

## **NASD AWARD**

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between

Name of Claimant

Olde Discount Corporation

and

NASD Case Number: 95-04055

Name of Respondent

The Huntington Investment Company

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### **REPRESENTATION OF PARTIES**

Claimant Olde Discount Corporation ("Claimant" or "Olde") was represented by Francis R. Ortiz, Esq. of Dickinson, Wright, Moon, Van Dusen & Freeman located in Detroit, Michigan.

Respondent The Huntington Investment Company ("Respondent" or "Huntington") was represented by Michael J. Barton, Esq. of Plunkett & Cooney, P.C. located in Detroit, Michigan.

### **CASE INFORMATION**

The Statement of Claim was filed with the National Association of Securities Dealers, Inc. ("NASD") by Claimant Olde Discount Corporation on or about August 23, 1995.

Claimant's Submission Agreement was signed on August 18, 1995 by Lisa S. Fildes, Corporate Secretary and Attorney of Olde Discount Corporation.

The Statement of Answer and Counterclaim was filed with the NASD by Respondent Huntington Investment Company on or about September 22, 1995.

Respondent's Emergency Motion for Temporary Restraining Order and Preliminary Injunction and Request for Expedited Hearing was filed with the NASD on or about September 22, 1995.

Respondent's Submission Agreement was signed on September 20, 1995 by Jordan A. Miller, Jr., Vice President and Controller of Huntington Investment Company.

Claimant's Answer to Counterclaim and Response to Respondent's Emergency Motion for Temporary Restraining Order and Preliminary Injunction was filed with the NASD on or about October 20, 1995.

### **HEARING INFORMATION**

The in-person pre-hearing was held on February 8, 1996 for one (1) session.

The hearing was held on May 14, 1996 for two (2) sessions. The hearing location was Southfield, Michigan.

### **CASE SUMMARY**

Claimant Olde Discount Corporation ("Claimant" or "Olde") alleged that on or about June 24, 1994, it entered into a Fully Disclosed Clearing Agreement (the "Agreement") with Respondent Huntington Investment Company ("Respondent" or "Huntington"). Claimant maintained that the Agreement provided for a two year term until June 24, 1996. Claimant asserted that on or about July 20, 1995, with 11 months remaining on the Agreement, Respondent breached the Agreement when it notified its customers in writing that, "after careful consideration" it "has decided to change its clearing agent from Olde Discount Corporation to National Financial Services Corporation." Claimant contended that Respondent made this decision and announcement secretly, without notice to Olde and without any prior indication that Olde was not providing the services required under the Agreement. Claimant maintained that it sent its own letter to the customers it was carrying, advising them that they were under no obligation to change clearing firms as requested by Respondent. Claimant alleged that it brought this claim against Respondent for breach of the Agreement, to recover the substantial losses that it suffered and will suffer as a result of Huntington's failure to perform its contractual obligations for the balance of the Agreement's term.

Respondent Huntington Investment Company denied all liability to Claimant in its Statement of Answer and Counterclaim. Respondent alleged that Claimant mischaracterized the Agreement, which gives Olde nothing more than the right to execute the securities trades of those Huntington accounts that Huntington chooses to introduce to Olde. Respondent asserted that Huntington had no obligation to introduce all new Huntington accounts to Olde. Respondent maintained that Olde has a clear obligation under the Agreement to avoid communicating in any way with any of Huntington's clients "for the purpose of marketing, selling or otherwise distributing" Olde's services to those Huntington clients that Huntington has chosen to introduce to Olde. Respondent alleged that Olde had blatantly violated this provision. Respondent asked that Olde

should be enjoined from further violations and ordered to pay damages to Huntington for those violations that Olde has already committed.

Claimant Olde Discount Corporation denied all liability to Respondent in its Answer to Counterclaim and Response to Respondent's Emergency Motion for Temporary Restraining Order and Preliminary Injunction. Claimant asserted that it has made no effort to solicit Huntington accounts since its initial actions taken in early August 1995. Claimant alleged that it represented to Huntington that it would not solicit any of the Huntington accounts introduced by Huntington until the appointment by the NASD Arbitration Panel.

### **RELIEF REQUESTED**

Claimant requested an award in favor of Olde and against Huntington for all the monetary damages suffered by Olde, plus interest and an award of attorneys fees and costs (including hearing session and filing fees) caused by Huntington's flagrant breach of the Agreement.

Respondent requested that the Statement of Claim be dismissed in its entirety and an award of costs and attorney's fees incurred in its defense of this action. Respondent also requested that the panel grant the relief sought in the Counterclaim by (i) enjoining Olde from all further violations of law, including violations of paragraph 13 of the Agreement, of its duty of loyalty to Huntington under the law of agency, and of its duty not to interfere with Huntington's current and prospective contractual and economic relations with Huntington customers; (ii) awarding Huntington all appropriate damages, including exemplary and punitive damages; and (iii) awarding Huntington all costs and attorneys' fees incurred by it in pursuing its Counterclaim, in defense of Olde's claim, and in efforts to obtain injunctive relief from the United States District Court for the Eastern District of Michigan.

### **OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD.

### **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. The Statement of Claim is hereby dismissed in its entirety with prejudice;
2. The Counterclaim is hereby dismissed in its entirety with prejudice;
3. Claimant Olde Discount Corporation shall not use, disclose, or transmit customer names, customer addresses, customer phone numbers, or other information learned of through its clearing relationship with Respondent Huntington Investment Company for the purpose of competing with Huntington Investment Company or for enabling any other persons or entities to compete with Huntington Investment Company until December 31, 1997 at 12:00 A.M. E.S.T.;
4. Respondent Huntington Investment Company shall reimburse Claimant Olde Discount Corporation for one-half (1/2) the hearing session deposit in the amount of Three Hundred Dollars and No Cents (\$300);
5. Other than forum fees which are specified below, the parties shall each bear their own respective costs and attorney's fees; and
6. Any relief not specifically enumerated is hereby denied.

### **FORUM FEES**

Forum fees are calculated at the rate of \$600 per hearing session and \$300 per pre-hearing session, if any. There were three (3) hearing sessions x \$600= \$1,800. Total forum fees= \$1,800. Pursuant to §43(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$500 previously deposited with the NASD by the Claimant. The NASD shall retain the hearing session deposit in the amount of \$600 previously deposited with the NASD by the Claimant. The NASD shall retain the amount of \$150 previously deposited with the NASD by the Claimant and apply this amount towards the Section 45 Member Surcharge in the amount of \$350.

The NASD shall retain the non-refundable filing fee in the amount of \$250 previously deposited with the NASD by the Respondent. The NASD shall retain the hearing session deposit in the amount of \$600 previously deposited with the NASD by the Respondent. The NASD shall retain

the amount of \$2,400 previously deposited with the NASD by the Respondent and apply this amount towards the expedited hearing surcharge in the amount of \$2,500. The NASD shall retain the Respondent's Section 45 Member Surcharge in the amount of \$350.

Claimant Olde Discount Corporation is assessed and shall pay forum fees in the amount of \$500.

Respondent Huntington Investment Company is assessed and shall pay forum fees in the amount \$400.

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

Concurring Arbitrators' Signatures

\s\ Harold I. Gach, Esq.

Harold I. Gach, Esq.

Chairperson

Industry Arbitrator

June 10, 1996

Dated:

\s\ Frank G. Bank

Frank G. Bank

Panelist

Industry Arbitrator

June 19, 1996

Dated:

\s\ Anthony J. Bove, III

Anthony J. Bove, III

Panelist

Industry Arbitrator

June 12, 1996

Dated:

For NASD use only:

Date award served on the parties: June 19, 1996