

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Jack Pulliam and Sandra
Pulliam,

Claimants,

v.

Case Number 96-02469

Olde Discount Corporation and
Dale Essenmacher,

Respondents.

REPRESENTATION OF PARTIES

Claimants Jack and Sandra Pulliam ("Claimants") were represented by John F. Chambers, Esq. of Chambers Steiner located in Detroit, Michigan.

Respondents Olde Discount Corporation ("Olde") and Dale Essenmacher ("Essenmacher") (collectively referred to as "Respondents") were represented by Karen L. Brink, Esq. and Donald P. Wray, Jr., Esq. of Olde Discount Corporation located in Detroit, Michigan.

CASE INFORMATION

The Statement of Claim was filed on or about June 11, 1996.

Claimants' Joint Submission Agreement was signed on June 7, 1996.

Respondents' Joint Statement of Answer was filed on or about September 3, 1996.

Respondent Olde's Submission Agreement was signed on July 23, 1996.

Respondent Essenmacher's Submission Agreement was signed on July 11, 1996.

HEARING INFORMATION

The hearing was held on August 12, 1997 for two (2) sessions, August 13, 1997 for two (2) sessions, and August 25, 1997 for two (2) sessions.

CASE SUMMARY

Claimants alleged that they opened a securities account with Respondent Essenmacher who was a stock broker with Respondent Olde. Claimants contended that Jack Pulliam had limited stock market knowledge and put his trust in Olde. Claimants maintained that they explained to Respondent Essenmacher that they had limited financial resources and were not in a position to sustain financial losses. Claimants asserted that Respondent Essenmacher churned Claimants' account and made unsuitable and unauthorized investments solely for the purpose of generating commissions. Claimants alleged that between March, 1995 and December, 1995, Respondent Essenmacher made 86 buys and 84 sales totaling over \$7,000,000 in stock transactions, causing losses approaching \$300,000.

Respondents denied all liability to Claimants in the Statement of Answer. Respondents alleged that Claimants were affluent, informed investors who were aware of the risks associated with their chosen trading strategy. Respondents contended that Claimants maintained complete control over their accounts at all times, and specifically authorized each and every stock purchase and sale. Respondents asserted that over the life of their Olde accounts Claimants received over thirty-six (36) monthly account statements and a written confirmation of each of their over one hundred and fifty (150) trades, none of which triggered a single complaint about the servicing of their Olde accounts until over one year had passed since the allegedly "unauthorized" transactions. Respondents denied that they violated any applicable securities laws or breached any common law duties owed to the Claimants in connection with their Olde accounts.

RELIEF REQUESTED

Claimants requested compensation for damages incurred as a result of Claimants' loss of investment capital in an amount equal to \$300,000; an amount equal to \$200,000 in loss of investment opportunity; punitive damages in the amount of \$750,000; and Claimants' costs and expenses, including reasonable attorney fees.

Respondents requested that the Statement of Claim be dismissed in its entirety with prejudice.

OTHER ISSUES CONSIDERED & DECIDED

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 at the hearing, 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 the parties shall each bear their own respective attorneys' fees and costs; and
- (3) That other than forum fees, which are addressed below, all other claims and requests for relief not specifically addressed and enumerated are hereby dismissed in their entirety with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$1,000 per hearing session and \$300 for each hearing session before a single arbitrator. There were six (6) hearing sessions x \$1,000 = \$6,000 in forum fees. Pursuant to §10332 (b) of the NASD Code of Arbitration Procedure ("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 \$250 and shall refund the hearing session deposit in the amount of \$1,000 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Claimants.

Pursuant to §10332(c) of the Code, Respondents are jointly liable for and shall pay all forum fees incurred in this matter in the amount of \$6,000.

Pursuant to §10333 of the Code, Respondent Olde is liable for and shall pay the member surcharge in the amount of \$500.

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

Concurring Arbitrators' Signatures

/s/ Robert J. Scafuri, Esq.
Robert J. Scafuri, Esq.
Chairperson
Public Arbitrator

September 23, 1997
Dated:

/s/ George P. Doom
George P. Doom
Panelist
Public Arbitrator

September 11, 1997
Dated:

/s/ Norman A. Samson
Norman A. Samson
Panelist
Industry Arbitrator

September 19, 1997
Dated:

For NASD Regulation use only:

Date award served on the parties: **September 23, 1997**