

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between

Name of Claimants

Bharat Das Agarwal, individually and Trustee of the  
B.D. Agarwal, MD, Inc. Profit Sharing Plan and Trust and  
Agarwal Family Ltd. Partnership

Case No. 99-01010

Name of Respondents

Olde Discount Corporation  
John K. Koczara  
Ernest J. Olde, Jr.  
Stanley A. Snider  
Daniel D. Katzman

Hearing Site: *Washington, DC*

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**REPRESENTATION OF PARTIES**

Claimants, Bharat Das Agarwal, Individually ("Mr. Agarwal") and as Trustee of the B.D. Agarwal, M.D., Inc. Profit Sharing Plan and Trust; and the Agarwal Family Ltd. Partnership (collectively referred to as "Claimants"): Richard Pu, Esq. of the law firm of McPheters & Danker, LLP, New York, NY.

Respondent, Olde Discount Corporation ("Olde ") and Respondent, John K. Koczara ("Koczara"): Theodore A. Krebsbach, Esq. and Liam O'Brien, Esq. of the law firm of Theodore A. Krebsbach & Associates, P.C., New York, NY.

Respondent, Ernest J. Olde ("Mr. Olde"): Brian N. Smiley, Esq. and Edward J. Dovin, Esq. of the law firm of Page Gard Smiley & Bishop, P.C., Atlanta, GA

Respondent, Stanley A. Snider ("Snider"): Jeffrey W. Kilduff, Esq. of the law firm of O'Melveny & Myers, LLP, McLean, VA and Rebecca H. Farrington, Esq. of the law firm of O'Melveny & Myers, LLP, Washington, DC.

Respondent, Daniel D. Katzman ("Katzman"): Lionel E. Pashkoff, Esq. of the law firm of Proskauer Rose, LLP, New York, NY.

### CASE INFORMATION

Statement of Claim filed on or about: March 4, 1999

Claimants signed the Uniform Submission Agreement: March 4, 1999

Joint Statement of Answer filed by Respondents Olde and Koczara on or about: June 28, 1999

Respondents Olde and Koczara did not sign a Uniform Submission Agreement.

Mr. Olde's Statement of Answer was filed on or about: October 7, 1999

Mr. Olde did not sign a Uniform Submission Agreement.

Snider's Statement of Answer was filed on or about: May 28, 1999

Snider did not sign a Uniform Submission Agreement.

Katzman's Statement of Answer was filed on or about: November 5, 1999

Katzman did not sign a Uniform Submission Agreement.

### CASE SUMMARY

Claimants asserted, among other things, the following causes of action: violation of Section 10(b) and Rule 10b-5; fraud; breach of fiduciary duty; breach of express and implied contractual obligations; breach of duty of care; churning; unsuitability; unauthorized trading and negligence. The causes of action alleged by Claimants relate to, among other things, Respondents inducing Claimants to buy and sell securities in which Olde made a market in and concealed from Claimants that Respondents were making money by churning Claimants' accounts and capturing money made off the spread.

Unless specifically admitted in its Answer, Respondent Olde and Koczara denied the allegations asserted in the Statement of Claim and maintained the following defenses: failure to state a claim on which relief may be granted; the claims are barred by laches, waiver, estoppel and ratification; Respondents' obligations to Claimants have been satisfied and discharged; Claimants assumed the risks of the investment transactions and the investment losses that occurred; Claimants may not recover punitive or exemplary damages, as the recovery of such damages is not permitted under applicable state laws; Claimants expressly indemnified Olde against any claims arising from transactions in the accounts; and, Claimants' claims are barred in whole or in part by all applicable statutes of limitations.

Unless specifically admitted in its Answer, Mr. Olde denied the allegations asserted in the Statement of Claim and maintained the following defenses: that he is not subject to the jurisdiction of the NASD; that Claimants' claim fails to state a claim upon which relief can be granted; the claims are barred by the doctrine of laches as well as applicable statutes of limitations.

Unless specifically admitted in its Answer, Snider denied the allegations made in the Statement of Claim and asserted, among other things, the following defenses: the claim against Snider is barred on the ground that there is no private cause of action based on a theory of failure to supervise or implementation of policies and procedures; Snider cannot be held secondarily liable for alleged primary violations by an Olde registered representative; the NASD lacked jurisdiction over Snider for purposes of this arbitration; Claimants' claims are barred by all applicable statutes of limitations; that Claimants' claim fails to state a claim upon which relief can be granted; Snider owes no fiduciary duty to Claimants; Claimants fail to allege facts sufficient to show any duty owed by Snider to Claimants; Snider does not have a contractual relationship to Claimants; Claimants' claim is barred on the grounds that Claimant Mr. Agarwal is a sophisticated investor who understood the nature and risks of the investments; Claimants knowingly ratified every transaction; Snider did not aid or abet Koczara, or conspire with him; Snider was not a control person; Snider did not knowingly or willfully misrepresent any material facts relating to any of the transactions at issue in this arbitration; Snider acted in good faith and did not directly or indirectly induce the acts constituting the securities violations alleged by Claimants; Claimants failed to mitigate their damages; and Claimants are not entitled to punitive damages.

Unless specifically admitted in its Answer, Katzman denied the allegations made in the Statement of Claim and asserted the following: Katzman had no personal dealings with Claimants or their accounts; at no time did Katzman become aware of any trading, much less improper trading, in Claimants' accounts; the Statement of Claim fails to state a claim for which relief may be granted; the claim is barred by the doctrine of laches as well as the applicable statutes of limitations; the NASD lacks jurisdiction over Katzman; Claimants' claim is precluded because Mr. Agarwal expressly authorized, approved and consented to every transaction effectuated in Claimants' accounts; the claim, as a matter of law, does not support a claim for punitive damages; Claimants are precluded from recovery because they failed to take reasonable and prudent action in order to mitigate their damages; and, Katzman acted in good faith and in compliance with all applicable rules and regulations.

#### **RELIEF REQUESTED**

Claimants, in their Statement of Claim, requested:

Compensatory Damages	\$1,500,000
Punitive Damages	\$3,500,000
Interest	unspecified

Respondents requested that Claimants' claim be dismissed in its entirety, that Claimants be assessed all forum fees and costs and that they be awarded all attorneys' fees associated with defending this action.

Koczara requested that the Panel expunge all references to this case from his CRD record.

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

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

Moreover, although Respondents Mr. Olde, Snider and Katzman maintained that they are not subject to the jurisdiction of the Panel as they were no longer registered at the time the Claimants' claim was filed, Respondents are incorrect. Respondents Mr. Olde, Snider and Katzman were registered representatives during the time frame alleged by Claimants. When a registered representative leaves the industry, they may be found liable for their actions committed while they were registered. Therefore, the time frame of the alleged wrongdoing determines whether there is jurisdiction and the Panel determined it had jurisdiction over all Respondents.

All Respondents presented oral motions for "Judgment" during the case and they were denied. The Panel decided this arbitration on the merits.

The parties at the hearing agreed that the Panel could sign counterpart copies of the award.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. That Claimants' claim for compensatory damages is denied in its entirety.
2. That Claimants' claim for punitive damages is denied in its entirety.
3. That the parties shall bear their respective costs, except as the Panel's Sanction Order attached as Exhibit A to this Award directs Claimants' counsel to pay \$250 each to the counsel for Respondent Olde Discount Corporation and to the NASD Dispute Resolution for Claimants' counsel failure to comply with the Panel's discovery order.
4. That the parties shall bear their respective attorneys' fees.

5. That all other Fees are assessed as indicated below.
6. That Koczara's request for an expungement is denied. The Panel makes a specific finding based on the totality of the evidence, including the testimony of Koczara, that he violated applicable rules and regulations by knowingly identifying numerous solicited trades as being unsolicited, but the Panel also finds that these actions did not provide sufficient basis for a determination on the merits of the case in favor of Claimants.
7. That any and all claims for relief not specifically addressed herein are denied in their entirety.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 250
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#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$2,500
Pre-hearing process fee	= \$ 600
Hearing process fee	= \$4,500

#### **Adjournment Fees**

Adjournments requested during these proceedings:

August 8, 9, 10, 12, and August 23, 24, 25, 28, 30 and 31, 2000, adjournment by Claimants	= \$1,000
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#### **Forum Fees and Assessments**

The arbitrators have the authority to assess forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) Pre-hearing sessions with a single arbitrator x \$300	= \$ 900
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Pre-hearing conferences:	May 3, 2000	1 session
	April 19, 2001	1 session
	April 20, 2001	1 session
Two (2) Pre-hearing sessions with Panel x \$1,000		= \$ 2,000
Pre-hearing conferences:	December 15, 1999	1 session
	June 29, 2000	1 session
Twenty (20) Hearing sessions x \$1,000		= \$20,000
Hearing Dates:	May 1, 2001	2 sessions
	May 2, 2001	2 sessions
	May 3, 2001	2 sessions
	May 4, 2001	2 sessions
	May 8, 2001	2 sessions
	May 9, 2001	2 sessions
	May 10, 2001	2 sessions
	May 11, 2001	2 sessions
	May 15, 2001	2 sessions
	May 16, 2001	2 sessions
Total Forum Fees		= \$22,900

The Panel has assessed forum fees in the amount of \$18,320 jointly and severally against the Claimants.

The Panel has assessed forum fees in the amount of \$2,290 against Koczara.

The Panel has assessed forum fees in the amount of \$2,290 against Olde.

#### Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

Claimants, Fee for past awards = \$ 80

#### Fee Summary

Claimants are jointly and severally assessed the following fees:

Initial Filing Fee	= \$ 250
Adjournment Fee	= \$ 1,000
Forum Fees	= \$18,320
Administrative Costs	= \$ 80

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Total Fees	= \$19,650
Less payments	= \$ 2,660
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Balance Due NASD Dispute Resolution, Inc.	= \$16,990

Respondent, Olde, is assessed the following fees:

Member Fees	= \$ 7,600
Forum Fees	= \$ 2,290
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Total Fees	= \$ 9,890
Less payments	= \$ 7,600
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Balance Due NASD Dispute Resolution, Inc.	= \$ 2,290

Respondent Koczara is assessed fees as follows:

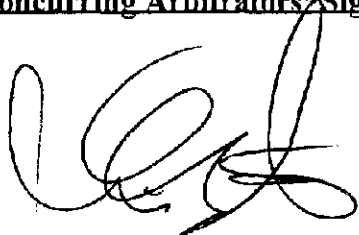
Forum Fee	= \$2,290
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Balance Due NASD Dispute Resolution, Inc.	= \$2,290

All balances are due to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

<i>Marvin Elster</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Kitty G. Grubb</i>	-	<i>Public Arbitrator, Panelist</i>
<i>Oscar W. Carlson, Jr.</i>	-	<i>Non-Public Arbitrator, Panelist</i>

**Concurring Arbitrators' Signatures**



*Marvin Elster*  
Public Arbitrator, Presiding Chairperson

JUNE 20, 2001  
Signature Date

*Kitty G. Grubb*  
Public Arbitrator, Panelist

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Signature Date

*Oscar W. Carlson, Jr.*  
Non-Public Arbitrator, Panelist

\_\_\_\_\_  
Signature Date

June 22, 2001  
Date of Service (For NASD Dispute Resolution office use only)



**ARBITRATION PANEL**

<i>Marvin Elster</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Kitty G. Grubb</i>	-	<i>Public Arbitrator, Panelist</i>
<i>Oscar W. Carlson, Jr.</i>	-	<i>Non-Public Arbitrator, Panelist</i>

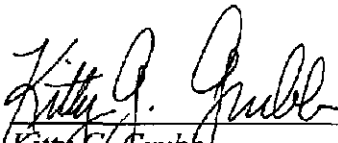
**Concurring Arbitrators' Signatures**

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*Marvin Elster*  
Public Arbitrator, Presiding Chairperson

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Signature Date

  
*Kitty G. Grubb*  
Public Arbitrator, Panelist

*06/20/01*  
Signature Date

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*Oscar W. Carlson, Jr.*  
Non-Public Arbitrator, Panelist

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Signature Date

*June 22, 2001*  
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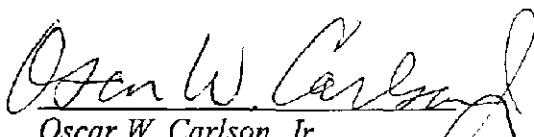
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Public Arbitrator, Presiding Chairperson

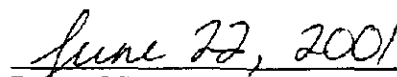
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