

NASDR AWARD**NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.**

In the Matter of Arbitration Between

Kent Thuc Tran,

Claimant,

v.

Case No. 95-04374

**Olde Discount Corporation
and David Wright,**© National Association of
Securities Dealers, Inc.

Respondents.

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REPRESENTATION OF PARTIES

Kent Thuc Tran ("Claimant") was represented by **Frank V. Ghiselli, Esquire and Winston Cochran,** Esquire of **Frank V. Ghiselli Attorney at Law** located in **Houston, Texas.**

Olde Discount Corp. and David Wright ("Respondents") were represented by **Lisa Fildes of Olde Discount Corp.** located in **Detroit, Michigan.**

CASE INFORMATION

The Statement of Claim was filed on or about October 24, 1995

The First Amended Statement of Claim was filed on or about December 18, 1995.

The Response to Respondents, Olde Discount Corp. and David Wright's Request for Dismissal was filed by the Claimant on or about January 25, 1996.

The Submission Agreement of Claimant was signed on September 7, 1995.

The Joint Statement of Answer and Request for Dismissal to the amended Statement of Claim was filed by both Respondents on or about December 20, 1995.

Respondent, Olde Discount Corp.'s Submission Agreement was signed on November 8, 1995 by Thomas P. Fitzgerald, General Counsel.

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Respondent, David Wright's Submission Agreement was signed on January 26, 1996,

HEARING INFORMATION

The hearing was held on July 12, 1996 in Houston, Texas for a total of two (2) sessions.

CASE SUMMARY

Claimant, Kent Thuc Tran ("Tran") alleged that Respondents, Olde Discount Corp. ("Olde") and David Wright ("Wright") made unauthorized trades on his account. Claimant asserted that Respondents ignored his express desire not to buy shares of E.A. Engineering Science and Technology, Inc. and purchased 4,000 shares for his account. Claimant stated that upon receiving confirmation of the purchase, he called Wright as well as the district manager and wrote a letter to find out why the trade had been made. However, Claimant asserted that he did not receive any response to his inquiries. Claimant further asserted that, only upon receipt of a threat from the Respondents to liquidate other stocks in his account, did he pay for the purchase of E.A. Engineering Science and Technology, Inc. stocks. Subsequently, Claimant claimed that he sold the shares of this stock for a loss. Claimant alleged that Respondents violated the following NASDR Rules of Fair Practice: Article III, Section 1; Article III, Section 18; and Article III, Section 27. Claimant also made the following legal claims: (1) violation of the Deceptive Trade Practices Act Section 17.50(a); (2) negligent misrepresentation; (3) breach of fiduciary duty; (4) violations of Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934; (5) violations of Texas Securities Act; (6) violation of Section 27.01 of the Texas Business & Commerce Code; and (7) breach of contract.

Respondents requested that the Statement of Claim and amendment be dismissed pursuant to Section 16 of the Code since Claimant did not commence this proceeding within the time limit required by the federal statutes of limitation. Additionally, Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that all transactions in Claimant's account were authorized, approved and ratified by Tran and that Claimant placed and reconfirmed the order for the 4,000 shares of E.A. Engineering Science and Technology, Inc. Furthermore, Respondents made the affirmative defenses of waiver, estoppel and ratification.

In response to the Respondent's Request for Dismissal, Tran asserted that the federal statute of limitations addresses only Claimant's federal securities law claims. Claimant asserted that his claims under the Texas Deceptive Trade Practices Act, negligent misrepresentation, breach of fiduciary duty, the Texas Securities Act, Section 27.01 of the Texas Business and Commerce Code, and breach of contract were not barred by limitations.

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RELIEF REQUESTED

Claimant requested an award in the amounts of \$8,750 plus pre-award interest at the rate of 10% per annum; \$27,000 in punitive damages, or, alternatively, statutorily enhanced damages in accordance with the Deceptive Trade Practices Act; reasonable attorney's fees; and costs.

Respondents requested that the Statement of Claim and amendment be dismissed in their entirety and that they be awarded their costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains on file with the NASDR.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in final resolution of the issues submitted for determination as follows:

- (1) The Claimant, Kent Thuc Tran's Statement of Claim and Amended Statement of Claim are dismissed and denied in their entirety with prejudice; and
- (2) The parties shall bear their own costs including attorneys' fees except for those specifically enumerated herein; and
- (3) Any requests for relief not specifically awarded are hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$400.00 per hearing session. There were two (2) hearing sessions x \$400.00 = \$800.00 in forum fees. Pursuant to Section 43(b) of the NASDR Code of Arbitration Procedure (the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a preaward-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Section 43(c) of the Code, the National Association of Securities Dealers Regulation, Inc. ("NASDR") shall retain the non-refundable filing fee in the amount of \$120.00 and shall retain, as forum fees the hearing session deposit in the amount of \$400.00 previously deposited with the NASDR by Claimant, Kent Thuc Tran.

Pursuant to Section 45 of the Code, the NASDR shall retain the member surcharge fee in the amount of \$200.00 previously paid by Respondent, Olde Discount Corp.

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Respondent, Olde Discount Corp. is liable for and shall pay Claimant, Kent Thuc Tran the amount of \$400.00 as reimbursement. Respondent, Olde Discount Corp. is also liable for and shall pay to the NASDR the sum of \$400.00 in additional forum fees.

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

Signed:

Dated:

George A. Sellnau, Esquire
George A. Sellnau, Esquire
Public Arbitrator, Presiding Chair

August 8, 1996

Victor B. Russek, Jr.
Victor B. Russek, Jr.
Public Arbitrator

August 8, 1996

William J. Hawkins, Esquire
William J. Hawkins, Esquire
Industry Arbitrator

August 8, 1996

Date served by the NASDR: August 13, 1996