

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Donald G. Hardesty

95-02187

Name of Respondents

Olde Discount Corporation  
Bill Short

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on May 8, 1995, Claimant Donald G. Hardesty ("Claimant"), who appeared Pro Se, alleged that Respondents Olde Discount Corporation ("ODC") and Bill Short ("Short"), in June of 1994, recommended that he purchase 300 shares of Viewlogic Systems, Inc. ("VSI") which he bought in November of 1994, at \$24.00 per share. Claimant further alleged that he also followed Short's advice to purchase the VSI shares on margin with funds from his Individual Retirement Account ("IRA"). Claimant contended that shortly after the purchase, the price began fluctuating downward and that ODC and Short recommended that he not sell because the price would rebound. Claimant further contended that immediately thereafter on January 3, 1995, the price fell drastically and that he then sold the shares at \$10.00 per share. Claimant alleged that in November of 1994, there was significant insider selling of VSI of which he was not informed. Claimant further alleged that his past trading demonstrates that he is not a aggressive investor and that as a result of the above, the Respondents should be held liable.

Respondents Olde Discount Corporation and Bill Short, through their representative and in-house counsel, David T. Doyle, maintained that Claimant is attempting to recoup selective losses out of the net profit he made in his ODC account. Respondents further maintained that VSI was a suitable investment and that Short took into account that Claimant was a moderate to aggressive investor who desired growth and speculative investment opportunities. Respondents contended that the investment represented less than 1.067% of the Claimant's stated net worth, a loss he could easily bear when compared with the potential for reward. Respondents further contended that Claimant approved of the trade and that he refused to add additional funds to his account to meet the margin requirement. Respondents maintained that as a result of the above, they should not be held liable.

Respondent Olde Discount Corporation, through it representative and in-house counsel, David T. Doyle, alleged that Claimant has concocted his claims in an attempt to forestall collection of his honest debts. Respondent ODC, further alleged that Claimant Donald G. Hardesty, owes ODC for his purchase of VSI stock. Respondent ODC, contended that as a result of the above, the Claimant should be held liable for the Counterclaim.

Claimant Donald G. Hardesty, maintained that although he made profits in his IRA account, it represented only 4% of his total portfolio which was not a stellar performance. Claimant further maintained that he signed an options form to write covered calls only and never signed for speculation. Claimant contended that the forms which ODC attached to their Statement of Answer were altered by someone other than him. Claimant further contended that he had historically invested in Blue Chip stocks and that Short recommended other type stocks and that the purchase of VSI subjected him to twice the amount of risk that he could afford. Claimant maintained that as a result of the above, he should not be held liable for the Counterclaim.

#### **RELIEF REQUESTED**

Claimant Donald G. Hardesty, requested \$4,388.66 in actual damages. Claimant Donald G. Hardesty, requested that the Counterclaims of the Respondent Olde Discount Corporation, be dismissed.

Respondents Olde Discount Corporation and Bill Short, requested that the claims of the Claimant be dismissed. Respondent Olde Discount Corporation, through a Counterclaim, requested \$738.66 in actual damages.

#### **AWARD**

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Arthur J. Leibell, Esq., P.A., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Donald G. Hardesty, on May 3, 1995, and by the Respondent Olde Discount Corporation, on June 1, 1995, but not by Respondent Bill Short, as required by Sections 12 and 13 of the NASD Code of Arbitration Procedure.

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 Claimant Donald G. Hardesty, against Respondents Olde Discount Corporation and Bill Short, are dismissed in their entirety.
2. The Claimant Donald G. Hardesty, is liable and shall pay to the Respondent Olde Discount Corporation, \$738.66 in actual damages.
3. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Donald G. Hardesty, shall be retained by the NASD, Inc.
4. The \$575.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Respondent Olde Discount Corporation, shall be retained by the NASD, Inc. The Claimant Donald G. Hardesty, is liable and shall pay to the Respondent Olde Discount Corporation, \$575.00 as reimbursement of the filing fee.
5. All other relief requests are denied.

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**AFFIRMATION**

I, ARTHUR J. LEIBELL, ESQ., P.A., 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.



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Arthur J. Leibell, Esq., P.A.

DATE OF DECISION: November 16, 1995