

NASD REGULATION AWARD

NASD Regulation, Inc., Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Gary M. Towers

95-01215

Name of Respondents

Olde Discount Corporation;
Al Rosenberg

REPRESENTATION

For Claimant: Gary M. Towers ("Towers") was represented by James J. Eccleston, Esq., of Uscian & Eccleston, Chicago, Illinois.

For Respondents: Olde Discount Corporation ("Olde") and Al Rosenberg ("Rosenberg") were represented by Ina N. Otto, Esq., of Olde Discount Corporation, Detroit, Michigan.

CASE INFORMATION

Statement of Claim filed: March 9, 1995.

Claimant's Submission Agreement signed on: March 3, 1995.

Statement of Answer filed by Respondents on: May 11, 1995.

Respondent Olde's Submission Agreement signed on: April 5, 1995 by Bruce A. Campbell, Vice President and Corporate Attorney, Olde Discount Corporation.

Respondent Rosenberg did not file an executed submissions agreement.

HEARING INFORMATION

Pre-Hearing Conference: February 15, 1996 for One (1) session before One (1) arbitrator.

Hearing Dates/Sessions: June 19, 1996 for Two (2) sessions; and

June 20, 1996 for Two (2) sessions.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimant Towers alleged that Respondent Rosenberg, while employed by or acting as agent for Respondent Olde, recommended or placed the Claimant in unsuitable investments in high risk, OTC stocks which were sold fraudulently and excessively. As a result of being placed in these unsuitable investments, including a margin account, Towers lost mortgage down-payment monies which were to be placed in a low risk investment. Based upon these allegations, Towers asserted claims for violation of the Illinois Securities Act of 1953; fraud; breach of fiduciary duty; negligent misrepresentation; and negligence against Respondent Rosenberg. Against Olde, Towers alleged claims for negligence (failure to supervise) and respondeat superior liability.

Respondents denied the material allegations of the Statement of Claim, asserting that:

1. Towers was a sophisticated investor who was interested in aggressive, growth stocks;
2. Rosenberg made recommendations based on Towers' stated interests, but because it was a non-discretionary account, Towers had the final decision and expressly authorized every trade;
3. One of the purchased stocks was the subject of a class action lawsuit and Towers should pursue his claims regarding that purchase in the court;
4. A number of the sales were the result of margin calls which were created when the market had a downturn or market correction; and
5. Any decline of the stocks' prices were the result of market forces or the actions of third-parties outside the Respondents' control.

RELIEF REQUESTED

Claimant requested entry of an award, jointly and severally, against Respondents for compensatory damages in the sum of \$19,810.04; punitive damages in a like amount to deter similar conduct; pre-judgment interest at the rate of 10% per annum compounded annually

pursuant to the Illinois Securities Act; reasonable attorneys' fees and expenses; costs; post award interest at the rate of 9% per annum; and any further relief that is fair and proper.

Respondents requested that the claims be denied in their entirety. Furthermore, Respondent Rosenberg requested at hearing that if no liability was found against him, that the panel order removal of this action from his record.

OTHER ISSUES CONSIDERED & DECIDED

At the beginning of the hearing, the Respondents moved to dismiss the claims that were in the class action. The panel denied that request, adding that the Motion could be reasserted after presentation of proof. In addition, the Claimant withdrew any claim for churning.

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 originals remain on file with the NASD.

AWARD

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

1. The Statement of Claim is hereby dismissed with prejudice and denied in its entirety;
2. The records of this claim against Respondent Al Rosenberg which are maintained by the Central Registration Depository of the NASD shall be expunged;
3. The parties shall bear their own costs of arbitration, including any attorneys' fees, except for those specifically enumerated herein; and
4. Any relief not specifically awarded is hereby denied.

OTHER COSTS

The NASDR shall retain the \$200.00 surcharge paid by Olde Discount Corporation pursuant to

Section 45 of the NASD Code of Arbitration Procedure.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) pre-hearing session with One (1) arbitrator x \$300.00 per session = \$300.00; Four (4) hearing session x \$400.00 per session = \$1,600.00; Total Forum Fees = \$1,900.00.

The NASDR, Inc. shall retain the \$120.00 claim filing fee and the \$400.00 hearing session deposit previously deposited by the Claimant, Gary M. Towers. Claimant Gary M. Towers is liable for and shall pay to the NASDR, Inc. the sum of \$1,500.00 as forum fees. Fees are payable to NASD Regulation, Inc.

Concurring Arbitrators' Signatures
Name

Date

/s/ Robert W. Edler, Esq.
Robert W. Edler, Esq.
Public Arbitrator
Chairperson

August 6, 1996

/s/ David L. Buffen, Esq.
David L. Buffen, Esq.
Public Arbitrator

July 31, 1996

/s/ Frank F. Foys
Frank F. Foys
Industry Arbitrator

July 31, 1996

For NASDR Use Only

Date of Decision: August 21, 1996