

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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**In the Matter of the Arbitration Between**

**Name of Claimant**

John T. White, Jr.

92-03999

**Name of Respondent**

Olde Discount Corporation

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**REPRESENTATION**

For Claimant: John T. White, Jr. ("White") appeared pro se and was assisted by Deborah M. Paterson, Esq.

For Respondent: Olde Discount Corporation ("Olde Discount") was represented by Mark L. Kowalsky, Esq. of Hertz, Schram & Saretsky, P.C., located in Bloomfield Hills, Michigan.

**CASE INFORMATION**

Statement of Claim filed: November 27, 1992.

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

Statement of Answer filed by Respondent, Olde Discount Corporation on: February 22, 1993.  
Respondent Olde Discount Corporation's Submission Agreement signed on: January 8, 1993 by  
Bruce A. Campbell, Esq., Corporate Attorney, Olde Discount Corporation.

**HEARING INFORMATION**

Pre-Hearing Conference:                      October 26, 1993 for Two (2) Sessions before One (1) arbitrator;  
March 8, 1994 for One (1) Session before Two (2) arbitrators.

Hearing Dates/Sessions: November 2, 1994 for Two (2) Sessions; and  
November 3, 1994 for Two (2) Sessions.

Hearing Location: Southfield, Michigan.

### **CASE SUMMARY**

Claimant alleged that a broker employed by or acting as an agent for Respondent Olde Discount Corporation ("Olde"), made misrepresentations and omitted to state material facts to Claimant in order to place his funds into unsuitable investments. The Claimant specifically alleged that:

1. On July 8, 1988 Claimant purchased 2,000 shares of Flextronics stock on the recommendation and advice of an Olde broker; at no time did the broker attempt to obtain any information from the Claimant in order to determine whether the investment was suitable and met Claimant's objectives;
2. Respondent's employee also failed to disclose that Flextronics was a new issue that had been trading for less than a year; that the share price had been in steady decline when Claimant made his purchase; that Respondent was a market maker in Flextronics stock; and that the public market for Flextronics was limited and therefore subject to steep decline in the stock price;
3. Respondent also failed to inform Claimant of news releases and other available information concerning the prospects of Flextronics;
4. As a result of Respondent's omissions and representations, Claimant continued to purchase additional shares of Flextronics, even as the stock price continuously declined.

Based on the above allegations, Claimant asserted claims for the violation of Section 10(b) and Rule 10b-5 of the 1934 Securities and Exchange Act of 1935; Rule 15c2-6(a)(2)(1) of the Securities and Exchange Act of 1934; common law fraud; Michigan statutory Fraud Laws; negligence; failure to supervise; breach of fiduciary duties; and *respondeat superior*.

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

1. Claimant represented to Olde that he had an annual income over \$50,000.00, net worth over \$50,000.00 and that his investment objectives included growth and speculation; Claimant also had previous investment experience in speculative OTC common stock;

2. Based on his knowledge of Claimant's investment activities and objectives, Olde's broker provided Claimant a research report on Flextronics which fully disclosed the risks of investing in such a security; Claimant initially purchased 2,000 shares and continued to average down his position with an additional 4,000 shares without the solicitation of Olde or its broker;

3. Olde provided Claimant with detailed records of each transaction and Claimant was at all times aware of the value of his holdings and any margin indebtedness existing in his account; Olde also provided all research updates and earning reports on Flextronics, as well as all other pertinent information regarding Flextronics and Claimant's account.

Respondents also asserted the following affirmative defenses:

1. Claimant has failed to state a claim on which relief may be granted;
2. Claimant's claims are barred by the applicable statute of limitations;
3. Claimant's claims are barred by the statute of frauds;
4. Claimant has failed to mitigate his damages;
5. Claimant's claims are barred under the doctrine of laches, waiver, estoppel and ratification;
6. Respondent's obligations, if any, have been fully paid, satisfied, and discharged;
7. Claimant's claims are barred by want or failure of consideration;
8. Claimant's claims are barred by the economic loss doctrine;
9. Claimant's claims are barred by claimant's contributory negligence;
10. Claimant assumed the risk of the transactions;
11. Respondent was not responsible for any of Claimant's losses;

**RELIEF REQUESTED**

Claimant requested entry of an award against the Respondent in the sum of \$47,000.00 for monetary losses and an additional \$25,000.00 which represents lost earnings to Claimant because of the poor investment recommendations by Respondent and all costs and attorney's fees incurred in this matter.

Respondent requested that the Statement of Claim be denied in its entirety.

**OTHER ISSUES CONSIDERED & DECIDED**

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 original 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. The Statement of Claim is hereby dismissed with prejudice and denied in its entirety;
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
3. Any relief not specifically enumerated is hereby denied.

**FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Two (2) Pre-Hearing Conference sessions with One (1) arbitrator x \$300.00 per session = \$600.00; One (1) Pre-Hearing Conference with Two (2) arbitrators x \$500.00 per sessions = \$500.00; Four (4) Hearing Sessions x \$500.00 per session = \$2,000.00; Total Forum Fees = \$3,100.00.

The National Association of Securities Dealers, Inc. shall retain the non-refundable filing fee in the amount of \$150.00 and the hearing session deposit in the amount of \$500.00 previously deposited with the NASD by the Claimant, John T. White, Jr. In addition, John T. White, Jr. is liable for and shall pay to the NASD the sum of \$1,050.00 as additional forum fees. Furthermore, Respondent Olde Discount Corporation is liable for and shall pay to the NASD the sum of \$1,550.00 as forum fees.

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

Concurring Arbitrators' Signatures

Name

Date

/s/ Barry Goldman, Esq.  
Barry Goldman, Esq.  
Public Arbitrator  
Chairperson

February 8, 1995

/s/ Thomas C. Girardot  
Thomas C. Girardot  
Industry Arbitrator

February 8, 1995

/s/ Irving Lopatin  
Irving Lopatin  
Public Arbitrator

February 8, 1995

For NASD Use Only  
Date of Decision: February 14, 1995