

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Ralph Sprang

95-00016

Name of Respondents

Olde Discount Corporation
Jahn D. Gazder
Timothy Haberstro

REPRESENTATION

Claimant Ralph Sprang appeared pro se.

For respondents Olde Discount Corporation ("Olde") and Jahn D. Gazder ("Gazder") appeared Timothy L. Isom, Esq., Corporate Attorney of Olde Discount Corporation.

Respondent Timothy Haberstro ("Haberstro") did not enter an appearance in this matter.

CASE INFORMATION

Statement of Claim filed: December 23, 1994.

Claimant's Submission Agreement signed on: March 11, 1995.

Statement of Answer filed by respondents Olde and Gazder on: February 21, 1995.

Respondent Olde's Submission Agreement signed on: January 18, 1995.

Respondent Gazder's Submission Agreement signed on: February 3, 1995.

Respondent Haberstro did not file a Statement of Answer or Submission Agreement.

HEARING INFORMATION

Hearing Date/Sessions:

January 11, 1996

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One Session

The hearing was held at the Marriott Hotel located in Cincinnati, Ohio.

CASE SUMMARY

Claimant alleged that, on October 28, 1993, Gazder solicited him to purchase common shares of Ross Stores Inc. ("Ross") assuring him that the investment was safe, was guaranteed to increase in value and that the original investment would not be at risk. Claimant alleged that, in reliance on Gazder's representations, he purchased 500 shares of Ross at a price of \$15.625 per share, for a total investment of \$7,894.25.

Claimant alleged that the shares initially increased in value and that he requested that Gazder sell the shares, but that Gazder persuaded him to retain the shares, promising the shares would be selling for over \$20.00 per share by January, 1994. Claimant further alleged that, on December 20, 1993, Gazder told him that an impending announcement would lower the price of Ross shares and that Gazder pressured him to sell the shares. Claimant allegedly spoke with Haberstro the next morning and instructed Haberstro to enter a limit order to sell 500 shares of Ross at \$15.50 per share. Claimant asserted that later that day, Gazder informed him that the order had been incorrectly entered as a market order and that he would correct the error by canceling the order. Claimant also asserted that Gazder told him that he received confirmation that the order had been canceled.

Claimant alleged that later that day Haberstro left a message on his answering machine stating that the shares had been sold for \$12.875 per share. Claimant further alleged that Gazder apologized to him and told him that he could not correct the mistake. Claimant contended that, on or about December 28, 1993, he learned that the announcement that drove down the price of the Ross stock was widely anticipated at the time of Gazder's buy recommendation and that securities analysts were recommending against buying this stock.

Claimant alleged that, in response to a letter he wrote to the president of Olde, he received a letter from Mr. Lessley, Olde's assistant vice president, which stated that Olde would not voluntarily correct the error. Claimant further alleged that enclosed with the letter from Mr. Lessley was documentation that suggested that his account application was changed after he signed the account agreement. Claimant asserted that, on December 22, 1993, he directed respondents to send him a check for the balance in his account and that when respondents refused to do so, he requested that respondents transfer the balance to an account with another broker. Claimant further asserted that he did not receive the funds until September 23, 1994.

Claimant alleged that respondents fraudulently induced him to buy the Ross shares; that respondents acted improperly and violated the rules of fair practice by executing a limit sell order as a market order, by executing the order after confirmed cancellation, by providing misleading and factually inaccurate information about the past performance of the investment, by failing to release the cash balance of his account upon request and by improperly delaying transfer of his funds.

Olde and Gazder maintained that Claimant purchased 500 shares of Ross at \$15.725. Olde and Gazder further maintained that, on December 20, 1993, Gazder notified claimant that the price was going to fall due to publicly known information that Ross' sales figures were not going to

meet estimates. Gazder alleged that claimant told him that he would think it over, but that he did not want to sell at that time. Gazder further alleged that, on December 21, 1993, claimant placed a market order with him to sell the shares and that he called claimant and told him that Ross had opened trading at \$13.00 per share. Gazder alleged that claimant told him he wanted to change his market order to a limit order at \$14.00 per share and that he told claimant that the order may have already been filled and that it might be too late to cancel his prior order. Gazder maintained that, when he was informed that the market order had been elected, his assistant called claimant to report that he had sold his Ross shares at \$12.875 per share.

RELIEF REQUESTED

Claimant requested damages of \$1,508.50.

Respondents Olde and Gazder requested that all claims against them be dismissed and that they be awarded costs and attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

Claimant entered into a stipulation with respondents Olde and Gazder withdrawing all claims against these respondents.

The arbitrator made the following rulings as to respondent Haberstro who failed to file an answer and a Submission Agreement in this matter and failed to appear at the hearing conducted in this matter without obtaining any adjournment/postponement thereof:

1. Pursuant to Section 1 of the Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy.
2. The arbitrator found that respondent Haberstro was a person associated with a member of the NASD at the time this controversy arose. Consequently, the panel found personal jurisdiction over respondent Haberstro pursuant to Section 12(a) of the Code.
3. In view of (2) above, the arbitrator found that respondent Haberstro was required to file an answer and a Submission Agreement pursuant to Section 25(b) of the Code.
4. The arbitrator also found that the NASD, pursuant to Section 21, 26 and 29 of the Code, provided respondent Haberstro with "due notice" of all hearings conducted in this matter by regular and certified mail. The arbitrator, therefore, determined to proceed with the hearing without respondent Haberstro whose absence was, as stated previously, unexcused.

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 deter-

ination as follows:

1. Respondent Haberstro he and hereby is liable and shall pay to claimant the sum of \$1,330.74.
2. Each party shall bear their own costs, except that respondent Haberstro is liable and shall pay to claimant the sum of \$50.00 to reimburse claimant for fees he previously paid to the NASD.

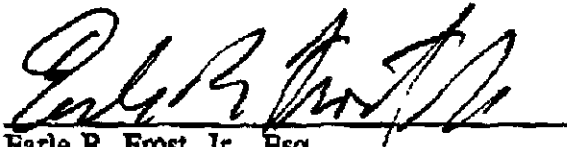
FORUM FEES

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

filing fee	= \$25.00
1 hearing session	= <u>\$25.00</u>
total	= \$50.00

Respondent Haberstro he and hereby is liable for the sum of \$50.00, representing the total amount of forum fees assessed.

Arbitrator's Signature



Earle R. Frost, Jr., Esq.
Public Arbitrator

Date of decision: April 16, 1996