

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Joyce and Oren Cohen

vs.

93-03079

Name of Respondents

Olde Discount Corporation  
Timothy O'Brien

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**REPRESENTATION**

For Claimants Joyce and Oren Cohen appeared Joan M. Markey, Esq., New York City, NY.

For Respondents Olde Discount Corporation and Timothy O' Brien (hereinafter collectively referred to as "Respondents") appeared Karen L. Brink, Esq., Olde Discount Corporation, Detroit, MI.

**CASE INFORMATION**

The Statement of Claim was filed on August 4, 1993. Claimant Joyce Cohen's Submission Agreement was signed on July 23, 1993 and Oren Cohen's Submission Agreement was signed on November 4, 1993.

Respondents filed a Joint Statement of Answer on January 19, 1994. Respondent Olde Discount Corporation's Submission Agreement was signed on December 9, 1993 and Timothy O'Brien's Submission Agreement was signed on January 21, 1994.

**HEARING INFORMATION**

Hearing Date: October 25, 1994 - 3 Sessions

The hearings were held at the NASD offices located in New York City, New York.

### **CASE SUMMARY**

Claimants alleged that in or about February, 1992 an account was opened at Olde Discount Corporation ("Olde") in the joint names of Joyce Cohen and Oren Cohen. Claimant Joyce Cohen alleged that she was the sole source of the funds invested in the account. However, the account was opened in joint name solely so that Oren Cohen would have quick access to the funds in the event that Joyce Cohen were to become completely incapacitated, or upon her death. Claimants further alleged that due to Joyce Cohen's medical condition, she is unemployable and lives on social security disability income of approximately \$6,500.00 per year and any income generated by her savings; that Joyce Cohen had placed most of her savings which totalled approximately \$95,000.00 in certificates of deposit ("CDs"); and that when the CDs matured, she was unable to reinvest the money at the same rate of return because interest rates had fallen.

Claimants also alleged that Joyce Cohen visited the Olde Discount Corporation branch office in Port Washington, New York where she met registered representative Timothy O'Brien as to whom who inquired what steps her mother had to take to buy Disney stock. Claimant Joyce Cohen further inquired of Respondent O'Brien how she could get a higher rate of interest on her money than she was currently earning on her CD. Claimants also alleged that Joyce Cohen explained her own circumstances thoroughly, including the fact that she lived on social security disability payments; that she did not expect that she would ever be able to work again; and that the money invested in CDs constituted her life savings and that she had never before had a securities account with a brokerage firm.

Further, Claimants alleged that Joyce Cohen and Respondent O'Brien discussed investment possibilities. Allegedly acting on O'Brien's recommendation, Joyce Cohen purchased 1,000 shares of Immucor stock at a price of \$14.00 per share; 500 shares of Euro Disney stock at a price of 27.875 per share; 300 shares of Euro Disney stock at a price of 28.75 per share; 100 shares of Disney stock at a price of 141.75 per share; and 44 shares of Disney stock were purchased at a price of 156.25 per share. Claimants alleged that Joyce Cohen paid a total of \$57,881.25 for her investments through Olde Discount Corporation; that this portfolio is manifestly unsuitable for a woman in her financial and medical circumstances; that Joyce Cohen had cause for concern as the price of these stocks fell; and that Joyce Cohen sold out her account for a total of \$40,472.97 on May 10, 1993 at a loss of \$17,408.28 or 30% of the total principal she had invested.

Respondents denied all allegations of wrongdoing asserted by the Claimants in the

Statement of Claim. Respondents maintained that Claimant Joyce Cohen presented herself to respondents during the course of her brokerage relationship, as an individual who was financially and physically healthy. Respondents also maintained that if the statements regarding her financial and physical condition are true, these facts were deliberately concealed from brokers at Olde Discount Corporation.

Additionally, Respondents maintained that Claimant Joyce Cohen made both oral representations to Olde Discount Corporation brokers and written statements in her account opening documents indicating that she was an affluent, aggressive investor interested primarily in growth-oriented and/or speculative investment opportunities. Respondents also maintained that Claimant Joyce Cohen authorized and understood each of the stock purchases she made in her account, and that respondents recommended one stock to Claimant which fit precisely within Claimant's stated investment objectives and financial situation. Respondents further maintained that respondents acted, at all times, in a diligent responsible manner when dealing with claimant Joyce Cohen and cannot be held liable for claimants' failure to disclose Joyce Cohen's illness and alleged financial difficulties.

Respondents asserted as affirmative defenses that the claimants failed to state a claim on which relief may be granted; that the claims are barred by the statement of frauds; that claimants failed to mitigate their alleged damages; that the claims are barred under the doctrines of laches, waiver, estoppel and ratification; and that the claims are barred by claimants' own contributory negligence.

### **RELIEF REQUESTED**

Claimants requested that the panel award claimant Joyce Cohen the total amount of her losses, \$17,408.26, plus interest at the legal rate in New York of 9% from the date of her investment; reimbursement of filing fees; attorney fees; and punitive damages.

Respondents requested dismissal of all of claimants' claims, an award in Joyce cohen's favor for zero dollars, and an award in faovr of Olde Discount Corporation and O'Brien for their costs incurred in defending this arbitration.

### **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 originals remain on file with the NASD.

### **AWARD**

1. Respondents be and hereby are jointly and severally liable and shall pay Claimant Joyce Cohen, \$7,608.50, plus interest from August 4, 1993, the date of filing, at the annual rate of 9% until the award is paid in full.
2. Each party shall bear their respective costs, including attorneys' fees, except that Respondents are jointly and severally liable and shall reimburse claimants the sum of \$500.00 representing forum fees previously deposited by the Claimant with the NASD.
3. All claims for punitive damages be and hereby are denied.
4. All other claims be and hereby are denied.

### **FORUM FEES**

3 Sessions X \$400.00 = \$1,200.00 minus \$400.00 hearing session deposit  
= \$800.00.

**TOTAL OUTSTANDING FEES = \$800.00**

Respondents Olde Discount Corporation and Timothy O'Brien be and hereby are jointly and severally liable and shall pay to the NASD the sum of \$800.00 representing outstanding forum fees.

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

Concurring Arbitrators' Signatures:

  
Lawrence A. Pittore, Esq.

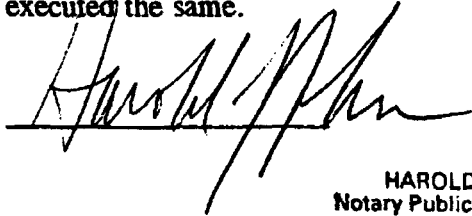
\_\_\_\_\_  
Thomas E. Wagner

\_\_\_\_\_  
Victor Pachter

STATE OF New York

COUNTY OF WESTCHESTER

On this 7th day of December, 1994, before me personally appeared Lawrence A. Pittore known to me to be the individual described in and who executed the foregoing instrument and he/she duly acknowledged to me that he/she executed the same.



HAROLD J. JOHNSON  
Notary Public, State of New York  
No. 4639003  
Qualified in Westchester County  
Commission Expires Jan. 31, 1995

Date of Decision: January 13, 1995

Concurring Arbitrators' Signatures:

Lawrence A. Pittore, Esq.

Thomas E. Wagner

Victor Pachter

Victor Pachter

STATE OF Florida

COUNTY OF Broward

On this 10 day of Jan, 1994, before me personally appeared Victor Pachter known to me to be the individual described in and who executed the foregoing instrument and he/she duly acknowledged to me that he/she executed the same.

Darlene M. Blackmon

Victor Pachter simultaneously



DARLENE M. BLACKMON  
MY COMMISSION # CC344184 EXPIRES  
January 25, 1998  
BONDED THRU TROY FAIN INSURANCE, INC.

1/10/95

Date of Decision: January 13, 1995