

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimants
Jack and Sharon Lebeau

Case Number: 02-04964

Name of the Respondents
Fahnestock & Co., Inc.
Estate of Jeffrey S. Vizak

Hearing Site: Philadelphia, Pennsylvania

Nature of the Dispute: Customers vs. Member and Associated Person.

REPRESENTATION OF PARTIES

Claimants Jack and Sharon Lebeau, hereinafter collectively referred to as "Claimants", were represented by Nicholas J. Guiliano, Esq., Attorney at Law, Philadelphia, Pennsylvania.

Respondents Fahnestock & Co., Inc. ("Fahnestock") and the Estate of Jeffrey S. Vizak ("Vizak"), hereinafter collectively referred to as "Respondents", were represented by William E. Mahoney, Esq., Stradley Ronon Stevens & Young, LLP, Philadelphia, Pennsylvania.

CASE INFORMATION

Statement of Claim filed August 19, 2002.

Claimants signed the Uniform Submission Agreement on August 9, 2002.

Statement of Answer filed by Respondents on January 3, 2003.

Respondents did not submit signed Uniform Submission Agreements.

Claimants filed a Motion to Amend the Statement of Claim on November 7, 2003.

Respondents filed a Response to the Motion to Amend the Statement of Claim on December 30, 2003.

Claimants filed a Motion for Sanction on September 7, 2004.

Respondents filed a Response to Claimants' Motion for Sanctions and a Motion for Sanctions on September 13, 2004.

Claimants filed a Response to Respondents' Motion for Sanctions on September 15, 2004.

CASE SUMMARY

Claimants, in their Statement of Claim and Amended Statement of Claim asserted the following causes of action, among others: misrepresentations; misstatements of material fact; suitability; churning; violations of NASD rules; violations of the Securities Exchange Act of 1934, Section 10(b) and SEC Rule 10b-5 as promulgated thereunder; violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law; breach of fiduciary duty; and failure to supervise. The causes of action relate to the purchase and sale of various unspecified securities and the purchase and sale of securities in a margin account.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: Respondents acted in good faith; failure to state a claim upon which relief may be granted; Claimants' claims are barred in whole or in part by the doctrines of contributory and comparative negligence; Claimants' claims are barred by the applicable statutes of limitations, estoppel, waiver, and ratification; failure to mitigate losses; and authorization

RELIEF REQUESTED

Claimants in their Statement of Claim requested:

Compensatory Damages	\$ 830,000
Punitive Damages	amount unspecified
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Lost Income under the Well Managed Portfolio	amount unspecified
Theory of Recovery	
Costs	amount unspecified

Respondents requested that Claimants' claims be denied in their entirety.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents Fahnestock and Vizak did not file with NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim are bound by the determination of the Arbitration Panel (the "Panel") on all issues submitted.

The Panel issued an Order granting Claimants' Motion to Amend the Statement of Claim on January 13, 2004.

The Panel issued an Order on September 15, 2004 indicating that the Motions for Sanctions would be addressed at the hearing on the merits. The Panel has declined to issue Orders resolving the Motions for Sanctions.

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. Claimants' claims are denied in their entirety;
2. All claims for punitive damages and attorneys' fees are denied in their entirety;

3. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and
4. Any and all relief not specifically addressed herein is denied in its entirety.

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 = \$ 375.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Respondent Fahnstock is party.

Member surcharge = \$ 2,250.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 4,000.00

Total Member Fees = \$ 7,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

May 4 – 6, 2004, adjournment requested by Respondents = \$ 1,200.00

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:

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

Pre-hearing conference: December 12, 2003 1 session

One (1) Pre-hearing session with Panel @ \$ 1,200.00 = \$ 1,200.00

Pre-hearing conference: May 9, 2003 1 session

Eleven (11) Hearing sessions @ \$ 1,200.00 = \$ 13,200.00

Hearing Dates: September 20, 2004 1 session
March 8, 2005 2 sessions
March 9, 2005 2 sessions
March 10, 2005 2 sessions
August 22, 2005 2 sessions

August 23, 2005 2 sessions

Total Forum Fees = \$ 14,850.00

The Panel has assessed \$ 14,850.00 of the forum fees jointly and severally to Respondents.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

1. Respondents requested tape duplication = \$ 90.00

SEE SUMMARY

Claimants are jointly and severally assessed and shall pay:

Initial Filing Fee	= \$ 375.00
Total Fees	= \$ 375.00
Less payments	= \$ 1,700.00
Refund owed to Claimants	= \$ 1,325.00

Respondent, Fahnestock, is assessed and shall pay:

Member Fees	= \$ 7,000.00
Total Fees	= \$ 7,000.00
Less payments	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$ 00.00

Respondents, Fahnestock and Vizak, are jointly and severally assessed and shall pay:

Forum Fees	= \$ 14,850.00
Adjournment Fees	= \$ 1,200.00
Administrative Costs	= \$ 90.00
Total Fees	= \$ 16,140.00
Less payments	= \$ 2,290.00
Balance Due NASD Dispute Resolution	= \$ 13,850.00

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

ARBITRATION PANEL

Earl L. Cahan, Esq.	-	Public Arbitrator, Presiding Chairperson
Cynthia H. Plishtin	-	Public Arbitrator, Panelist
Martin Kobak	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures



Earl L. Cahan, Esq.
Public Arbitrator, Presiding Chairperson

8/27/05

Signature Date

Cynthia H. Plishtin
Public Arbitrator, Panelist

Signature Date

Martin Kobak
Non-Public Arbitrator, Panelist

Signature Date

August 31, 2005
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Earl L. Cahan, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Cynthia H. Plishtin
Cynthia H. Plishtin
Public Arbitrator, Panelist

8/29/05
Signature Date

Martin Kobak
Non-Public Arbitrator, Panelist

Signature Date

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NASD Dispute Resolution

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Earl L. Cahan, Esq.

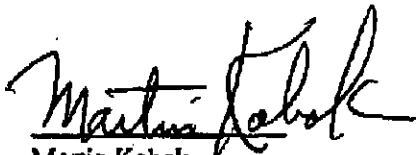
Public Arbitrator, Presiding Chairperson

Signature Date

Cynthia H. Plishtin

Public Arbitrator, Panelist

Signature Date



Martin Kobak

Non-Public Arbitrator, Panelist

8/27/2005
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August 31 2005

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