

**AWARD**

**NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION**

In the Matter of the Arbitration Between

Name of Claimants

Thomas Sarelas and Valerie Sarelas

96-00764

Name of Respondents

Olde Discount Corporation;  
Alan Rosenberg

**REPRESENTATION**

For Claimants: Thomas Sarelas and Valerie Sarelas ("Sarelas") were represented by J. William Holland, Esq. of Holland & Holland, located in Chicago, Illinois.

For Respondents: Olde Discount Corporation ("Olde") and Alan Rosenberg ("Rosenberg") were represented by Lisa S. Fildes, Esq. of Olde Discount Corporation, located in Detroit, Michigan.

**CASE INFORMATION**

Statement of Claim filed: February 21, 1996.

Claimant's Submission Agreement signed on: January 25, 1996

Statement of Answer filed by Respondents Olde and Rosenberg on: April 15, 1996.

Respondent Olde's Submission Agreement signed on: March 24, 1996 by Thomas P. Fitzgerald, General Counsel, Olde Discount Corporation.

Respondent Rosenberg did not file an executed submission agreement.

Respondents' Motion for Summary Deposition filed on: August 27, 1996.

Claimants' Response filed on: September 3, 1996.

**HEARING INFORMATION**

Pre-Hearing Conference: None Held

Hearing Date/Sessions: September 26, 1996 for Two (2) sessions.

Hearing Location: Chicago, Illinois.

**CASE SUMMARY**

Claimants alleged that Respondent Rosenberg, while employed by or acting as an agent for Respondent Olde, failed to execute a sale order on October 24, 1995 for 1,000 shares of Cirrus Logic (CRUS), resulting in damages for the difference between the purchase price and the sale proceeds. Claimants

asserted claims for violations of Section 12 and 13 of the Illinois Securities Act of 1953; fraud; misrepresentation; negligence; breach of fiduciary duty; breach of oral and written contract; violation of Section 10b of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder; violation of Section 17(a) of the Securities Act of 1933; violation of the NASD Rules of Fair Practice; and violation of the Illinois Consumer Fraud and Deceptive Practices Act.

Respondents denied the material allegations of the Statement of Claim, asserting that Sarelas placed a limit order to sell his 1,000 shares of CRUS at \$50.00 per share, but that the price never hit the limit price. In addition, the trade was placed at Sarelas' direction and with his full understanding of the risks. In addition, Sarelas did not sell the shares until November 14, 1995. Pursuant to these allegations, Respondents asserted that Sarelas was attempting to recoup from them losses which were solely the result of his investment decisions.

### **RELIEF REQUESTED**

Claimants requested entry of an award against Respondents for return of claimants' funds in the amount of \$47,500.00 less their sale proceeds of \$28,500.00; compensatory damages of \$19,000.00; pre-award interest, commissions and dividends; reasonable attorneys' fees; costs of filing and maintaining the action; and such other relief as the Panel deemed appropriate.

Respondents requested that the claim be dismissed in its entirety and that Respondent Rosenberg's record be expunged.

### **OTHER ISSUES CONSIDERED & DECIDED**

Respondent Rosenberg did not file an executed submission agreement, but is required to submit to arbitration pursuant to Section 10301 of the Code of Arbitration Procedure. In addition, Respondent Rosenberg filed a Statement of Answer and appeared at hearing.

On September 16, 1996, the Panel, after review of Respondents' Motion for Summary Deposition and the responses, determined that the Motion would be denied.

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

1. The Statement of Claim is dismissed with prejudice and denied in its entirety;
2. The parties shall bear their own costs of arbitration, including any attorneys' fees, except for those specifically enumerated herein;
3. The Panel hereby orders that all record of this claim and arbitration be expunged from

the CRD record of Respondent Alan Rosenberg; and

4. Any relief not specifically awarded is hereby denied.

**OTHER COSTS**

Respondent Olde Discount Corporation is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution, the sum of \$200.00 as the member surcharge pursuant to Section 10333 of the Code of Arbitration Procedure.

**FORUM FEES**

Pursuant to Section 10332(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:  
Two (2) hearing sessions x \$400.00 per session = \$800.00.

The Office of Dispute Resolution shall retain the \$100.00 non-refundable claim filing fee paid by the Claimants, Thomas and Valerie Sarelas. In addition, the Office of Dispute Resolution shall retain the \$400.00 hearing session deposit as forum fees paid by the Claimants, Thomas and Valerie Sarelas. Respondent Olde Discount Corporation is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$400.00 as forum fees.

Concurring Arbitrators' Signatures  
Name

Date

/s/ Stephen C. Esposito, Esq.  
Stephen C. Esposito, Esq.  
Public Arbitrator  
Chairperson

December 4, 1996

/s/ Michael J. Dolesh, Esq.  
Michael J. Dolesh, Esq.  
Public Arbitrator

December 4, 1996

/s/ Brian E. Slotky  
Brian E. Slotky  
Industry Arbitrator

December 4, 1996

For Dispute Resolution Use Only  
Date of Decision: December 5, 1996