

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Mali Mirmesdagh

Case No. 99-00675

Names of Respondents

Olde Discount Corporation
Timothy Brown

REPRESENTATION OF PARTIES

For Claimant Mali Mirmesdagh hereinafter referred to as "Claimant": J. Pat Sadler, Esq. and Eric Hovdesven, Esq. of the law firm of Sadler & Associates, P.C., Atlanta, Georgia.

For Respondents Olde Discount Corporation ("Olde") and Timothy Brown ("Brown"): David T. Doyle, Esq. and Curt Lofgren, Esq. of Olde Discount Corporation, Detroit, Michigan.

CASE INFORMATION

Statement of Claim filed on or about: February 12, 1999.

Claimant signed the Uniform Submission Agreement: February 8, 1999.

Statement of Answer filed by Respondents on or about: May 10, 1999.

Respondent Olde signed the Uniform Submission Agreement: May 10, 1999.

Respondent Brown did not file an executed Uniform Submission Agreement.

CASE SUMMARY

Claimant opened an account at Olde in September, 1998 using funds from the sale of stock her husband had received through business. The funds were initially invested in Coca-Cola, Dell Computer, Cisco Systems, Lucent Technologies and similar securities. Claimant desired to receive a greater rate of return on these funds than had been accruing, however. In or about mid-November, 1998, Claimant heard of an after-market offering of an internet related security, TheGlobe.com, that was to be offered for the first time on Friday, November 13, 1998. On the Thursday before that date, Claimant asked Respondent Brown, her registered representative at Olde, about purchasing a position in this offering. Brown was not familiar with it, it was not something offered through Olde, but he said he would check. Claimant further consulted another broker, Fara Harandi, at another firm with whom she had opened an account in the previous month. Ms. Harandi testified by telephone that Claimant desired to take a very large position in TheGlobe.com and wanted to put in a

market order. Ms. Harandi's firm at the time would not allow a market order on a newly-offered initial public offering ("IPO"). Ms. Harandi testified that Claimant insisted that she wanted to get in and out of TheGlobe.com on the same day and that she wanted to be sure her transaction executed and insisted on a market order, if not in those terms, in substance.

Mr. Brown testified that Claimant insisted to him that a market order be entered, although Mr. Brown recommended a limit order and was aware that Olde policy required limit orders in all after-market IPOs. Mr. Brown, upon looking into TheGlobe.com, informed Claimant that the security probably would open between \$9.00, the underwriter's price, and \$30.00. Mr. Brown testified that Claimant at first wanted to purchase 10,000 shares but reduced the position to 7,000 shares before any order was placed. Claimant testified that she had some \$210,000.00 in her account at the time and at the maximum expected possible offering price of \$30.00, 7,000 shares would be covered by her liquid funds. Upon Claimant's continuing to insist on a market order, Mr. Brown placed a market order for 7,000 shares on Friday morning prior to the opening of the market. Claimant testified that she spoke with another Olde representative, Pervez Kaisani, on Friday morning and that he also advised her to enter a limit order. Claimant understood a limit order to mean to limit the size of the position she would take, and consequently spoke with Mr. Brown and reduced her order to 5,000 shares, at market. Mr. Brown testified that he cancelled the 7,000 share order and entered a 5,000 share order, but still at market. That order was entered at 10:59 on Friday morning and executed at 11:10 (Respondents' Exhibit No. 1). Claimant called Mr. Brown shortly thereafter and learned that TheGlobe.com had opened at \$90.00. Claimant, aware that she did not have funds to cover a \$450,000.00 purchase, was shocked and asked Mr. Brown to cancel the order, but upon checking, Mr. Brown learned that it had been executed. Claimant testified she then told Mr. Brown to sell the position since she could not cover it and Mr. Brown told her the security had been bouncing up and down and she should place a limit order at \$95.00 and perhaps could still execute a sell and get out at a profit. Mr. Brown testified that Claimant was reluctant to sell at market and wished still to make a profit on the trade if possible, and asked for a limit order at \$95.00. That order was entered at 11:22 but did not execute, and upon Claimant calling back, a limit order at \$91.00 was entered at 12:03. TheGlobe.com was trading at \$88.00 - \$89.00 at the time. That order did not execute. Claimant then drove to the Olde office, spoke to the branch manager, and watched trading at Mr. Brown's terminal for the remainder of the afternoon, hoping the price would rebound and at least cut her losses. Towards the end of the trading day, a limit order to sell at \$62.00 was entered at 3:50 and six minutes later a market order to sell was entered. The limit order executed at 4:02 P.M., realizing a loss of more than \$140,000.00 to Claimant.

Claimant testified that Mr. Brown had urged her to maintain the position and that she would not realize a loss until it was sold. Claimant testified that she insisted she had no funds to pay for the position and had no choice but to sell.

Claimant alleged that she was unsophisticated and did not understand market and limit orders; that she was misled by Mr. Brown's original projections that TheGlobe.com would open between \$9.00 and \$30.00; that she and Mr. Brown set her initial position of 7,000 shares based upon funds she had in the account to cover that trade at the highest expected

opening price; that when TheGlobe.com opened at \$90.00, she immediately told Mr. Brown to sell but he encouraged her to enter limit orders at \$95.00 and \$91.00 and that she agreed based upon his advice; and, that at the end of the trading day, she had no choice but to get out of the position since she could not afford to pay.

Respondents alleged that Claimant had entered limit and market orders in the Olde account and in the account with Ms. Harandi in the past; that she understood the functions of a limit order; that she had been advised by Mr. Brown to enter a limit order several times for TheGlobe.com position; that Ms. Harandi had also advised her to enter a limit order; and, that Claimant instead insisted that she wanted to make a quick profit, wanted to insure that her order would execute, and declined to enter a limit order because she wanted to get in and out of the stock the same day. Respondents alleged that they had no duty to Claimant that would prevent them from entering her order upon her insistence; that they did so; that the position was not sold when it was first discovered that TheGlobe.com had opened at \$90.00 because Claimant wanted to place limit orders to try to recoup some profit; and, that Claimant throughout directed all trading and decisions in the account and that Respondents were mere order-takers and have no liability to Claimant for her losses.

RELIEF REQUESTED

Claimant requested an award of \$140,663.84 in compensatory damages; interest; and, attorney's fees and expenses of not less than \$70,000.00.

Respondents requested that the Statement of Claim be dismissed in its entirety; that all arbitration fees and expenses be assessed against Claimant; and, that the Panel enter an order expunging all references to this arbitration from the CRD record of Mr. Brown.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Brown did not file with the NASD Regulation, Inc., Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure ("Code") and having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

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.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

While Respondents are not insurers of Claimant responsible for any losses she might incur

regardless of the circumstances, this trade in an aftermarket IPO was something new and different in Claimant's account; it was much more risky than the securities she had previously purchased; the trade was contrary to the objectives set out in Claimant's new account documents, which were conservative in nature; and, Respondents had a duty to know their customer and to advise her most strongly regarding the risk of this new trading strategy she wished to pursue. Instead, although Mr. Brown did suggest limit orders, Mr. Brown did enter the order at market, against Olde policy, and without any consultation with the branch manager or other Olde authority. Mr. Brown knew Claimant's account did not have funds to cover the order if it opened above \$30.00 per share, and at the time the order was entered, his blotter shows the quote at \$50.00 - \$60.00.

Not only was the order entered at market, but for an exceedingly large block, constituting almost all of Claimant's account funds and concentrating them in one exceedingly risky transaction. The Panel finds that Mr. Brown did not sufficiently inform Claimant of the risk, which was not that she might miss an opportunity for a sizeable appreciation in capital as she believed, but that she might end up in the situation that in fact occurred, with a considerable loss in the account. There was no testimony whatsoever concerning Respondents' advising Claimant of these risks, and while Claimant may have initiated and directed this transaction, she is certainly not a sophisticated trader and Respondents certainly should have been aware of that fact. This transaction was unsuitable for Claimant and Respondents were in the best position to be aware of that and to advise Claimant most forcefully of the dangers involved. Further, regardless of the circumstances of the limit orders at \$95.00 and \$91.00, after the transaction had executed at \$90.00, much to the dismay of all parties, Olde was by far in the best position then to insist that Claimant sell the position even if she wanted to hang on long enough to pick up a small profit. Certainly, Respondents were aware that Claimant did not have funds in the account sufficient to cover the trade that had just occurred, and should have advised her strongly to sell out immediately.

At the same time, the Panel finds that Claimant initiated this transaction; that she was eager for quick profits in the account; that she ignored the advice of Mr. Brown, Ms. Harandi and perhaps others; that she wanted a big trade with a big return; and, that she was insistent that the transaction be undertaken as she wished. Mr. Brown had other customers that day interested in TheGlobe.com and each entered a limit order.

The Panel finds that Respondents did breach duties to Claimant arising from the fiduciary relationship between broker and customer, as well as duties and standards of care arising from the requirements of the NASD Rules of Conduct. However, Claimant did not exercise sufficient care for her own best interests under the circumstances, ignoring the advice of Mr. Brown, Ms. Harandi and others. Although she is not a sophisticated investor, she certainly should have been aware under the circumstances that the transaction she wanted was fraught with peril and risk and although she did not understand the depth of the danger, nevertheless, she assumed some of the risk of the losses she in fact incurred. Both Claimant and Respondents are comparatively responsible for the resulting losses in her account.

Therefore, the undersigned arbitrators have decided in full and final resolution of all of the

issues submitted for determination that:

Respondents are jointly and severally liable to Claimant and shall pay to her the sum of \$40,000.00, pre-judgment interest specifically excluded. Post-judgment interest shall accrue in accordance with Rule 10330(h) of the Code;

Each party shall bear his or her own costs, including attorney's fees; and,

Mr. Brown's request for an expungement of all references to this matter from his CRD record is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$200.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$600.00
Hearing process fee	= \$2,500.00

Adjournment Fees

No Adjournments were requested during these proceedings.

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One Pre-hearing session(s) with Panel x \$750.00	= \$750.00
Pre-hearing conference(s): July 22, 1999	1 session
Two Hearing sessions x \$750.00	= \$1,500.00
Hearing Date(s): December 7, 1999	2 sessions
Total Forum Fees	= \$2,250.00

The Panel has assessed \$1,125.00 of the forum fees to Claimant.

The Panel has assessed \$1,125.00 of the forum fees jointly and severally to Respondents.

Fee Summary

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$200.00
Forum Fees	= <u>\$1,125.00</u>
Total Fees	= \$1,325.00
<u>Less payments</u>	= <u>\$950.00</u>
Balance Due NASD Regulation, Inc.	= \$375.00

Respondent Olde be and hereby is solely liable for:

Member Fees	= \$4,600.00
Total Fees	= \$4,600.00
<u>Less payments</u>	= <u>\$4,600.00</u>
Balance Due NASD Regulation, Inc.	= \$0.00

Respondents Olde and Brown be and hereby are jointly and severally liable for:

Forum Fees	= \$1,125.00
<u>Less Payments</u>	= <u>\$0.00</u>
Balance Due NASD Regulation, Inc.	= \$1,125.00

All balances are due and payable to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

_____/s/
Robert H. Putnam, Jr., Esq.
Public Arbitrator, Presiding Chair

Signature Date

_____/s/
Fran L. Rothenberg, Esq.
Public Arbitrator

Signature Date

_____/s/
Joseph J. Castro, CFP
Industry Arbitrator

Signature Date

December 29, 1999

Date of Service (For NASD office use only)

Fee Summary

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$200.00
Forum Fees	= \$1,125.00
Total Fees	= \$1,325.00
<u>Less payments</u>	<u>= \$950.00</u>
Balance Due NASD Regulation, Inc.	= \$375.00

Respondent Olde be and hereby is solely liable for:

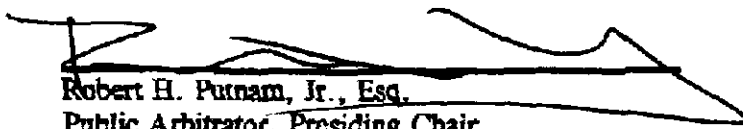
Member Fees	= \$4,600.00
Total Fees	= \$4,600.00
<u>Less payments</u>	<u>= \$4,600.00</u>
Balance Due NASD Regulation, Inc.	= \$0.00

Respondents Olde and Brown be and hereby are jointly and severally liable for:

Forum Fees	= \$1,125.00
<u>Less Payments</u>	<u>= \$0.00</u>
Balance Due NASD Regulation, Inc.	= \$1,125.00

All balances are due and payable to NASD Regulation, Inc.

Concurring Arbitrators' Signatures


Robert H. Putnam, Jr., Esq.
Public Arbitrator, Presiding Chair

15 Dec 99
Signature Date

Fran L. Rothenberg, Esq.
Public Arbitrator

Signature Date

Joseph J. Castro, CFP
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

Fee Summary

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$200.00
Forum Fees	= \$1,125.00
Total Fees	= \$1,325.00
<u>Less payments</u>	<u>= \$950.00</u>
Balance Due NASD Regulation, Inc.	= \$375.00

Respondent Olde be and hereby is solely liable for:

Member Fees	= \$4,600.00
Total Fees	= \$4,600.00
<u>Less payments</u>	<u>= \$4,600.00</u>
Balance Due NASD Regulation, Inc.	= \$0.00

Respondents Olde and Brown be and hereby are jointly and severally liable for:

Forum Fees	= \$1,125.00
<u>Less Payments</u>	<u>= \$0.00</u>
Balance Due NASD Regulation, Inc.	= \$1,125.00

All balances are due and payable to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

Robert H. Putnam, Jr., Esq.
Public Arbitrator, Presiding Chair

Signature Date



Fran L. Rothenberg, Esq.
Public Arbitrator

12/27/99

Signature Date

Joseph J. Castro, CFP
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

Fee Summary

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$200.00
Forum Fees	= \$1,125.00
Total Fees	= \$1,325.00
<u>Less payments</u>	<u>= \$950.00</u>
Balance Due NASD Regulation, Inc.	= \$375.00

Respondent Olde be and hereby is solely liable for:

Member Fees	= \$4,600.00
Total Fees	= \$4,600.00
<u>Less payments</u>	<u>= \$4,600.00</u>
Balance Due NASD Regulation, Inc.	= \$0.00

Respondents Olde and Brown be and hereby are jointly and severally liable for:

Forum Fees	= \$1,125.00
<u>Less Payments</u>	<u>= \$0.00</u>
Balance Due NASD Regulation, Inc.	= \$1,125.00

All balances are due and payable to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

Robert H. Putnam, Jr., Esq.
Public Arbitrator, Presiding Chair

Signature Date

Fran L. Rothenberg, Esq.
Public Arbitrator

Signature Date



Joseph J. Castro, CFP
Industry Arbitrator

December 15, 1999

Signature Date

Date of Service (For NASD office use only)