

12/97

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AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimants

Vernon A. And Marion V. Otte

and

96-01120

Name of Respondents

X OLDE Discount Corp.
Simmons & Bishop Co.
Thomas C. Ziemba

REPRESENTATION OF PARTIES

Vernon A. And Marion V. Otte ("**Claimants**") was represented by Michael Salcido, Esq., Phoenix Arizona.

OLDE Discount Corp. ("**OLDE**") was represented by Ina Otto, Esq., OLDE Discount Co., Detroit, Michigan.

Simmons & Bishop Co. ("**SBC**") was represented by Jeanne M. Rowzee, Esq., Irvine, CA. SBC did not appear at the hearing due to a prior settlement with the Claimants.

Thomas C. Ziemba ("**Ziemba**") was represented by Jeanne M. Rowzee, Esq., Irvine, CA. Ziemba did not appear at the hearing due to a prior settlement with the Claimants.

CASE INFORMATION

Claimants filed their Statement of Claim on or about March 11, 1996 and signed their Submission Agreement of on February 16, 1996. Claimants filed a notice of settlement with SBC and Ziemba on or about March 25, 1997.

The Statement of Answer for OLDE Discount Corp. Was filed on or about June 21, 1996. Thomas P. Fitzgerald signed the Submission Agreement of Respondent OLDE Discount Corp. on April 6, 1997.

HEARING INFORMATION

The Arbitration Panel held a hearing on November 5, 1997 in Scottsdale, Arizona for a total of two (2) sessions.

CASE SUMMARY

Claimants alleged that OLDE, SBC and Ziemba (collectively referred to as "Respondents"): Committed securities fraud in violation of ARS §44-1991; committed fraud; made unsuitable investment recommendations; used dishonest and unethical conduct, as defined in the Arizona Securities Act, AAC R14-4-130, in their dealings with Claimants; breached their fiduciary duty; were negligent in their supervision and/or failed to supervise; made negligent misrepresentations; and were negligent. Specifically, Claimants alleged that: All of the trades in their account were recommended and solicited by Respondents; and Respondents listed many of Claimants' trades as solicited in violation of applicable rules and regulations. The allegations arose out of transactions in securities more fully set forth in Exhibit A to the Statement of Claim.

OLDE denied the allegations set forth in the Statement of Claim. OLDE 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; Claimants have failed to mitigate their damages; Claimants' claims are barred under the doctrines of laches, waiver, estoppel and ratification; OLDE's obligations, if any, to the Claimants have been fully paid, satisfied and discharged; Claimants' claims are barred by their contributory negligence; Claimants assumed the risk of the transactions engaged in and the investment losses incurred; economic, industry, corporate, and market conditions, and not OLDE were 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; and OLDE has no knowledge of or reasonable grounds to believe the existence of any facts by reason of which liability is alleged, and therefore, OLDE cannot be held liable.

RELIEF REQUESTED

Claimants requested an award of the following: Compensatory damages of at least \$60,000; pre and post judgement interest until the award is paid in full; "opportunity" or "benefit of the bargain" losses based on how the Claimants account would have performed had it been properly managed; disgorgement of all commissions and margin interest charged to their account; their costs and attorney's fees incurred herein, including all filing and expert witness fees, pursuant to ARS §§ 12-341.01 and 44-2001; punitive damages in an amount to be determined at the hearing in this matter; and such other and further relief as is deemed just and proper.

OLDE requested that the Claimants' Statement of Claim be dismissed in its entirety, and that OLDE be awarded costs, attorney fees and any other remedy the panel finds reasonable.

OTHER ISSUES CONSIDERED & DECIDED

Prior to closing the hearing, OLDE made an oral Motion to Dismiss the Statement of Claim. After hearing argument from the parties, and deliberation, the panel denied the motion.

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.

On or about November 7, 1997 After the close of the hearing, and prior to any decision being entered by the panel, a disclosure made by Charles Berry was sent to the parties by facsimile transmission. The disclosure stated that,

This morning (November 6, 1997) I discovered that a few months ago our firm began representing an individual named Hendrickson who had filed an arbitration claim against OLDE. Yesterday, I was unaware of the claim, and I have not discussed the facts or circumstances of the Hendrickson case with any persons at our firm.

Clearly, since I was unaware of our firm's representation of a client adverse to OLDE at the time of the hearing, I do not believe that any conflict or prejudice was involved. Now that I know about the Hendrickson case, I feel that the disclosure of its existence is proper.

As of December 10, 1997, the parties have not responded to the disclosure letter, and the following decision has been entered by the arbitrators.

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:

OLDE Discount Corp. Is liable for and shall pay to the Claimants the sum of \$15,962 as an award of compensatory damages with interest thereon at the rate of 5% per annum from May 1, 1995 until paid, and \$650 as an award of Claimants' costs of filing the arbitration.

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 \$500 per hearing session. There were two (2) sessions x \$500 = \$1,000 in forum fees. Pursuant to Rule 10332(b) of the 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 Rule 10332© of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$150 and shall **retain** as forum fees the hearing session deposit in the amount of \$500 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimants Vernon A. And Marion V. Otte.

Pursuant to Rule 10333 of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$300 previously paid by OLDE.

Pursuant to Rule 10333 of the Code, SBC is liable for and shall pay to NASD Regulation, Inc. Office of Dispute Resolution the non-refundable member surcharge in the amount of \$350.

Additional forum fees in the amount of \$500 are assessed by the arbitrators against OLDE.

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

Dated:

Robert C. Hubbard
Robert C. Hubbard
Public Arbitrator, Presiding Chair

/s/

December 18, 1997

Charles R. Berry
Charles R. Berry
Public Arbitrator

/s/

December 10, 1997

Stephen T. Yeargan
Stephen T. Yeargan
Industry Arbitrator

/s/

December 11, 1997