

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Henry W. Pigora

95-03890

Names of Respondents

Olde Discount Corporation  
David N. Rades

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REPRESENTATION

For Claimant, Henry W. Pigora ("Pigora"): Neal J. Blaher, Esq. of Orlando, FL.

For Respondents, Olde Discount Corporation ("Olde") and David N. Rades ("Rades"): Marc S. Dobin, Esq. of Boose Casey Ciklin Lubitz Martens McBane & O'Connell, West Palm Beach, Florida.

CASE INFORMATION

Statement of Claim filed: 8/7/95.

Claimant's Submission Agreement signed on: 8/4/95.

A Joint Statement of Answer filed by Respondents, Olde and Rades, on: 10/16/95.

Respondent, Olde's, Submission Agreement/Corporate Acknowledgment signed on: 8/29/95 by Thomas D. Fitzgerald on behalf of the firm.

Respondent, Rades, did not file an executed Submission Agreement as required under Sections 12 and 25 of the Code of Arbitration Procedure.

HEARING INFORMATION

Pre-Hearing Conferences were held on: 2/2/96; 2/8/96; 3/1/96; 3/26/96; and, 4/19/96 consisting of five (5) sessions with the Chairman.

Hearing Dates/Sessions:     5-8-96/two (2) sessions.  
                                     5-9-95/two (2) sessions.

Hearing Location: Tampa, Florida.

### CASE SUMMARY

Claimant alleged that he is a widower in his late 60s and a retired GML steel receiving clerk; that he filed this arbitration in connection with excessive and unsuitable short-term trading of speculative stocks, many of which were unauthorized, in a brokerage account he maintained with Respondent, Olde; that that account had been inactive from the time it was opened in 1986 until September of 1993, when it was assigned to Respondent, Rades; that from the fall of 1993 through the end of 1994, Rades executed approximately \$4,000.00 in purchases and \$4,000.00 in sales of stock in which Olde made a market, on average equity of approximately \$115,000.00 resulting in an annualized turnover of 35. In connection with the conduct alleged, Claimant asserted claims against Respondents of violations of Florida Securities and Investor Protection Act, the Florida Civil Theft Statute, federal RICO and common law fraud, breach of fiduciary duty, negligence, gross negligence and breach of contract.

Respondents denied all allegations of wrongdoing contained in Claimant's Claims and affirmatively stated that any profits, or losses, incurred by the Claimant resulted solely from his own informed investment decisions and operative market force. Respondents maintained that the Claimant is a wealthy, knowledgeable and experienced investor who fully understood the risks associated with the trading that took place in his account; that Respondents handled Claimant's account in a diligent and responsible manner; that Claimant did not rely exclusively upon Rades for investment recommendations and came up with his own investment ideas through CNBC or elsewhere. Respondents further alleged that Claimant was experienced in the use of margin and aware of its risks. Respondents further denied that the account was churned because Claimant failed to meet all of the necessary elements of churning; that there was unauthorized trading in the account because Olde's policies prohibit unauthorized trading and, that on several occasions, Claimant was given the opportunity to object to any trading and failed to do so. Respondents denied that there was a breach of any fiduciary duty and Respondent, Olde, denied that it failed to supervise the activity in the account or that there was fraud in connection with the purchase or sale of any security in the account and that any of the recommendations made to the Claimant were unsuitable.

### RELIEF REQUESTED

Claimant requested the following: recovery of damages under the statutory counts, which would include the formula set forth under Section 517.211 Florida Statutes and a trebling of the damages under Section 772.11 Florida Statutes. With respect to the statutory formula under Section 517.211, Claimant requested selective rescission pursuant to Kane v. Shearson Lehman Hutton, Inc. 916 F.2d 643, 646-47 (11th Cir. 1990), for a total compensatory award (before trebling) of \$294,826.18. Claimant further requested pre-judgment interest on the compensatory and/or the trebled damages, costs and fees of this action (including expert witness fees) and a reasonable attorneys' fee as provided for under the Florida Securities Act, the Florida Civil Theft Statute and federal RICO. Claimant separately has brought a claim for punitive damages under the common law claims.

Respondents requested that the arbitrators dismiss all of Claimant's claims in their entirety.

**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, is found liable and shall pay to Claimant the amount of \$60,072.47.
2. Respondent, Olde, is further found liable and shall pay to the Claimant the amount of \$18,560.83 for attorneys' fees pursuant to Sections 517.211(6).
3. Respondent, Olde, is further found liable and shall pay to the Claimant costs in the amount of \$2,162.00.
4. Respondent, Rades, is found not liable and, therefore, all claims against him are hereby dismissed.
5. Claimant's Claim for treble damages is hereby denied.
6. Claimant's Request for punitive damages is hereby denied.
7. All other claims are hereby denied.

**OTHER COSTS**

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

**FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the Panel has assessed Forum Fees in the amount of \$3,500.00 (five (5) pre-hearing telephone conference sessions X \$300.00 + four regular hearing sessions X \$500.00).

1. Claimant is hereby assessed Forum Fees in the amount of \$1,167.00 for which the NASD shall retain the \$500.00 previously deposited by Claimant in partial satisfaction thereof leaving a balance due to the NASD of \$667.00 by Claimant.
2. Respondent, Olde, is hereby assessed Forum Fees in the amount of \$2,333.00 payable to the NASD, Inc.

3. The NASD shall retain the non-refundable filing fee of \$150.00 paid by the Claimant.
4. the NASD shall retain the non-refundable surcharge of \$300.00 paid by Olde.

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

**ARBITRATION PANEL**

**Concurring Arbitrators' Signatures**

/s/

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Paul Sidney Elliott, Esq.

Public/Chairman

/s/

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Andrew W. MacGill

Industry/Panelist

/s/

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Don Muyskens, Esq.

Public/Panelist

Date of Decision: July 10, 1996