

NASD REGULATION, INC.
AWARD

In the Matter of the Arbitration Between

Names of Claimants

Katherine A. Pisaneschi
Katherine A. Pisaneschi Trust

vs.

Case No.
98-00294

Names of Respondents

Olde Discount Corporation (a/k/a Olde & Co., Incorporated)
Edward A. Tracy

REPRESENTATION

For Claimants Katherine A. Pisaneschi ("Pisaneschi") and Katherine A. Pisaneschi Trust (collectively "Claimants") appeared Roger Wise, Esq. of the firm Heintzman, Warren, Wise & Fornella, P.C., located in Pittsburgh, Pennsylvania.

For Respondents Olde Discount Corporation (a/k/a Olde & Co., Incorporated) ("Olde") and Edward A. Tracy ("Tracy") (collectively "Respondents") appeared Ina N. Otto, Esq., of the Office of the General Counsel of Olde Discount Corporation, located in Detroit, Michigan.

CASE INFORMATION

Claimants' Statement of Claim was filed on January 22, 1998.
Claimants' Submission Agreement was signed on February 9, 1998.
Claimants' Amended Statement of Claim was filed on February 11, 1998.

Respondents' Joint Statement of Answer was filed on April 7, 1998.
Respondent Olde's Submission Agreement was signed on March 3, 1998.
Respondent Tracy's Submission Agreement was signed on January 25, 1998.

HEARING INFORMATION

Pre-Hearing Conference: September 14, 1998

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1 session

Hearing Dates/Sessions:	March 4, 1999	-	2 sessions
	March 5, 1999	-	2 sessions

The pre-hearing conference was conducted telephonically. The hearings were conducted at the Westin William Penn, located in Pittsburgh, Pennsylvania.

CASE SUMMARY

Claimants alleged that Pisaneschi is a 58-year-old widow who has been disabled since February 1994, and has been unable to engage in her profession as an elementary school teacher. Claimants further alleged that Pisaneschi's husband handled all family financial matters until his death in 1989, and that Pisaneschi is unsophisticated in financial matters. Claimants maintained that Pisaneschi invested approximately \$250,000.00 in a trust account at Olde, through Tracy, a registered representative and the Pittsburgh Branch Office Manager, beginning in February, 1993. Claimants also maintained that Pisaneschi's account value was approximately \$105,000.00 upon its closing in October 1997.

Claimants contended that Tracy engaged in improper, fraudulent, and illegal conduct with respect to the account because of Olde's compensation, production, training, and other practices. Claimants asserted that Olde's policies and practices led Tracy to: (a) treat Claimants' account as a discretionary account, even though he had no authorization to do so; (b) purchase numerous unsuitable investments; (c) deliberately fail to seek prior approval of purchases and sales of securities; (d) churn the account; (e) open a margin account without ever explaining the nature of the account to them; (f) issue numerous checks on margin; (g) borrow substantial amounts of money on margin to purchase unsuitable investments; and (h) secretly update the customer preference profile to state that Pisaneschi was an "aggressive" investor in order to justify the purchase of speculative stocks and to churn the account. Claimants contended that Olde is liable for the acts of Tracy because Tracy performed these acts as an Olde employee and as Olde's Pittsburgh Branch Office Manager. Claimants further contended that Olde is also liable for the acts of Tracy because they occurred in an environment created by Olde's firm policies and practices. Claimants asserted that Tracy is also liable for his illegal conduct, which was done in his capacity as a registered representative, employee, and management representative of Olde.

Claimants maintained that the acts of Respondents jointly and severally constituted: (a) violations of Section 10(b) of the Securities and Exchange Act of 1934 and Rule 10b-5, illegal churning and purchasing unsuitable securities; (b) a breach of NASD Rules of Fair Practice; (c) fraud, deceit, and recklessness; (d) a violation of the Pennsylvania Unfair Trade Practice and Consumer Protection Law (UTCPL); and (e) a violation of the Michigan Uniform Securities Act.

Respondents maintained that the profits and losses which occurred in Claimants' account were solely the result of Pisaneschi's own, deliberately chosen trading strategy and operative market forces. Respondents alleged that, since this account was not discretionary and Olde does not permit discretionary accounts, Tracy was required to receive express authorization from Claimants prior to entering every trade. Respondents contended that, Claimants failed to respond to the confirmation slips and, therefore, ratified all trades. Respondents asserted that, through monthly account statements, Claimants were also well aware of the character and

volume of activity in the account and did not express concern that trading in the account was excessive. Respondents contended that Claimants possessed sufficient means to purchase the investments, and simply because an investor may have earned a greater return utilizing other investment vehicles does not mean that the transactions recommended by the broker are unsuitable, or that the broker is liable for the investor's losses. Respondents asserted that, of the thirty-five securities purchased in the account over the five years it remained open, fewer than one-third failed to be profitable. Respondents contended that the account earned profits of approximately \$24,000.00 and, thus, Claimants losses do not total the claimed compensatory damages.

RELIEF REQUESTED

Claimants requested compensatory damages in excess of \$300,000.00, plus unspecified punitive damages, attorneys' fees, and costs, assessed against Respondents jointly and severally. Claimant alternatively requested three times the compensatory damages against Respondents, jointly and severally, pursuant to the Pennsylvania UTPCPL.

Respondents requested that all counts be denied in their entirety. Respondent Tracy also requested that the panel issue an Order in this matter, specifically expunging any reference to this action from his Central Registration Depository ("CRD") record.

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 Regulation, Inc.

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. Respondent Olde be and is hereby liable for and shall pay to Claimants compensatory damages in the amount of \$100,000.00, inclusive of interest.
2. Respondent Olde be and is hereby liable for and shall pay to Claimants the sum of \$200.00 to reimburse Claimants for the filing fee paid to NASD Regulation, Inc.
3. Respondent Olde be and is hereby liable for all forum fees associated with this arbitration, as set forth more fully in the "Forum Fees" section, below.
4. All other requests are hereby denied.

OTHER COSTS

Pursuant to Rule 10333 of the *NASD Code of Arbitration Procedure* ("Code") Olde has paid NASD Regulation, Inc. the \$1,500.00 member surcharge previously invoiced.

Pursuant to Rule 10333 of the *NASD Code of Arbitration Procedure* ("Code") Olde has paid NASD Regulation, Inc. the \$600.00 pre-hearing process fee previously invoiced.

Pursuant to Rule 10333 of the *NASD Code of Arbitration Procedure* ("Code") Olde has paid NASD Regulation, Inc. the \$2,500.00 hearing process fee previously invoiced.

FORUM FEES

Pursuant to Rule 10332(c) of the *Code*, the arbitrators have determined that NASD Regulation, Inc. will retain the \$200.00 non-refundable filing fee paid by Claimants and have assessed the following Forum Fees:


1 pre-hearing conference x \$750.00	=	\$ 750.00
4 hearing sessions (full panel) x \$750.00	=	<u>\$3,000.00</u>
Total Forum Fees	=	\$3,750.00

Respondent Olde is liable for and shall pay to NASD Regulation, Inc. the sum of \$3,750.00, representing the total amount of forum fees assessed.

ARBITRATION PANEL

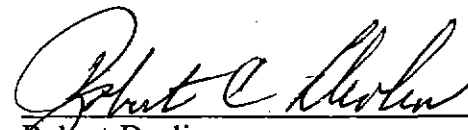
Robert Devlin, Esq.	-	Public Chairperson
Cynthia M. Frederick, Esq.	-	Public Arbitrator
Garry Lee Hogan	-	Industry Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE


Robert Devlin, Esq.

Date of decision: April 7, 1999

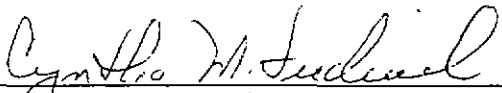
I, Robert Devlin, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.


Robert Devlin

ARBITRATION PANEL


Robert Devlin, Esq.	-	Public Chairperson
Cynthia M. Frederick, Esq.	-	Public Arbitrator
Garry Lee Hogan	..	Industry Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE


Cynthia M. Frederick, Esq.

Date of decision: April 7, 1999

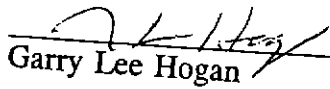
I, Cynthia M. Frederick, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.


Cynthia M. Frederick, Esq.

ARBITRATION PANEL

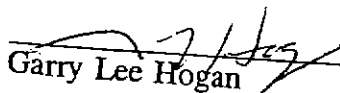
Robert Devlin, Esq.	-	Public Chairperson
Cynthia M. Frederick, Esq.	-	Public Arbitrator
Garry Lee Hogan	-	Industry Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE


Garry Lee Hogan

Date of decision: April 7, 1999

I, Garry Lee Hogan, 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.


Garry Lee Hogan