

## **AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of the Arbitration Between

Kenneth M. Demeter,  
Claimant,

and

No. 96-04297

Olde Discount Corporation,  
Michael G. McDonald, and  
Brent Walters,

Respondents.

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### **REPRESENTATION OF PARTIES**

Claimant Kenneth M. Demeter ("Claimant") was represented by Laurence S. Schultz, Esq. and Michael T. Reid, Esq. of Driggers, Schultz & Herbst, P.C. located in Troy, Michigan.

Respondent Olde Discount Corporation ("Olde") was represented by Ronald P. Kane, Esq. of Gombert Kane & Fischer, Ltd. located in Chicago, Illinois and Ina N. Otto, Esq. of Olde Discount Corporation located in Detroit, Michigan.

Respondent Michael G. McDonald ("McDonald") was dismissed from this matter without prejudice.

Respondent Brent Walters ("Walters") did not appear in this matter and was unrepresented.

### **CASE INFORMATION**

The Statement of Claim was filed on or about September 23, 1996.

Claimant's Submission Agreement was signed on July 18, 1996.

Respondent Olde's Statement of Answer was filed on or about April 18, 1996.

Respondent Olde's Submission Agreement was signed on November 6, 1996 by Thomas P.

Fitzgerald, General Counsel of Olde Discount Corporation.

Respondents McDonald and Walters did not file a Statement of Answer or Submission Agreement.

### **HEARING INFORMATION**

The telephonic pre-hearing conference was held on August 26, 1997 for one (1) session.

The hearing was held on September 4, 1997 for two (2) sessions; September 5, 1997 for two (2) sessions; September 29, 1997 for three (3) sessions; and September 30, 1997 for three (3) sessions. The hearing was held in Southfield, Michigan.

### **CASE SUMMARY**

Claimant alleged that he opened a securities account with Olde with Respondent McDonald as his broker. Claimant contended that he emphasized to McDonald that his money had to be invested conservatively and provide for his future. Claimant asserted that he had no prior experience in the purchase or sale of securities and followed all of McDonald's recommendations. Claimant alleged that McDonald engaged in a pattern of frenetic buying and selling of Olde recommended stocks. Claimant contended that Respondent Walters subsequently became Claimant's account representative and continued the same excessive trading pattern begun by McDonald. Claimant asserted that the excessive margin trading in the account consisted of 215 trades and over \$1,445,000 in purchases and over \$1,399,000 in sales representing an equity turnover rate of 39. Claimant alleged that commissions and interest incurred in Claimant's account represented almost 75% of the account equity. Claimant contended that Olde directly fostered and encouraged the excessive trading by McDonald and Walters.

Respondent Olde denied all liability to Claimant in its Statement of Answer. Olde contended that the Claimant was: (1) aware of the risks attendant to his chosen trading activity; (2) in complete control of his account at all times; and (3) making his own investment decisions. Olde alleged that Claimant's losses resulted from Claimant's own aggressive trading activity and the normal, unpredictable operation of the stock market and not from Olde's actions. Contrary to Claimant's attempt to portray himself as a native investor who had no interest or ability to trade aggressively, Olde contended that the Claimant represented that he had limited experience in investing, consisting of stock trades done over a three year period. Olde asserted that the Claimant also represented in his signed account application that he had a net worth, exclusive of family residence, of \$100,000. Olde alleged that the Claimant signed letters acknowledging that his trading was consistent with his investment objectives and that he was fully aware and accepted the risks involved with investing in securities and trading on margin.

### **RELIEF REQUESTED**

Claimant requested out-of-pocket damages in an amount in excess of \$49,000, plus a refund of commissions, lost opportunity at a reasonable rate of return, damages pursuant to RICO, punitive and exemplary damages, including damages for emotional distress and severe mental anguish, plus interest from the date of filing, costs and attorney fees.

Olde requested that the panel dismiss all of Claimant's claims in their entirety and award Olde any costs it deems fair and reasonable in defending this claim.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondent McDonald was dismissed from this matter without prejudice by the Claimant prior to hearing.

Respondent Walters failed to appear at the hearing. Upon review of the file, the undersigned arbitrators have determined that Respondent Walters has not been properly served with the Statement of Claim pursuant to §10302 and §10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondent Walters has not received due notice of the hearing as required under §10315 of the Code and that arbitration of the matter would not proceed against Respondent Walters pursuant to §10318 of the Code.

The parties who appeared at the hearing 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 the 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) That the Statement of Claim is hereby dismissed in its entirety with prejudice; and
- (2) That other than forum fees, which are addressed below, all other claims and requests for relief not specifically addressed and enumerated are hereby denied in their entirety with prejudice.

### **FORUM FEES**

Forum fees are calculated at the rate of \$500 per hearing session and \$300 for each pre-hearing conference, if any. There was one (1) pre-hearing session x \$300 = \$300 in forum fees. There were ten (10) hearing sessions x \$500 = \$5,000 in forum fees. Total forum fees = \$5,300.

Pursuant to § 10332(b) of 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 § 10332(c) 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 Claimant. Pursuant to § 10333 of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable member surcharge in the amount of \$300 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Olde. Pursuant to § 10332(c) of the Code, Claimant is liable for and shall pay forum fees in the amount of \$2,150 (1/2 total forum fees - hearing session deposit). Pursuant to § 10332(c) of the Code, Olde is liable for and shall pay forum fees in the amount of \$2,650 (1/2 total forum fees). Pursuant to § 10332(c) of the Code, Olde is additionally liable for and shall pay postponement fees in the amount of \$500.

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

### **Concurring Arbitrators' Signatures**

**/s/ Robert J. Scafuri, Esq.**

Robert J. Scafuri, Esq.

Chairperson

Public Arbitrator

**October 15, 1997**

Dated:

**/s/ William D. Keller**

William D. Keller

Panelist

Public Arbitrator

**October 10, 1997**

Dated:

**/s/ Bruce F. Coleman**

Bruce F. Coleman

Panelist

Industry Arbitrator

**October 10, 1997**

Dated:

For NASD use only:

Date Award was served on the parties:

**October 15, 1997**