

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

In the Matter of the Arbitration Between

Name of Claimant(s)

Allen P. and Sandra L. Faivre

94-01627

Name of Respondent(s)

Olde Discount Corporation  
Manuel J. Leon  
Jack Avery

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**REPRESENTATION**

For Claimants, Allen P. and Sandra L. Faivre ("Faivre"): Michael Huberman, Esq. of Greenbaum and Ferentz, Newport Beach, CA.

For Respondents, Olde Discount Corporation ("Olde"), Manuel J. Leon ("Leon") and Jack Avery ("Avery"): Karen L. Brink, Esq., Olde Discount Corporation, Detroit, MI.

**CASE INFORMATION**

Statement of Claim filed: April 26, 1994.

Claimants' Submission Agreement signed: April 20, 1994.

Respondents', Olde, Leon and Avery, Joint Statement of Answer filed: September 16, 1994.

Respondents', Olde and Leon, Submission Agreements signed: September 23, 1994 by Bruce Campbell, on behalf of Olde and on October 4, 1994 by Leon.

Respondent, Avery, did not sign a Submission Agreement as required by Section 12 and 25 of the Code.

### HEARING INFORMATION

On July 5, 1995, in Ft. Lauderdale, Florida, a Pre hearing Conference lasting 1 session was conducted via telephone conference call with the complete panel of arbitrators.

On July 13, 14, 1995, in Tampa, Florida, hearings lasting 4 sessions were conducted.

### CASE SUMMARY

Claimants alleged that Respondents breached their fiduciary duty to the Claimants by employing a nationwide scheme of soliciting and recommending Respondents "in-house" recommendations without regards for the Claimants welfare; that respondents failed to disclose the total costs and commissions generated with the transactions of their "in-house" recommendations; that the respondents failed to disclose the underlying reasons for the heavy solicitations of respondents "in-house" recommendations; that respondents made numerous misrepresentations and recommendations involving these "in-house" securities transacted in the Claimants Account. The Claimants alleged that these recommendations were also in the Claimants Account; that these recommendations were unsuitable for the Claimants, as they had absolutely no prior investment experience before relying on respondents; that respondents persuaded the Claimants to use margin to increase the Claimants' purchasing power without fully explaining the risks and costs associated with margin; failure to disclose the "truth in lending" act before placing the Claimants' account on Margin; that respondent, Olde, failed to adequately supervise their employees and freely allowed them to violate the rules and regulations SEC, NASD, that state of Florida and Olde's internal compliance manual.

Respondents, denied all allegations of wrongdoing and alleged that any losses which occurred in the Faivres' account resulted solely from Mr. Faivre's own informed investment decisions and not from any action or inaction on the part of OLDE or its brokers; that very few of the trades executed in the Faivres account were solicited by or generated any commissions for either Mr. Avery or Mr. Leon. Furthermore, most, if not all, of the trades which did generate commissions for Mr. Avery or Mr. Leon were unsolicited. Mr. Faivre was an experienced, aggressive investor who got his investment ideas from the other customers he befriended in the branch office and not from OLDE or its brokers. Mr. Avery, Mr. Leon and OLDE fulfilled any and all duties owed to the Faivres with respect to their account.

### RELIEF REQUESTED

Claimants requested compensatory damages of \$40,000.00 plus costs, loss of interest, punitive damages, treble damages, attorney's fees, and damages for the abuse and disregard of a disabled person.

Respondents requested Claimant's claims be entirely dismissed, and request that they be awarded their costs in defending this claim.

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

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award 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**

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

- (1) Respondent, Olde Discount Corporation, is found solely liable and shall pay to the Claimants the amount of \$ 13,000.00. There shall be no interest on this award if it is paid within 30 days of the date herein. If not paid within 30 days, interest shall accrue at the maximum legal rate.
- (2) Claimants' requests for interest, attorney's fees, punitive damages and treble damages are denied.
- (3) Claimants' request for damages for the abuse and disregard of a disabled person is denied.
- (4) Respondents' requests for costs and expenses are denied.

### **OTHER COSTS**

Other than as provided below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

### **FORUM FEES**

- (1) Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$2,300.00 ( 1 pre-hearing conferences x \$300.00 plus 4 hearing sessions x \$500).
- (2) Respondent, Olde, is hereby assessed \$2,300.00, \$500.00 of which shall be paid directly to the Claimants, and \$1,800.00 of which shall be paid to the National Association of Securities Dealers, Inc.
- (3) The NASD shall retain the non-refundable filing fee of \$150 paid by the Claimants.
- (4) Respondent, Olde shall reimburse the Claimants \$150 for the non-refundable filing fee.

(5) The NASD shall retain the session deposit of \$500.00 paid by the Claimants.

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

Arbitrators Signatures

/s/

Robert M. Shavick, Esq.

Public

/s/

Peter F. Crowell

Industry

/s/

Jack W. Windt

Public

October 16, 1995

Date of Decision: \_\_\_\_\_