

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Mary Jane and Gregory C. Moody

95-05081

Name of Respondents

Olde Discount Corporation  
Curtis S. Dahl

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**REPRESENTATION**

For Claimants, Mary Jane and Gregory C. Moody ("Moody"): K. Michael Swann, Esq. of Snyderburn, Rishoi & Swann, Winter Park, Florida.

For Respondent, Olde Discount Corporation ("Olde"): Lisa S. Fildes, Esq., Corporate Counsel for Olde Discount Corporation, Detroit, Michigan.

For Respondent, Curtis S. Dahl ("Dahl"): Larry M. Dreyfus, Esq., Attorney at Law, Chicago, Illinois.

**CASE INFORMATION**

Statement of Claim filed: 10/29/95.

Amended Statement of Claim filed: 2/29/96.

Claimants' Submission Agreement signed on: 10/3/95.

Respondent, Olde's, Statement of Answer filed: 11/29/95.

Respondent, Olde, did not submit an answer to the amended Statement of Claim.

Respondent, Olde's, Submission Agreement/Corporate Acknowledgment signed on: 11/28/95 by Thomas P. Fitzgerald on behalf of the firm.

Respondent, Dahl's, Statement of Answer to Amended Statement of Claim filed 4/8/96.

Respondent, Dahl's, Submission Agreement signed on:

### **HEARING INFORMATION**

Hearing Date/Sessions: 5-14-96/two (2) sessions.

Hearing Location: Tampa, Florida.

### **CASE SUMMARY**

Claimants alleged that Respondents fraudulently induced them to act upon misrepresentations and omissions by investing in the stocks in which Olde was a market maker and follow its recommendations. Furthermore, Claimants alleged that Olde had a duty to make full and fair disclosure of all material facts to the Claimants who were reposing faith and confidence in Olde. Claimants also alleged that Olde breached its fiduciary duty by accepting Claimants' special confidence in Olde by reassuring Claimants that their money would be invested in accordance with their stated investment goals and objectives. Moreover, Claimants alleged that Olde breached its contract to provide securities brokerage services and investment advice to Claimants by engaging in excessive and unauthorized trading, by recommending unsuitable investments for Claimants and by generally mismanaging Claimants' account.

Respondents alleged that Claimants did not complain of unauthorized activity in their account until filing this claim, that Claimants thereby failed to comply with their contractual obligations by failing to reasonably object to the transactions complained of in the account. Olde further alleged that margin trading was discussed with Mr. Moody and purchases using margin loans were made at his request and with his authorization. Olde further alleged that Claimants' investment objectives became more and more aggressive over time but that Respondent Dahl recommended investments consistent with their overall situation and needs, as Claimants presented that information to Olde.

### **RELIEF REQUESTED**

Claimants requested an award be entered against Olde as follows:

- a. Compensatory Damages \$20,000.00.
- b. Interest.
- c. Attorney's Fees.
- d. All costs of this proceeding.
- e. Punitive Damages pursuant to Florida Statutes.

Respondent, Olde, requested that this Claim be dismissed with no damages awarded, and that Respondent be reimbursed for the costs and attorneys' fees attributable to defending against this Claim.

#### **OTHER ISSUES CONSIDERED & DECIDED**

Respondent, Dahl, was voluntarily dismissed, by the Claimants, during the hearing on May 14, 1996 in Tampa, Florida.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award 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.

#### **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. Respondent, Olde, is found liable, and shall pay to the Claimants the amount of \$6,608.00, plus interest in the requested amount of \$2,465.00 for a total due to the Claimants of \$9,073.00.
2. Respondent, Olde, is also found liable, and shall pay to the Claimants attorney's fees, in an amount to be determined by a court of competent jurisdiction.
3. Claimants' request for punitive damages is hereby denied.
4. All other claims are hereby denied.

#### **OTHER COSTS**

Other than the Forum Fees detailed below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

#### **FORUM FEES**

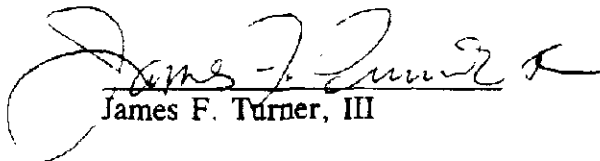
Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Arbitrator has assessed forum fees in the amount of \$600.00 (2 sessions x \$300.00).

1. Respondent, Olde, is hereby assessed Forum Fees in the amount of \$600.00, \$300.00 of which shall be paid directly to the Claimants, and \$300.00 of which shall be paid to the National Association of Securities Dealers, Inc.
2. The NASD shall retain the non-refundable filing fee of \$100.00 paid by the Claimants.
3. The NASD shall retain the non-refundable member surcharge of \$200.00 paid by Respondent Olde.

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

**ARBITRATION PANEL**

**Concurring Arbitrator's Signature**

  
James F. Turner, III

Public/Chairman

Date of Decision: June 26, 1996