

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Charles G. Allen
Charles G. McDonald

95-04885

Name of Respondents

Olde Discount Corporation
Herbert Lamont Robinson

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on October 16, 1995, Claimants Charles G. Allen and Charles G. McDonald ("Claimants"), who appeared Pro Se, alleged that Respondent Olde Discount Corporation ("Olde"), through its representative, Herbert Lamont Robinson ("Robinson"), on June 12, 1995, failed to execute Charles G. Allen's ("Allen") order to purchase shares of Cephalon, Inc. ("CEPH") to their detriment. Claimants further alleged that Allen discussed and confirmed the number of shares and the price with Robinson. Claimants contended that the price of CEPH jumped considerably that afternoon and they learned the following day that the trade had not been executed until the price had almost doubled. Claimants further contended that Robinson, and his boss Mark Davidson, became difficult and aggressive because of their complaint about the trade. Claimants maintained that they filed a complaint with Ann Lowe, Olde Compliance, and made an additional trade for 2,000 shares of Concurrent Computer ("CC"). Claimants further maintained that their account statement showed that the CC shares had been placed on margin in error so they complained about that as well. Claimants contended that Olde Compliance was not helpful in resolving the dispute. Claimants further contended that as a result of the above, they have suffered a loss for which the Respondents should be held liable.

Respondents Olde Discount Corporation and Herbert Lamont Robinson through their representative and in-house counsel, Timothy L. Isom, Esq., maintained that Allen misunderstood the reading back of his order, done to ensure the accuracy of the order. Respondents further maintained that Claimants case is nothing more than an opportunistic effort to gain at the expense of the brokerage firm because they are wealthy and knowledgeable investors who research and analyze their stock purchases. Respondents contended that Claimants purchased only three stocks for their Olde account: Chantal Pharmaceutical Corp., Cephalon Inc. and Concurrent Computer Corp. Respondents further contended that all trades were unsolicited and were initiated by the Claimants. Respondents maintained that on July 12, 1995, Allen placed an order for \$4,000.00 of Cephalon stock but the order was not filled until the following morning, at a much higher price, because the trading had been halted. Respondents further maintained that they could not have filled their order at the price desired because it was simply not available. Respondents contended that their Compliance Department fully cooperated with the Claimants and that as a result of the above, they should not be held liable.

RELIEF REQUESTED

Claimants Charles G. Allen and Charles G. McDonald requested \$4,238.25 in actual damages plus interest.

Respondents Olde Discount Corporation and Herbert Lamont Robinson 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, James C. Bussart, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on October 6, 1995, and by the Respondent Olde Discount Corporation on November 28, 1995, and Herbert Lamont Robinson on January 23, 1996.

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 Claimants Charles G. Allen and Charles G. McDonald against Respondents Olde Discount Corporation and Herbert Lamont Robinson are denied in their entirety.
2. The parties shall bear their respective costs.
3. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc.

AFFIRMATION

I, **JAMES C. BUSSART, 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.


James C. Bussart, Esq.

DATE OF DECISION: April 25, 1996

Report of Arbitrator

The evidence shows that the trade at issue was a market order (Claimants admit declining the opportunity to enter their order as a limit order between the purported bid and asked prices), and therefore was properly executed. There is no dispute that the order was in fact executed at the market, albeit on the following day. Accordingly, the Claimants' claim fails.

Even if the order at issue were in fact a limit order at 10 3/4, then the order would have not been executed because of the trading halt that day and subsequent increase in stock price after resumption of trading. Respondents could not have filled the trade at a limit of 10 3/4 as trading in the stock was halted, and the bid-ask prices were substantially higher after resumption of trading. Claimants' case would have perhaps been stronger if Claimants sought to rescind the trade entirely. However, Claimants do not disavow the purchase of the stock, but merely the purchase price. Claimants have failed to show any loss or damage because of the trade as executed.