

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

James Gibbings

94-00969

Name of Respondent

Olde Discount Corporation

REPRESENTATION

For Claimant: James Gibbings ("Gibbings") was represented by Cheryl D. Bloom, Esq. of Bloom and Bloom, P.C., located in Farmington Hills, Michigan.

For Respondent: Olde Discount Corporation ("Olde") was represented by Timothy H. Howlett, Esq. of Dickinson, Wright, Moon, Van Dusen & Freeman, located in Detroit, Michigan

CASE INFORMATION

Statement of Claim filed: March 15, 1995.

Claimant's Submission Agreement signed on: April 11, 1994.

Statement of Answer filed by Respondent Olde on: June 3, 1994.

Respondent Olde's Submission Agreement signed on: June 3, 1994 by Bruce A. Campbell, Vice President and Corporate Attorney, Olde Discount Corporation.

HEARING INFORMATION

Pre-Hearing Conference: None Held.

Hearing Dates/Sessions: March 16, 1995 for Two (2) sessions;
March 17, 1995 for Two (2) sessions.

Hearing Location: Southfield, Michigan.

CASE SUMMARY

Claimant Gibbings alleged that Respondent Olde violated his civil rights under Michigan law by terminating Gibbings' employment because of his age. Gibbings specifically alleged that:

1. Gibbings began his employment with Olde in June 1987 as a broker. Gibbings received several promotions through August 1990 and voluntarily returned to a sales position in January 1991. In February 1991, Gibbings was recognized to be in the top ten per cent for commissions earned. In March 1991, Gibbings became one of the first of Olde's brokers to achieve the status of "Olde Super Brokers";
2. In December 1991, Respondent recruited six new brokers in their early twenties with little or no experience. Gibbings was instructed to assist in training these new brokers;
3. In March 1992, Gibbings' manager ordered him to increase his commission production by more than one hundred per cent. The manager reprimanded Gibbings, claiming that the younger brokers were outproducing him;
4. On May 1, 1991, Olde terminated Gibbings' employment. The manager claimed that Gibbings was terminated because the younger brokers could do his job as well as he could. Gibbings was 44 years old;
5. Gibbings had performed all his job duties in an exemplary manner. However, after Gibbings was terminated, Olde wrongfully contended that the termination was the result of Gibbings falsifying a document; and
6. At the time of the termination, Gibbings had been making approximately \$65,000.00 per year and received numerous employee benefits.

Gibbings asserted his claims pursuant to the Elliot-Larsen, Michigan Civil Rights Act, which provides that the opportunity to maintain employment without discrimination due to age is recognized and declared to be a civil right. Olde violated its duty to Gibbings by harassing him and discriminating against him because of his age; using age as a factor in his termination; and implementing a hiring policy which favored young employees in their twenties.

Respondent Olde denied the material allegations of the Statement of Claim, alleging that Gibbings was terminated for unsatisfactory performance, including the altering of a customer account form. The Statement of Answer asserted that:

1. Gibbings had a history of trading errors. In the six months prior to his

discharge Gibbings received six different disciplinary documents for trading mistakes;

2. His final unacceptable act was Gibbings' alteration of a document in order to have assets transferred to a single account, which placed Olde in risk of litigation and affected the trust between Gibbings and Olde;

3. Gibbings filed complaints with the Michigan Department of Civil Rights and the EEOC. The Michigan Department of Civil Rights conducted an investigation and dismissed Gibbings' complain because their was insufficient grounds on which to issue a charge. The EEOC dismissed the charge, stating that the evidence did not establish a violation of the Act.

RELIEF REQUESTED

Claimant requested entry of an award against Respondent in an amount to be established by the proofs, together with interest, costs and reasonable attorneys' fees as provided by the Michigan Civil Rights Act.

Respondent requested that the claim be dismissed.

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.

After the Panel reached a decision, but prior to the Panel executing the Award, Claimant Gibbings sent post-hearing submissions to the Panel chairperson to forward to the remaining panel members. The materials were not forwarded to the remaining panel members because the decision had been reached. On June 26, 1995, the Claimant withdrew its request that the materials be forwarded to the Panel.

AWARD

After considering the pleading, 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. Respondent Olde Discount Corporation is liable for and shall pay to the Claimant, James Gibbings the sum of \$130,000.00 in compensatory damages;

2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
3. Any relief not specifically awarded is hereby denied.

FORUM FEES

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Four (4) hearing sessions x \$600.00 per hearing session = \$2,400.00.

The National Association of Securities Dealers, Inc. shall retain the \$250.00 claim filing fee and the \$600.00 hearing session deposit previously deposited by the Claimant, James Gibbings. In addition, the NASD shall refund the \$400.00 excess hearing session deposit previously paid by the Claimant, James Gibbings. Respondent Olde Discount Corporation is liable for and shall pay to the Claimant, James Gibbings, the sum of \$850.00 as reimbursement of the claim filing fee and hearing session deposit paid by the Claimant. In addition, Respondent Olde Discount Corporation is liable for and, shall pay to the NASD the sum of \$1,800.00 as forum fees.

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

Concurring Arbitrators' Signatures

Name

Date

/s/ Martin J. Brosnan, Esq.

June 26, 1995

Martin J. Brosnan, Esq.

Public Arbitrator

Chairperson

/s/ James C. Steffl, Esq.

June 27, 1995

James C. Steffl, Esq.

Public Arbitrator

/s/ Michele Verlinden

July 3, 1995

Michele Verlinden

Industry Arbitrator

For NASD Use Only

Date of Decision: July 3, 1995