

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Gladys L. Drew and Nancy Amey Sanderson

Case Number: 01-00239

Name of the Respondent

Fahnestock & Co., Inc.

Hearing Site: St. Louis, Missouri

REPRESENTATION OF PARTIES

Claimant Gladys L. Drew ("Drew") and Nancy Amey Sanderson ("Sanderson") (together referred to as "Claimants") were represented by Donald J. Mehan, Esq., of the firm of Moline, Shostak & Mehan, LLC.

Respondent Fahnestock & Co., Inc. ("Fahnestock") was represented by Lisa O'Brien, Esq., of the firm of Theodore A. Krebsbach & Associates, located in New York, New York.

CASE INFORMATION

Statement of Claim filed: January 17, 2001.

Claimant Drew signed the Uniform Submission Agreement: January 9, 2001.

Claimant Sanderson did not file an executed submission agreement.

Statement of Answer and Motion to Join a Necessary Party filed by Respondent Fahnestock on or about: April 5, 2001.

Respondent Fahnestock signed the Uniform Submission Agreement: January 23, 2001.

Response to Join a Necessary Party filed by Claimant on or about: May 2, 2001.

Reply to Response to Join a Necessary Party filed by Respondent on: May 4, 2001.

CASE SUMMARY

Claimant Drew asserted the following causes of action: unsuitability; negligence; breach of fiduciary duty; and violation of the NASD Rules of Fair Practice. In addition, Drew alleged failure to supervise and control person liability Fahnestock. These causes of action resulted from unsuitable recommendations that resulted in purchases of several stocks, including Oak Technology, Inc., At Home Corp. and Agribiotech.

Unless specifically admitted in its Answer, Respondent Fahnestock denied the allegations made in the Statement of Claim and asserted the following defenses:

1. The Statement of Claim consists of only conclusory allegations and damage

- claims, and states no facts sufficient to state a valid cause of action;
2. Respondent complied with all applicable rules and regulations and at all times acted in good faith;
 3. Claimants' alleged damages were not caused by Respondent;
 4. Claimant Drew did not reasonably rely to her detriment on any action or inaction by Respondent;
 5. Respondent made no misrepresentations or omissions of material facts;
 6. Respondent discharged its responsibilities in a professional and ethical manner, within the parameters of appropriate brokerage conduct;
 7. The supervision by Respondent was reasonable and appropriate;
 8. The claim is barred by the defenses of estoppel, waiver, ratification and laches;
 9. Claimants are barred from recovery because Drew failed to mitigate damages;
 10. The facts of this case, as a matter of law, do not support a claim for punitive damages; and
 11. An award of pre-judgment interest and attorneys' fees is barred as a matter of law.

RELIEF REQUESTED

Claimants requested:

Compensatory Damages	In excess of \$75,000.00.
Punitive Damages	As determined by the panel.
Interest	Pre-judgment
Attorneys' Fees	Unspecified amount
Other Costs	Unspecified amount
Other Monetary/Non-Monetary Relief if just and proper.	

Respondent requested that the panel dismiss all of Claimants' claims and award Respondent all costs, including attorneys' fees, in connection with the defense of Claimants' claims.

OTHER ISSUES CONSIDERED AND DECIDED

At the Initial Pre-Hearing Conference held on August 20, 2001, the panel determined that the Motion to Join a Necessary Party was granted and Nancy Amey Sanderson, as a joint tenant on the securities account at issue in this arbitration, was added to the arbitration as a Claimant. Claimant Sanderson did not file a properly executed submission to arbitration with NASD Dispute Resolution but is required to submit to arbitration pursuant to the Customer Agreement and the decision of the panel, and is bound by the determination of the Panel on all issues submitted.

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. The Statement of Claim is dismissed and denied in its entirety;
2. The parties shall bear their own costs of arbitration, including any attorneys' fees, except for those specifically enumerated herein; and
3. Any and all relief not specifically addressed herein, including punitive damages, is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee = \$ 225.00

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. Accordingly, Respondent Fahnestock is a party and the following member fees are assessed:

Member surcharge = \$ 1,000.00
Pre-hearing process fee = \$ 600.00
Hearing process fee = \$ 1,500.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

January 24 and 25, 2002 adjournment by Respondent Fahnestock = \$ 750.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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:

Two (2) Pre-hearing sessions with Panel @ \$750.00	= \$ 1,500.00
Pre-hearing conferences: August 20, 2001 1 session	
January 14, 2002 1 session	
Two (2) Hearing sessions @ \$750.00	= \$ 1,500.00
Hearing Date: May 28, 2002 2 sessions	
Total Forum Fees	= \$ 3,000.00

The Panel has assessed \$3,000.00 of the forum fees to Fahnestock & Co., Inc.

FEE SUMMARY

Claimants Gladys L. Drew and Nancy Amey Sanderson are jointly and severally liable for:

Initial Filing Fee	= \$ 225.00
Less payments	= \$ 975.00
Refund Due from NASD Dispute Resolution	= \$ 750.00

Respondent Fahnstock & Co., Inc. is solely liable for:

Member Fees	= \$ 3,100.00
Adjournment Fee	= \$ 750.00
Forum Fees	= \$ 3,000.00
Total Fees	= \$ 6,850.00
Less payments	= \$ 3,100.00
Balance Due NASD Dispute Resolution	= \$ 3,750.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Neil N. Bernstein - Public Arbitrator, Presiding Chairperson
Robert G. Bailey - Public Arbitrator
William Stark Port, Esq. - Non-Public Arbitrator

Concurring Arbitrators' Signatures



Neil N. Bernstein
Public Arbitrator, Presiding Chairperson


Signature Date

Robert G. Bailey
Public Arbitrator

Signature Date

William Stark Port, Esq.
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only):



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Public Arbitrator, Presiding Chairperson

Signature Date



Robert G. Bailey
Public Arbitrator

7/1/02

Signature Date

William Stark Port, Esq.
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only):

7/1/02 WSP

SEE SUMMARY

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Neil N. Bernstein
Public Arbitrator, Presiding Chairperson

Signature Date

Robert G. Bailey
Public Arbitrator

Signature Date

Will S. Port

William Stark Port, Esq.
Non-Public Arbitrator

6/25/02

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

7/1/02

Signature Date