

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Victor Dobrin

and

NASD Case Number: 95-03760

Name of Respondents

Olde Discount Corporation

Mark S. Katzman

Russell G. Miller

Steven R. Ross

REPRESENTATION OF PARTIES

Claimant Victor Dobrin ("Claimant") was represented by Laurence S. Schultz, Esq. of Driggers, Schultz, Herbst & Paterson located in Troy, Michigan.

Respondents Olde Discount Corporation ("Olde"), Mark S. Katzman ("Katzman"), Russell G. Miller ("Miller"), and Steven R. Ross ("Ross") were represented by Ina Otto, Esq. of Olde Discount Corporation located in Detroit, Michigan.

CASE INFORMATION

The Statement of Claim was filed with the National Association of Securities Dealers, Inc. ("NASD") by Claimant Victor Dobrin on or about July 28, 1995.

Claimant Victor Dobrin's Submission Agreement was signed on July 19, 1995.

The Joint Statement of Answer was filed with the NASD by Respondents Olde Discount Corporation, Mark S. Katzman, Russell G. Miller, and Steven R. Ross on or about September 26, 1995.

Respondent Olde's Submission Agreement was signed on August 28, 1995 by Thomas Fitzgerald, General Counsel of Olde Discount Corporation.

Respondent Katzman's Submission Agreement was signed on September 1, 1995

Respondent Miller's Submission Agreement was signed on August 25, 1995.

Respondent Ross' Submission Agreement was signed on August 28, 1995.

HEARING INFORMATION

The telephonic pre-hearing conferences were held on:

January 19, 1996 for one (1) session; and
June 10, 1996 for one (1) session.

The in-person pre-hearing conference was held on:

January 22, 1996 for one (1) session.

The Hearing was held on:

February 22, 1996 for two (2) sessions;
February 23, 1996 for three (3) sessions;
June 13, 1996 for two (2) sessions; and
June 14, 1996 for two (2) sessions.

The Hearing location was Southfield, Michigan.

CASE SUMMARY

Claimant Victor Dobrin ("Claimant") brought this action in connection with an account maintained by Claimant at Olde Discount Corporation ("Olde"). Claimant alleged that Respondents Steven R. Ross ("Ross"), Mark S. Katzman ("Katzman"), Russell G. Miller ("Miller"), and Richard Kalla served as Claimant's account representatives. Claimant maintained that the account in question was a joint account with Claimant and Keith T. Lockie. Claimant asserted that, at all times, the assets in the account were the property of Claimant, and that Lockie

had no participation or involvement. Claimant contended that Lockie was maintained as a joint party on the account solely for survivorship purposes.

Claimant contended that he was an unsophisticated, inexperienced investor. Claimant alleged that his initial Olde broker, Richard Kalla, immediately placed him on margin and began recommending the purchase of speculative securities, making false representations regarding the risk of margin, the quality of the securities, as well as discounted commissions and free trades to encourage trading. Claimant maintained that Kalla was succeeded by Ross as Claimant's broker, who was succeeded by Katzman, who was succeeded by Miller. Claimant asserted that the Olde brokers encouraged Claimant to excessively trade on margin, encouraged high activity in Olde-recommended securities, and misrepresented the speculative nature of the securities and the risk involved. Claimant maintained that day trades were made involving securities such as Integrated Device Technology and Tellabs. Claimant asserted that the day trades were made at levels that were inappropriate and unsuitable for Claimant. Claimant alleged that Respondents exercised control over the Dobrin account and traded the account for the purpose of generating commissions. Claimant contended that the Olde brokers lacked the experience and understanding to advise Claimant.

Claimant asserted the following legal basis for the claim: breach of fiduciary duty; misrepresentation and deceptive devices; exemplary and punitive damages; NASD and NYSE rules; breach of contract; respondeat superior; and RICO.

Respondents denied all liability to Claimant in the Joint Statement of Answer. Respondents alleged that Claimant was (1) aware of the risks attendant to his chosen trading activity; (2) in complete control of his account at all times; and (3) making his own investment decisions. Respondents contended that, in his signed account application, Claimant described himself as a moderate to aggressive investor who was interested in investment opportunities which offered the potential for growth and speculation. Respondents maintained that Claimant portrayed himself as a sophisticated investor. Respondents alleged that Claimant was in control of his account at all times and directed the activity in the account. Respondents contended that Claimant placed frequent calls to the branch, often averaging several calls a day, and Claimant discussed information which he had learned from other sources of financial information. Respondents asserted that Claimant's losses resulted not from Olde or its brokers actions, but from Claimant's own aggressive trading activity and the normal, unpredictable operation of the stock market. Respondents maintained that Olde and its brokers' conduct in handling Claimant's account was at all times proper and did not violate any rules or regulations.

RELIEF REQUESTED

Claimant requested an award of out of pocket damages in an amount in excess of \$97,000, plus a refund of commissions, lost opportunity at a reasonable rate of return, damages pursuant to

RICO, punitive and exemplary damages including damages for emotional distress and severe mental anguish, plus interest from the date of filing, costs and attorneys' fees.

Respondents requested that the Statement of Claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed to receive conformed copies of the award while the original(s) 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. Respondent Olde Discount Corporation is liable for, and shall pay to Claimant Victor Dobrin compensatory damages in the amount of Forty Five Thousand Dollars and No Cents (\$45,000.00);
2. Respondent Mark S. Katzman is liable for, and shall pay to Claimant Victor Dobrin compensatory damages in the amount of Five Thousand Dollars and No Cents (\$5,000.00);
3. Respondent Russell G. Miller is liable for, and shall pay to Claimant Victor Dobrin compensatory damages in the amount of Five Thousand Dollars and No Cents (\$5,000.00);
4. Respondent Steven R. Ross is hereby dismissed from this matter with prejudice;
5. Other than forum fees which are specified below, the parties shall each bear their own costs, expenses and attorneys' fees incurred in this matter; and
6. Any relief not specifically enumerated is hereby denied.

FORUM FEES

Forum fees are calculated at the rate of \$500 per hearing session and \$300 per pre-hearing session, if any. There were nine (9) hearing sessions x \$500= \$4,500 in forum fees. There was

one (1) in-person pre-hearing conference x \$300 = \$300 in forum fees. There were two (2) pre-hearing sessions x \$300 = \$600 in forum fees. Total forum fees = \$5,400. Pursuant to §43(b) 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 NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$150 previously deposited with the NASD by the Claimant. The NASD shall retain the hearing session deposit in the amount of \$500 previously deposited with the NASD by the Claimant. The NASD shall retain the Section 45 Member Surcharge in the amount of \$300.

Claimant Victor Dobrin is liable for, and shall pay forum fees in the amount of \$2,200. Respondent Olde Discount Corporation is liable for, and shall pay forum fees in the amount \$2,700. Claimant Olde Discount Corporation is liable for, and shall pay the adjournment fee in the amount of \$500.

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

Concurring Arbitrators' Signatures

/s/ Levi T. Gardner, III
Levi T. Gardner, III
Chairperson
Public Arbitrator

July 10, 1996
Dated:

/s/ Mark Scarr
Mark Scarr
Panelist
Public Arbitrator

July 10, 1996
Dated:

/s/ Keith J. Koerber
Keith J. Koerber
Panelist
Industry Arbitrator

July 10, 1996
Dated:

For NASD use only:
Date award served on the parties: July 11, 1996