

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Lavern Augustine, and
Therese Augustine,
Claimants,

V

No. 96-00704

OLDE Discount Corporation, and
James T. Monaco, Jr.,
Respondents

REPRESENTATION OF PARTIES

Lavern Augustine and Therese Augustine ("**Claimants**") were represented by Robert B. Van Cleave, Esq., Overland Park, Kansas.

OLDE Discount Corporation ("**OLDE**"), and James T. Monaco, Jr. ("**Monaco**") (or jointly referred to as "**Respondents**") were represented by Ina N. Otto, Esq., and Lisa S. Fildes, Esq., of OLDE Discount Corporation, Detroit, Michigan.

CASE INFORMATION

Claimant's Statement of Claim was filed on or about February 14, 1996. Claimants' Submission Agreement was signed on February 14, 1996.

Respondents' joint Statement of Answer was filed on or about April 9, 1996. The NASDR, Inc. Office of Dispute Resolution does not have a record of Respondents' filing Submission Agreements.

HEARING INFORMATION

A pre-hearing conference was held on October 14, 1996 for one (1) session.

The hearing was held on: October 16, 1996 for two (2) sessions.

The hearing was held in Kansas City, Missouri

CASE SUMMARY

Claimants alleged that Respondents: Violated Kansas and Federal Securities Acts through the offering or sale of securities by untrue statements of material fact and omissions of material fact;

committed fraud and misrepresentation by making statements which were either false, or which they should have known with reasonable diligence were false and by concealing information from the Claimants, were negligent in that they did not use reasonable diligence in supervision and failed to determine whether recommendations to Claimants were suitable; violated NASD Rules through their failure to provide Claimants with competent and professional services in breach and violation of applicable industry rules, regulations, and practices; and breached their fiduciary duty to the Claimants. The allegations arose out of the purchase and subsequent sale of SLM International, Inc. ("SLMI") stock.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that: Claimants retained control over the account at all times; in accepting the recommendations made to them, Claimants acted independently and voluntarily; a suitable recommendation on SLMI was issued based on the public information available at the time; Claimants were aggressive investors who sought financial reward through equity investments and accepted the associated market risk; Respondents acted properly with respect to Claimants' account and the recommendations on SLMI; Claimants' purchases fall within the class of purchasers on whose behalf a class action was filed against SLMI, its officers and directors; and if any misrepresentations or omissions were made, Claimants must look to SLMI.

RELIEF REQUESTED

Claimant requested an award in the amount of actual capital losses of \$28,515, and further requested an award of their actual loss plus the following: Interest of 15% on the principal amount invested as provided in the Kansas Securities Act; punitive damages to punish Respondents and to deter others from similar misconduct; Claimants' costs and expenses, including attorneys' fees as provided by the Kansas Securities Act; and such other relief as the panel deemed just and proper.

Respondents requested that the Claim be dismissed in its entirety with no damages awarded.

OTHER ISSUES CONSIDERED & DECIDED

The hearing began with a hearing of Claimants' motions to compel discovery and for sanctions. Claimants asked that they be permitted to add exhibits which were appended to the motion and exhibit list. The arbitrators ruled that Claimants could supplement their exhibit list with documents their attorney had obtained elsewhere within a few days of the hearing from another source. The arbitrators ruling concerning sanctions was withheld until their final determination of this case.

Respondents did not file with NASD Regulation, Inc. Office of Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to §10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing and are bound by the determination of the arbitration panel on all issues submitted.

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) Claimants Lavern Augustine's and Therese Augustine's claims are, and each of them, denied with prejudice;

(2) Respondent OLDE Discount Corporation is liable for, and shall pay to the Claimants the sum of \$3,600 as sanctions for its failure to make complete discovery regarding certain documents which Claimants should have received from Respondent OLDE Discount Corporation and which were directed to be produced on the first motion to compel. The award is to compensate Claimants for the additional work their attorney was required to do to obtain the above referenced documents elsewhere;

(3) That other than forum fees discussed below, each party shall bear its own costs and expenses, including attorneys' fees, associated with this arbitration; and

(4) All other requests for relief/claims for damages not specifically set forth herein are, and each of them, denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each pre-hearing conference, if any. There were two (2) regular sessions x \$400 and one (1) pre-hearing conference session x \$300 = \$1,100 in forum fees. 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 \$100 and shall **retain** as forum fees the hearing session deposit in the amount of \$400 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Claimant Lavern Augustine and Therese Augustine.

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 \$200 previously paid by Respondent OLDE Discount Corporation.

Additional forum fees in the amount of \$150 are assessed by the arbitrators against the Claimants.

Additional forum fees in the amount of \$550 are assessed by the arbitrators against OLDE.
Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Dated.

John C. Aisenbrey
John C. Aisenbrey
Public Arbitrator, Presiding Chair

/s/

November 12, 1996

Sidney P. Keltner
Sidney P. Keltner
Public Arbitrator

/s/

November 11, 1996

Billy H. Ware
Billy H. Ware
Industry Arbitrator

/s/

November 13, 1996