

**Award**  
**NASD Regulation, Inc.**

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In the Matter of the Arbitration Between:

**ANNE M. ROCKAFIELD v. OLDE DISCOUNT CORPORATION AND PAUL SEALS**

Case Number: 99-2663

Hearing Site: Detroit, Michigan

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**REPRESENTATION OF PARTIES**

Claimant Anne M. Rockafield ("Rockafield"), hereinafter referred to as "Claimant": Anthony V. Trogan, Esq., Weisman, Trogan, Young & Schloss, P.C., Bingham Farms, Michigan.

Respondents, Party Old Discount Corporation ("Olde") and Paul Seals ("Seals"), hereinafter collectively referred to as "Respondents": Attorney Donald P. Wray, Esq., Olde Discount Corporation, Detroit, Michigan.

**CASE INFORMATION**

Statement of Claim filed on or about: June 7, 1999

Claimant signed the Uniform Submission Agreement: June 2, 1999

Respondents' Motion to Strike filed on or about: August 10, 1999

Claimant's Reply to Motion to Strike filed on or about: August 30, 1999

Respondent Olde's Answer filed on or about: none on record

Respondent Seals' Answer filed on or about: none on record

**CASE SUMMARY**

Claimant alleged that she is a 70 year old retiree who opened an account with Olde Discount Corporation in 1996 with funds received from her father's estate. She stated that she disclosed to Respondents that her investment experience consisted of owning one mutual fund and one stock at Merrill Lynch, and that she knew nothing about investing and that she required professional advice to guide her investment activities. Claimant alleged that she informed Respondents that since she was retired and on a limited income, that she considered herself a conservative to moderately conservative investor with objectives of income and growth, and that her goal was to leave an inheritance to one of her daughters. Claimant averred that she was given the signature page of the application to sign without being allowed to review the information it contained and that Respondents intentionally misrepresented her characterization and objectives on all of the applications in order to pursue the type of trading that they desired in her account; a pattern of trading activity consisting of Respondents making unsuitable recommendations to Claimant and recommending the use of margin, while misrepresenting the procedure for meeting margin calls, and with Claimant, all the while trustingly, following their advice. Claimant stated that when she did have occasion to question the trading in her account and the erroneous characterization information that appeared on her monthly statements, Respondents would

convince her to rely upon their skill and experience, and guaranteed that if she did, everything would be okay. Claimant alleged that the effect of Respondents' actions was to successfully induce Claimant to totally rely upon them, and Respondents soon obtained complete domination over claimant and the account, resulting in Claimant's loss.

Claimant purports that Respondents' activities consisted of making recommendations unsuitable for Claimant; making recommendations based upon misrepresentation and without proper risk disclosure; the misrepresentation of margin procedures and the abuse of margin; and the use of improper sales techniques. Claimant's claim is based upon the legal theories and principles of breach of contract, common law fraud, conspiracy, promissory estoppel, conversion, negligence, malpractice, breach of fiduciary duty, breach of Michigan securities law, and violation of Michigan Consumer's Protection Law.

### **RELIEF REQUESTED**

Claimant requested: compensatory damages of \$44,000.00, plus interest at 12%, costs, actual attorney fees, exemplary and punitive damages, additional damages, rescission of all transactions and payment of all monies necessary to make Claimant whole

Respondent requested: unspecified

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

Respondents Olde and Seals did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but are required to submit to arbitration pursuant to the Code and, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

The Panel denied Respondents' Motion to Strike.

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.

### **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.) Claimant's Statement of Claim is dismissed with prejudice;
- 2.) That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;

- 3.) That any relief not specifically enumerated, including exemplary and punitive damages is hereby denied with prejudice.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee = \$ 175.00

#### **Member Fees**

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

Member surcharge = \$ 800.00

Pre-hearing process fee = \$ 600.00

Hearing process fee = \$1,000.00

#### **Adjournment Fees**

Adjournments requested during these proceedings: N/A

#### **Forum Fees and Assessments**

The Panel assesses 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:

One (1) Pre-hearing session with a single arbitrator x \$450.00 = \$ 450.00

Pre-hearing conference: December 1, 1999 1 session

Four(4) Hearing sessions x \$600.00 = \$2,400.00

Hearing Dates: May 1, 2000 2 sessions

May 2, 2000 2 sessions

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Total Forum Fees = \$2,850.00

The Panel has assessed \$2,850.00 of the forum fees to Olde Discount Corporation.

#### **Fee Summary**

Claimant, Anne M. Rockafeld, be and hereby is solely liable for:

Initial Filing Fee = \$ 175.00

Total Fees = \$ 175.00

Less payments = \$ 775.00

Balance Due NASD Regulation, Inc. = \$ (600.00)

Respondent, Olde Discount Corporation, be and hereby is solely liable for:

Member Fees	= \$ 2,400.00
Forum Fees	= \$ 2,850.00
Total Fees	= \$ 5,250.00
Less payments	= \$ 2,400.00
Balance Due NASD Regulation, Inc.	= \$ 2,850.00

All balances are due to NASD Regulation, Inc.

**Concurring Arbitrators' Signatures**

/s/ D. Michael Kratchman, Esq.  
D. Michael Kratchman, Esq.  
Public Arbitrator, Presiding Chair

05/26/00  
Signature Date

/s/ Harvey Frank  
Harvey Frank  
Public Arbitrator

05/23/00  
Signature Date

/s/ Corby A. Kiss  
Corby A. Kiss  
Industry Arbitrator

05/23/00  
Signature Date

06/01/00  
Date of Service (For NASD office use only)

Respondent, Olde Discount Corporation, be and hereby is solely liable for:

Member Fees	= \$ 2,400.00
Forum Fees	= \$ 2,850.00
Total Fees	= \$ 5,250.00
Less payments	= \$ 2,400.00
Balance Due NASD Regulation, Inc.	= \$ 2,850.00

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Signature Date

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NASD Regulation, Inc. Office of Dispute Resolution  
Arbitration # 99-2663  
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*5/23/00*

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TUE 13:59 FAX

D Regulation, Inc. Office of Dispute Resolution  
aration #99-2563  
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