

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Daniel P. Bradley, and
V. Suzanne Bradley,

Claimants,

v.

No. 95-01244

Olde Discount Corporation, and
Tony Gioco,

Respondents.

REPRESENTATION OF PARTIES

Daniel P. Bradley, and V. Suzanne Bradley ("Claimants") appeared on their own behalf.

Olde Discount Corporation, and Tony Gioco ("Respondents") were represented by Amy Kutt Richards, Esq. of Olde Discount Corporation, Detroit, Michigan.

CASE INFORMATION

Claimants' Statement of Claim was filed on or about March 10, 1995. Claimants' Submission Agreement was signed on March 7, 1995.

Respondents' joint Statement of Answer was filed on or about May 10, 1995. Respondents' Submission Agreements were signed on April 3, 1995 and May 22, 1995 respectively.

HEARING INFORMATION

The hearing was held on November 13, 1995 in Scottsdale, Arizona for a total of two (2) sessions.

CASE SUMMARY

Claimants alleged that:

1. Respondents failed to advise them at the time of purchase of the America West Airline ("AWA") common stock (July 18, 1994) that AWA had already notified Respondents (June 28, 1994) of AWA's reorganization plan. Under the plan, shareholders would have three (3) options to exchange current shares for new shares and warrants, and that shares purchased after June 28, 1994 would have their shares exchanged under the "forced option", including the Claimants, and that Respondents had a legal and ethical obligation to inform them of the reorganization at the time Claimants purchased their shares.

2. Respondents failed to inform them that the exchange of AWA stock became effective on August 26, 1994 when AWA was released from bankruptcy and began trading on the New York Stock Exchange ("NYSE"). Prior to that time, AWA had traded on NASDAQ. AWA began trading in the \$16.00 range, and fell steadily over the next several weeks. Claimants did not receive any notice of the exchange until a month after it occurred due to the fact that the AWA stock was a part of their IRA and was registered in Olde Discount Corp.'s name as custodian.

3. Respondents gave them false, misleading and incomplete information about the AWA exchange of stock. Based on the Respondents' statements to them, the Claimants believed that trading had been suspended and that they could not sell their AWA stock until it was issued. When AWA began trading on the NYSE, Respondents stated to the Claimants that the "wi" (when issued) notation meant that the stock had not been issued yet. Respondents never mentioned that the exchange involved warrants, and the Claimants did not find out about the warrants until they called AWA directly in October of 1994.

Respondent denied the allegations set forth in the Statement of Claim. Respondents specifically stated that: AWA's plan for reorganization had been readily available to the public long before the Claimants purchased the AWA stock; Respondents were only order takers for the Claimants, and as such, they fulfilled all of their limited duties to the Claimants; Claimants purchased AWA stock on their own based on information they learned themselves by reading public sources; Claimants' losses in AWA were due to Claimants' own lack of due diligence concerning the plan for reorganization of AWA; they were not responsible for the fact that the Claimants jumped to conclusions regarding whether they could trade their new AWA stock and warrants with a "Wi" notation.

RELIEF REQUESTED

Claimants requested an award in the amount of \$6,658.88 in actual damages, and \$4,591.76 in punitive damages.

Respondents requested that the claims asserted against it be denied in its entirety and that it be awarded their costs and fees associated with the defense of this action..

OTHER ISSUES CONSIDERED & DECIDED

Respondent Tony Gioco did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to §12 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains on file with the NASD.

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:

Claimants' claims are, and each of them, denied and dismissed with prejudice. The panel found that Claimants failed to carry their burden of proof, and found that Respondent Olde Discount Corp. acted in an agency capacity and therefore, there was no fiduciary duty owed to the Claimants.

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

FORUM FEES

Forum fees are calculated at the rate of \$400.00 per hearing session and \$300 for each prehearing conference, if any. There were two (2) sessions x \$400.00 = \$800.00 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 prehearing 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 \$100.00 and shall **retain** as forum fees the hearing session deposit in the amount of \$400.00 previously deposited with the NASD by the Claimant .

Pursuant to §45 of the Code, the NASD shall retain the member surcharge in the amount of \$200.00 previously paid by Olde Discount Corp.

Additional forum fees in the amount of \$400.00 are assessed against Olde Discount Corp. **Fees are payable to the National Association of Securities Dealers, Inc.**

Dated:

Howard R. Gaines
Howard R. Gaines
Public Arbitrator, Presiding Chair

s/s

December 6, 1995

Paul J. Robinson
Paul J. Robinson
Industry Arbitrator

s/s

December 6, 1995

Donald E. Cline
Donald E. Cline
Public Arbitrator

s/s

December 8, 1995