

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Name of Claimant

93-00031

Name of Respondent

Olde Discount Corporation

REPRESENTATION

For Claimant: Leny K. Wallen-Friedman, Esq., of Fruth & Anthony, P.A.

For Respondent: Thomas P. Fitzgerald, Esq., of Altheimer & Gray

CASE INFORMATION

Statement of Claim filed: December 28, 1992.

Claimant's Submission Agreement signed on: December 24, 1994.

Statement of Answer filed by Respondent, Olde Discount Corporation on: March 2, 1993.

Respondent, Olde Discount Corporation's Submission Agreement signed on:
March 1, 1993.

HEARING INFORMATION

Hearing Dates/Sessions: May 17, 1994 - 2 Sessions
May 18, 1994 - 1 Session

Hearing Location: American Arbitration Association Offices
Towne Center Building
Southfield, Michigan

CASE SUMMARY

Claimant, alleged that under the terms of his employment agreement he was entitled to receive salary of fixed amount plus 2% commission on his sales credits and mark-ups on principal transaction trades plus 5% of the profit and loss on principle transaction trades (P&L). The P&L was to be paid at the end of calendar year for the period from the end of December through the end of November and in January of the next year for December.

In the middle of June 1991 - Olde offered to revise it's agreement with Mr. Armstrong and the other OTC traders, to pay him and the others 5% of his P&L every six months instead of once a year.

In mid year 1991 Olde did pay to Mr. Armstrong and the other traders a bonus based on six months performance. Claimant accepted this revision to his employment contract and continued to work for Olde. Claimant alleges this wa a permanent change and was not subject to any arbitrary or discretionary alteration by Olde.

In June of 1992 Olde unilaterally announced that it would not pay it's traders the 5% P&L bonus at mid year, but would make only one payment for the year and the payment would be made at year end.

On July 27, 1992 Claimant left his employment at Olde in protest over the change in payout policy of P&L bonus. Claimant alleges that there was no requirement in his employment contract that obligated him to be employed by Olde at year end in order to qualify for the 5% P&L bonus. Claimant alleges that he earned and Olde owes him the 5% P&L bonus for the period of November 22, 1991 through July 27, 1992.

Respondent Olde alleges that it has no written policy agreement which obligates the firm to pay traders bonuses, nor did Olde ever promise or offer to give traders a "guaranteed" bonus as part of their compensation.

Instead, at or near the end of the firm's fiscal year (Dec 31), Olde evaluated the firm's performance and each trader's individual performance. If both the firm and the trader have a profitable year, Olde MAY DECIDE to pay the trader a bonus, based loosely on 5% of net trading profits for the year.

In order to even be considered for a bonus, the trader must be in the employ of the firm at year end. Respondent, Olde, contends that Mr. Armstrong, having left the firm on July 27, 1992, was not employed by the firm at year end and thus was not even to be considered for the 5% P&L year end bonus.

Respondent alleges that having paid a mid year bonus in 1991 it was under no obligation to do the same in 1992. Respondent alleges that it had sole discretion to pay or not to pay any bonuses to any employee and also had sole discretion to as to when any such bonuses would be paid.

RELIEF REQUESTED

Claimant requested:

- A. Payment of actual damages in the amount of \$84,000
- B. Two (2) months interest on \$7,068
- C. Reasonable Attorney's fees and costs
- D. Such other relief as panel will allow.

Respondent requested:

- 1. A prehearing Dismissal of all claims.
- 2. Reimbursement for all costs, expenses and Forum Fees.
- 3. Reasonable attorney fees.

AWARD

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

ALL CLAIMS ARE DENIED

Respondent will pay Claimant --0--

FORUM FEES

Pursuant to Section 44c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

Claimant, Armstrong, will pay all Forum Fees.

Non-refundable filing fee - \$500.00

3 sessions X \$400 = \$1,200.00

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

ATTORNEY FEES

Claimant, ARMSTRONG, will pay to Respondent, OLDE DISCOUNT CORP., \$4,000.00 (four thousand dollars) to reimburse for attorney fees.

CONCURRING ARBITRATORS SIGNATURES

THATCHER W. ROOF

DM McDonald
DOUGLAS H. McDONALD

Thomas C. Girardot
THOMAS C. GIRARDO

NASD Date of Decision June 10, 1994

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DOUGLAS H. McDONALD


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