

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

David A. Gatz

95-00170

Name of Respondent

Olde Discount Corporation

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 12, 1995, Claimant David A. Gatz ("Claimant"), through his representative and counsel, Thomas E. Greef, Esq., located in Largo, FL, alleged that Respondent Olde Discount Corporation ("Respondent"), through its representatives Manuel Leon and Robert Porter, mishandled Claimant's account during a two and one-half year period. Claimant further alleged that he was an unsophisticated investor, because he had a twelfth grade education and no experience in trading securities. Claimant contended that he had informed a representative of the Respondent that he was unemployed, but that the Respondent's representative informed him to put down "a company" on the application form to indicate that he was employed. Claimant further contended that in addition to the false employer other inaccuracies were placed on the application form. Claimant alleged that he had indicated his desire to his brokers, a desire for conservative investments but that they made margin account investments which were speculative and risky. Claimant further alleged that Robert Porter failed to investigate the obvious discrepancies in the Claimant's financial status and as a result, made investment recommendations which were unsuitable. Claimant contended that during the two and one-half year period that his account was open it was churned and commissions were excessive. Claimant further contended that as a result of the above, he has suffered a loss for which the Respondent should be held liable.

Respondent Olde Discount Corporation, through its representative and in-house counsel, David T. Doyle, Esq., located in Detroit, MI, maintained that the claim represents nothing more than the Claimant's attempt to recover losses suffered as a result of his deliberate trading decisions. Respondent further maintained that the Claimant was an intelligent, aggressive young individual who came to Respondent with specific and somewhat unrealistic goals. Respondent contended that Claimant attempted to "short-cut" his way to riches by pursuing an aggressive trading strategy which failed. Respondent further contended that although the Claimant asserted that he earned under one thousand dollars during the period immediately after opening the account with Respondent, he deposited over nine thousand dollars into that account. Respondent maintained that Claimant made a successful investment with the purchase of Home Depot stock and shortly thereafter placed his account on margin in order to purchase more Home Depot shares. Respondent further maintained that the Home Depot stock fell in value and thereafter Claimant was unable to repeat the successful trading that he first experienced. Respondent contended that as a result of the above, it should not be held liable.

RELIEF REQUESTED

Claimant David A. Gatz, requested \$7,554.00 in actual damages, plus punitive damages, attorney's fees and interest.

Respondent Olde Discount Corporation, requested that the claims of the Claimant be dismissed.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, James A. Cormack, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant David A. Gatz, on January 5, 1995, and by the Respondent Olde Discount Corporation, on March 13, 1995.

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 Respondent Olde Discount Corporation, is liable and shall pay to the Claimant David A. Gatz, \$5,000.00 in actual damages.
2. The parties shall bear their respective costs.
3. All other relief requests are denied.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant David A. Gatz, shall be retained by the NASD, Inc. The Respondent Olde Discount Corporation, is liable and shall pay to the Claimant David A. Gatz, \$150.00 as reimbursement of the filing fee.

AFFIRMATION

I, **JAMES A. CORMACK**, 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.



James A. Cormack

DATE OF DECISION: November 9, 1995