

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between:

Peter and Susan Najar vs. Olde Discount Corporation and Scott Robertson

Case Number: 99-1102

Hearing Site: Detroit, Michigan

REPRESENTATION OF PARTIES

Claimants, Peter Najar and Susan Najar hereinafter collectively referred to as "Claimants": Anthony V. Trogan, Esq., Weisman, Trogan, Young & Schloss, Bingham Farms, Michigan.

Respondents, Olde Discount Corporation ("Olde") and Scott Robertson ("Robertson") hereinafter collectively referred to as "Respondents": Howard M. Klausmeier, Esq., Olde Discount Corporation, Detroit, Michigan.

CASE INFORMATION

Statement of Claim filed on or about: March 5, 1999

Claimant, Peter Najar, signed the Uniform Submission Agreement: March 5, 1999

Claimant, Susan Najar, signed the Uniform Submission Agreement: March 5, 1999

Statement of Answer filed by Respondents on or about: May 6, 1999

Respondent, Olde, signed the Uniform Submission Agreement: March 26, 1999

Respondent, Scott Robertson, signed the Uniform Submission Agreement: April 21, 1999

Respondents' Motion to Strike Exhibits filed on or about: January 27, 2000

Claimants Reply to Motion to Strike filed on or about: February 1, 2000

CASE SUMMARY

Claimants alleged that they opened an account with Respondents in April of 1987, at that time indicating that they were conservative investors with limited investment experience. Claimants alleged a pattern of minimal trading until early 1994, when Respondent Robertson became Claimants' broker and began pressuring Claimants to trade in their account. Claimants asserted that Respondent Robertson professed to have great skill and experience in investments and encouraged Claimants to rely solely upon him to manage their account. Claimants further asserted that after much persuasion, Claimants agreed to rely totally upon Respondent to make decisions in their account and allowed more trading in the account.

According to Claimants, in exercising control over Claimants' account, Respondents utilized improper sales techniques (as promulgated by Olde management) by misleading Claimants concerning "commission free" trading on stocks with wide margins which offset commission savings; by recommending unsuitable investments for Claimants, investments which were in opposition to Claimants' stated objections, and then misrepresenting the characterization of Claimants' investment goals as "aggressive" to achieve the level and nature of trading that Respondents desired.

Additionally, Claimants alleged that Respondents neglected to provide adequate risk disclosure and/or misrepresented that products were risk free or nearly so, when they were not. Claimants also averred that Respondents abused the use of margin in the account, and recommended securities in which Olde made a market, irrespective of Claimants' best interest and goals, in order to qualify for commission incentive plans offered by Olde.

Claimant's claim is based upon the following legal theories and principles: breach of contract; common law fraud; conspiracy; promissory estoppel; conversion; negligence; malpractice; breach of fiduciary duty; breach of Michigan securities law; and violation of Michigan Consumer Protection laws.

Unless specifically admitted in their Answer, Respondents, Olde and Robertson, denied the allegations made in the Statement of Claim and asserted the following defenses: failure to state a claim upon which relief may be granted; Claimants' claims are barred by the statute of frauds; Claimants' claims are barred by laches, waiver, estoppel and ratification; Respondents' obligations to Claimants have been satisfied and discharged; the alleged wrongdoing of which Claimants complain was perpetrated, if at all, by an individual or entities other than Olde or its agents and therefore, Respondents are not liable in any respect; Claimants assumed the risk of their investment transactions and the investment losses incurred; economic, industry, corporate and market conditions, and not Respondents were responsible for Claimants losses, if any; Claimants may not recover punitive or exemplary damages, as the recovery of such damages is not permitted under applicable state laws; Respondents have no knowledge of or reasonable grounds to believe the existence of any facts by reason of which liability is alleged, and therefore, Respondents cannot be held liable; Claimants' claims are time barred by applicable statutes of limitation.

RELIEF REQUESTED

Claimants requested \$125,000.00 as out-of-pocket loss, plus 12% interest, costs, attorney fees, exemplary and punitive damages, additional damages as allowed and determined by the panel, and rescission.

Respondents requested that all counts of Claimants' Claim be denied in their entirety, plus costs, expenses, and expungement of any and all references to this matter from Respondent Robertson's CRD file.

OTHER ISSUES CONSIDERED AND DECIDED

The panel denied Respondents' Motion to Strike Exhibits.

At hearing, Respondents moved to dismiss based on statutes of limitations, failure to state a claim for express contract, fraud, and all other claims. The panel granted Respondents' Motions to Dismiss for Failure to State a Claim.

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, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Claimants claims, in their entirety, are dismissed with prejudice;
- 2.) The panel recommends the expungement of any and all references to the above-captioned arbitration from Respondent Scott Robertson's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Scott Robertson (CRD# 2360754) must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
- 3.) That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 4.) That any relief not specifically enumerated, including punitive and exemplary damages is hereby denied with prejudice.

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
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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

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:

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One (1) Pre-hearing session with Panel x \$300.00 = \$ 300.00
Pre-hearing conference: October 7, 1999 1 session

Three (3) Hearing sessions x \$750.00 = \$2,250.00
Hearing Dates: March 14, 2000 2 sessions
March 15, 2000 1 session

Total Forum Fees = \$2,550.00

The Panel has assessed \$2,550.00 of the forum fees, jointly and severally, to Peter and Susan Najjar.

Fee Summary

Claimants, Peter and Susan Najjar, be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 200.00
<u>Forum Fees</u>	= \$ 2,550.00
Total Fees	= \$ 2,750.00
<u>Less payments</u>	= \$ 950.00
Balance Due NASD Regulation, Inc.	= \$ 1,800.00

Respondent, Olde Discount Corporation, be and hereby is solely liable for:

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

All balances are due to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

D. Kerry Crenshaw
Public Arbitrator, Presiding Chair



Robert Hudson
Public Arbitrator

Signature Date

3/27/00

Signature Date

Stephen D. Arkwright
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

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Concurring Arbitrators' Signatures

D. Kerry Crenshaw
Public Arbitrator, Presiding Chair

Signature Date

Robert Hudson
Public Arbitrator

Signature Date

Stephen D. Arkwright
Industry Arbitrator

3-28-00

Signature Date

Date of Service (For NASD office use only)

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Concurring Arbitrators' Signatures


D. Kerry Crenshaw
Public Arbitrator, Presiding Chair

24 March 2000
Signature Date

Robert Hudson
Public Arbitrator

Signature Date

Stephen D. Arkwright
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)