

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Francis L. Arthur and Linda Arthur

95-02097

Name of Respondents

Olde Discount Corporation  
Stan Thomas

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REPRESENTATION

Claimants Francis L. Arthur and Linda Arthur ("claimants") appeared pro se.

For respondents Olde Discount Corporation ("Olde") and Stan Thomas ("Thomas") appeared Karen L. Brink, Esq., Corporate Attorney of Olde Discount Corporation.

CASE INFORMATION

Statement of Claim filed: April 28, 1995.

Submission Agreement executed by Francis L. Arthur and Linda Arthur on: April 24, 1995.

Joint Statement of Answer filed by Olde and Thomas on: July 21, 1995.

Olde's Submission Agreement signed on: June 8, 1995.

Thomas' Submission Agreement signed on: June 26, 1995.

HEARING INFORMATION

Hearing Date/Sessions: February 8, 1996 - Two Sessions

The hearing was held at the offices of the National Association of Securities Dealers, Inc. located in Cleveland, Ohio.

CASE SUMMARY

Claimants alleged that, during February, 1994, Mr. Arthur received an unsolicited telephone call

from Thomas. Claimant further alleged that Mr. Arthur advised Thomas that he was not active in the stock market because he previously had suffered significant losses. Claimants asserted that Thomas advised Mr. Thomas that he followed certain Nasdaq stocks which were earnings driven and not particularly subject to market declines. Claimants further asserted that Thomas stated that he monitored the stocks and he would protect claimants from any significant losses.

Claimants alleged they opened an account at Olde and sent Thomas \$20,000.00 to invest. Claimant further alleged that the stocks Thomas purchased initially increased in value and they subsequently invested an additional \$10,000.00. Claimants alleged that every stock traded in their account was the result of a specific recommendation by Thomas and that the trades were authorized based upon claimants' reliance on Thomas' claimed expertise of the stocks and the market conditions.

Claimants asserted that, despite Thomas' assurance that he would get claimants out if a stock began to look bad, Thomas' practice was to recommend the purchase of additional stocks on margin. Claimants maintained that the losses they incurred were caused by Thomas' misrepresentations, his inappropriate margin recommendations and his churning of their account.

Respondents maintained that, when the claimants' account was opened, Mr. Arthur represented that he had over twenty two years of stock trading experience, twelve years of experience trading bonds and options, that he was an aggressive investor and that he was primarily interested in growth oriented stock. Respondents further maintained that claimants had a joint income of \$150,000.00, a liquid net worth of over \$500,000.00 and a total net worth of over \$1,000,000.00.

Respondents maintained that all of Thomas' recommendations to Mr. Arthur were suitable and fit within Mr. Arthur's stated investment objectives. Respondents further maintained that Mr. Arthur knew that the stocks may be volatile because they were growth stocks. Respondents also maintained that the claim was an attempt to recoup from respondents losses that resulted solely from Mr. Arthur's own informed investment decisions.

### **RELIEF REQUESTED**

Claimants requested a judgment against Thomas and Olde to compensate him for the funds which were lost due to Thomas' misrepresentations and fraud in the amount of \$27,587.50 plus interest and costs.

Respondents requested that the claims be dismissed in their entirety.

### **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:

1. All claims against respondents Olde and Thomas be and hereby are dismissed in their entirety.

2. Each party shall bear their respective costs, including attorneys' fees.
3. All other claims are hereby denied.

#### FORUM FEES


Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrator has determined that the NASD shall retain the \$100.00 non-refundable filing fee submitted by claimants and have assessed the following forum fees:

2 hearing sessions x \$300.00 = \$600.00

Claimants be and hereby are jointly and severally liable for the sum of \$600.00, representing the total amount of forum fees. Claimants previously submitted a hearing session deposit of \$300.00, which shall be applied toward the forum fees assessed. Therefore, claimants are liable and shall pay to the NASD the sum of \$300.00.

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

Arbitrator's Signature

  
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Robert C. Devlin, Esq.  
Public Arbitrator

Date of Decision: April 4, 1996