

NATIONAL ASSOCIATION OF SECURITIES DEALERS INC.

In the Matter of the Arbitration Between

Manju Ahuja

Claimant

vs.

Olde Discount Corporation
John Perry

Respondents

AWARD

#90-01385

CASE SUMMARY

Claimant alleges that she purchased shares of General Nutrition Corp on July 20, 1989. She states that she tried to rectify the fact that a check for insufficient funds was tendered for the purchase by contacting her broker and having the check redeposited. She claims that she was told that she had no amount due on her account whenever she called. The stock of GNC was the subject of a Tender Offer which expired on August 18, 1990. Claimant contends that if her stock was unpaid for then she should have been sold out at the prices being offered of 10 7/8 or she should have been permitted to tender her stock. She states that the value of her stock subsequently dropped and that she sustained a \$4000.00 loss.

Respondents contend that the Claimant represented that she would be sending a replacement check and on that basis did not sell her out. They further contend that she never asked to have the stock sold. They claim that she first asked to have the stock sold after the tender expired.

RELIEF REQUESTED

Claimant seeks damages of \$4000.00 and Respondents seek dismissal.

AWARD

On October 24, 1990, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed by the Claimant on January 10, 1990 and by Olde Discount Corp. on June 25, 1990 and by John Perry on June 26, 1990. The Claimant had originally requested a hearing of the matter but then requested to have the case heard on the papers. The Respondent John Perry was the only party to actually appear for the hearing. Upon a statement by Mr. Perry that he had nothing further to add to his affidavit which was part of the Respondent's answer, the arbitrator announced on the record that he would therefore reach his decision on the basis of the written submissions. It was also noted on the record that on the morning of October 24th, the Claimant was requested to state whether she wished to appear at a later date. The Claimant advised by phone that she wished the proceeding to occur without her. Wherefore, the arbitrator having considered the pleadings, has determined in full and final resolution of the issues submitted for determination as follows:

1. The problem began when the check--issued by Claimant for the payment of stock--was returned for insufficient funds. Claimant alleges she offered to rectify the non-payment in a timely fashion and seeks damages because the stock ordered was not subsequently tendered or, in lieu thereof, sold by Respondent pursuant to Claimant's instructions. Respondents deny those allegations. Claimant submitted telephone records indicating she called Respondents; but, other than to indicate that calls were made, it still boils down to conflicting accounts as to what each party said to the other during this period. Under the circumstances, the Claimant has not sustained her burden of proving her claim; and, accordingly, The claim is dismissed.

2. The parties shall each bear their respective costs, including attorneys' fees;

3. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$100.00 filing fee previously deposited by the Claimant and Respondents be and hereby are liable and shall reimburse Claimant the \$100.00.

 10/26/90

Professor Constantine N. Katsoris, Esq.

Dated: October 29, 1990