

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Michael T. and Rose F. Stefaniak

93-03608

Name of Respondents

Olde Discount Corporation  
Mark Cohen

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CONSOLIDATED WITH

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In the Matter of Arbitration Between

Name of Claimant

Edward Romm

93-03072

Name of Respondents

Olde Discount Corporation  
Mark Cohen

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REPRESENTATION

For Claimants Michael T. and Rose F. Stefaniak ("Stefaniak") and Edward Romm ("Romm") appeared Anthony J. Hom, Esq., Philadelphia, PA.

For Respondents Olde Discount Corporation ("Olde") and Mark Cohen ("Cohen") appeared

Karen L. Brink, Esq., Corporate Counsel for Olde Discount Corp., Detroit, MI.

### **CASE INFORMATION**

The Statement of Claim filed on behalf of the Stefaniaks was filed on September 22, 1993. The Stefaniaks executed their Submission Agreement on September 30, 1993.

Respondents Olde Discount Corporation and Mark Cohen's joint Statement of Answer to the Stefaniak claim was filed on November 29, 1993. Respondent Olde Discount Corporation's Submission Agreement was executed on November 29, 1993. Respondent Mark Cohen's Submission Agreement was executed on November 11, 1993.

The Statement of Claim of Edward Romm was filed on September 9, 1993. Romm's Submission Agreement was executed on July 19, 1993.

Respondents Olde Discount Corporation and Mark Cohen's joint Statement of Answer to the Romm claim was filed on November 11, 1993. Respondent Olde Discount Corporation's Submission Agreement was executed on November 11, 1993. Respondent Mark Cohen's Submission Agreement was executed on November 11, 1993.

### **HEARING INFORMATION**

The hearing was held at the Albany Marriott located at 189 Wolf Road, Albany, New York on January 26, 1994 and January 27, 1994. There were a total of four hearing sessions held on these days.

### **CASE SUMMARY**

Claimant Edward Romm ("Romm") alleged that he is a single, college educated engineer with a M.S. E.E. degree who had an annual income of Seventy Thousand Dollars (\$70,000.00). Claimant Romm also alleged that when he opened his account on September 28, 1991, with a stated investment goal of safety of principal and income, his investment background and experience consisted of 10 years of experience in mutual funds and money market funds. Further, Claimant Romm alleged that on or about February 28, 1992, Claimant Romm deposited \$204,250.00 into the account and upon closing the account on March 24, 1993, the account was worth \$33,322.44.

It was further alleged by Claimant Romm that he met his broker Mark Cohen, via telephone, and advised Respondent Cohen that his investment objectives were a 10-20% profit and a limitation on losses of 10-15%. Claimant Romm allegedly followed the recommendations presented to him by Respondent Cohen to purchase Sierra common stock and Healthdyne common stock. Further, Claimant Romm alleged that he expressed his unhappiness with the Sierra and Healthdyne stocks when both stocks dropped in price, and Claimant Romm wanted to sell both stocks to liquidate his margin position. However, Claimant Romm alleged,

Respondent Cohen dissuaded him from liquidating his account thereby allegedly causing claimant Romm to suffer losses in Sierra and Healthdyne.

Claimants Michael and Rose Stefaniak alleged that Claimant Michael Stefaniak has a BA and MS and is employed by the New York Power Authority as a plant engineer earning an annual salary of approximately Fifty Five Thousand Dollars (\$55,000.00). Claimants alleged that Michael Stefaniak's investment experience consisted of investments in stock and mutual funds from 1967 to 1977 in the amount of \$2,500.00.

Claimants Michael and Rose Stefaniak alleged that Mr. Stefaniak opened an account in March, 1991 based upon Respondent Cohen's representations that Olde had the lowest commissions and was a full service firm. Moreover, the Stefaniak claimants alleged that Michael Stefaniak advised Respondent Cohen that their investment objectives were safety of principal and income; that Michael Stefaniak's desire was to invest in utility stocks; and that Claimants were not willing to assume a great deal of risk.

The Stefaniaks alleged that they first learned of a problem in their account during the end of 1992 and March of 1993, at which time Mr. Stefaniak wanted to cash out of his stock and wanted to pursue a more conservative strategy. Respondent Cohen allegedly dissuaded Mr. Stefaniak from selling his stocks and, on several occasions, Mr. Stefaniak's instructions to sell were not carried out by Respondent Cohen.

After allegedly discovering a problem existed, Mr. Stefaniak requested that Respondent Cohen purchase \$20,000.00 in New York State Bonds but Respondent Cohen allegedly persuaded Mr. Stefaniak to invest \$13,000.00 in New York State Bonds and to use the remainder to trade stock. Further, Respondent Cohen allegedly recommended and solicited Mr. Stefaniak to engage in the rapid in and out trading of securities which were unsuitable and resulted in \$14,888.88 in losses.

The claimants, Edward Romm and Michael and Rose Stefaniak, asserted that the Respondents engaged in fraudulent, unlawful and improper conduct, including unsuitable trades, fraudulent misrepresentations and omissions, unauthorized trading and churning. In addition, the Romm and Stefaniak Claimants alleged that Respondents failed to provide claimants with competent professional services; that Respondents failed to provide services in accordance with applicable NASD and NYSE rules and regulations; breached their fiduciary duties owed to the claimants; negligently breached their contractual obligations to Claimant and violated federal securities laws. Moreover, Claimants alleged that Respondent Olde failed to supervise Respondent Cohen and are thereby liable as his employer for Cohen's allegedly negligent and fraudulent acts and omissions.

Respondents Olde and Cohen denied all allegations as set forth by Claimant Romm in his Statement of Claim. Respondents maintained that in Romm's account opening documents, Claimant Romm listed his net worth, exclusive of his residence, as being Eight Hundred Thousand Dollars (\$800,000.00) and his liquid net worth as being over Five Hundred Thousand (\$500,000.00) dollars; that his Customer Preference Profile represents that Romm has over a decade of stock trading experience; and that he averages from ten (10) to fifty (50) trades per

year. Further, Respondents maintained that in his Profile Romm states he is an aggressive investor primarily interested in trading growth-oriented and speculative stocks; and that of the thirteen (13) stocks traded by Claimant in his Olde account only two (2) lost money. The remaining eleven (11) stocks produced profits for Claimant in excess of Forty-Five Thousand Dollars (\$45,000.00).

More specifically, Respondents maintained that Romm first opened his account on September 10, 1991. In his initial account opening documents, Claimant Romm allegedly stated that he was a private contractor who contracted electrical engineering services to power companies and listed his annual income as Seventy Thousand Dollars (\$70,000.00). Further, Respondents maintained that Claimant Romm described himself as a moderately aggressive investor who was primarily interested in purchasing income-generation, growth-oriented and/or speculative stocks. Within three months of opening the account, Claimant Romm allegedly filled out and signed another customer account application in which he stated that his liquid net worth had increased to over Five Hundred Thousand Dollars (\$500,000.00) and explained the sudden increase by stating that he wanted to test Respondent Cohen's ability as a broker before letting Cohen know how much money he had. Additionally, Respondents maintained that Romm changed his account application indicating that he was only interested in growth-oriented and speculative stocks.

Respondents also maintained that monthly account statements clearly demonstrate that approximately one half of the trades executed in Romm's account were unsolicited and, therefore, instigated by Romm himself. Furthermore, Respondents maintained that Romm signed a margin agreement attesting to the fact that he understood the risks associated with margin trading, and signed an account agreement indicating that he had over a decade of stock trading experience.

It was also maintained by Respondents that Claimant Romm concluded in his claim that he lost a total of Sixty-Eight Thousand (\$68,000.00) in his account; that Claimant Romm only deposited (\$62,000.00) into his account throughout its entire life and the value of his account at the time he transferred it out of Olde was over Thirty-Five Thousand Dollars (\$35,000.00); that the most Romm could have lost in his account while it was at Olde was Twenty-Seven Thousand Dollars (\$27,000.00); and that any losses which were incurred by Claimant Romm in his account were caused, not by Olde and/or Cohen, but by Romm's own chosen investment strategy.

Respondents denied all allegations of wrongdoing asserted against them in the Statement of Claim filed by the Stefaniaks. Respondents maintained that the Stefaniaks suffered no losses in their account with Respondents and, to the contrary, the Stefaniaks made over Six Thousand (\$6,000.00) Dollars while investing with Respondents. Further, Respondents maintained that claimant Michael Stephaniak represented in his signed investor account application that he has a liquid net worth of over One Hundred Fifty Thousand Dollars (\$150,000.00) and a total net worth exclusive of residence of over Two Hundred Thousand Dollars (\$200,000.00).

In addition, Respondents maintained that the allegations as they relate to the Stefaniaks' claim relate to only seven (7) stocks in their account while the Stefaniaks traded over twenty seven (27) stocks in their account, many of which were growth-oriented or speculative and many of which made money for the Stefaniak account. Respondents also maintained that these claimants

alleged that they lost \$14,000.00 trading seven stocks, but that Claimant made over Ten Thousand Dollars (\$10,000.00) on these seven (7) stocks alone. Therefore, Respondents maintained that the Stefaniak claimants did not lose money in their account, nor were they coerced by Respondents into unsuitable or excessive trading activity.

Respondents denied that they were liable to Edward Romm and/or Michael and Rose Stefaniak under any of the theories of fraud, misrepresentation churning, suitability, violation of the Securities Act, Violations of NASD or NYSE Rules, negligence, breach of Contract, or failure to supervise.

### **OTHER ISSUES CONSIDERED AND DECIDED**

At the hearing, a motion was made on behalf of Respondents Olde and Cohen to dismissal of the Stefaniaks' claim on the grounds that even accepting all of the testimony and evidence presented by the Stefaniak claimants, there was no basis for the relief sought. The panel unanimously granted the Motion to Dismiss the Stefaniak claim with prejudice.

### **RELIEF REQUESTED**

Claimant Romm sought to recover \$86,000.00 in compensatory damages plus interest from the date the losses were incurred to the date of this arbitration hearing plus attorneys fees, costs, and any other damages the panel may deem just and fair.

Claimants Michael and Rose Stefaniak sought to recover \$15,000.00 in compensatory damages plus interest from the date the losses were incurred to the date of this arbitration hearing plus attorneys fees, costs, and any other damages the panel may deem just and fair.

Respondents Olde and Cohen requested an award providing that Olde and Cohen are obligated to pay Romm \$0.00, and that Romm is liable to Olde and Cohen for their cost and attorneys fees incurred in the defense of this claim.

Respondents Olde and Cohen requested an award providing that Olde and Cohen are to pay the Stefaniaks \$0.00, and that the Stefaniaks are liable to Olde and Cohen for their cost and attorneys fees incurred in the defense of this claim.

### **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:

1. All claims by Edward Romm against Respondents Olde and Cohen be and hereby are dismissed.
2. All claims by Michael T. and Rose F. Stefaniak against Respondents Olde and

Cohen be and hereby are dismissed.

3. Each party shall bear their respective costs, including attorneys' fees.
4. All other claims be and hereby are dismissed.

### **FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed:

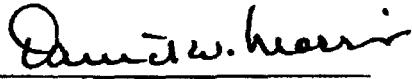
4 hearing sessions x \$750.00 = \$3000.00.

1. Michael T. and Rose F. Stefaniak be and hereby are liable and shall pay to the NASD the sum of \$1500.00 representing forum fees assessed by the panel. However, the Stefaniaks previously deposited a hearing session deposit in the amount of \$400.00 which shall be credited towards their account. Therefore, the Stefaniak Claimants are liable to the NASD for the balance of \$1,100.00.
2. Edward Romm be and hereby is liable and shall pay to the NASD the sum of \$900.00 representing forum fees assessed by the panel. However, Edward Romm previously deposited a hearing session deposit in the amount of \$500.00 which shall be credited to his account. Therefore, Edward Romm is liable to the NASD for the balance of \$400.00.
3. Respondent Olde Discount Corporation be and hereby is liable and shall pay to the NASD the sum of \$600.00 representing forum fees assessed by the panel.

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

Concurring Arbitrators' Signatures  
Name

Public/Industry

  
\_\_\_\_\_  
David W. Morris, Esq.

Public

\_\_\_\_\_  
James J. Carroll

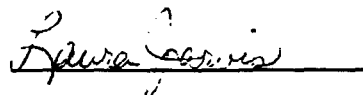
Industry

\_\_\_\_\_  
Michael J. McNeil, Esq.

Public

STATE OF  
COUNTY OF

On this 28<sup>th</sup> day of April, 1995, before me personally appeared DAVID W. MORRIS known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged to me that he executed the same.

  
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**LAURA JARVIS**  
Notary Public - New York  
Saratoga County  
No. 01JA5040963  
Commission Expires 3-27-97

Date of Decision: April 27, 1995

Concurring Arbitrators' Signatures  
Name

Public/Industry

David W. Morris, Esq.

Public

James J. Carroll

Industry

Michael J. McNeil, Esq.

Public

STATE OF New York  
COUNTY OF Albany

On this 13<sup>th</sup> day of April, 1995, before me personally appeared  
James J. Carroll known to me to be the individual described in and who executed the  
foregoing instrument and duly acknowledged to me that he executed the same.

Joseph B. Carr  
JOSEPH B. CARR  
Notary Public, State of New York  
Qualified in Albany County  
No. 4624595  
Commission Expires February 28, 1995

Date of Decision: April 27, 1995

Concurring Arbitrators' Signatures  
Name


Public/Industry

David W. Morris, Esq.

Public

James J. Carroll

Industry

  
Michael J. McNeil, Esq.

Public

STATE OF  
COUNTY OF

On this 17<sup>th</sup> day of April, 1995, before me personally appeared  
MICHAEL J. MCNEIL known to me to be the individual described in and who executed the  
foregoing instrument and duly acknowledged to me that he executed the same.



**JANE K. HARTNETT**  
Notary Public, State of New York  
Qualified in Washington County  
Commission Expires April 30, 1996

Date of Decision: April 27, 1995