

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Beverly Walklin

95-00034

Name of Respondents

**Olde Discount Corporation;
Carl Choley**

REPRESENTATION

For Claimant: Beverly Walklin ("Walklin") was represented by Merrill Gordon, Esq. of Bloom, Davidow & Associates, P.L.C., located in Farmington Hills, Michigan.

For Respondent: Olde Discount Corporation ("Olde") and Carl Choley ("Choley") were represented by Lisa S. Fildes, Esq. of Olde Discount Corporation, Detroit, Michigan.

CASE INFORMATION

Statement of Claim filed: January 3, 1995.

Claimant's Submission Agreement signed on: December 28, 1994.

Statement of Answer filed by Respondent, Olde and Choley on: January 30, 1995.

Olde's Uniform Submission Agreement signed on: January 30, 1995 by Lisa s. Fildes, Secretary and Corporate Attorney, Olde Discount Corporation.

Choley's Uniform Submission Agreement signed on: January 30, 1995.

HEARING INFORMATION

Pre-Hearing Conference: None held.

Hearing Dates/Sessions: October 12, 1995 for Two (2) sessions.

Hearing Location: Southfield, Michigan.

CASE SUMMARY

Claimant Walklin alleged that Respondent Choley, while employed by or acting as an agent for Respondent Olde, failed to advise Walklin that a common stock purchase was not suitable for her given her net worth and investor profile. Walklin specifically alleged that:

1. In August of 1992, Walklin opened her brokerage account with Respondents Walklins' investment profile was conservative, consisting primarily of cash and no-load mutual funds. Walklin was a novice investor having traded in stocks for three years and engaging in only two trades a year. After opening the account, Walklin's trading history remained conservative;

2. On May 20, 1993, Walklin purchased through Respondents 3,000 shares of Spectrum Information Technologies, Inc. common stock at \$12.875 per share. The purchase equated to approximately 64% of her net worth;

3. Despite Walklin's inexperience, the nature of the stock, and the size of the purchase, Respondents failed to inform her of the risks of the purchase or whether such a large investment was suitable for Walklin;

4. Several days after purchase, the Spectrum stock value fell to \$5.00 per share. Walklin phoned Choley, who advised her that in his professional opinion, it was best to retain the stock and the price would rebound. The stock continued to fall until it was sold on June 21, 1994. As a result, Walklin lost \$33,562.50 plus commissions of \$400.66;

5. In light of Walklin's prior trading history and the information contained on her investor profile, Respondents were obligated to advise Walklin that the investment was inappropriate and unsuitable, but they failed to do so; and

6. Walklin was further induced to purchase this large investment because she believed that Choley personally owned shares of Spectrum.

Respondents denied the material allegations of the Statement of Claim, alleging that:

1. On May 18 and 20, 1993, Walklin divested herself of her holdings and placed an unsolicited order to purchase 3,000 shares of Spectrum. The trade was executed at 12.875 and required the payment of additional equity. Simultaneously, Walklin placed an order to sell 3,000 shares of Spectrum at a limit of 15 good till canceled. The shares did not reach 15 and the order was canceled June 30, 1993. On November 4, 1993, the shares were delivered out of the account to Walklin at

her request when the market value was 9.375;

2. The Respondents are not obligated and have no duty to save Walklin from losses incurred as a result of the decreased value of stock she purchased on her own initiative. The Spectrum purchase was not recommended to Walklin, the order was authorized by Walklin and promptly executed and no misrepresentations were made;

3. Walklin did not question the trade until the price declined substantially. After the shares were withdrawn from the account, Respondents could not be expected to advise her on the disposition of the security.

RELIEF REQUESTED

Claimant requested entry of an award against Respondents for the sum of \$33,963.16, plus attorneys' fees, costs and interest incurred as a result of Respondents' actions.

Respondents requested that the claims 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.

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

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are

assessed: Two (2) hearing sessions x \$400.00 per session = \$800.00.

The National Association of Securities Dealers, Inc. shall retain the \$120.00 claim filing fee and the \$400.00 hearing session deposit previously deposited by the Claimant, Beverly Walklin. The NASD shall refund the amount of \$30.00 additionally paid as part of the hearing session deposit. Respondents Olde Discount Corporation and Carl Choley are jointly and severally liable for and shall pay to the NASD the sum of \$400.00 as forum fees. In addition, the NASD shall retain the \$200.00 Section 45 surcharge paid by Respondent Olde Discount Corporation.

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

Concurring Arbitrators' Signatures

Name

Date

/s/ Barry Goldman, Esq.

November 28, 1995

Barry Goldman, Esq.

Public Arbitrator

Chairperson

/s/ Ernest K. Efimoff, DDS

November 29, 1995

Ernest K. Efimoff, DDS

Public Arbitrator

/s/ Norman A. Samson

November 28, 1995

Norman A. Samson

Industry Arbitrator

For NASD Use Only

Date of Decision: November 30, 1995