

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

- Robert J. Weigand

Claimant,

v.

Case No. 95-05887

Olde Discount Corporation
and Jeffrey Wild

Respondent.

REPRESENTATION OF PARTIES

Claimant Robert J. Weigand ("Claimant") did not appear at the hearing and was unrepresented. Claimant was previously represented by Lawrence M. Elkus, Esq. and Joseph H. Spiegel, Esq. both of Southfield, Michigan. On or about August 5, 1996, Mr. Elkus advised NASD Regulation, Inc. Office of Dispute Resolution that his firm and Mr. Spiegel's firm was withdrawing as counsel for Claimant.

Respondents Olde Discount Corporation ("Olde") and Jeffrey Wild ("Wild") (collectively referred to as "Respondents") were represented by David T. Doyle, Esq. and Ina N. Otto, Esq. of Olde Discount Corporation located in Detroit, Michigan.

CASE INFORMATION

The Statement of Claim was filed on or about December 15, 1995.

Claimant's Submission Agreement was signed on December 14, 1995.

Respondents' Joint Statement of Answer was filed on or about February 9, 1996.

Respondent Olde's Submission Agreement was signed in January of 1996 by Thomas P. Fitzgerald, General Counsel of Olde Discount Corporation.

NASD Regulation, Inc. Office of Dispute Resolution has no record of a signed Submission Agreement from Respondent Wild.

Claimant's Motion for Order to Bar Respondents from Presenting any Matter, Arguments or Defenses at the Hearing was filed on or about March 19, 1996. Respondents' Response thereto was filed on or about March 20, 1996.

HEARING INFORMATION

The hearing in this matter was held on February 25, 1997 for one (1) session and April 7, 1997 for one (1) session in Southfield, Michigan.

CASE SUMMARY

In his Statement of Claim, Claimant alleged that Respondents solicited him to purchase various unsuitable investments, including: 3Com Corp., Tellabs, Inc., and Sybase. Claimant contended that Respondents failed to disclose the nature and scope of the risks inherent in these transactions and also made material misrepresentations of fact regarding the safety and security of the investments at issue. Claimant asserted claims against Respondents, including: (1) Liability under 1934 Act Anti-Fraud Provisions; (2) violations of Sections 12 and 17 of the Securities Act of 1933; (3) Liability under the 1933 Act Anti-Fraud Provisions; (4) Liability under Michigan Blue Sky Law; (5) Negligent Misrepresentation; and (6) Liability for Breach of Common Law Fiduciary Duty.

Respondents denied all liability to Claimant in the Joint Statement of Answer. Respondents contended that any profits, or losses, incurred by Claimant in his account, resulted solely from Claimant's own informed investment decisions and operative market forces. Respondents asserted that they handled Claimant's account in a diligent and responsible manner and that Claimant cannot be allowed to hold Respondents liable for his own investment decisions. Respondents maintained that Claimant's opening account documents stated that Claimant's preference was for aggressive stocks and he was seeking 80% short-term investments. Respondents asserted affirmative defenses including that Claimant is barred from recovery by the doctrines of waiver, estoppel and ratification.

RELIEF REQUESTED

Claimant requested: damages in the amount of \$94,000, less amounts withdrawn by Claimant; rescission of all fraudulent transactions; interest at 6%; and expenses and costs resulting from this action.

Respondents requested: that the Statement of Claim be dismissed with prejudice; that the arbitrators expunge Wild's U-5; and that Respondents be recompensed for every cost, expense and fee incurred in defending this action.

OTHER ISSUES CONSIDERED & DECIDED

Claimant's Motion for Order to Bar Respondents from Presenting any Matter, Arguments or Defenses was denied.

Claimant failed to appear at the February 25, 1997 hearing. At the February 25, 1997 hearing, Respondents made a Motion to Dismiss on the basis of Claimant's failure to appear. The arbitrators denied this motion and rescheduled the hearing to April 7, 1997 in an attempt to provide the Claimant with a second chance to appear at the hearing. Claimant also failed to appear at the April 7, 1997 hearing. At the April 7, 1997 hearing, Respondents renewed the Motion to Dismiss, which is now granted in this final award.

Upon review of the file and the representations made on behalf of the Respondents, the undersigned arbitrators have determined that the Claimant had received due notice of the hearing as required under §10315 of the NASD Code of Arbitration Procedure (the "Code") and that arbitration of the matter would proceed pursuant to §10318 of the Code.

Respondent Wild did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to §10301 of the Code, and having answered the claim and appeared at the hearing is bound by the determination of the arbitration panel on all issues submitted.

The parties present at the hearing 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 original(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

AWARD

The undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- (1) That the Statement of Claim is hereby dismissed in its entirety with prejudice;
- (2) That Claimant Robert J. Weigand is liable for and shall pay to Respondents Olde Discount Corporation and Jeffrey Wild their attorney fees incurred in this matter in the amount of Two Thousand Dollars and No Cents (\$2,000.00). The authority for the award of attorney fees award is found at Prince v. Heritage, 109 Mich. App. 189 (1981);
- (3) That all records of this matter shall be expunged from the Central Registration Depository (also known as "CRD") of the National Association of Securities Dealers, Inc.; and
- (4) That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby dismissed in their entirety with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$500 per hearing session and \$300 for each pre-hearing conference, if any. There were two (2) hearing sessions x \$500 = \$1,000 in forum fees. Pursuant to §10332(b) of 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 §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$150 and shall retain the hearing session deposit in the amount of \$500 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Claimant. Pursuant to §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall also retain the postponement fee in the amount of \$500 previously deposited with NASD Regulation, Inc. by Claimant.

Pursuant to §10332(c) of the Code, Claimant Robert J. Weigand is liable for and shall pay forum fees in the amount of \$500 (\$1,000 total forum fees - \$500 hearing session deposit.)

Pursuant to §10333(c) of the Code, Respondent Olde is liable for and shall pay the member surcharge in the amount of \$300.

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Concurring Arbitrators' Signatures

\s\ George P. Doom
George P. Doom
Chairman
Public Arbitrator

April 12, 1997
Dated:

\s\ Gordon F. Knight
Gordon F. Knight, Ph.D
Panelist
Public Arbitrator

April 17, 1997
Dated:

\s\ Frank G. Bank
Frank G. Bank
Panelist
Industry Arbitrator

April 12, 1997
Dated:

For NASD Regulation use only:
Date award served on the parties: April 21, 1997