

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

George W. and Anna R. Kroll

95-03911

Name of Respondents

Olde Discount Corporation
James Gear

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on August 14, 1995, Claimants George W. and Anna R. Kroll ("Claimants"), who appeared Pro Se, alleged that Respondents Olde Discount Corporation ("ODC") and James Gear ("Gear"), breached their responsibility regarding NYSE Rule #405 (know your customer), and suitability in recommending the purchase of \$50,000.00 worth of Dow Corning Corporate Debentures on September 28, 1994, which was Claimants first venture in the commercial bond market. Claimants further alleged that this debenture recommended by Respondent Gear was a risky investment, and therefore, unsuitable. The Claimants asserted that, in addition, the investment was not suitable due to the risk of default or the investment becoming worthless, and pending litigation. Claimants contended that they wanted to purchase \$50,000.00 worth of U.S. Government Securities, which they did on December 15, 1994, in keeping with their investment objectives of safety of principal and liquidity of total investment. Claimants further contended that as a result of the Respondents' wrongdoing, they have suffered a loss for which the Respondents should be held liable.

Respondents Olde Discount Corporation and James Gear, through their in-house counsel, Julie D. Reed, Esq., maintained that Respondent Gear adhered to guidelines set forth by NYSE Rule #405, in that Gear had knowledge of Claimants via a previous relationship with Claimants from another firm, and in that Claimants expressed net worth (\$750,000, \$400,000 liquidity) and investment objectives of moderate growth were suitable for the investment. Respondents contended Claimants later purchased Treasury Bonds while they still held the debentures, not replace them and further that the Claimants voluntarily authorized and ratified the Dow Corning investment, and thus are barred from any recovery related to the same. Respondents further maintained that Claimants waited to see the market outcome of the disputed investment, and thus waived their right to any recovery related to this investment. Respondents contended that as a result of the above, they should not be held liable in this matter.

In a Reply to the Claimant's Amended Answer, the Respondents retracted Respondent Gear's statement that Claimants previously had an account with him at another firm, but that this has no bearing on the issues, and that the Claimants' claims should be dismissed.

RELIEF REQUESTED

Claimants George W. and Anna R. Kroll, requested \$9,197.31 in actual damages representing lost principal, plus unspecified punitive damages.

Respondents Olde Discount Corporation and James Gear, requested that the claims of the Claimant be dismissed in their entirety.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Albert R. Neville, Jr., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants George W. and Anna R. Kroll, on August 7, 1995, by the Respondent Olde Discount Corporation on September 5, 1995, and by Respondent James Gear on September 18, 1995.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The Respondents Olde Discount Corporation and James Gear, are jointly and severally liable, and shall pay to the Claimants George W. and Anna R. Kroll, \$9,491.00 in actual damages, representing the total loss of principal incurred by the Claimants.
2. The Claimants' request for punitive damages is denied.
3. The parties shall bear their respective costs.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants George W. and Anna R. Kroll, shall be retained by the NASD, Inc. The Respondents Olde Discount Corporation and James Gear are jointly and severally liable and shall pay to the Claimants George W. and Anna R. Kroll, \$150.00 as reimbursement of the filing fee.

AFFIRMATION

STATE OF FLORIDA

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ss:

COUNTY OF PINELAS

I, ALBERT R. NEVILLE, JR, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.


Signature of Arbitrator

DATE OF DECISION: January 31, 1996

95-03911