

971006

N.A.S.D. REGULATION INC. AWARD

OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimant

Andrew Reiniger

96-05236

Name of Respondents

Olde Discount Corporation
Marc A. Sperling
Milton E. Harkrader, III

REPRESENTATION

For Claimant Andrew Reiniger ("Claimant") appeared Phillip G. Steck, Esq., of the law firm Cooper, Erving, Savage, Nolan & Heller located in Albany, New York.

For Respondents Olde Discount Corporation ("ODC"), Mark A. Sperling ("Sperling") and Milton E. Harkrader, III ("Harkrader") appeared Ina N. Otto, in-house counsel of the firm Olde Discount Corporation located in Detroit, Michigan.

CASE INFORMATION

Statement of Claim filed: November 22, 1996.

Claimant's Submission Agreement signed on: November 21, 1996.

Joint Statement of Answer filed by Respondents ODC, Sperling and Harkrader on: February 4, 1997.

Respondent ODC's Submission Agreement signed on: December 10, 1996.

Respondent Sperling's Submission Agreement signed on: February 12, 1997.

Respondent Harkrader's Submission Agreement signed on: January 29, 1997.

HEARING INFORMATION

Hearing Dates/Sessions:

July 1, 1997
July 2, 1997

Two Sessions
Two Sessions

The hearings were held at the Marriott Hotel, located in Albany, New York.

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CASE SUMMARY

Claimant, an employee of and shareholder of General Electric ("GE"), alleged that in September 1995, he sold his shares for over \$67,000. Claimant further alleged that he received a "cold-call" from respondent Sperling, an employee of ODC, urging claimant to open an account with ODC. Claimant also alleged that he opened an account with ODC and from October 1995 to July 1996, he purchased and sold shares of Sierra Semiconductor ("Sierra"), Interleaf Inc. ("Interleaf"), Sun Microsystems ("Sun"), C Cube Microsystems ("Cube"), and Iomega Corp. ("Iomega") on the advice and recommendations of Sperling, which lead to claimant's losses of \$75,647.00 and respondents ODC's commissions and transaction fees of \$1,241.50.

Claimant asserted that his losses were due to Sperling's failure to make reasonable inquiry to determine facts necessary to evaluate the suitability of claimant's investments. Claimant further asserted that Sperling "churned" his account, trading for his own benefit and gain, without regard for claimant's needs and objectives. Claimant also asserted that Sperling failed to disclose that ODC was a market maker in many of the stocks, that he improperly vouched for their growth potential, and falsely claimed that his own personal financial future was dependent upon the success or failure of the investment he recommended to claimant. Claimant contended that Sperling purchased shares on margin without explaining how the margin process worked. Claimant further contended that he never signed a margin agreement prior to the purchase and that Sperling misrepresented the cost of the margin purchases.

Claimant also contended that respondents ODC and Harkrader failed in their duty to supervise and control Sperling, and did not comply with the requirements of the NASD rules regarding proper supervision of their registered representatives. Claimant alleged that their negligence was the proximate cause of his investment losses. Claimant also alleged that ODC and Harkrader demonstrated disregard for the rights and financial safety of claimant, acting instead with deceitful intent to benefit themselves without regard to their duty to protect his interests.

Respondents maintained that contrary to claimant's assertion of opening an account in October 1995, claimant had in fact opened his account with ODC in June 1994, and purchased his GE shares the day he opened his account. Respondents further maintained that claimant's account application, which was signed and returned by claimant, represented claimant as having five years of experience in trading stocks, and two years of experience in trading bonds, and classified himself as an investor who was interested in income, growth and speculation. Respondents also maintained that claimant sold his GE shares at a profit in September 1995, and reinvested the fund to purchase 2,000 shares of Sierra, which Sperling had solicited to claimant, believing it was fit with claimant's investment objective profile. Respondents contended that during the life of claimant's account, Sperling made many recommendations to claimant based on claimant's investment objectives and abilities. Respondents further contended that any solicited recommendations were clearly indicated as such on the trade confirmations, and Sperling took time to update claimant's investment profile on several occasions. Respondents also contended that as a result of these updates, three letters were sent to claimant to review his investment profile for accuracy, and if necessary, to make any corrections to reflect his investment objectives. Respondents maintained that the first letter dated October 18, 1995, was deemed accurate because of claimant's decision not to submit any changes; a second letter dated March 26, 1996, was returned with some changes and incorporated in claimant's profile. Respondents further maintained that on April 11, 1996, ODC sent a letter to claimant thanking him for utilizing his margin privileges, including a copy of a

booklet entitled "Trading on Margin", which was in addition to the margin disclosure contained in claimant's account agreement with ODC.

Respondents also maintained that since ODC does not research or follow Iomega, and its brokers are prohibited from making any recommendations as such, claimant himself read about and made the choice to buy the stock himself. Respondents contended that this arbitration is basically a disappointed investors attempt to hold his broker and brokerage firm responsible for trading losses.

RELIEF REQUESTED

Claimant requested damages of \$76,888.50, plus interest from October 1, 1995, costs and disbursements incurred by claimant in arbitrating the matter, and punitive damages of \$100,000.

Respondents requested that the Statement of Claim be dismissed in its entirety and that claimant be required to reimburse respondents for all reasonable costs and fees incurred, and that this action be expunged from the CRD records of Sperling and Harkrader.

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 remains on file with NASD.

AWARD

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

- 1) An award of \$29,000.00, inclusive of interest through July 2, 1997, for compensatory damages only, should be made in favor of the claimant against respondents, with liability to be apportioned as follows:
 - a) 20% as against respondents Marc A. Sperling and Olde Discount Corporation, jointly and severally; and
 - b) 80% as against respondents Milton E. Harkrader III and Olde Discount Corporation, jointly and severally.
- 2) Respondents be and hereby are liable for all filing, arbitrators and other forum fees in the percentages mentioned above.

- 3) All other relief requests are denied.

FORUM FEES

Pursuant to Rule 10332 of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation, Inc. shall retain the \$200 non-refundable filing fee previously deposited by the claimant and have assessed the following forum fees:

$$4 \text{ Hearing Sessions} \times \$750 = \$3,000$$

Forum fees assessed against respondents with liability to be apportioned as follows:

- (1) Respondents Sperling and Olde be and hereby are jointly and severally liable and shall pay the NASD Regulation, Inc., 20% of the \$2,225 owed for the forum fees.

- (2) Respondent Harkrader and Olde be and hereby are jointly and severally liable and shall pay the NASD Regulation, Inc., 80% of the \$2,225 owed for the forum fees.

- (3) Respondents Sperling and Olde be and hereby are jointly and severally liable and shall pay claimant 20% of \$950.00, reimbursing claimant for his filing fee and hearing session deposit.

- (4) Respondents Harkrader and Olde be and hereby are jointly and severally liable and shall pay claimant 80% of the \$950.00, reimbursing claimant for his filing fee and hearing session deposit.

- (5) Respondent Olde be and hereby is liable and shall pay the NASD Regulation, Inc. the sum of \$350.00, representing the member surcharge fee owed.

Fees are payable to the NASD Regulation, Inc.

ARBITRATORS' SIGNATURE

Blair Allen, Esq.
Public Chairperson

Donald G. Hatt, Esq.
Public Arbitrator

Arnold M. Kaplan
Industry Arbitrator

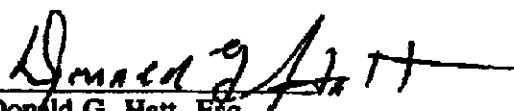
Date of Decision: October 29, 1997

I, Blair Allen, Esq., do hereby affirm pursuant to Article 7505 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.


Blair Allen, Esq.

ARBITRATORS' SIGNATURES

Blair Allen, Esq.
Public Chairperson


Donald G. Hatt, Esq.
Public Arbitrator

Arnold M. Kaplan
Industry Arbitrator

Date of Decision: October 29, 1997

I, Donald G. Hatt, Esq., do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.


Donald G. Hatt, Esq.

ARBITRATORS' SIGNATURES

Blair Allen, Esq.
Public Chairperson

Donald G. Hatt, Esq.
Public Arbitrator


Arnold M. Kaplan
Industry Arbitrator

Date of Decision: October 29, 1997

I, Arnold M. Kaplan, do hereby affirm pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.


Arnold M. Kaplan