

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Olde Discount Corporation,

Claimant and Counter-Respondent,

v.

No. 97-00108

Frank Michael Dimercurio, and
Virginia Dimercurio,

Respondents and Counter-Claimants.

REPRESENTATION OF PARTIES

Claimant and Counter-Respondent Olde Discount Corporation ("Claimant") was represented by David M. Kuhna of Olde Discount Corporation located in Detroit, Michigan.

Respondents and Counter-Claimants Frank Michael Dimercurio and Virginia Dimercurio ("Respondents") were represented by Laurence S. Schultz, Esq. of Driggers, Schultz & Herbst located in Troy, Michigan.

CASE INFORMATION

The Statement of Claim was filed on or about January 7, 1997.

Claimant's Submission Agreement was signed on January 7, 1997.

Respondents' Statement of Answer and Counterclaim was filed on or about April 11, 1997.

Respondents' Joint Submission Agreement was signed on April 7, 1997.

HEARING INFORMATION

The hearing was held on January 19, 1998 for two (2) sessions in Southfield, Michigan.

CASE SUMMARY

Claimant alleged that it erroneously journaled a debit of \$9,985 as well as 170 shares of IBM and 187 shares of Mellon Bank Corp. stock into Respondents' securities account. Claimant contended that after Respondents sold all stocks in their securities account, Claimant realized its error and contacted Respondents to inquire about the sale of the IBM and Mellon Bank Corp. stock, as well as the \$9,985.50 credit. Claimant maintained that Respondents have chosen to ignore Claimant's demand of their outstanding debit account balance. Claimant asserted that it was forced per federal regulations to buy back the IBM and Mellon Bank Corp. stock to cover its positions.

Respondents denied all liability to Claimant in their Statement of Answer and Counterclaim. Respondents alleged that they sold their stocks without knowledge of Claimant's error. Respondents contended that they immediately called Claimant after receiving a check containing the overpayment, and was told the account would be checked by Claimant. Respondents asserted that when Claimant finally contacted them, Claimant demanded a sum which exceeded the overpayment by almost \$15,200. Respondents contended that they would refuse to pay any more than the dollar amount erroneously credited to their account.

RELIEF REQUESTED

Claimant requested an award of \$12,519.65, plus interest, costs and attorney fees.

Respondents requested that the Statement of Claim be dismissed in its entirety with prejudice, plus an award of actual attorney fees, plus costs.

OTHER ISSUES CONSIDERED & DECIDED

The parties 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 Respondents and Counter-Claimants Frank Michael Dimercurio and Virginia Dimercurio are jointly and severally liable for and shall pay to Claimant Olde Discount Corporation actual damages in the amount of Eight Thousand Seven Hundred and Ninety Four Dollars and Thirty Eight Cents (\$8,794.38), plus interest in the amount of Six Hundred Seventy Six Dollars and Twenty One Cents (\$676.21);
- (2) That Claimant and Counter-Respondent Olde Discount Corporation is liable for and shall pay to Respondents and Counter-Claimants Frank Michael Dimercurio and Virginia Dimercurio legal fees in the amount of Three Thousand Five Hundred Dollars and No Cents (\$3,500.00). The panel finds that an award of attorney fees in this matter is allowed under Michigan law; and
- (3) That any relief not specifically enumerated is hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$600 per hearing session and \$300 for each pre-hearing conference, if any. There were two (2) hearing sessions x \$600 = \$1,200 in forum fees. Total forum fees = \$1,200. 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, NASD Regulation, Inc. Office of Dispute Resolution shall retain Claimant's non-refundable filing fee in the amount of \$500 and shall retain as forum fees the hearing session deposit in the amount of \$300 previously deposited by the Claimant. Pursuant to §10333 of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain Claimant's member surcharge in the amount of \$200.

Pursuant to §10332(c) of the Code, Claimant is liable for and shall pay forum fees in the amount of \$300 (1/2 total forum fees - hearing session deposit).

Pursuant to §10332(c) of the Code, Respondents are jointly and severally liable for and shall pay the non-refundable filing fees associated with the filling of their Counterclaim in the amount of \$250, plus forum fees in the amount of \$600 (1/2 total forum fees).

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

Concurring Arbitrators' Signatures:

/s/ Terrance J. Dorcy

Terrance J. Dorcy
Chairperson
Public Arbitrator

January 30, 1998

Dated:

/s/ Michael J. Meeusen

Michael J. Meeusen
Panelist
Public Arbitrator

February 2, 1998

Dated:

/s/ Nancy R. Papo

Nancy R. Papo
Panelist
Industry Arbitrator

January 29, 1998

Dated:

For NASD Regulation use only:

Date award served on parties:

February 6, 1998