

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

SAK Enterprises, Inc.

95-04268

Name of Respondent

Olde Discount Corporation

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on September 7, 1995, Claimant SAK Enterprises, Inc. ("Claimant"), through its representative and President, Sydney A. Kessler, alleged that Respondent Olde Discount Corporation ("OLDE") on July 7, 1995, failed to execute two trades authorized by Claimant, a short sale of 1500 shares of Federal National Mortgage Association ("Fannie Mae") and a purchase of 2000 shares of Federal Home Loan Mortgage Corporation ("Freddie Mac") at 68 3/8. Claimant further alleged that Respondent's failure to execute trades caused it to have to cover the resulting short position with a purchase of 1500 shares of Fannie Mae at 98. Claimant contended that after contacting the SEC to obtain information about Respondent's obligations in this matter, Claimant's trading account was summarily closed by Respondent, forcing Claimant to suspend trading activities, its sole source of income, until a new account could be opened at another firm. Claimant further contended that as a result of the above, it has suffered a loss for which the Respondent should be held liable.

Respondent Olde Discount Corporation, through its representative and in-house counsel, Amy Kutt Richards, Esq., maintained that the sole cause of the failure to execute the disputed trades was an error of the Chicago Stock Exchange ("CHX"), and that pursuant to CHX Rule 37, Claimant was not entitled to an execution of the purchase of 2000 Freddie Mac shares, as the specialists book in the primary exchange, NYSE, had not participated in the transaction at all. Respondent further maintained that the decision to cover Fannie Mae short position at 98 on July 7, 1995, at a loss to Claimant, was Claimant's voluntarily decision since Claimant had at least an entire settlement period during which he might have purchased shares at a more advantageous price. Respondent contended that Claimant is not entitled to any recovery from the disputed trades as Claimant's theory of lost profits is premised on its actually owning 2000 shares of Freddie Mac, which would never have come to pass pursuant to CHX Rule 37. Respondent further contended that Claimant is not entitled to any recovery from the closing of its account as the OLDE Investors Account Agreement provides for the closing of an account at OLDE's discretion. Respondent maintained that as a result of the above, it should not be held liable.

RELIEF REQUESTED

Claimant SAK Enterprises, Inc., requested \$10,000.00 in actual damages.

Respondent OLDE Discount Corporation, requested that the claims of the Claimant be dismissed.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Frances D. Sheehy, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant SAK Enterprises, Inc., on August 30, 1995, and by the Respondent OLDE Discount Corporation, on October 11, 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 claims of the Claimant SAK Enterprises, Inc., against the Respondent OLDE Discount Corporation, are denied in their entirety.
2. The parties shall bear their respective costs.

3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant SAK Enterprises, Inc., shall be retained by the NASD, Inc. The Respondent OLDE Discount Corporation, shall pay to the Claimant SAK Enterprises, Inc., \$75.00 as reimbursement of one-half of the filing fee.

4. All other relief requests are denied.

AFFIRMATION

I, FRANCES D. SHEEHY, ESQ., 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 29, 1996