

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

David Michan Cheren, Trustee  
Trust No. 1987-1, Dated April 9, 1987

NASD Arbitration  
No. 95-00549

Name of Respondent(s)

Olde Discount Corporation  
Thomas Kelly

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REPRESENTATION

For Claimant: Dennis J. Wickham, Esq., Seltzer Caplan Wilkins & McMahon, San Diego, California

For Respondents: David T. Doyle, Esq., Olde Discount Corporation, Detroit, Michigan

CASE INFORMATION

Statement of Claim filed: January 27, 1995

Supplement to Statement of Claim filed: February 24, 1995

Claimant's Submission Agreement signed: January 30, 1995

Joint Statement of Answer filed by Respondents: May 20, 1995

Respondents' Submission Agreements signed as follows:

Olde Discount Corporation: April 12, 1995

Thomas Kelly: May 4, 1995

### HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s): None

Hearing Date(s)/Session(s): November 16, 1995 (two sessions)

Hearing Location: San Diego, California

### CASE SUMMARY

Claimant David Michan Cheren, Trustee, alleged that he is not an aggressive nor a sophisticated investor in the securities market and alleged that the shares of Texaco Preferred "B" stock, made in Claimant's account, was contrary to Claimant's investment objectives. Claimant further alleged misrepresentations with respect to his investment.

Respondents denied Claimant's allegations of wrongdoing and denied any liability to Claimant. Respondents alleged that Mr. Cheren is an extremely wealthy, sophisticated investor who was fully informed by Respondents of the attendant risks associated with Claimant's investment and that Mr. Cheren understood those risks when the subject investment was made. Respondents further alleged that although it is unfortunate when any customer loses money, Respondents are not Mr. Cheren's financial insurers, guaranteeing that Claimant will make a profit, and alleged that this arbitration matter is the result of 20/20 hindsight by Claimant. Respondents also asserted affirmative defenses.

### RELIEF REQUESTED

Claimant requested damages in the approximate amount of \$43,674.63.

Respondents requested dismissal of Claimant's claims and requested that Claimant pay all fees and costs in connection with Respondents' defense against Claimant's claims.

### 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 originals remain on file with the National Association of Securities Dealers, Inc. (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. Respondents Olde Discount Corporation and Thomas Kelly are jointly and severally liable for and shall pay to Claimant the sum of \$11,800.00, inclusive of interest.

2. The parties shall each bear their respective costs including attorney's fees.

#### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall refund the \$400.00 hearing session deposit previously deposited by the Claimant. Forum fees are assessed against Respondents Olde Discount Corporation and Thomas Kelly, jointly and severally, in the amount of \$800.00, calculated as follows: Two hearing sessions times \$400.00/session.

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

#### ARBITRATORS

Name ..... Public / Industry

William R. Newsome, Esq.  
James H. Mayer, Esq.  
Robert A. Yates

Public Arbitrator  
Public Arbitrator  
Industry Arbitrator

Concurring Arbitrators' Signatures



William R. Newsome, Esq.

\_\_\_\_\_  
James H. Mayer, Esq.


\_\_\_\_\_  
Robert A. Yates

Date served: 12/26/95

Date of Decision: \_\_\_\_\_

Concurring Arbitrators' Signatures

\_\_\_\_\_  
William R. Newsome, Esq.

  
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James H. Mayer, Esq.

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Robert A. Yates

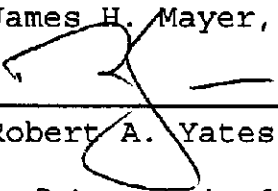
Date served: 12/26/95

Date of Decision: November 16, 1995

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William R. Newsome, Esq.

\_\_\_\_\_  
James H. Mayer, Esq.

  
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Robert A. Yates

Date served: 12/26/95

Date of Decision: 12/22/95