

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Sandra A. LoMonaco

92-01651

Name of Respondent

Olde Discount Corporation;  
CEFCU Financial Services/Credit Union Brokerage Services

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**REPRESENTATION**

For Claimant: Sandra A. LoMonaco was represented by Salvatore LoMonaco.

For Respondents: Olde Discount Corporation and CEFCU Financial Services/Credit Union Brokerage Services was represented by Bruce A. Campbell, Esq. of Olde Discount Corporation, located in Detroit, Michigan.

**CASE INFORMATION**

Statement of Claim filed: May 15, 1992.

Claimant's Submission Agreement signed on: June 15, 1992.

Statement of Answer filed by Respondent Olde Discount Corporation on: August 27, 1992.

Respondent Olde Discount Corporations's Submission Agreement signed on: August 27, 1992 by Bruce A. Campbell, Assistant Vice President/Corporate Attorney, Olde Discount Corporation.

Claimant's Motion to Bar pursuant to Section 25(b)(2)(iii) and Motion for Summary Judgement filed: September 2, 1992.

Respondents' Response to the Motion to Bar and Motion for Summary Judgment filed:

September 17, 1992.

Respondent CEFCU Financial Services/Credit Union Brokerage Services' Motion to Dismiss filed: December 30, 1992.

Claimant's Response to Motion to Dismiss/Renewed Motion for Summary Judgment filed: January 6, 1993.

Claimant's Supplemental Correction to the Statement of Claim filed: December 31, 1992.

### HEARING INFORMATION

Pre-Hearing Conference: None Held.  
Hearing Date/Sessions: January 22, 1993 for One (1) session.  
Hearing Location: Chicago, Illinois.

### CASE SUMMARY

Claimant Sandra LoMonaco ("LoMonaco") alleged that Respondents Olde Discount Corporation ("Olde") and CEFCU Financial Service/Credit Union Brokerage Services ("CUBS") failed to execute a Limit Buy order of common stock. LoMonaco specifically alleged that:

1. Her husband, Salvatore Lo Monaco, as executor of her IRA account at CUBS/Olde, placed a Limit Buy order of 4,000 shares of VideoCart, ("VCRT"), at a price of \$12.00;
2. Olde did not enter her order in a prompt fashion nor did they follow through as they should have because the ask price at the time of her order was \$12.25 and by the end of the day the stock price had reached 11 7/8, yet the order was not placed;
3. Salvatore LoMonaco assumed that the order was executed and the following day, tried to place a sell order when the price reached to \$14.50;
4. Salvatore LoMonaco was informed that his buy order had not been filled and when he questioned Respondent as to why his order had not been filled, he was told that the stock only momentarily hit his ask/bid price and that was why they were unable to execute the order;
5. Respondents were falsifying records since the call to Olde was place in the afternoon and the price spread in the morning was too great for them to have

accepted the limit order since the stock was close to \$13.00 per share at that time.

Respondent Olde denied the material allegations of the Statement of Claim, alleging that:

1. VCRT was traded on the NASDAQ/NMS system by competing market makers registered with the NASD. Via a computer system, NASDAQ displays the bid and offer of the competing market makers;
2. The only period of time for the customer's order to be executed was eight seconds and during that time, one computer-automated trade was executed for 200 shares;
3. At that same time, the offer changed to 12 1/8 and did not return to 12;
4. The typical bid/offer lasts for a period of minutes, except for the eight seconds which is the subject of this matter;
5. The most plausible explanation for the eight second interval was that an offer of 12 was entered by mistake, by a market maker and the mistake was discovered and corrected in eight seconds; and
6. The Claimant did not execute nor was she entitled to an execution on 4,000 shares of VCRT.

#### **RELIEF REQUESTED**

Claimant requested that the panel enter an award against Respondents for \$10,000 in compensatory damages, plus treble damages.

Respondents requested that the Statement of Claim be dismissed in its entirety.

#### **OTHER ISSUES CONSIDERED & DECIDED**

At the beginning of the hearing, several Motions were argued by the parties prior to the presentation of evidence. The panel, upon review of the papers filed and the arguments of the parties, made the following determinations:

1. Claimant's Motion to Bar Respondents' Presentation of Evidence and Motion for Summary Judgment were denied; and

2. Respondent CEFCU Financial Services/Credit Union Brokerage Services Motion to Dismiss was granted, upon the representation by Respondent Olde that if liability was found, it would be responsible.

At the close of the Claimant's case, Respondent Olde Discount Corporation raised a Motion for Directed Verdict. After hearing argument from the parties, the Panel determined that the Motion for Directed Verdict was granted in favor of Respondent Olde Discount Corporation, by unanimous decision of the arbitration panel.

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 originals remain on file with the NASD.

#### **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 CEFCU Financial Services/Credit Union Brokerage Services' Motion to Dismiss was granted and all claims against this Respondent are dismissed with prejudice;
2. Respondent Olde Discount Corporation's Motion for Directed Verdict is granted and the claims brought against this Respondent by Claimant Sandra A. LoMonaco are hereby dismissed with prejudice;
3. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein.

#### **OTHER COSTS**

The National Association of Securities Dealers, Inc. shall retain the \$400.00 hearing adjournment fee previously deposited by Respondent Olde Discount Corporation.

#### **FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed: One hearing session x \$400.00 per session = \$400.

The National Association of Securities Dealers, Inc. shall retain the \$120.00 claim filing fee and

the \$400.00 hearing session deposit previously deposited by the Claimant Sandra A. LoMonaco.

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

Concurring Arbitrators' Signatures

Name:

Date:

Sheldon I. Saitlin, Esq.  
Sheldon I. Saitlin, Esq.  
Public Arbitrator  
Chairperson

April 5, 1993

Robert W. Edler, Esq.  
Robert W. Edler, Esq.  
Public Arbitrator

April 5, 1993

John Detmer  
John Detmer  
Industry Arbitrator

April 6, 1993

Date of Service on Parties: 4-12-93