

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Randy and Ursulla L. Rodman

94-01626

Name of Respondents

Olde Discount Corporation
Tony Arko

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on May 3, 1994, Claimants Randy and Ursulla L. Rodman, who appeared Pro Se, alleged that Respondents Olde Discount Corporation ("Olde") and Tony Arko ("Arko"), failed to properly execute certain sell orders and stop-loss or limit orders for them. Claimants further alleged that in January of 1993 they bought 1,000 shares of Network General ("NETG") at \$18.00 per share and 500 shares of Filenet ("FILE") at \$15.00 per share through Respondent Olde.

Claimants contended that by early 1994 the prices of both NETG and FILE were up considerably and they started to get calls from Respondent Arko recommending a purchase or sale. Claimants further contended that they received a letter from Olde saying that because of lack of account activity they needed to call their broker to make some money-related movement. Claimants alleged that they therefore agreed to purchase 1,000 shares of NETG at \$21 3/4 on margin on the condition that if NETG went down, Respondents would sell their whole NETG interest to "insure that they did not lose more than [their] original investment in NETG of \$18,000.00."*

Claimants alleged that the price of NETG fell and Arko did not get them out at the break even point because Arko had not placed a limit order on their account. Claimants contended that when Arko sold their stocks on March 30, 1994, he sold one block of 1,000 NETG at \$16 7/8 and the other block of 1,000 at \$17.00 after quoting a price of between \$17 1/2 and \$17 5/8. Claimants further contended that, after the sales confirmation had arrived, they asked Arko how much was in their account and he said, \$23,111.00, but the check they received was for \$23,065.20.

Claimants alleged that Arko's statement that he called them when the NETG stock reached the break-even point is false, because Arko never informed Claimants of this. As a result of the above, Claimants contended that they have suffered damages for which the Respondents should be held liable.

Respondents Olde Discount Corporation and Tony Arko, through their representative Lisa S. Fildes, Esq., of Detroit, MI, maintained that they had no indication that Claimants sought to place any condition such as a sell-stop or a stop limit sell order on their March 16, 1994 purchase of 1,000 shares of NETG at \$21 3/4. Respondents further maintained that it was Olde's policy (duly communicated to Claimants in Olde's written guide, "Investing the Olde Way") not to accept any stop loss or sell limit orders on OTC securities (n.b. both NETG and FILE were OTC securities at all relevant times).

Respondents further maintained that Arko did not have discretionary authority over the account and therefore, if any agreement was made, it was outside the scope of Arko's employment. Respondents further contended that the letter sent to Claimants was to notify them of the purpose of free credit balance and not to solicit an investment. Respondents maintained that regarding the sale of Claimants' stock, as with all market orders, the price at execution is subject to availability. As a result of the above, Respondents maintained that they should not be held liable in this matter.

RELIEF REQUESTED

Claimants Randy and Ursulla L. Rodman, requested \$4,771.55 in actual damages.

Respondents Olde Discount Corporation and Tony Arko, requested that the claims of the Claimants be dismissed.

AWARD


Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Alan Stamm, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on April 26, 1994, by Respondent Olde Discount Corporation on July 5, 1994, but not signed by Respondent Tony Arko as required by Sections 12 and 13 of the NASD, Inc. Code of Arbitration Procedure.

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. The claims of the Claimants Randy and Ursulla L. Rodman against Respondents Olde Discount Corporation and Tony Arko are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc.

AFFIRMATION

I, ALAN STAMM, ESQ., 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.

A handwritten signature in cursive script, appearing to read "Alan Stamm", is written over a horizontal line.

Signature of Arbitrator

DATE OF DECISION: June 27, 1995

REPORT OF ARBITRATOR

* Note: Claimants' quoted language suggests that they were willing to lose up to their entire original investment of \$18,000.00 in NETG, but no more than that amount, when and if they sold all 2,000 shares of NETG. However, neither Claimants' nor Respondents' other written statements in the record of this case seem to indicate that this was their interpretation of their communications with one another.