

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Antonio DiNuto,

Claimant,

v.

No. 95-00729

OLDE Discount Corporation, and
Andrew Siegel,

Respondents.

REPRESENTATION OF PARTIES

Antonio DiNuto ("Claimant") was represented by Albert M. Goldberg, Esq., Phoenix, Arizona.

OLDE Discount Corporation ("OLDE") and Andrew Siegel ("Siegel") (jointly referred to as "Respondents") were represented by Ina Otto, Esq., and David T. Doyle, Esq. of OLDE Discount Corporation, Detroit, Michigan.

CASE INFORMATION

Claimant's Statement of Claim was filed on or about February 7, 1995. Claimant's Submission Agreement was signed on February 7, 1995.

Respondents' Statement of Answer was filed on or about May 18, 1995. Respondents Submission Agreements were signed on April 7, 1995 and April 19, 1995 respectively.

HEARING INFORMATION

A telephonic pre-hearing conference was held on March 11, 1996 for one (1) session.

The hearing was held on March 12, 1996 for one (1) session and March 13, 1996 for three (3) sessions in Scottsdale, Arizona for a total of four (4) sessions.

CASE SUMMARY

Claimant alleged that the Respondents committed the following acts with respect to Claimant's account: The account information sheet of the Claimant was falsified by Siegel; churning; unauthorized trading; improper and unauthorized use of margin; violation of investment objectives in that trades were made in an unsafe manner and margin was employed for the purpose of trading

in Claimant's account; all trades made by Respondents were of market maker variety, and prior advice was not given by Respondents to Claimant that any of said trades were to be of market maker character; Respondents failed to furnish a month-end statement to Claimant as required by the rules of the NYSE and NASD; falsified the account information Application of the Claimant; traded Claimant's account on margin contrary to the specific instructions of claimant; failed to maintain and exercise a reasonable system of internal supervision of sales personnel in their employ in violation of its duty as a control person; failed to discharge their fiduciary duty to the Claimant; and were otherwise negligent in their failure to supervise and control the activities of those persons employed by OLDE with relation to the claimant's account. The allegations arose out of transactions in the following securities: Xircom Inc., and other securities more fully discussed during the hearing in this matter.

Respondents denied the allegations set forth in the Statement of Claim. Respondents also asserted the following affirmative defenses: Claimant has failed to state a claim on which relief may be granted; Claimant's claims are barred by the statute of frauds, contributory negligence, assumption of risk, and the doctrines of waiver, estoppel, laches and ratification; claimant failed to mitigate his damages; Respondents' obligations if any, to the claimant have been fully paid, satisfied and discharged; economic, industry, corporate and market conditions, and not Respondents were responsible for Claimant's losses, if any; Claimant may not recover punitive or exemplary damages, as the recovery of such damages is not permitted under applicable state laws; and Respondents have no knowledge of or reasonable grounds to believe the existence of any facts by reason of which liability is alleged, and therefore, Respondents cannot be held liable.

RELIEF REQUESTED

In his statement of claim, Claimant requested an award against the Respondents, jointly and severally, as follows: For the sum of \$50,652.06, or such other amount as may be determined at the hearing; for interest thereon at the rate of 10% per annum from May, 1994; for punitive damages in such amount as the panel may award; for his attorneys' fees; and for costs and disbursements.

Respondents requested that Claimant be awarded zero dollars (\$0.00). Respondents also strenuously request repayment from Claimant of all costs and reasonable attorney fees expended, as well as whatever other relief the arbitrators deem appropriate in defending against claimant's allegations.

OTHER ISSUES CONSIDERED & DECIDED

At a pre-hearing conference scheduled in January of 1996, which was set to handle discovery disputes between the parties, former arbitrators Hoover and McArthur disclosed that they knew, and had relationships, in the past, of a business and personal nature, with Claimant's expert witness Mr. Butt. The conference call was cancelled. Claimant accepted the panel. However, Respondents, after consideration of the disclosure, filed an objection to the arbitrators' further participation. Upon notification of the objection, the arbitrators withdrew themselves from this arbitration.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

Claimant's claims are, and each of them, denied with prejudice.

Each party shall bear its own costs and expenses, including attorneys' fees, associated with this arbitration.

FORUM FEES

Forum fees are calculated at the rate of \$500 per hearing session and \$300 for each pre-hearing conference, if any. There were four (4) regular sessions x \$500 and one pre-hearing conference session x \$300 = \$2,300 in forum fees. Pursuant to §43(b) of the NASD Code of Arbitration Procedure (the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the Code, the NASD shall **retain** the non-refundable filing fee in the amount of \$150 and shall **retain** as forum fees the hearing session deposit in the amount of \$500 previously deposited with the NASD by the Claimant.

Pursuant to §45 of the Code, the NASD shall retain the member surcharge fee in the amount of \$300 previously paid by OLDE.

Additional forum fees in the amount of \$1,150 are assessed against OLDE.

Additional forum fees in the amount of \$650 are assessed against the Claimant.

Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

Thomas F. Tobin
Thomas F. Tobin
Public Arbitrator, Presiding Chair

/s/

May 16, 1996

Robert A. Williams
Robert A. Williams
Public Arbitrator

/s/

May 18, 1996

George N. Roy
George N. Roy
Public Arbitrator

/s/

May 14, 1996