

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

David Wojcik

Claimant,

v.

No. 96-01785

Olde Discount Corporation,
Mark Katzman, and
Russ Miller,

Respondents.

REPRESENTATION OF PARTIES

Claimant David Wojcik ("Claimant") was represented by Laurence S. Schultz, Esq. of Driggers, Schultz & Herbst located in Troy, Michigan.

Respondents Olde Discount Corporation ("Olde"), Mark S. Katzman ("Katzman"), and Russell G. Miller ("Miller") (collectively referred to as "Respondents") were represented by Howard M. Klausmeier, Esq. and David T. Doyle, Esq. of Olde Discount Corporation.

CASE INFORMATION

The Statement of Claim was filed on or about April 17, 1996.

The First Amended Statement of Claim was filed on or about August 28, 1996.

Claimant's Submission Agreement was signed on April 9, 1996.

Respondents' Joint Statement of Answer was filed on or about July 10, 1996.

NASD Regulation, Inc. Office of Dispute Resolution has no record that Respondents submitted properly executed submission agreements.

Claimant's Brief in Support of Awarding Costs, Attorney Fees and Punitive/Exemplary Damages was filed on or about January 13, 1997.

Respondents' Brief in Opposition to Claimant's Request for Attorney Fees and Punitive/Exemplary Damages was filed on or about January 14, 1997.

Respondents' Motion to Dismiss and Supplemental Motion to Dismiss were filed on or about March 13, 1997 and March 17, 1997.

Claimant's Response to the Motion to Dismiss was filled prior to the start of the hearing on March 18, 1997.

HEARING INFORMATION

The telephonic pre-hearing conferences were held on: November 18, 1996 for one (1) session; November 19, 1996 for one (1) session; November 26, 1996 for one (1) session; and December 18, 1996 for one (1) session.

The hearings were held on: January 16, 1997 for two (2) sessions; January 17, 1996 for two (2) sessions; March 18, 1997 for two (2) sessions; and March 19, 1997 for three (3) sessions.

The hearings were held in Southfield, Michigan.

CASE SUMMARY

This action was brought in connection with a securities account maintained by Claimant with Olde. Claimant alleged that Respondents Katzman and Miller were Claimant's account representatives. Claimant contended that he was an unsophisticated and inexperienced investor who had never made an investment prior to 1994. Claimant asserted that in response to Katzman's selling pressure, he opened a securities account at Olde and purchased stocks and mutual funds, including: Cysco Systems, 3-Com, Beverly Enterprises, and GT Global. Claimant maintained that, after Katzman moved to another branch, Claimant's account was taken over by Respondent Miller. Claimant alleged that Miller continued the pressure for margin trading and day trading that was begun by Katzman. Claimant maintained that Respondents encouraged unsuitable trades and excessive margin trading in his account. Claimant contended his account was churned and that his analysis of the account indicated a turnover ratio of 124. Claimant provided the following legal basis for his claim, including: breach of fiduciary duty; misrepresentation and deceptive devices; exemplary/punitive damages; NASD and NYSE rules; breach of contract; respondeat superior; and RICO.

Respondents denied all liability to Claimant in the Joint Statement of Answer. Respondents alleged that the Statement of Claim represented a disappointed investor's attempt to recover losses he suffered as a result of his own reasoned and deliberate trading activity. Respondents contended that Claimant was: (1) aware of the risks attendant to his chosen trading activity; (2) in complete control of his account at all times; and (3) making his own investment decisions. Respondents asserted various affirmative defenses, including: that Claimant has failed to state a claim upon which relief can be granted; that Claimant's claims are barred by the statute of frauds; that Claimant's claims are barred under the doctrines of laches, waiver, estoppel and ratification; that Respondents' obligations, if any, to the Claimant have been fully paid, satisfied and discharged; that the alleged wrongdoing of which Claimant complains was perpetuated, if at all, by an individual or entities other than Olde or its agents; that Claimant assumed the risk of the transactions engaged in and the investment losses incurred; that economic, industry, corporate and market conditions were responsible for Claimant's losses; and that the recovery of punitive or exemplary damages is not permitted under applicable state law.

RELIEF REQUESTED

Claimant sought out-of-pocket damages in the amount of \$60,877, plus interest, plus refund of commissions, plus lost opportunity of \$4,800, plus such other damages as may be awarded, including damages for emotional distress and severe mental anguish, plus interest from the date of filing, costs and attorney fees. Claimant also sought an award of punitive damages.

Respondents requested that the Statement of Claim be dismissed in its entirety with prejudice and that the panel award any costs to Respondents it sees fit.

OTHER ISSUES CONSIDERED & DECIDED

Respondents' Motion to Dismiss was denied.

Respondents' Motion to Strike First Amendment to Statement of Claim and to Strike Witnesses was 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 original(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

AWARD

After considering the pleadings, the testimony, and the evidence presented, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- (1) That Respondent Olde Discount Corporation is liable for and shall pay to Claimant David Wojcik damages in the amount of Fifty Thousand Dollars and No Cents (\$50,000);
- (2) That all claims against Respondents Mark S. Katzman and Russell G. Miller are hereby dismissed in their entirety with prejudice and that Respondents Mark S. Katzman and Russell G. Miller shall not pay any amount to Claimant David Wojcik;
- (3) That other than forum fees which are specified below, the parties shall each bear their own costs, expenses, and attorneys' fees incurred in this matter; and
- (4) That 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 nine (9) hearing sessions x \$500 = \$4,500 in forum fees. There were four (4) pre-hearing conferences x \$300 = \$1,200 in forum fees. Total forum fees = \$5,700. 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, Claimant is liable for and shall pay the non-refundable filing fee associated with the filing of this claim in the amount of \$150. Pursuant to §10332(c) of the Code, Claimant is liable for and shall pay forum fees in the amount of \$2,850.

Pursuant to §10332(c) of the Code, Respondent Olde Discount Corporation is liable for and shall pay forum fees in the amount of \$2,850.

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

Concurring Arbitrators' Signatures:

\s\ Michael B. Laikin

Michael B. Laikin, Esq.
Chairperson
Public Arbitrator

March 31, 1997

Dated:

\s\ A. Robert Bliven

A. Robert Bliven
Panelist
Public Arbitrator

March 26, 1997

Dated:

\s\ Dennis M. Hamel

Dennis M. Hamel
Panelist
Public Arbitrator

March 27, 1997

Dated:

For NASD Regulation use only:
Date award served on the parties: April 4, 1997