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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

T. Kevin Gaw

93-05354

Name of Respondent(s)

Olde Discount Corporation  
Anne Buckley Evans  
Michael Belotte  
Mark Miller

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REPRESENTATION

For Claimant T. Kevin Gaw: J. Pat Sadler, Esq., Atlanta, GA.

For Respondents Olde Discount Corporation ("Olde"), Anne Buckley Evans, Michael Belotte and Mark Miller: Julie D. Reed, Esq., in-house counsel at Olde Discount Corporation.

CASE INFORMATION

Statement of Claim filed: December 27, 1993.

Claimant's Submission Agreement signed on: December 16, 1993.

Joint Statement of Answer filed by Respondents Olde Discount Corporation, Anne Buckley Evans, Michael Belotte and Mark Miller on: March 31, 1994.

Respondent Olde Discount Corporation's Submission Agreement signed on: March 23, 1994.

Respondent Anne Buckley Evans' Submission Agreement signed on: February 15, 1994.

**Respondent Mark Miller's Submission Agreement signed on: March 24, 1994.**

Claimant further alleged that when he opened an account with Respondent Olde Discount Corporation in 1990 he was a novice investor. Claimant further alleged in one instance Respondent Michael Belotte, an account executive at Respondent Olde Discount Corporation, represented that Dell computer stock ("Dell") was going to open several points lower than its previous day's close but that Olde's research department believed this represented an extraordinary buy despite the release of the bad news giving rise to this sell-off. Respondent Belotte further told the Claimant that he did not need to be concerned with the delayed opening due to an order imbalance to the sell side and that he and the firm were going to be "big buyers" of the stock. Claimant further alleged the Respondent Belotte further represented to Claimant that the Dell shares were to bounce back sharply and that his best interests would be served by risking a significant portion of his net worth by making a purchase two to three times larger than any previous solicitations and based upon the misrepresentations, Claimant purchased the Dell stock from Respondent Belotte. Claimant alleged that no disclosure was given regarding the risks in buying "story" stocks, stocks suffering precipitous declines, or stocks involved in delayed openings and Claimant further alleged upon information and belief that Respondent Belotte entered no other orders to buy Dell shares that day and did not disclose to Claimant that Olde Discount Corporation had taken in the stock it sold to Claimant at a price more than a dollar lower than it was selling it to him.

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Claimant further alleged that the stock fell from \$45.50 to \$38.00 per share. He claimed that Respondent Anne Buckley Evans, a supervisor, then persuaded him to purchase call options because the stock was going to embark on a major upswing. However, Claimant alleged that the options expired worthless and the share price fell yet another fifty percent and that he suffered large losses as a result. Claimant further alleged the Respondents followed a similar pattern in all his dealings with Olde Discount Corporation and in virtually every case, his trades were mismarked unsolicited when they were actually solicited.

Claimant further alleged Respondents made the following misrepresentations and/or omissions to him:

- 1) Respondent Mark Miller, an account executive, stated that the Quantum Computer issue would "split and skyrocket" almost immediately and implied that he was privy to reliable information to back up this claim;
- 2) Respondents stated on multiple occasions that stocks would rise to a specific price within a designated time frame;
- 3) Respondents Miller and Belotte stated on various occasions that the entire firm would be going in together to buy certain stock which would result in a price increase in the stocks;
- 4) Respondents did not disclose their mark-ups or mark-downs in solicited transactions, until the transaction had been completed;
- 5) Respondents on numerous occasions executed trades for Claimant at prices 1/8 to 1/4 point different from the agreed price; and,
- 6) Respondents attempted to discourage Claimant from trading stocks which were not Olde Discount Corporation market maker issues.

Respondents maintained for nearly three years, from September 1990 through July 1993, against the advice and recommendations of Respondents, the Claimant engaged in aggressive, "in and out" short-term trading, both in stocks of his own selection as well as nine high-tech and or speculative stocks that he selected based upon long-term recommendations made to him by Olde Discount Corporation's brokers.

Respondents further maintained Claimant sold every stock that he had purchased upon the recommendation of Olde Discount Corporation for a short-term gain or loss, instead of heeding the recommendations contained in Olde Discount Corporation's Research Reports, the advice stated to him by Olde Discount Corporation's brokers and the advice sent to him in a July 1991 letter, all of which recommended that Olde Discount Corporation recommended stocks be held for long-term holding periods.

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Respondents further maintained Claimant opened fourteen options transactions of which four closed at a profit, six expired worthless and four were closed at a loss.

Respondents further maintained the Claimant is solely responsible for all of the purchases and sales in his account, and is thereby responsible for all of the loss, because of his own failed strategy and his failure to follow the advice and recommendations of Olde Discount Corporation's Research Department and brokers. Respondents further maintained the following:

1. In September 1990, Claimant presented himself to Olde Discount Corporation and its brokers as an aggressive investor seeking growth and speculation as his investment objectives;
2. Claimant pursued a very aggressive strategy of short-term trading throughout his relationship with Olde Discount Corporation;
3. Claimant independently made all decisions to purchase and sell stocks and options in his account;
4. All of the recommendations Olde Discount Corporation and its brokers made to Claimant were sound when they were made;
5. Olde Discount Corporation and its brokers provided all necessary material information and disclosures to Claimant with respect to their recommendations, including Olde Discount Corporation's status as a market-maker;
6. All of the recommendations Olde Discount Corporation's brokers made to Claimant were suitable for the Claimant and the Claimant ratified each transaction; and,
7. The decline in value of the stocks recommended to Claimant was in most cases temporary, and in all cases was due to factors unforeseen by Olde Discount Corporation and outside Olde Discount Corporation's control, such as economic, corporate or industry factors and Claimant's damage claims are inflated and unwarranted.

Respondents further maintained these undisputed facts justify Olde Discount Corporation's position that Claimant is completely responsible for the losses in his account, which resulted from his own aggressive, speculative trading habits, and not through the fault of Olde Discount Corporation.

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### RELIEF REQUEST

Claimant requested compensatory damages in the amount of \$59,715.00, attorneys' fees of \$2,000.00, filing fees of \$950.00, interest of \$14,332.00, and punitive damages in the amount of \$119,430.00, and any other award that the panel deems just and proper.

Respondents requested Claimant's claims be dismissed in their entirety.

### AWARD

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

1. Respondents Olde Discount Corporation and Mark Miller are hereby liable jointly and severally and shall pay to the Claimant the sum of \$11,000.00 interest specifically excluded.
2. Respondents Anne Buckley Evans, Michael Belotte and Olde Discount Corporation are hereby liable jointly and severally and shall pay to the Claimant the sum of \$29,000.00 interest specifically excluded.
3. The Claimant's request for punitive damages is denied.
4. Each party shall bear their respective costs including attorneys' fees.

### FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

5 sessions x \$750.00 = \$3,750.00 less Claimant's hearing session deposit (\$750.00) = net \$3,000.00 due.

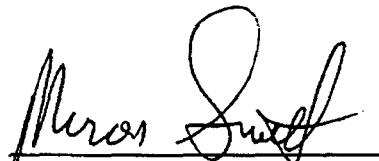
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Forum Fees Assessed Against:

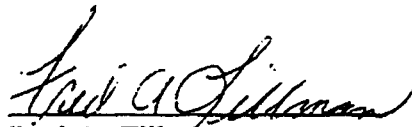
The Respondent Olde Discount Corporation be and hereby is liable and shall pay to the NASD the sum of \$3,000.00 representing the balance of the forum fees.

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

ARBITRATORS' SIGNATURE



Marion Smith, II, Esq.  
Public Arbitrator



Fred A. Tillman  
Public Arbitrator



Stanley H. Fishman  
Industry Arbitrator

Date of Decision: December 14, 1994