

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

Wayne DeFontes

NASD Arbitration
No. 93-01552

Name of Respondent(s)

Olde Discount Corporation
Brandon Brooks

REPRESENTATION

For Claimant: Jeff Dennis Ferentz, Esq. and Michael Huberman, Esq.,
Greenbaum and Ferentz, Newport Beach, California

For Respondent Olde Discount Corporation: Bruce A. Campbell, Esq.
and Karen L. Brink, Esq., Olde Discount Corporation, Detroit,
Michigan

For Respondent Brandon Brooks: Brandon Brooks, San Clemente,
California

CASE INFORMATION

Statement of Claim filed: April 8, 1993

Claimant's Submission Agreement signed: April 6, 1993

Statement of Answer filed by Respondent Olde Discount Corporation:
September 16, 1993

Respondent Olde Discount Corporation's Submission Agreement signed:
September 16, 1993

Statement of Answer filed by Respondent Brandon Brooks: July 13,
1993

Respondent Brandon Brooks' Submission Agreement signed: July 16,
1993

HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s):

January 5, 1994 (one session)
March 11, 1994 (one session)

Hearing Date(s)/Session(s):

January 11, 1994 (two sessions)
January 12, 1994 (two sessions)
March 29, 1994 (two sessions)
March 30, 1994 (two sessions)
March 31, 1994 (two sessions)

Hearing Location:

Los Angeles, California

CASE SUMMARY

Claimant alleged that Respondents recommended and executed unsuitable transactions with respect to Claimant's investments in Axagon Resources, Ltd. and various other securities. Claimants further alleged: 1) breach of contract; 2) violation of rules and regulations of the various Exchanges, the customs and usages of the marketplace and/or California law and/or Federal law; 3) improper use of Claimant's funds; 4) breach of fiduciary duties; 5) perpetration of fraud upon Claimant under the provisions of California common law and/or the provisions of the California corporate securities laws, rules and regulations, and/or Federal laws, rules and regulations, including, without limitation, Rule 10b-5; 6) negligence; and 7) failure to supervise.

Respondent Olde Discount Corporation (Olde) denied Claimant's allegations and alleged that Claimant represented himself in his account application as being a wealthy, sophisticated investor having over two decades of stock trading experience. Olde further alleged that Claimant wanted most of his trading activity to consist of speculative, short-term trading and alleged that Claimant admittedly directed all of the Axagon purchases that occurred in his account, both knowing and understanding the risks associated with each purchase he made. Olde further alleged that when offered an opportunity to rescind his Axagon purchase, Claimant refused, choosing to take his chances by holding onto his Axagon shares. Olde also asserted affirmative defenses.

Respondent Brandon Brooks denied Claimant's allegations and alleged that the misfortune in his Axagon investment and the subsequent advice of counsel caused Claimant to believe that he had found a deep pockets Respondent in Olde and an outlet for personal frustration in the person of Brandon Brooks.

RELIEF REQUESTED

Claimant requested:

1. Out-of-pocket losses in the amount of \$170,000.00;
2. Interest at the highest legal rate;
3. Punitive damages in the amount of \$330,000.00;
4. Commissions and fees in an amount to be determined at arbitration;
5. Costs of suit;
6. Attorney's fees; and
7. Other and further relief the Arbitration Panel deems just and proper.

Olde asserted that Claimant is not entitled to recover any monies on his Claim and requested that Respondents be awarded costs.

OTHER ISSUES CONSIDERED AND DECIDED

Prior to the hearing, the panel of arbitrators, reviewed and considered the written positions of the parties relative to Claimant's Motion To Strike Pleadings, Motion To Bar The Introduction Of All Defenses At Arbitration, Motion To Preclude Respondents From Presenting Any Facts Or Defenses And For Summary Judgement, and Motion To Bar The Introduction Of All Evidence At Arbitration. The panel denied Claimant's Motions.

The parties have agreed that the Award in this matter may be executed in either 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 National Association of Securities Dealers, Inc. (NASD).

The panel reviewed and considered the written positions filed by the parties relative to Claimant's post hearing Motion for Sanctions. The panel denied the Motion.

AWARD

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

1. Respondents Olde Discount Corporation and Brandon Brooks are jointly and severally liable for and shall pay to Claimant Wayne DeFontes the sum of \$40,000.00, inclusive of interest and in satisfaction of Claimant's claims.

2. Respondent Olde Discount Corporation is solely liable for and shall pay to Claimant Wayne DeFontes the sum of \$200.00 as reimbursement for Claimant's filing fee.

3. Claimant's claim for punitive damages is denied.

4. The parties shall each bear their respective costs including attorney's fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall refund the \$750.00 hearing session deposit previously paid by the Claimant. Forum fees are assessed against: Respondent Olde Discount Corporation solely, in the amount of \$8,100.00, calculated as follows: Two pre-hearing sessions times \$300.00/session plus ten hearing sessions times \$750.00/session.

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

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Lauri J. Butler, Esq.	Public Arbitrator
Larry Edmonson	Public Arbitrator
Corinne Whitaker	Industry Arbitrator

Concurring Arbitrators' Signatures

Lauri J. Butler, Esq.

Larry Edmonson

Corinne Whitaker
Corinne Whitaker

Date of Decision: _____