

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Jerry Ginsberg

96-01123

Name of Respondents

Olde Discount Corporation

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 14, 1996, Claimant Jerry Ginsberg ("Claimant"), who appeared Pro Se, alleged that Respondent Olde Discount Corporation ("Respondent"), misrepresented the value of stock offered for sale. Respondent further alleged that Troy Taylor, a broker at Olde, encouraged him to purchase stock in NetManage (NETM) at 32 1/4. Claimant contended that he was hesitant to purchase the stock because it had gone up almost 10 points in the previous two days, and he did not want to buy into a "pullback." Claimant asserted that when he expressed his concerns to Taylor, he assured him that the stock's value would probably increase to \$40 a share. Claimant further asserted that on December 5, 1995, Taylor purchased 1000 shares of NETM at a price above Claimant's buy order, and that the day after the stock was purchased, its value began to decline. Claimant alleged that Respondent discouraged him from selling the stock after its price began to fall, that NETM's value was consistently misrepresented, and that Respondent "made a market in" NETM. Claimant further alleged that due to the wrongdoing of the Respondent, he has suffered damages for which the Respondent should be held liable.

Respondent Olde Discount Corporation, through its representative and in-house counsel, Julie D. Reed, Esq., maintained that Claimant represented himself as an aggressive investor who was interested in growth and speculation in 100% short term investments in technology stocks. Respondent further maintained that its recommendation to purchase NETM was suitable for Claimant's investment objectives, and that Claimant did not follow Respondent's advice to purchase only 300 shares of the stock. Respondent asserted that the Claimant decided on his own, without any coercion by Olde or its broker, to enter into the purchase and that at no time did Olde or its brokers do anything to force the Claimant to make a purchase that he was not completely willing to make. Respondent further asserted that even if Claimant could establish a substantive claim, he is barred from recovery because he ratified the purchases by failing to timely submit written complaints of the transaction. Respondent maintained that it derived no financial interest in "peddling" NETM to customers and that Claimant knowingly assumed the risk of loss in the investment. Respondent further maintained that it had committed no wrongdoing and requested that the claims against it be dismissed.

In a Response to Respondent's Answer, Claimant disputed the Respondent's characterization of the events leading to the purchase of the NETM stock. Claimant maintained that Taylor inappropriately encouraged him to purchase the stock when its price was already above the target price listed in an Olde's research report on NETM. Claimant further maintained that as a result of his initial hesitation to purchase NETM, Taylor encouraged him to purchase only 300 shares of the stock. Claimant alleged that Taylor did not caution him when he decided to purchase 1,000 shares and that at no point did the Respondent recommend that he lighten his position. Claimant further alleged that when the stock fell below \$15.00, he called Respondent with a sell order and was talked out of selling any part of the stock.

RELIEF REQUESTED

Claimant Jerry Ginsberg requested \$10,000.00 in actual damages.

Respondent Olde Discount Corporation requested that the claims of the Claimant be dismissed, and that it be awarded attorney's fees and costs.

AWARD


Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Margaret Kallman, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Jerry Ginsberg on March 7, 1996, and by the Respondent Olde Discount Corporation on March 29, 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 Claimant Jerry Ginsberg against Respondent Olde Discount Corporation are dismissed in their entirety.
2. All other requests for relief are denied.
3. The parties shall bear their respective costs.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Jerry Ginsberg, shall be retained by the NASD, Inc. Respondent Olde Discount Corp., is liable and shall pay \$150.00 to the Claimant as reimbursement of the filing fee.

AFFIRMATION

I, **MARGARET KALLMAN**, 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.


Margaret Kallman

DATE OF DECISION: July 29, 1996

July 11, 1996

REPORT OF ARBITRATOR

Subject: NASD Arbitration Number 96-01123
Jerry Ginsberg vs. Olde Discount Corporation

A BRIEF EXPLANATION OF THE AWARD

Determining Factors

A. Claimant's Investment Experience:

1. According to his Statement of Claim, Claimant had previously traded with a different discount broker and had success making his own decisions. He knew OLDE was a discount broker and expected to be on his own, continuing to make his own decisions.
2. According to the uncontradicted Account Application signed by Claimant, he had four years experience investing, characterized himself as an "aggressive" rather than "conservative" or "moderate" investor, and traded about 15 times a year in blocks averaging 1,000 shares. He checked all three investment objectives offered on the application: income, growth and speculation. He checked "yes" to the question "are you an active investor?"

B. Claimant's Reaction to Taylor's Recommendations:

1. Claimant determined that the first recommendations by Taylor were not based on any rational news, and so rejected them.

2. When Taylor recommended NETM, Claimant was hesitant to buy because he knew that NETM stock had gone up almost 10 points in the previous two days, which suggested the likelihood of a subsequent drop in price. Claimant prudently wanted to check out the stock, but chose to buy immediately. Claimant was aware that the stock began declining on the very next day and he followed its progress as it steadily declined. Claimant decided several times to sell, and discussed his decision to sell the declining stock repeatedly with Taylor or other brokers at OLDE Discount Corporation. Despite the continuing decline in the stock's value, he continued to follow their recommendation to hold it. Then he had difficulty selling it because OLDE did not transfer the stock timely. He eventually transferred the stock to another brokerage house, but he still hadn't sold it as of the date he wrote the Statement of Claim, March 8, 1996 when it was trading at under 12. The arbitrator notes that on June 13 NETM was trading around 15, a 25% rise over its value when Claimant submitted his claim.

C. Conclusion:

Relying almost solely on Claimant's explanation of the chain of events and the application he signed, the picture that emerges is of a confident, self-reliant, active, experienced investor, who wished to speculate as well as accomplish other objectives in his trading; a trader accustomed to frequent trading in substantial blocks, who saw flaws early on in Taylor's recommendations and chose to rely on them nevertheless. His experience and critical faculties equipped him to evaluate these recommendations and to determine his actions. Finally, as of this writing, Claimant apparently still owns the stock, and it is impossible to determine whether he will ultimately sell at, below or above the price at which he bought.