

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Names of Claimants

Richard & Charlotte Astalos

95-01914

Names of Respondents

Olde Discount Corporation  
Richard D. Gurchak  
Frank L. Thomas

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REPRESENTATION

For Claimants, Charlotte L. Astalos and Richard J. Astalos ("Astalos"): Allan J. Fedor, Esq. and Franell Fedor, Esq. of Fedor & Fedor, of Largo, Florida.

For Respondents, Olde Discount Corporation ("Olde"), Frank Thomas ("Thomas"), and Richard Gurchak ("Gurchak"): Karen L. Brink, Esq. of Olde Discount Corporation, of Detroit, Michigan.

CASE INFORMATION

Statement of Claim filed: April 11, 1995.

Claimants Astalos' Submission Agreement signed on: April 4, 1995.

Joint Statement of Answer filed: June 27, 1995.

Respondent Olde's Submission Agreement signed on: June 29, 1995 by Thomas P. Fitzgerald, General Counsel of Olde, on behalf of Olde.

Respondent Thomas's Submission Agreement signed on: May 15, 1995.

Respondent Gurchak's Submission Agreement signed on: June 2, 1995.

HEARING INFORMATION

On February 9, 1996, in Fort Lauderdale, Florida, a prehearing conference lasting one session was conducted via telephone conference call with the Chairperson of the Panel.

On February 21, 22, 23, and March 13, 1996, in Tampa, Florida, a hearing lasting eight (8) sessions was conducted.

### CASE SUMMARY

Claimants Astalos alleged that Respondents made numerous misrepresentations and omissions of material fact in recommending securities purchases for Claimants accounts. Claimants alleged that Respondents altered their new account applications to show aggressive and speculative trading objectives, engaged in excessive margin trading and the "churning" of Claimants' accounts.

Claimants further alleged that "credit" payments to their brokers, a form of undisclosed commissions, were deliberately concealed from them on their confirmation slips.

Claimants alleged that Respondents' conduct: (1) constituted fraudulent transactions in violation of Florida Statutes Section 517.301; (2) constituted common law fraud and/or negligent misrepresentation; (3) constituted negligence and/or gross negligence; and (4) constituted a breach of fiduciary duty to Claimants.

In addition, Claimants alleged that Respondent Olde failed to properly supervise the activities of its agents, and that Respondent Olde was responsible for the conduct of its agents under the common law theory of respondeat superior.

Claimants charged Respondent Olde with Discovery abuse during the course of the arbitration, including Respondent Olde's deliberate failure to produce documents in a timely fashion. Further, Claimants moved to preclude the presentation of any testimony or exhibits for Respondents' failure to adhere to the NASD Section 32(c) twenty day exchange rule.

Respondents firmly deny all of Claimants allegations and affirmatively stat that any profits or losses, incurred by Claimants in their accounts, resulted solely from Claimants' own informed investment decisions and operative market forces. Claimants are wealthy, knowledgeable and experienced investors who have over 30 years of stock trading experience and who fully understood the risks associated with their chosen trading strategy. They directed all of the trading in their accounts and were fully aware of the attendant risks.

Neither Olde nor its brokers violated applicable securities laws nor breached any common law duties owed to the Astalos. Respondents handled Claimants' accounts in a diligent and responsible manner, and should not now be held liable for the Astalos' own unsuccessful investment decisions. Furthermore, Claimants' statutory claims are barred by the applicable statute of limitations. Accordingly, Respondents asked that the Arbitrators dismiss all of the Astalos' claims in their entirety.

### RELIEF REQUESTED

Claimants, Astalos requested actual compensatory damages plus interest in excess of \$140,000.00 between them, excessive commissions and undisclosed "credits" in excess of \$65,000.00, margin expenses in excess of \$16,928.94.00, plus interest, costs, expenses,

disbursements and reasonable attorneys' fees and the \$950.00 filing and forum fee paid to the NASD. Claimants also requested punitive damages and such other relief as the Panel deems just and proper. Further, Claimants Astalos requested sanctions against Respondents for discovery abuse and for failure to adhere to the NASD "twenty day exchange rule" under Section 32(c) of the NASD Code of Arbitration Procedure.

### **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 originals 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. Respondents Olde and Thomas are found liable jointly and severally, and shall pay to Claimant Charlotte L. Astalos the amount of \$24,000.00.
2. Respondents are found not liable for the claims of Claimant Richard J. Astalos.
3. Respondent Gurchak is found not liable and therefore all claims against him are hereby dismissed, and he shall be held harmless and not liable for any amount.
4. Respondents' requests for attorneys' fees are denied.
6. The Panel recommends that Respondent Olde pay Claimant Charlotte L. Astalos' reasonable attorney's fees. The amount of reasonable attorneys' fees shall be determined by a Court of competent jurisdiction.
7. Claimants' request for sanctions are denied.

### **OTHER COSTS**

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

### **FORUM FEES**

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure (the "Code"), the Panel has assessed forum fees in the amount of \$6,300.00 (1 prehearing conference x \$300.00 plus 8 regular hearing sessions x \$750.00).
2. Respondent Olde is hereby assessed \$6,300.00, \$750.00 of which shall be paid directly to the Claimants and \$5,550.00 shall be paid to the National Association of Securities Dealers, Inc.

3. Respondent Olde shall also pay to the NASD the outstanding Member Surcharge in the amount of \$350.00, pursuant to Section 45 of the Code, for a total amount of \$5,900.00 payable to the National Association of Securities Dealers, Inc.
4. The NASD shall retain the non-refundable filing fee of \$200.00 paid by the Claimants.

**ARBITRATORS**

**Concurring Arbitrators' Signatures**

/s/

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George S. Coit, Jr., Esq.  
Chairperson/Public Arbitrator

/s/

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John A. Bevier  
Panelist/Industry Arbitrator

/s/

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Langfred W. White, Esq.  
Panelist/Public Arbitrator

April 23, 1996

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