

## N.A.S.D. AWARD

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

Name of Claimants

Fred D. and Toni K. Lee

95-03 192

Name of Respondents

Olde Discount Corporation  
Keith Sargent

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**REPRESENTATION**

For Claimants, Fred D. and Toni K. Lee ("the Lees"): Norman Meyers, **Esq.** of Meyers & Bierkan, P.A., Sun City Center, Florida.

For Respondents Olde Discount Corporation ("Olde Discount") and Keith Sargent ("Sargent"): Lisa S. Fildes, **Esq.** of Olde Discount Corporation, Detroit, Michigan.

**CASE INFORMATION**

Statement of Claim **filed**: June 28, 1995.

Amended Statement of Claim filed: April 4, 1996.

**Claimants'** Submission Agreement signed on June 26, 1995.

Respondents' Joint Statement of Answer filed: September 5, 1995.

Respondent Olde Discount's Submission Agreement signed on September 5, 1995 by Lisa S. Fildes on behalf of Olde Discount.

Respondent Sargent's Submission Agreement signed on August 24, 1995.

**HEARING INFORMATION**

On May 17, 1996, a pre-hearing conference lasting 1 session was conducted via telephone conference call with the Chairman.

On May 23, 1996, in Tampa, Florida, a hearing lasting 2 sessions was conducted.

### CASE SUMMARY

Claimants, the Lees, alleged that **Olde Discount**, through its many investment advisors, including but not limited to Sargent, Neil **Plotkin**, and Brian Stoner, purchased unsuitable and high risk stocks for the Claimants; churned their account by repeatedly trading; made material misrepresentations; and destroyed their stated investment plan by inducing them into speculation and Olde Discount "Market Maker" stocks. Claimants further alleged that Olde Discount was grossly negligent in supervising these brokers by either condoning or failing to properly supervise or even exercise the slightest care to prevent their actions. Therefore, Claimants alleged that Olde Discount was vicariously liable.

Respondent, Olde Discount alleged that there is no evidence to support Claimants' allegations. Respondent further alleged that Olde Discount and its employees acted in accordance with applicable state and federal securities laws and **fulfilled** any and all duties owed to the Lees. In addition, the Respondent alleged that Claimants directed each transaction in the account, were routinely informed of the account's status, and the investments made were suitable for the Lees' stated objectives. Furthermore, the losses in the account were attributable to market conditions, not any alleged wrongdoing by Respondent.

Respondent asserted the affirmative defenses of contributory negligence, assumption of risk, and the doctrines of **laches**, waiver, estoppel, and **ratification**.

### RELIEF REQUESTED

Claimants requested: compensatory damages in the amount of **\$15,469.00**, plus commission disgorgement equalling **\$1,157.00**, together with the income the accounts should have realistically earned; the return of the federal tax liability; pre-judgment interest on the compensatory damages; costs; reasonable attorney's fees; and punitive damages in an amount to be determined in the discretion of the Panel.

Respondent requested: the claims be dismissed in the entirety and no damages be awarded, plus costs and attorney's fees incurred in the defense of this claim.

### 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.

Respondent Sargent was dropped as a respondent in this action by the Amended Statement of Claim filed by the Claimants on April 4, 1996.

The Panel Ordered that the NASD expunge the records of Sargent.

### 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. Respondent Olde Discount is found not liable and, therefore, all claims against it are hereby dismissed.
2. Claimants request for compensatory damages, commission disgorgement, pre-judgment interest, costs, attorney's fees, and punitive damages is denied.
3. Respondent's request for costs and attorney's fees is denied.

#### OTHER COSTS

The parties shall each bear all other costs and expenses **incurred** by them in connection with this **proceeding**, including attorney's fees.

#### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$1 ,100.00 (1 pre-hearing conference x \$300.00 plus 2 sessions x 400.00).

1. Claimants, the Lees, are hereby assessed \$550.00 for which the NASD shall retain the **\$400.00** previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$150.00.
2. Respondent Olde Discount is hereby assessed \$550.00 payable to the National Association of Securities Dealers, Inc.
3. The NASD shall retain the non-refundable filing fee of \$100.00 paid by the Claimants.
4. The NASD shall retain the \$200.00 member surcharge fee paid by Respondent.

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

Concurring Arbitrators' Signatures

/s/

James R. Kennedy, Jr., **Esq.**

/s/

Robert J. **Stemmermann**

/s/

Harlan Pomeroy, **Esq.**

Public/Chairperson

Industry

Public

August 8, 1996

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