

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Bill G. and Wanda Annette Cariker

95-00757

Name of Respondents

Olde Discount Corporation
Christopher McDonald

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 13, 1995, Claimants Bill G. and Wanda Annette Cariker ("Claimants"), who appeared Pro Se, alleged that Respondents Olde Discount Corporation ("ODC") and Christopher McDonald ("McDonald"), from March 31, 1994 to November 7, 1994, led Claimants to purchase a wide range of securities, including Artisoft and SLM International, to their detriment. Claimants further alleged that the disputed investments were not suitable for Claimants' self-expressed conservative investment objectives due to the risky, speculative nature. Claimants contended that Respondent McDonald failed in his duty to adequately research the proposed investments, nor did he fully and fairly disclose to Claimants the parameters of proposed investments, including risk factors, potential profits and historical/future financial performance. Claimants further contended that McDonald failed to adequately monitor the performance of Claimants' account, and to notify Claimants on timely basis of appropriate capital-preserving strategies. Claimants alleged that Respondent ODC's lack of adequate customer service and processing procedures resulted in Claimants being represented as "aggressive, speculative investors" when, at all times during their relationship with Respondents, they were conservative investors. Claimants further alleged that as a result of the above, they have suffered a loss for which the Respondents should be held liable.

Respondents Olde Discount Corporation and Christopher McDonald, through their in-house counsel, Amy Kutt Richards, Esq., maintained that Claimants changed their original customer profile when on May 11, 1994. Respondents further maintained that the ODC Option Account Agreement, and this new account information conflicted with the original information it had been given, necessitating a change in Claimants' investment objective profile from conservative to "moderate to aggressive", and an addition of "speculation." Respondents further maintained that while acting against McDonald's advice, the Claimants gave sell orders for the 7/29 sale of 1,000 AME at \$7.625 a share and the sale of ECI at \$17.00 a share. Respondents contended that regarding the disputed investment in Artisoft, ODC research department had issued a buy recommendation on 8/2, but subsequently the stock underwent an unforeseen decline. Respondents further contended that the ODC research department had issued a buy recommendation for SLM on 5/12, and that in November, 1994, it downgraded the stock, and that

Claimants were among the few clients that McDonald "was simply unable to reach". Respondents maintained that it was a wrongdoing by SLM management, not ODC, which occasioned Claimants' alleged loss in this investment. Respondents further maintained that McDonald at all times acted with adequate professionalism regarding communicating relevant information to and utilizing ODC research on behalf of Claimants. Respondents contended that as a result of the above, they should not be held liable.

RELIEF REQUESTED

Claimants Bill G. and Wanda Annette Cariker, requested \$8,000.00 in actual damages.

Respondents Olde Discount Corp. and Christopher McDonald, requested that the claims of the Claimant be dismissed in their entirety.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, James B. Eichberg, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants Bill G. and Wanda Annette Cariker, on February 9, 1995, and by the Respondent Olde Discount Corp., on March 3, 1995, and by Respondent Christopher McDonald, on March 13, 1995.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of the Claimants Bill G. and Wanda Annette, against Respondent Olde Discount Corp. are denied in their entirety.
2. The Respondent Christopher McDonald, is liable and shall pay to the Claimants Bill G. and Wanda Annette, \$2,500.00 in actual damages.
3. The parties shall bear their respective costs.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants Bill G. & Wanda Annette, shall be retained by the NASD, Inc.

AFFIRMATION

I, **JAMES B. EICHBERG**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



JAMES B. EICHBERG

DATE OF DECISION: February 6, 1996