

**NASD AWARD**

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between

Gary S. Harhay, and  
Suzanne Harhay,  
Claimants,

v.

No. 95-00055

OLDE Discount Corporation, and  
Mark Chiapetta, and  
Deborah Bonsel,  
Respondents.

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**REPRESENTATION OF PARTIES**

Gary S. Harhay, and Suzanne Harhay ("Claimants") was represented by Richard Himelrick, Esq., of Byrnes & Himelrick, Scottsdale, Arizona.

OLDE Discount Corporation ("ODC"), Mark Chiapetta ("Chiapetta"), and Deborah Bonsel ("Bonsel") (or collectively referred to as "Respondents") were represented by Amy Kutt Richards, Esq., of OLDE Discount Corporation.

**CASE INFORMATION**

Claimants' Statement of Claim was filed on or about December 28, 1994. Claimants' Submission Agreement was signed on December 27, 1994.

Respondents' joint Statement of Answer was filed on or about March 17, 1995. Respondents Submission Agreements were signed on February 3, 1995.

**HEARING INFORMATION**

A telephonic pre-hearing conference was held on September 15, 1995 for a total of one (1) session.

The hearing was held on December 5, 6, and 7, 1995 in Scottsdale, Arizona for a total of six (6) sessions.

### **CASE SUMMARY**

Claimant alleged that Respondents: Committed negligence in encouraging the Claimants to engage in short term trading on margin; breached their fiduciary duties; made misstatements of material fact; and engaged in excessive trading in an account which Chiapetta controlled and which was suited only for investments promoting safety of principal. Claimants further alleged that OLDE failed to supervise their sales personnel with respect to accounts involving unsophisticated customers. The allegations arose out of trading in the securities listed on exhibit "G" to the Statement of Claim.

Respondent denied the allegations set forth in the Statement of Claim. Respondents specifically stated that the Claimants were: Aware of the risks attendant to their chosen activity; in complete control of their account at all times; made their own investment decisions; the losses suffered by the Claimants in this matter were clearly the result of Claimants' own behavior, not any negligence on the part of OLDE or its brokers; and Claimants initiated a short-term trading scheme on his own because they desired quick returns.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of: \$22,697 with interest at 10% from September 30, 1993; costs and reasonable attorneys' fees under A.R.S. §44-2001; and punitive damages in the amount of \$250,000.

Respondent requested that the claims asserted against it be denied in its entirety and that it be awarded its' costs and attorneys' fees.

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

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains on file with the NASD.

### **AWARD**

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

Respondent OLDE Discount Corporation is liable for, and shall pay to the Claimants damages in the sum of \$28,272, punitive damages in the amount of \$28,272, reasonable costs (including the NASD filing fee \$950), including reasonable attorneys' fees, including fees and costs incurred in connection with securing document production from Respondents, subject to submission of an itemized statement of such costs and fees. In addition, Claimant is awarded interest at the rate of 10% per annum.

Respondent Mark Chiapetta is liable for, and shall pay to Claimants the sum of \$829 as satisfaction of their claims made herein.

Claimants' claims are, and each of them, denied and dismissed with prejudice as to Respondent Deborah Bonsel.

Except as specifically set forth in this award, each party shall bear its own costs and expenses associated with this arbitration.

#### **FORUM FEES**

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each prehearing conference, if any. There were six (6) regular sessions x \$750 and one (1) pre-hearing conference session x \$300.00 = \$4,800 in forum fees. Pursuant to §43(b) of the NASD Code of Arbitration Procedure (the "Code"), 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 Code, the NASD shall **retain** the non-refundable filing fee in the amount of \$200 and shall **retain** as forum fees the hearing session deposit in the amount of \$750 previously deposited with the NASD by the Claimant.

Pursuant to §45 of the Code, the NASD shall retain the member surcharge fee in the amount of \$350 previously paid by OLDE Discount Corporation.

Additional forum fees in the amount of \$4050 are assessed against OLDE Discount Corporation.

The NASD shall retain postponement fees in the amount of \$750 previously deposited with the NASD by OLDE Discount Corporation. **Fees are payable to the National Association of Securities Dealers, Inc.**

Dated:

Warren C. Kotzman  
Warren C. Kotzman  
Public Arbitrator, Presiding Chair

s/s

February 13, 1996

Frank Lewis  
Frank Lewis  
Public Arbitrator

s/s

February 8, 1996

Emanuel H. Heimann, Jr.  
Emanuel H. Heimann, Jr.  
Industry Arbitrator

s/s

February 13, 1996

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

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

In the matter of the Arbitration Between

**Name of Claimant**

Robert M. Paulson

vs.

NASD Arbitration  
No. 95-00058

**Name of Respondents**

Cartwright & Walker Securities, Inc. and Gene Todd

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**REPRESENTATION**

For Claimant: Robert M. Paulson, In Pro Per

For Respondents: No Appearance by Respondents

**CASE INFORMATION**

Statement of Claim filed: January 4, 1995

Claimant's Submission Agreement signed: December 30, 1994

Joint Statement of Answer filed by Respondents: No Answer filed

Respondents' Submission Agreement signed: No Submission Agreement signed

**HEARING INFORMATION**

Hearing Date(s) / Session(s): October 18, 1995 (1 session)

Hearing Location: Los Angeles, California

### CASE SUMMARY

Claimant alleged that Respondents sold him an unsuitable stock and engaged in misrepresentation during an unsolicited telephone call.

### RELIEF REQUESTED

Claimant sought return of his \$4,100.00 investment, plus interest and punitive damages.

### OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in either 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 original remains on file with the NASD.

The Arbitrator, upon review of the case file, determined the Respondents had been served with the Statement of Claim and had been given sufficient notice of the Arbitration proceeding.

### AWARD

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

1. Claimant is awarded \$4,030.00 plus interest at 7% per annum from and after June 24, 1994 against Respondents, jointly and severally.
2. Claimant is further awarded \$150.00 against respondents, jointly and severally for reimbursement of the costs of arbitration, consisting of his filing fee and hearing session deposit.
3. Claimant's request for punitive damages is denied.

### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed:

Claimant's hearing session deposit shall be retained by the NASD.

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

**ARBITRATORS**

<u>Name</u>	<u>Public / Industry</u>
Herbert M. Schoenberg, Esq.	Public Arbitrator

**Arbitrator's Signature**

Herbert M. Schoenberg  
Herbert M. Schoenberg, Esq.

Date of Decision: Oct. 26, 1995