

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Amrit N. Achari

95-00306

Names of Respondents

Olde Discount Corporation  
Michael S. Clements  
Daniel Garcia

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**REPRESENTATION**

Claimant, Amrit N. Achari was represent by Dale L. Trimble, Esq., Sole Practitioner, located in Houston, TX.

Respondents, Olde Discount Corporation, Michael S. Clements, and Daniel Garcia were represented by Karen L. Brink, Esq. of Olde Discount Corporation located in Detroit, MI..

**CASE INFORMATION**

The Statement of Claim was filed on January 20, 1995.

Claimant's Submission Agreement was signed on January 11, 1995.

The Joint Statement of Answer was filed by all Respondents on or about March 16, 1996.

Respondent, Olde Discount Corporation's Submission Agreement was signed on February 2, 1995 by Bruce A. Campbell, Vice President and Corporate Attorney.

Respondent, Michael S. Clements's Submission Agreement was signed on February 7, 1995.

Respondent, Daniel Garcia's Submission Agreement was signed on February 10, 1995.

**HEARING INFORMATION**

A pre-hearing conference was held on January 3, 1996 for one (1) pre-hearing session before one arbitrator.

The hearing was held in Houston, TX on the following dates:

- March 7, 1996 for two (2) hearing sessions
- March 8, 1996 for two (2) hearing sessions

### **CASE SUMMARY**

In the Statement of Claim, Dr. Amrit N. Achari ("Achari") alleged that when he opened his accounts at Olde Discount Corporation on or about July 22, 1992, he completed an application indicating he was an inexperienced investor, interested in conservative, growth-oriented investing and would be dependent upon advice from Olde. As alleged, Olde brokers, particularly Dan Garcia ("Garcia"), encouraged Claimant to invest in speculative and volatile holdings. Claimants contended that Garcia was responsible for securities transactions totaling more than \$2.4 million in his accounts from January, 1993 until April, 1994. Claimant further contended that on April 29, 1994 Garcia purchased 3800 shares of Pinnacle Micro at \$17.00 per share and sold 1000 shares of 3 COM stock at \$57.75 per share without the Claimants's authorization. Achari alleged that when he confronted the broker on May 2, 1994 about the sale of 3 COM stock, Garcia explained that the sale was a mistake and that he would remedy the problem by selling the 3 COM shares as of May 2, 1994 when the stock was selling at \$59.25. Garcia allegedly told Claimant that the Pinnacle Micro stock had been purchased for another client but mistakenly applied to Achari's account and that he would correct the transaction. As alleged, the Claimant complained to Mike Clements, Regional Director, and Clay Stroup, customer service representative, who both told Claimant that all suspect transactions had been authorized by him. According to the Claimant, Garcia took advantage of his inexperience, placed undue pressure on him to sell stocks which were performing well and pressured him to buy other stocks in order to generate commissions from the transactions. Achari made other allegations against the Respondents including, but not limited to, churning, negligent handling of accounts and breach of fiduciary duty.

In their Statement of Answer, Olde Discount Corporation, Daniel Garcia and Michael Clements denied the allegations of wrongdoing asserted against them by the Claimant. Respondents alleged that Achari was a knowledgeable investor who authorized each trade knowingly and with an understanding of the attendant risks. Respondents maintained that Achari kept in constant contact with Olde and that he was continuously making unsolicited stock purchases in his accounts. Respondents requested that Achari be awarded nothing since Claimant allegedly wanted to hold them responsible for Claimant's own chosen trading strategy and for uncontrollable market swings. Respondents contended that Claimant failed to state any legal or factual basis for this allegations.

### **RELIEF REQUESTED**

Claimant, Amrit N. Achari requested an award in the amount of \$93,719.38 in actual damages and \$250,00.00 in exemplary damages as well as interest, costs and attorneys' fees.

Respondents, Olde Discount Corporation, Daniel Garcia and Michael Clements requested that the Statement of Claim be dismissed in its entirety and that they be awarded costs and attorneys' fees.

### **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.

### **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 denied in its entirety;
2. All relief not specifically granted herein is hereby denied in its entirety; and
3. The parties shall bear their own costs including attorneys' fees except for those specifically enumerated herein.

### **FORUM FEES**

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

four (4) hearing sessions x \$750.00 plus one (1) pre-hearing session x \$300.00 = \$3,300.00

The National Association of Securities Dealers, Inc. ("NASD") shall retain the claim filing fee in the amount of \$200.00 and the hearing session deposit in the amount of \$750.00 previously submitted by the Claimant, Amrit N. Achari. Claimant, Amrit N. Achari is hereby liable for and shall pay to the NASD the sum of \$750.00 in additional forum fees.

The NASD shall retain the member surcharge of \$350.00 and the postponement fee of \$750.00 previously submitted by the Respondents, Olde Discount Corporation, Michael Clements and Daniel Garcia. Respondents, Olde Discount Corporation, Michael Clements and Daniel Garcia are hereby jointly and severally liable for and shall pay to the NASD the sum of \$1,500.00 in forum fees. Respondents, Olde Discount Corporation, Michael Clements and Daniel Garcia are also jointly and severally hereby liable for and shall pay to the NASD the postponement fee in the amount of \$1,000.00 assessed by the panel following Respondents' request for adjournment dated December 27, 1995.

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

Concurring Arbitrators' Signatures

Name

Date

David G. Beerbower, Esq.

April 19, 1996

David G. Beerbower, Esq.

Public Arbitrator, Chairman

Leonard J. Sullivan

April 25, 1996

Leonard J. Sullivan

Public Arbitrator, Panelist

Nick Sacaris

April 23, 1996

Nick Sacaris

Industry Arbitrator, Panelist

Date served by the NASD: April 30, 1996