

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Alberta Jeanne List

96-00905

Name of Respondents

Ralph Sadler Powell
Charles A. Creekmore

CASE SUMMARY

In a case filed with the National Association of Securities Dealers, Inc. on February 29, 1996, claimant Alberta Jeanne List ("claimant"), who appeared Pro Se, alleged that respondents Ralph S. Powell ("Powell") and Charles A. Creekmore ("Creekmore") breached their fiduciary duty owed to her. Claimant further alleged that in October of 1995, she left respondents firm Olde Discount Corporation ("Olde"), because her vision was severely affected by medication given to treat bronchitis. Claimant also alleged that by January 1996, her health improved and she reopened her account at Olde. Claimant asserted that before placing an new order she requested a copy of her original Customer Agreement to see if it needed updating, and to see if someone mistakenly checked her as a margin customer. Claimant further asserted that after reviewing her 1995 account, she noticed that Powell had caused two small margin charges in her account.

Claimant alleged that on February 2, 1996, she placed two orders, one for 500 shares of Agnico, and the other for 500 shares of Ericy. Claimant further alleged that on February 6, 1996, she faxed a letter to Creekmore stating that she wanted to cancel the Ericy order. Claimant also alleged that twenty minutes later Creekmore phoned and told her that she could not cancel the Ericy trade in writing. Claimant asserted that five minutes later Powell called and told her that the trade had already been bought and that he had sent a copy of the application. Claimant further asserted that a copy of the application was sent to her, but that it was totally unreadable. Claimant also asserted that Creekmore told her that they were no other documents available. Claimant contended that on February 6, 1996, Olde's Customer Service established that the Ericy trade was purchased an hour or more after she had asked to cancel the trade. Claimant further contended that after being so manipulated, lied to and denied her fiduciary rights, she refused to acknowledge the Ericy purchase and any subsequent sale or loss.

Respondents Charles A. Creekmore and Ralph S. Powell (collectively referred to as "respondents"), through their representative and in-house counsel Julie D. Reed, maintained that they committed no wrongdoing, but merely adhered to industry and Olde policies. Respondents further maintained that the claimant has already transferred 480 of her 500 shares of Agnico out of her Olde account. Respondents also maintained that Olde was forced to sell the other 20 shares of Agnico on February 21, 1996, in order to satisfy the debt created in her account when she purchased Ericy. Respondents contended the Olde

legitimately charged the claimant \$328.50 for the debit created by her purchase and non-payment of Ericy. Respondents further contended that Olde has a specific written policy stating that they only accept verbal orders from its customers, and that they will not accept orders through the mail. Respondents also contended that claimant did not cancel the good-til-canceled purchased order for Ericy by telephone, nor was the order read back to her by a registered representative and confirmed by her. Respondents further maintained that they have no knowledge or belief with regard to whether the claimant legitimately incurred margined charges of \$19.38 in 1995, since neither one were involved with those charges. Respondents further contended that the claim of the claimant is really against Olde, and not them, for they were merely following company and industry guidelines and policies.

RELIEF REQUESTED

Claimant Alberta Jeanne List requested the full value of the twenty shares of Agnico which was taken from her account; plus \$18.38 for margin cost, and \$78.00 for expenses.

Respondents Charles A. Creekmore and Ralph S. Powell requested that the claim of the claimants be dismissed in their entirety, and \$100 for expenses.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Arnald B. Crews, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the claimant Alberta Jeanne List on February 26, 1996, and by respondents Ralph S. Powell on March 30, 1996, and Charles A. Creekmore on April 15, 1996, as required by section 12 and 13 of the NASD Code of Arbitration Procedure.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of the claimant Alberta Jeanne List against respondents Charles A. Creekmore and Ralph S. Powell are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$30.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the claimant Alberta Jeanne List shall be retained by the NASD, Inc. Respondents Ralph S. Powell and Charles A. Creekmore are jointly and severally liable and shall pay the claimant Alberta Jeanne List \$15.00, as reimbursement of one-half the filing fee.

Affirmation

STATE OF

Va

} SS:

City
COUNTY OF

Norfolk

I, *Arnold B. Cress*, do hereby affirm upon my oath
as arbitrator that I am the individual described in and who executed this instrument,
which is my oath and award.

Date

Arnold B. Cress
Signature of Arbitrator

Arnold B. Cress, Esq.
P.O. Box 7302
Norfolk, VA 23508-7302

Date of Decision: August 27, 1996