

## NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between

Frank Sakolari, and  
Ekaterina Sakolari,  
Claimants,

v.

No. 95-00984

OLDE Discount Corporation, and  
Rick Rizzo,  
Respondents.

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### REPRESENTATION OF PARTIES

Frank Sakolari and Ekaterina Sakolari ("**Claimants**") were represented by Carl J. Koster, Esq., of Villa Park, Illinois.

OLDE Discount Corporation ("**ODC**"), and Rick Rizzo ("**Rizzo**") (or collectively referred to as "**Respondents**") were represented by Julie D. Reed, Esq., of OLDE Discount Corporation, Detroit, Michigan.

### CASE INFORMATION

Claimants' Statement of Claim was filed on or about February 24, 1995. Claimants' Submission Agreement was signed on February 2, 1995.

Respondents' Statement of Answer was filed on or about April 24, 1995. Respondents Submission Agreements were signed on April 24, 1995.

### HEARING INFORMATION

The hearing was held on January 23, 1996 in Chicago, Illinois for a total of one (1) session.

### **CASE SUMMARY**

Claimants alleged that: On or about March 22, 1994, they telephoned Rizzo and requested that he send to the Claimants \$7,000 from their account at ODC, to which Rizzo agreed; Rizzo never sent the money as agreed, and instead, on or about March 24, 1994, contacted Claimants to purchase stock in American Power Conversion Corp.; Rizzo, when asked, told the Claimants that they had sufficient funds in their account to pay for the purchase; Rizzo misinformed Claimants that there was enough money in the account after the \$7,000 were withdrawn to purchase the American Power Conversion Corp. stock; within one week of March 23, 1994 Claimants had not received a check for \$7,000, and when they called Rizzo, he informed the Claimants that their request had not been followed; and that due to Rizzo's negligence, Claimants had to sell the American Power Conversion Corp. stock at a time when the value had dropped (\$10,000).

Unless otherwise admitted therein, Respondents denied the allegations set forth in the Statement of Claim. Respondents also asserted the following affirmative defenses: Claimant has failed to state a claim upon which relief may be granted; Claimants' claim is barred by, the applicable statutes of limitation, by the statute of frauds, by the doctrines of laches, waiver and ratification, by want or failure of consideration, by Claimants' contributory negligence; Claimant failed to mitigate his damages; Respondents' obligations to Claimants, if any, to the Claimants have been fully paid, satisfied and discharged; the alleged wrongdoing of which Claimants complain was perpetrated, if at all, by an individual or entities other than ODC and therefore, ODC is not liable in any respect; Claimant assumed the risk of the transactions engaged in and the investment losses occurred; Economic, industry, corporate and market conditions, and not ODC was responsible for Claimants' losses, if any; Claimant may not recover punitive or exemplary damages, as the recovery of such damages is not permitted under applicable state laws; ODC at all times, acted in good faith and did not induce Claimants' investments, and therefore, ODC cannot be held liable as a control person; and Respondents have no knowledge of or reasonable grounds to believe the existence of any facts by reason of which liability is alleged, and therefore, Respondents cannot be held liable.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$10,000, the interest accrued from March 23, 1994 and the attorneys' fees incurred as a result of this arbitration.

Respondents requested that the arbitration panel reject all of the Claimants' claims.

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

On or about January 4, 1996, Respondents filed a Motion to Dismiss the Statement of Claim. Claimants filed their response to the motion on January 23, 1996. On or about January 22, 1996, Respondents filed a Motion to Bar Witnesses and Documents and to Dismiss the Statement of

Claim. After review of the motions and the response, and hearing argument on January 23, 1996, the undersigned arbitrator denied Respondents' motions.

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, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

Claimants Frank Sakolari, and Ekaterina Sakolari's claims asserted against OLDE Discount Corporation, and Rick Rizzo are, and each of them, denied with prejudice.

All other claims/requests for relief not specifically set forth herein, are denied with prejudice.

Each party shall bear its own costs and expenses, including attorneys' fees, associated with this arbitration.

### **FORUM FEES**

Forum fees are calculated at the rate of \$200 per hearing session and \$300 for each prehearing conference, if any. There was one (1) session x \$200 = \$200 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 \$75 and shall **refund** the hearing session deposit in the amount of \$199 previously deposited with the NASD by the Claimants.

Pursuant to §45 of the Code, the NASD shall retain the member surcharge fee in the amount of \$100 previously paid by OLDE Discount Corporation.

Additional forum fees in the amount of \$200 are assessed against OLDE Discount Corporation.

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

Bradford S. Allen  
Bradford S. Allen  
Public Arbitrator, Presiding Chair

s/s

Dated:  
February 26, 1996