

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

The Estate of Isaac Platt
Laura Platt

95-04668

Name of Respondents

Olde Discount Corporation
James Murphy

REPRESENTATION

For Claimant, Laura Platt ("Platt"): Guy M. Burns, Esq. of Johnson, Blakely, Pope, Bokor, et al., Tampa, Florida.

For Respondents, Olde Discount Corporation ("Olde") and James Murphy ("Murphy"): Karen L. Brink, Esq. Corporate Counsel for Olde Discount Corporation and Ronald P. Kane, Esq. of Gomberg Kane & Fischer, Ltd., Chicago, Illinois.

CASE INFORMATION

Statement of Claim filed: October 3, 1995.

Claimant's Submission Agreement signed on: September 27, 1995.

A joint Statement of Answer filed: January 5, 1996 by Respondents, Olde and Murphy.

Respondent, Olde's, Submission Agreement signed: November 8, 1995 by Thomas P. Fitzgerald on behalf of his firm.

Respondent, Murphy's, Submission Agreement signed: November 29, 1995.

HEARING INFORMATION

On June 11, 12, 13, and 14, 1996, hearings lasting seven (7) sessions were conducted in Tampa,

Florida.

CASE SUMMARY

Claimant alleged that her late husband was induced to open a joint account with Olde based upon their representations of commission-free trading. Claimant further alleged that Mr. Platt stated that his investment objectives were growth and speculation and that he anticipated moderate and/or aggressive trading. Claimant alleged that during the next nine months, the Claimant's account bought and sold stock in thirty-seven different companies with two-thirds of the activity being recommended by Olde and the remaining one-third by the deceased. Moreover, Claimant alleged that all recommendations made by Olde were from its list of "special ventures" stocks which were for the long-term. Claimant alleged that Respondent Murphy continued to recommend these special ventures stocks even though he realized that the stocks would be held for a much shorter period of time thereby developing a pattern of rapid trading resulting in significant losses. The Claimant alleged that losses on securities selected by the deceased were approximately \$3,000.00, while the losses on the special ventures stocks recommended by Olde were approximately \$295,000.00. Furthermore, Claimant alleged that a week after closing the account, Claimant's late husband committed suicide. More specifically, Claimant alleged that Olde was negligent; failed to supervise its broker; breached its fiduciary duty; perpetrated fraud; violated securities laws, as well as the Florida law concerning the civil liability for criminal practices and negligently caused severe emotional damage.

Respondents denied any liability to Claimant and alleged that all of the investments that Respondents recommended to Claimant were suitable in light of Claimant's investment objectives, financial resources, sophistication and past trading history. Respondents further alleged that they fully and adequately performed all common law and statutory duties that were owed to the Platts and fully complied with all of its supervisory duties. Respondents asserted that Claimant was barred from recovery by the doctrines of estoppel, waiver and ratification and statutes of limitation.

RELIEF REQUESTED

Claimant's requested that Respondents pay compensatory damages of \$349,398.00, which includes principal and interest on the loss, out-of-pocket costs of \$9,845.36, punitive damages, and reasonable attorneys' fees.

Respondents requested that the arbitrators reject the claim of Claimant and dismiss the claims against both Respondents 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 (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Murphy is found liable and shall pay to Claimant the amount of \$1.00 for actual damages.
2. Respondent, Olde is found liable and shall pay to Claimant the amount of \$1.00 for actual damages.
3. Respondent, Olde is also found liable for punitive damages and shall pay to Claimant the amount of \$350,000.00. While the panel believes that Mr. Platt was comparatively responsible for the actual losses in the account, the panel feels that, based on the inexperience of the broker and the size and frequency of the trading, Olde was at least reckless in the lack of supervision provided in allowing investments of this type in an account which had demonstrated a short term trading philosophy contrary to the stated investment objectives. Therefore, the panel believes that an award of punitive damages in this case is appropriate.
4. The panel leaves the issue of the attorney's fees to be determined by a court of competent jurisdiction.

OTHER COSTS

Other than the forum fees noted below and the issue of the attorney's fees mentioned above, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$7,000.00 (seven sessions x \$1,000.00 per session).

1. Claimant is hereby assessed \$3,500.00 for which the NASD shall retain the \$1,000.00 previously deposited by Claimant in partial satisfaction thereof, leaving a balance due the NASD of \$2,500.00.
2. Respondents, Olde and Murphy are hereby assessed \$3,500.00, jointly and severally, payable to the NASD.
3. The NASD shall retain the \$250.00 non-refundable filing fee previously paid by Claimant.
4. The NASD shall retain the \$350.00 member surcharge pursuant to Section 45 of the Code, which was previously paid by Respondent, Olde.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

_____/s/_____
James A. Smith, IV

Public/Chairman

_____/s/_____
Robert Schwartz

Industry

_____/s/_____
Donald M. Macdonald

Public

Date of Decision: August 15, 1996