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In the Matter of the Arbitration Between

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Name of Claimant

Michael Sopko

91-00513

Name of RespondentsOlde Discount Corporation  
David M. Clever

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REPRESENTATION

For Claimant Michael Sopko ("Claimant"): Anthony V. Trogan of Weisman, Trogan et al.

For Respondents Olde Discount Corp. ("Olde") and David M. Clever ("Clever"): Steve Weiss of Hertz, Schram et al.

CASE INFORMATION

Statement of Claim filed: February 8, 1991.

Claimant's Submission Agreement signed on: February 8, 1991.

Joint Statement of Answer filed by Respondents on: there was no date on the Statement of Answer; however it was received by the NASD on May 28, 1991.

Respondent, Olde's Submission Agreement signed on: April 22, 1991.

Respondent, Clever's Submission Agreement signed on: April 23, 1991.

HEARING INFORMATION

Hearing Dates/Sessions: October 24, 1991/2 sessions.

Hearing Location: Southfield, MI.

CASE SUMMARY

Claimant alleged he had no training and little or no "experience" in securities investment; however, he had engaged in securities trading with a

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friend who displayed knowledge of securities investing. Claimant stated he relied exclusively on the advice of his friend to buy or sell securities and opened an account with Olde because he did not want anyone else's advice except that of his friend. Claimant stated he paid his friend for each "good" trade suggested.

Claimant alleged he began to receive investment suggestions from Olde representatives soon after he opened his account with them. He stated that Olde had a financial interest as a market maker in the recommended securities. Claimant maintained he resisted these efforts until Clever persuaded him to acquire shares of Centerbank Family Banking Center ("Centerbank"). Claimant alleged Clever continued to recommend Centerbank and failed to advise Claimant to sell his shares as the price declined. Claimant stated he was eventually forced to sell all shares to meet margin calls.

Claimant alleged Respondents were in willful or negligent disregard of Claimant's investment objectives and in disregard of their fiduciary duty to Claimant; the Centerbank investment was without accurate disclosure of the risks attendant thereto; and Olde is required by law to supervise its agents.

Finally, Claimant alleged Respondents made misrepresentations; committed common law fraud; and violated Federal and State Securities Laws.

Respondents alleged that Claimant's margin account application stated his investment objectives to be "aggressive" and "growth" and that he told Clever he wanted to speculate.

Respondents stated Claimant's first transaction was the sale of his 165 shares of K-Mart stock and that same day he bought 1,600 shares of Irwin Magnetics Systems, Inc. ("Irwin") on margin and using his K-Mart proceeds. Respondents stated this was a speculative transaction; however, Claimant more than doubled his original deposit in the account in this one transaction.

Respondents maintained Claimant took \$14,591.04 out of the account after selling the Irwin stock and on April 3, 1989 he deposited a check for \$25,000.00 into the account. Respondents stated Claimant continued to trade in this fashion for about nine months profiting from every buy/sell transaction.

Respondents stated Centerbank was the one transaction which did not show a profit for Claimant. They stated Centerbank was recommended based upon a research report prepared by Olde's research department. Clever stated he advised Claimant not to buy Centerbank on margin, but that Claimant purchased 4,000 shares on June 6, 1989 and the price paid out of Claimant's own funds and with money he borrowed from Olde was \$54,000.00.

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Clever stated he and Claimant spoke often during the months following the purchase and that Olde sent him monthly statements which showed the value of the shares declining. Respondents maintained that in November and December Claimant sold a total of 800 shares and received a dividend of \$800.00 plus \$25,445.25 on the sales.

Respondents alleged they are not liable for Claimant's losses due to the decline in value of Centerbank; that Clever, as a broker of a non-discretionary account, did not owe Claimant a fiduciary duty, nor did he determine what purchases and sales to make; that a broker has no continuing duty to keep abreast of financial information which may affect his customer's portfolio; that fraud claims are not compensable; that as the price of Centerbank was not affected by any alleged statements or omissions by Respondents, they cannot be found liable to Claimant; that there is no private right of action under M.C.L. 451.501; that there is no private right of action with respect to suitability or supervisory responsibilities; Claimant has suffered not recoverable out of pocket losses; that interest is not recoverable; that attorneys' fees and costs are only recoverable by a Claimant in an NASD Arbitration where statute permits such recovery; and that punitive/exemplary damages are not recoverable.

**RELIEF REQUESTED**

Claimant requested: actual damages in the amount of \$30,000.00; costs; attorneys' fees; interest from account opening in 1989; exemplary and punitive damages.

Respondents requested: this case be dismissed on the basis of the facts and law presented herein, without a hearing, and that costs and attorneys' fees be assessed against the Claimant.

**OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that a handwritten, signed Award may be entered. In this case, the parties have agreed to receive a conformed copy of the Award while the original remains on file with the NASD.

**AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

- 1- the claims of the Claimant are denied;
- 2- all other claims are dismissed;

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3- the parties shall each bear their respective costs, including attorneys' fees.

**FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the NASD shall retain the \$100.00 non-refundable filing fee previously deposited and the following Forum Fees are assessed.

2 sessions X \$300 = \$600.00

Forum fees Assessed Against:

1- Claimant in the amount of \$300.00; however, Claimant may use his \$300.00 hearing session deposit to offset the forum fees due and owing;

2- Respondents, jointly and severally, in the amount of \$300.00.

Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATOR SIGNATURE

/s/  
Dwight Cheever/Public Arbitrator

Date of Decision: November 11, 1991