

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Richard H. O'Keefe

96-01705

Name of Respondent

Olde Discount Corporation

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on April 19, 1996, Claimant Richard H. O'Keefe ("Claimant"), who appeared Pro Se, alleged that Respondent Olde Discount Corporation ("Olde"), did not timely place his sell orders. Claimant maintained that on the morning of October 10, 1995, he had three telephone conversations with Frank Visconti ("Visconti"), who was a registered representative at Olde. Claimant contended that during the first phone conversation he asked Visconti the bid and ask prices for Vicor Corp. ("VICR") and Network General Corp. ("NETG"). Claimant further contended that during the second conversation, which ended at 9:22 A.M., he placed an order to sell 1000 shares of VICR and 1000 shares of NETG, both at market price. Claimant asserted that Visconti later called and in response to Claimant's question as to whether the market orders had been placed, stated that he was just calling to confirm the market orders. Claimant further asserted that Visconti failed to place these orders immediately after the second conversation, and as a result of 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 in its Answer that Claimant called the morning before the market opened to place orders to sell VICR and NETG. Respondent further maintained that the market for both stocks was falling. Respondent alleged that if the market had not yet opened when the quotes were given, then the quotes which Claimant was given were the pre-opening prices. Respondent further alleged that the actual price upon execution would have been either the actual opening price, or the actual price at the time his order was filled. Respondent maintained that it had committed no wrongdoing and requested that the claims against it be dismissed.

In a Supplement to its Answer, Respondent incorporated an affidavit of Frank Visconti. In his affidavit, Visconti maintained that on October 10, 1995, at approximately 9:22 A.M., Claimant called him and asked the bid and ask prices for VICR and NETG. Visconti further maintained that Claimant did not place any orders at that time and that he stated that he would call Visconti back. Visconti alleged that at approximately 9:28 A.M., he called Claimant to see what Claimant wished to do. Visconti further alleged that Claimant stated that he wished to place market orders to sell 1,000 shares of VICR and

NETG. Visconti maintained that he immediately put the orders in after hanging up the telephone, and that both orders were sent for execution at 9:30 A.M. Visconti further maintained that at 9:48 A.M., Claimant's order to sell 1,000 shares of NETG at the market was executed at \$37 1/2 per share, and that at 10:21 A.M., Claimant's order to sell 1,000 shares of VICR was executed at \$18 7/8 per share.

RELIEF REQUESTED

Claimant Richard H. O'Keefe requested \$1,375.00 in actual damages.

Respondent Olde Discount Corporation 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, Carole M. Crosby, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Richard H. O'Keefe on April 16, 1996, and by the Respondent Olde Discount Corporation on May 8, 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. Respondent Olde Discount Corporation is liable and shall pay to Claimant Richard H. O'Keefe \$1,375.00 in actual in actual damages.
2. The parties shall bear their respective costs.
3. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Richard H. O'Keefe shall be retained by the NASD, Inc. Respondent Olde Discount Corporation is liable and shall pay to Claimant Richard H. O'Keefe \$50.00 as reimbursement of the filing fee.

Affirmation

STATE OF *Michigan* } SS:

COUNTY OF *Alameda*

I, CHARLE CROSBY, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument, which is my oath and award.

award.

Carole Crosby

Signature of Arbitrator

Decision Date: July 29, 1996