

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Name of Claimants

Kenneth E. Davis  
Jean R. Davis

COPY

No. 93-01035

Name of Respondents

Olde Discount Corp.  
William Osborne

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REPRESENTATION OF PARTIES

For Claimants: James J. Moylan, Esq., of James J. Moylan & Associates, Inc., Chicago, Illinois.

For Respondents: Bruce A. Campbell, Esq., Corporate Attorney, Olde Discount Corp., Detroit, Michigan.

CASE INFORMATION

Statement of Claim filed on or about: March 17, 1993.

Claimants' Submission Agreement signed: March 11, 1993.

Joint Answer filed by Respondents on or about: May 17, 1993.

The NASD does not have a record of Respondents having filed Submission Agreements in this arbitration.

HEARING INFORMATION

Pursuant to the Claimants' request for simplified arbitration, and the concurrence of the Respondents, the Chairperson vacated the July 15, 1993 hearing date, and has made her determination based solely upon the submissions of the parties.

CASE SUMMARY

Claimants, Kenneth E. Davis and Jean R. Davis ("Claimants") alleged: Violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder; breach of contract and unsuitability; violation of Illinois Securities Law of 1953, as amended; Negligence; violation of Section 20 of the Securities Exchange Act of 1934; and respondeat superior liability by Respondents Olde Discount Corp. and William Osborne. The allegations arose out of a transaction in Exabyte Corporation common stock ("Exabyte").

In their Answer, Respondents denied each and every allegation contained in the Statement of Claim.

RELIEF REQUESTED

In their First through Sixth Claims for Relief, Claimants requested an award in their favor and against William Osborne and Olde Discount Corporation, jointly and severally, permitting them to rescind their purchase of Exabyte or, in the alternative, for the actual amount of damages of \$4,761.75, upon tender of the security to the Respondents, less income received, plus interest thereon, their filing fee, costs, including their reasonable attorney's fees incurred in connection herewith, and for such other and further relief as the arbitrators would allow.

Respondents requested that the claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

Respondents did not file with the NASD properly executed submissions to arbitration but are required to submit to arbitration pursuant to Section 12 of the Code of Arbitration Procedure (the "Code") and having answered the claim and filed additional supplementation to their Answer, are required to submit to arbitration and therefore are bound by the determination of the undersigned arbitrator on all issues submitted.

On June 29, 1993, Claimants made a Motion to Submit Case under Simplified Arbitration. Respondents filed their response on July 12, 1993. After review of the documents submitted, the undersigned arbitrator granted the Motion. The hearing date was vacated, and the parties were given additional time to file supplemental documents.

On May 10, 1993, Claimants made a Motion, pursuant to Section 25 (b)(2)(iii) of the Code, to Bar Presentation of Any Matter, Arguments, or Defenses by Respondents. On May 17, 1993, Respondents filed their Response to the Motion, and also filed their Answer to the Statement of Claim. After review of the documents submitted, and deliberation, the undersigned arbitrator denied the Motion to Bar.

AWARD

After considering the pleadings and the exhibits attached thereto, and the additional documentation supplied by the parties, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's First and Fourth Claims for Relief are hereby denied and dismissed with prejudice. Claimant's

Second, Third, Fifth and Sixth Claims for Relief are hereby granted. Respondant, Olde Discount Corp. is hereby Ordered to rescind the Claimant's purchase of Exabyte as satisfaction of all of Claimants' claims herein, except as set forth more fully below.

OTHER COSTS

Each party shall bear their own costs and expenses associated with this arbitration, including attorneys' fees, except as set forth more fully below.

Respondents, Olde Discount Corp. and William Osborne are jointly and severally liable for, and shall pay to the Claimants, Kenneth E. Davis and Jean R. Davis the sum of \$925.00 as satisfaction of their claim for attorneys' fees herein. The authority for the Award of attorneys' fees is pursuant to the Illinois Securities Law of 1953, as amended.

Respondant, Olde Discount Corp. is liable for, and shall pay to the Claimants, Kenneth E. Davis and Jean R. Davis the sum of \$125.00 as satisfaction of Claimants' claim for filing fee and costs.

FORUM FEES

Pursuant to Section 43(c) of the Code, the following forum fees are assessed:

Simplified Arbitration Fee @ \$75.00

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$50.00, and shall retain the simplified arbitration deposit in the amount of \$75.00 previously paid to the NASD by the Claimant. The NASD shall refund the excess \$25.00 the Claimants' paid to the NASD as part of their hearing session deposit.

ARBITRATOR'S SIGNATURE

Dated:

Name:

9-1-93

Fay Clayton

Fay Clayton  
Presiding Chair  
Public Arbitrator

Date of Service by the NASD: Sept 7, 1993