

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Gerald J. and Beverly J. Zukerman, and
the Gerald and Beverly Estate
Revocable Trust,

Claimants,

v.

95-03779

OLDE Discount Corporation,

Respondent.

REPRESENTATION OF PARTIES

Gerald J. and Beverly J. Zukerman, and the Gerald and Beverly Estate Revocable Trust ("Claimants") appeared on their own behalf.

OLDE Discount Corporation ("Respondent") was represented by Julie D. Reed, Esq., of OLDE Discount Corporation, Detroit, Michigan.

CASE INFORMATION

Claimants' Statement of claim was filed on or about. Claimants' Submission Agreements were signed on July 31, and August 30, 1995.

Respondent's Statement of Answer was filed on or about November 2, 1995. Respondent's submission Agreement was signed on September 22, 1995.

HEARING INFORMATION

The hearing was held on February 8, 1996, in Scottsdale, Arizona for a total of two (2) sessions.

CASE SUMMARY

Claimant alleged that Respondent: failed to execute an order given to transfer 10,000 shares of Starlog Franchise Corporation ("SIFI") from a joint account to a trust account; sold the SIFI shares and then transferred the funds into the trust account; was negligent in giving faulty information that the SIFI stock could be transferred; and caused an additional sales commission when Claimant had

to go back into the market to purchase the SIFI stock for the trust account at a higher price than the original sales price.

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

RELIEF REQUESTED

Claimants requested exemplary damages of \$5,000.

Respondent requested that Claimants' claims be dismissed in their entirety and that Respondent be awarded its costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

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 arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

Claimants' claims are, and each of them, denied with prejudice.

Each party shall bear its own costs and expenses associated with this arbitration.

FORUM FEES

Forum fees are calculated at the rate of \$200 per hearing session and \$300 for each pre-hearing conference, if any. There were two (2) sessions x \$200 = \$400 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 Section 43 of the Code, the NASD shall **retain** the nonrefundable filing fee in the amount of \$75, and shall **retain** the hearing session deposit in the amount of \$200 previously paid by the Claimant.

Pursuant to Section 45 of the Code, the NASD shall retain the nonrefundable member surcharge in the amount of \$100 previously paid by Respondent..

Additional forum fees in the amount of \$200 are assessed against the Respondent.

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

Dated:

Thomas F. Tobin

s/s

February 20, 1996

Thomas F. Tobin

Public Arbitrator, Presiding Chair