

NASD FINAL ORDER

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

William M. Hauser, and
Cynthia M. Hauser,
Claimants,

v.

No. 95-04751

OLDE Discount Corporation,
Respondent.

REPRESENTATION OF PARTIES

William M. Hauser, and Cynthia M. Hauser ("Claimants") were represented by William M. Hauser.

OLDE Discount Corporation ("Respondent") was represented by Timothy L. Isom, Esq., of OLDE Discount Corporation, Detroit, Michigan.

CASE INFORMATION

Claimants' Statement of Claim was filed on or about October 9, 1995. Claimants' Submission Agreement was signed on September 27, 1995.

Respondent's Statement of Answer was filed on or about November 30, 1995. Respondent's Submission Agreement was signed on November 8, 1995.

HEARING INFORMATION

Telephonic hearings were held on April 4 and 16, 1996 for one (1) session each for a total of two (2) sessions.

CASE SUMMARY

Claimants alleged that: On March 21, 1990, on the advice of Ms. Carol of Respondent's Overland Park, Kansas office, they purchased 1000 shares of Everex Systems, Inc. ("EVRX") stock; at the time of the purchase, Ms. Carol was told that they were interested in growth stock, but wanted a financially healthy company; between April, 1990 and June 1992, Claimants constantly checked on the stock with Respondent's brokers to see if any action should be taken, and were continually advised that Respondent's analysts felt that the decline in the price of EVRX stock was a temporary setback; on June 8, 1992, on Mr. Bukaty's recommendation, Claimants purchased an additional 1000 shares of EVRX; they were never advised of the excessively high risk involved with EVRX; and that they were never informed of the speculative nature of the investment. Claimants stated that they sold all of their EVRX shares on September 14, 1992, and shortly thereafter, EVRX filed for bankruptcy.

Respondent denied the allegations set forth in the Statement of Claim. Respondent specifically stated that: Claimants' profits and losses resulted from Claimants' own informed investment decisions and the workings of the market; and that all of Claimants' decisions regarding their accounts with Respondent emerged as a product of mutual discussions with Respondent's brokers, and were carried out in a time and manner expressly authorized and approved by the Claimants. Respondent asserted the affirmative defenses of waiver, estoppel and ratification. Respondent also made a Motion to Dismiss the Statement of Claim pursuant to §16 of the NASD Code of Arbitration Procedure (the "Code") asserting that the claim is barred by the applicable statute of limitations.

In response to the Motion to Dismiss, Claimants asserted that: both transactions to buy EVRX stock were initiated by and solicited by Respondent's brokers; they would not have made an additional purchase of EVRX had they known all the facts regarding EVRX's financial status; §15 of the Code states a time limit of six (6) years for filing arbitration claims; and the reason why Claimants waited so long before initiating this action is due to the fact that they were unaware of the arbitration process until March 24, 1995.

A telephonic hearing was convened on April 4, 1996 for the purpose of hearing argument on Respondent's Motion to Compel Discovery and Motion to Dismiss. After review of the Motion to Dismiss, the response and hearing argument from the parties, the undersigned arbitrator allowed the parties to file additional support to their respective positions. On April 9, 1996, Respondent filed a Request for Reconsideration of Respondent's Motion for Dismissal. On April 16, 1996, a second telephonic hearing was held with the parties to take further argument on the statute of limitations issue.

ORDER

After considering the pleadings, the argument made by the parties during the telephonic hearings held with the parties on April 4 and 16, 1996, and the Motion to Dismiss and Claimants' Response thereto, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

Respondent's Motion to Dismiss is granted. Therefore, Claimants' claim is dismissed with prejudice as untimely.

Each party shall bear its own costs and expenses, including attorneys' fees, associated with this arbitration.

FORUM FEES

Forum fees are calculated at the rate of \$300 per hearing session. There were two (2) sessions x \$300 = \$600 in forum fees. Pursuant to §43(b) of the NASD Code of Arbitration Procedure (the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §45 of the Code, the NASD shall retain the member surcharge fee in the amount of \$200 previously paid by Respondent.

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

Michael D. Fitzgerald
Michael D. Fitzgerald
Public Arbitrator, Presiding Chair

S/S

April 26, 1996