

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION

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In the Matter of the Arbitration Between

Name of Claimants

Kenneth J. and Leslie C. Silver

96-01751

Name of Respondents

Olde Discount Corporation  
Kenneth Mueller

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REPRESENTATION

Claimants Kenneth J. and Leslie C. Silver ("Claimants") were represented by Thomas C. Wagner, Esq., Chattman, Gaines & Stern, Independence, OH.

Respondents Olde Discount Corporation ("Olde") and Kenneth Mueller ("Mueller") were represented by Ina N. Otto, Esq. and Donald P. Wray, Esq., Olde Discount Corporation, Detroit, MI.

CASE INFORMATION

The Statement of Claim was filed April 23, 1996.  
Claimants' Uniform Submission Agreement was signed April 3, 1996.

The Joint Statement of Answer of Olde and Mueller (collectively "Respondents") was filed June 25, 1996.  
Olde's Uniform Submission Agreement was signed June 25, 1996.  
Mueller's Uniform Submission Agreement was signed July 1, 1996.

HEARING INFORMATION

Hearing Date/Sessions: November 13, 1996/three sessions

Hearing Location: NASD Regulation District Office  
Cleveland, OH

CASE SUMMARY

Claimants alleged, among other things, that Respondents induced them to authorize unsuitable securities and excessive trading in Claimants' account, in addition to executing transactions before calling Claimants for authorization. Claimants alleged that the excessive trading in their account, 320 trades in forty months, was to generate commissions for Respondents and not for the benefit of Claimants. Claimants alleged that they are unsophisticated investors and reasonably relied upon the expertise of Respondents when investing. Claimants alleged that following the inheritance of nearly \$200,000.00 from Mr. Silver's mother's estate in 1991, Claimants initially made investment decisions on their own in secure, conservative securities. Claimants alleged that gradually Respondents induced Claimants to invest in

increasingly speculative and aggressive securities. Claimants alleged that Respondents knew that the inheritance was the sum total of Claimants' assets and therefore, needed to be protected. Claimants alleged that Respondents induced Claimants to trade in options and other high risk securities, as well as buying on margin. Claimants alleged that in March 1994, Respondents induced Claimants to purchase S.L.M. International ("SLMI") and Respondents represented that Respondents' Research Department had placed SLMI on its list of "special ventures" recommended buys. Claimants alleged that Respondents continued to induce Claimants to purchase more and more SLMI even as SLMI was beginning to drop in value. Claimants alleged that Respondents breached their fiduciary duty to provide Claimants with a reasonable and prudent investment strategy suitable to Claimants' expressed needs and goals. Claimants alleged that the principal motivation for Respondents' recommendations of SLMI was the fact that Olde had purchased substantial amounts of that security for its own inventory and sought to unload it on customers. Claimants alleged that the actions of Respondents resulted in financial damages to Claimants.

Respondents denied all allegations of wrong doing as asserted in the Statement of Claim. Respondents maintained that when Claimants opened their account in 1991, Claimants described themselves as investors with twenty years of stock and bond trading experience, and indicated an allocation preference as fifty percent (50%) short term. Respondents maintained that Claimants updated their profile to aggressive in 1993, and allocated ninety percent (90%) to short-term stock trading. Respondents maintained that Claimants certified that Mr. Silver had an annual income of \$100,000.00, net worth of \$2.5 million and liquid net worth of \$1.2 million. Respondents further maintained that the \$200,000.00 Claimants refer to in the Statement of Claim is only a portion of Claimants' inheritance. Respondents agreed that immediately after opening the account in 1991, Claimants made their own investment decisions including many short-term investments. Respondents maintained, for example, that Claimants bought and sold IBM stock seven times in three months resulting in a loss of \$18,431.67; during six weeks trades in Teradata Claimants had a loss of \$12,035. and during four months Claimants' trades in Rubbermaid resulted in a gain of \$10,380.37. Respondents maintained that in March 1993, Claimants applied for an option account and confirmed the earlier financial and investment information and requested approval for "covered writing" with safety and income as his option objective. Respondents maintained that Claimants were provided the OCC Disclosure Documents entitled "Characteristics and Risks of Standardized Options. Respondents maintained Claimants followed their own options strategy in 1993 and 1994 fairly successfully. Respondents maintained that at no time did they recommend or solicit options trades to Claimants. Respondents maintained that each and every trade confirmation clearly indicates the amount of commission paid and each monthly account statement lists every trade for the period. Respondents maintained that Claimants' accounts began to decline in March 1994 with the initial purchases of SLMI. Respondents maintained that what was not known at the time, but is now the basis of a recently settled class action against SLMI, its officers and directors, is the allegations that SLMI corporate insiders released fraudulent financial information to the public to inflate the stock price. Respondents maintained that the release of partially corrected financial data in late March and again in April 1994, caused the market value of SLMI to decline substantially. Respondents maintained that Claimants qualified as class members in the SLMI class action suit. Respondents maintained that Claimants were familiar with the use of margin loans to finance investments and Claimants margin as a percent of equity grew substantially in late 1993 and remained at that level in 1994. Respondents maintained that the margin as an increasing percent of equity was due to a number of factors including substantial withdrawals of cash; for example, in 1992, Claimants deposited \$54,162.00 in the accounts and withdrew \$97,402.32. Respondents maintained that in this non- discretionary account there was no breach of limited fiduciary duty owed to Claimants. Respondents further maintained that based on the financial information provided, and confirmed, by Claimants, the recommendations made by Respondents were suitable at the time they were made. Respondents maintained that any loss suffered by Claimants was the result of Claimants' own investment decisions and market fluctuations.

### RELIEF REQUESTED

Claimants requested relief in the amount of \$150,000.00.

Respondents requested that the Statement of Claim be dismissed and that they be awarded the costs of defending against the Statement of Claim.

### 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 originals remain on file with the NASD.

The panel considered the Respondents' Motion to Dismiss Pursuant to Rule 10301(d) and Claimants Response thereto, and denied the Motion.

### 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 Respondents Olde Discount Corporation and Kenneth Mueller are jointly and severally liable to and shall pay to Claimants the sum of \$76,300.00 inclusive of interest.
2. That each party shall pay its own expenses with the exception of the Forum Fees which are addressed below.
3. That any relief not specifically addressed herein is denied.

### FORUM FEES

Pursuant to Rule 10332(c) (formerly Section 43) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

3 sessions x \$750.00 = \$2,250.00

Forum Fees are assessed to Respondents, jointly and severally. Therefore, Respondents are jointly and severally liable to and shall reimburse Claimants the \$750.00 hearing session deposit previously submitted to the NASD Regulation. Respondents have a net assessment due to the NASD Regulation of \$1,500.00.

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

DATE

CONCURRING ARBITRATORS' SIGNATURES

12/13/96

Robert C. Devlin  
Robert C. Devlin, Chairman  
Public Arbitrator

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Sydney S. Friedman  
Public Arbitrator

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John P. McGinty  
Industry Arbitrator

Date Decision Served by NASD Regulation: December 23, 1996

DATE

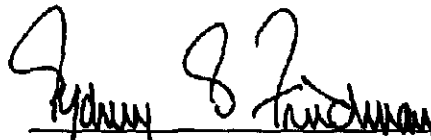
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