

## AWARD

**NASD Regulation, Inc. Office of Dispute Resolution**

## In the Matter of the Arbitration Between

Robert J. Anderson,

Claimant,

**V.**

No. 95-04252

**Olde Discount Corp., and Todd A. Bukaty,**

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Securities Dealers, Inc.**

### Respondents.

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## REPRESENTATION OF PARTIES

Claimant Robert J. Anderson was represented by Eric L. Hanson, Esq. of Holman, McCollum & Hansen, P.C. located in Prairie Village, Kansas.

Respondents Olde Discount Corp. and Todd A. Bukaty were represented by Karen Brink, Esq. of Olde Discount Corp. located in Detroit, Michigan.

### CASE INFORMATION

**Claimant Robert J. Anderson's Statement of Claim was filed on or about September 5, 1995.**

**Claimant Robert J. Anderson's Submission Agreement was signed on August 9, 1995.**

Respondents Olde Discount Corp. and Todd A. Bukaty's joint Statement of Answer was filed on or about November 3, 1995.

Respondent Olde Discount Corp.'s Submission Agreement was signed on September 28, 1995 by Thomas P. Fitzgerald, General Counsel of Olde Discount Corp.

**Respondent Todd A. Bukaty's Submission Agreement was signed on October 17, 1995.**

## HEARING INFORMATION

A pre-hearing conference was held on June 11, 1996 for one ( 1 ) session.

The hearing was held on: June 24, 1996 for two (2) sessions; and  
June 25, 1996 for two (2) sessions.

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The hearing was held in Kansas City, Missouri.

### CASE SUMMARY

Claimant Robert J. Anderson ("Claimant") alleged that Respondent Todd A. Bukaty ("Respondent Mr. Bukaty"), through his employer, Respondent Olde Discount Corp., negligently or intentionally misrepresented the financial stability of investments, breached his fiduciary duty to Claimant, and may have violated state and federal securities laws. Claimant asserted: that on March 15, 1994, Respondent Mr. Bukaty solicited an order for SLM International, Inc. ("SLMI"), in which Respondent Mr. Bukaty supposedly stated that SLMI was a stable company, that it usually traded at a high of \$28½ per share, and that at its current price of \$18½ per share Claimant should buy it; that he bought 2,000 shares of SLMI at \$18½ per share for a total cost of \$37,000; that on March 24, 1994, Respondent Mr. Bukaty contacted Claimant and reported that SLMI was trading at \$14¼ and recommended that Claimant buy more shares because investing in SLMI was a no lose situation; that based on this recommendation Claimant purchased 2,000 shares of SLMI at \$14¼ per share for a total cost of \$28,500; that on May 3, 1994, Respondent Mr. Bukaty contacted Claimant again to report that SLMI was trading at \$10 per share and recommended that Claimant buy more shares; that Claimant purchased 4,000 shares at \$10 per share, for a total cost of \$40,000; and that on November 8, 1994, Respondent Mr. Bukaty called Claimant to tell him that SLMI was on the verge of bankruptcy. Claimant further asserted that: SLMI had lost \$56 million in 1994; that SLMI was burdened with debt from a \$77 million revolving line of credit established in 1993 which, without new funding, SLMI could not repay; that SLMI's CEO had resigned under questionable circumstance; and that after considering this information, Claimant sold his 8,000 shares of SLMI on December 9, 1994, for \$3 per share or \$24,000. Claimant alleged that, subtracting the sale proceeds from the total investment in SLMI, he lost \$81,500. Claimant further alleged that at no time during the conversations prior to November 18, 1994, did Respondent Mr. Bukaty tell Claimant about SLMI's debt or about the CEO's resignation, and that had he known either of these facts he would not have invested in SLMI.

Respondents Olde Discount Corp. and Todd A. Bukaty (hereinafter collectively referred to as "Respondents") denied the allegations set forth in the Statement of Claim. Respondents specifically stated there is a pending class action lawsuit against SLMI and its officers and directors for knowingly reporting 'false financial data to the public and to regulators, and that this is the appropriate avenue for Claimant to recover his alleged damages. Respondents further stated that each time Respondent Mr. Bukaty or any other brokers of Respondent Olde Discount Corp. made a recommendation to Claimant, they thoroughly explained the stock to him, disclosing both its positive and negative traits and its risk factors. Respondents made the following affirmative defenses: that Claimant is barred from recovery under the doctrines of waiver, estoppel, and ratification; and Claimant is limited to recovering actual damages, if any.

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### RELIEF REQUESTED

Claimant Robert J. Anderson requested an award in the amount of \$8 1,500 in actual damages, plus interest, attorneys' fees, and costs.

Respondents Olde Discount Corp. and Todd A. Bukaty requested that the claims asserted against them be dismissed in their entirety with prejudice.

### 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 original(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

### 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) That Respondent Olde Discount Corp. is liable for and shall pay Claimant Robert J. Anderson \$68,000 for compensatory damages;

(2) That Respondent Olde Discount Corp. is liable for and shall pay Claimant Robert J. Anderson \$5,000 for attorneys' fees pursuant to Section 45 1.8 10 of the Michigan Uniform Securities Act; and

(3) That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded are, and each of them, denied with prejudice.

### FORUM FEES

Forum fees are calculated at the rate of \$500 per hearing session and \$300 for each pre-hearing conference, if any. There was one pre-hearing session x \$300 = \$300 forum fees, and there were four (4) hearing sessions x \$500 = \$2,000 in forum fees. Total forum fees are \$300 + \$2,000 = \$2,300. Pursuant to \$10332(b) 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 \$10332(c) of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$150 and shall

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**retain** as forum fees the hearing session deposit in the amount of \$500 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Claimant Robert J. Anderson.

Pursuant to § 10333 of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$300 previously paid by Respondent Olde Discount Corp.

Additional forum fees in the amount of \$1,800 (= \$2,300 - \$500 hearing session deposit) are assessed against Olde Discount Corp.

Respondent Olde Discount Corp. is liable for and shall reimburse Claimant Robert J. Anderson \$500 for his hearing session deposit.

**Fees are payable to NASD Regulation, Inc.' Office of Dispute Resolution.**

Dated:

/s/ August 29, 1996

/s/ August 29, 1996

/s/ August 22, 1996