

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

James P. Endlich

vs.

Case No.  
95-00172

Name of Respondents

Olde Discount Corporation  
Randall B. Cohen

REPRESENTATION

For Claimant James P. Endlich a.k.a. James P. Endlich ("Endlich" or "Endlich") appeared Ronald G. Figler of Lesh, Casner & Miller located in Canton, Ohio.

For Respondents Olde Discount Corporation ("Olde") and Randall B. Cohen ("Cohen") appeared Lisa S. Fildes of Olde located in Detroit Michigan.

CASE INFORMATION

Statement of Claim filed on: January 12, 1995.

Amended Statement of Claim filed on: September 18, 1995.

Claimant's Submission Agreement signed on: January 10, 1995.

Statement of Answer filed by Respondent Olde on: February 21, 1995.

Respondent Olde's Submission Agreement signed on: February 17, 1995.

Statement of Answer filed by Respondent Cohen on: February 21, 1995.

Respondent Cohen's Submission Agreement signed on: January 21, 1995.

HEARING INFORMATION

Pre-Hearing Conference: November 6, 1995 - 1 session

Hearing Date/Session: November 7, 1995 - 3 sessions

The hearings took place at the National Association of Securities Dealers, Inc.'s offices located in Cleveland, Ohio.

CASE SUMMARY

Claimant alleged that Respondent Cohen encouraged him to open a margin account but, misrepresented

the inherent risks of the margin investment strategy. Moreover, the Claimant contended that he was not given adequate warnings concerning the risks of investing on margin but rather, was only informed of the rewards and given assurances that the risks were being minimized. Endlich further alleged that he only authorized purchases on margin based upon Respondent Cohen's assurances that he would not margin the Claimant out too far and upon Cohen's recommendations.

Considering that he was a relatively unsophisticated investor, Endlich maintained that the Respondents recommended and caused him to invest in unsuitable securities. The Claimant further alleged that the securities which the Respondents recommended and caused the Claimant to purchase were unsuitable because the extent of the margin was too heavy for the small-capitalization type of securities and because these securities were highly speculative and cyclical. In addition, the Claimant maintained that some of the information contained on the Account Application was untrue and was added by the Respondents without the Claimant's authorization or consultation.

Endlich further contended that the Respondents failed to monitor his holdings and failed to advise him of any holdings which should be sold. In addition, the Claimant maintained that Respondent Olde failed to adequately supervise Cohen. According to the Claimant, by failing to ascertain whether he understood the risks of the investment, the Respondents breached their fiduciary duty to him.

Respondents maintained that Endlich provided the information to Olde upon which Cohen based his recommendations which were both reasonable and suitable for the Claimant's account. In addition, the Respondents contended that the Claimant received written information on the recommended securities and directed all trading activity in his account. According to the Respondents, Cohen verbally discussed the risks and rewards of margin trading in great detail with Endlich and provided him with the appropriate written disclosures. Moreover, the Respondents maintained that the Claimant was comfortable with his use of margin and even resisted Cohen's suggestion that certain stocks be sold to lessen margin debit.

#### **RELIEF REQUESTED**

Claimant requested compensatory damages from the Respondents, jointly and severally, in the amount of \$40,593. In the alternative, the Claimant sought such greater or lesser amount as would adequately compensate the Claimant for the losses incurred. In addition, the Claimant requested punitive damages against the Respondents jointly and severally. Endlich also prayed for reasonable attorney fees and his costs in this action.

Respondents requested that the Claimant's claim be denied and no damages awarded.

#### **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 original(s) remain on file with the NASD.

1. The arbitrators determined at the hearing to permit the Claimant to proceed on his Amended Statement of Claim. In addition, the arbitrators let stand the Respondents' Answer with the understanding that any additional allegations in the Amended Statement of Claim would be deemed to be denied.

#### **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 Respondents Olde and Cohen are jointly and severally liable to the Claimant in the amount of **TWENTY THOUSAND DOLLARS (\$20,000)**.

2. All forum fees are to be assessed jointly and severally against both Respondents.

#### FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

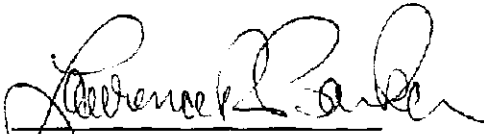
Non-refundable filing fee:	\$ 120.00
Hearing Sessions (3 @ \$400 per session):	\$1,200.00
Pre-Hearing Conferences (1 @ \$300):	<u>\$ 300.00</u>
Total Fees:	\$1,620.00

1. The Claimant has paid \$520.00 and owes nothing.

2. The Respondents, jointly and severally, owe the Claimant \$400.00 and owe the NASD \$1,100.00.

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

#### ARBITRATORS' SIGNATURES



Lawrence R. Barker  
Chairperson

Public

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Robert E. Bingham, Esq.

Public

\_\_\_\_\_  
David A. Rodriguez

Industry

Date of Decision: January 26, 1996

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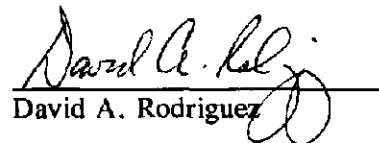
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