 remains on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

Claimant and respondent both bear responsibility for claimant's loss. Claimant was less than prudent by failing to determine the consequences of his "short" sales, while respondent failed adequately to inform claimant of the risks to which he was subject. Claimant is awarded damages of \$5,000.00. The parties shall each bear their respective costs and attorneys' fees.

FORUM FEES

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

Forum fees are to be split between the parties and are calculated as follows: Two hearing sessions @ \$200.00/session for total forum fees of \$400.00. The NASD shall retain the \$200.00 hearing session deposit previously deposited by claimant, which is equal to claimant's share of forum fees. The respondent shall forward to the NASD its share of forum fees in the amount of \$200.00. Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATOR

Name _____ Public/Industry _____

Allan Blau

Public Arbitrator

Arbitrator's Signature

Allan Blau

Date of Decision: 2/15/95

Date Served: 02/16/95