

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Tom Stuver

95-03289

Name of Respondent

Olde Discount Corporation

REPRESENTATION

For Claimant: Clifford J. Hunt, Esq. of the law firm of Riden, Earle & Kiefner, St. Petersburg, Florida.

For Respondent: Karen Fitzgerald, Esq., in-house counsel at Olde Discount Corporation.

CASE INFORMATION

Statement of Claim filed: July 7, 1995.

Claimant's Submission Agreement signed on: June 12, 1995.

Statement of Answer filed by Respondent on: September 5, 1995.

Respondent's Submission Agreement signed on: July 31, 1995.

HEARING INFORMATION

One pre-hearing conference was conducted on August 15, 1995 and eight hearing sessions were conducted on August 26, 27 and 28, 1996 in Tampa, Florida.

CASE SUMMARY

Claimant alleged that he opened an account with Respondent Olde Discount Corporation ("Olde") on or about September 30, 1992 and had been a conservative investor at the time he began doing business with Olde, and had engaged only in limited securities transactions during his lifetime. Claimant next alleged that at the time of opening the account, he was 47 years of age, had a 9th grade education, and had an investment philosophy of "buy and hold,"

with an objective of conservation of principal and growth-oriented investments and he was not interested in active trading, and did not understand what constituted speculative securities or margin trading. Claimant alleged his investment experience was limited to "blue chip" securities, Certificates of Deposit, and Publix stock purchased through his wife's employer.

Claimant next alleged that several months after the opening of the Olde account, the Claimant received a telephone call from an Olde broker and the Olde broker began recommending Olde "Special Venture" stocks to him, stocks in which Olde made a market, even though these stocks were speculative and contrary to the Claimant's investment goals.

Claimant next alleged that the broker opened a margin account for him, but never fully explained or disclosed the risks associated with trading on margin and the broker then began a pattern of active trading, principally in Olde "Special Ventures," with the Claimant being controlled by the broker in derogation of his best interests.

Claimant next alleged that in order to cover up the broker's fraudulent scheme to engage in active trading to generate commissions, the Olde broker prepared "CPP Update Forms" reflecting material changes in financial information and investment objectives. Claimant alleged that the Olde broker never spoke with the Claimant regarding the changes; he merely filed the update forms containing false financial and other information to legitimize the speculative and excessive trading in the account.

Claimant next alleged that he has never been a "sophisticated investor" and the trading activity in his account was clearly excessive and unsuitable, especially in light of the Claimant's lack of business acumen, education, background, and overall investment experience and objectives.

Respondent maintained that the arbitration represents nothing more than a disappointed investor's attempt to recoup, at Olde's expense, losses he suffered as a result of his own informed investment decisions. Respondent next maintained that the Claimant is a knowledgeable and experienced investor who fully understood the risks associated with his chosen investment strategy and any profits or losses incurred by Claimant in his account, resulted solely from Claimant's own informed investment decisions and operative market forces. Respondent next maintained that both Olde and its brokers handled Claimant's account in a diligent and responsible manner and Claimant cannot now be allowed to hold his brokerage firm liable for his own unsuccessful investment decisions.

Respondent next maintained that the broker at Olde did make some stock recommendations to the Claimant; however, many of the stocks purchased in the Claimant's account were speculative growth stocks that he chose on his own and some of the Claimant's most active trading (and largest losses) occurred in stocks that Olde did not recommend, and from which the broker received no commissions. Respondent next maintained that throughout the life of the account Mr. Stuver monitored and researched both his own stocks and stocks that Olde recommended and both the positive and the negative traits were discussed and Mr. Stuver was repeatedly told that the recommendations were based on long term factors and were not intended to be used for short term trading. Respondent next maintained that the Claimant indicated to the broker that he was familiar with margin and that he wanted to begin using it in his account and he made it clear to the Olde broker that he fully understood and accepted the risks associated with trading

on margin.

RELIEF REQUESTED

Claimant requested rescission of the subject investments in the amount of \$389,952.00, punitive and/or treble damages, reasonable attorneys' fees and such other and further relief as the panel deemed appropriate.

Respondent requested a dismissal of all claims against them and asked that the Claimant be required to reimburse Respondent for all reasonable costs and fees incurred in defending this action.

OTHER ISSUES CONSIDERED & DECIDED

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 and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Olde Discount Corporation, is found liable and shall pay to the Claimant the amount of \$200,000.00 inclusive of interest.
2. Respondent, Olde Discount Corporation, is also found liable and shall pay the attorney fees of Claimant, the amount to be determined by a court of competent jurisdiction.
3. Claimant's requests for rescission, punitive damages and/or treble damages are hereby denied.
3. Respondent's request for Claimant to reimburse their reasonable costs and fees in defending this action is denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$8,300 (one pre-hearing conference x \$300) plus (eight hearing sessions x \$1,000).

Respondent is hereby assessed \$8,300; \$1,000 of which shall be paid directly to Claimant and \$7,300 of which shall be paid to the NASD.

The Respondent shall reimburse the Claimant \$250 for the non-refundable filing fee.

The NASD shall retain both the non-refundable filing fee of \$250 and the \$1,000 hearing session deposit paid by Claimant.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

/s/

Sam A. Giunta

Public

/s/

Robert M. Pizzini

Industry

/s/

Paul E. Flora

Public

Date of Decision: November 18, 1996
