

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Fahnestock & Co., Inc. (Claimant) v. Adam Reback (Respondent)

and

Richard P. Barnett and Adam J. Reback (Claimants) v. Fahnestock & Co., Inc.  
(Respondent)

and

Fahnestock & Co., Inc. (Claimant) v. Richard P. Barnett (Respondent)

Case Numbers: 02-05807 (consolidated w/02-06041 and 02-06249)

Hearing Site: New York, New York

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Nature of the Dispute: Member v. Associated Person (02-05807)  
Associated Persons v. Member (02-06041)  
Member v. Associated Person (02-06249)

**REPRESENTATION OF PARTIES**

Fahnestock & Co., Inc. hereinafter referred to as "Fahnestock": Jana M. Landon, Esq.,  
Stradley Ronon Stevens & Young, LLP, Philadelphia, PA. Previously represented by:  
Eric J. Schames, Esq., Joseph DaProcida, Esq. and Margarita Landaburu, Esq.,  
Fahnestock & Co., Inc., New York, NY.

Adam Reback ("Reback") and Richard P. Barnett ("Barnett") hereinafter referred to as  
"Reback and Barnett": Michael P. Mangan, Esq., New York, NY.

**CASE INFORMATION**

02-05807

Statement of Claim filed on or about: September 27, 2002.

Reply to Counterclaims filed by Fahnestock on or about: January 22, 2003.

Fahnestock signed the Uniform Submission Agreement: September 27, 2002.

Statement of Answer and Counterclaim filed by Reback on or about: November 21,  
2002.

Reback signed the Uniform Submission Agreement: November 20, 2002.

02-06041

Statement of Claim filed on or about: October 7, 2002.  
Reback and Barnett signed the Uniform Submission Agreement: September 27, 2002.

Statement of Answer filed by Fahnestock on or about: January 11, 2003.  
Fahnestock did not sign the Uniform Submission Agreement.

02-06249

Statement of Claim filed on or about: October 17, 2002.  
Reply to Counterclaims filed by Fahnestock on or about: January 22, 2003.  
Fahnestock signed the Uniform Submission Agreement: October 17, 2002.

Statement of Answer and Counterclaim filed Barnett on or about: December 16, 2002.  
Barnett did not sign the Uniform Submission Agreement.

**CASE SUMMARY**

02-05807

In its Statement of Claim, Fahnestock asserted the following cause of action: failure to repay monies owed pursuant to the terms of a promissory note.

Unless specifically admitted in its Reply to Counterclaims, Fahnestock denied the allegations made in the Counterclaims and asserted various affirmative defenses.

Unless specifically admitted in his Answer, Reback denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In his Counterclaim, Reback asserted the following causes of action: fraudulent inducement; breach of contract; defamation; assault and battery; and tortious interference.

02-06041

In their Statement of Claim, Barnett and Reback asserted the following causes of action: breach of contract; fraud in the inducement; defamation; assault and battery; tortious interference with prospective business relations; and breach of the implied covenant of good faith and fair dealing.

Unless specifically admitted in its Answer, Fahnestock denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

02-06249

In its Statement of Claim, Fahnestock asserted the following cause of action: failure to repay monies owed pursuant to the terms of a promissory note.

Unless specifically admitted in its Reply to Counterclaims, Fahnestock denied the allegations made in the Counterclaims and asserted various affirmative defenses.

Unless specifically admitted in his Answer, Barnett denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In his Counterclaim, Barnett asserted the following causes of action: fraudulent inducement; breach of contract; defamation; assault and battery; and tortious interference.

**RELIEF REQUESTED**

02-05807

In its Statement of Claim, Fahnestock requested compensatory damages in the amount of \$30,000.00; interest at the rate of 8% from August 6, 2002 through the date of the award; NASD filing fees; and attorneys' fees. In its Reply to Counterclaims, Fahnestock requested that Reback's Counterclaims be dismissed and that costs, expenses, and disbursements be assessed against him.

In his Answer, Reback requested dismissal of the Statement of Claim; a judgment on his Counterclaims against Fahnestock in an amount to be determined at the hearing; punitive damages; costs and disbursements, including attorneys' fees; and such other and further relief as the Panel may deem appropriate.

02-06041

In their Statement of Claim, Barnett and Reback requested compensatory damages in the amount of \$300,000.00; interest from the original dates of Fahnestock's breach of contract to the date of the award; costs; attorneys' fees; and punitive damages in the amount of \$200,000.00.

In its Answer, Fahnestock requested that the Statement of Claim be dismissed and that costs, expenses, and disbursements be assessed against Barnett and Reback.

02-06249

In its Statement of Claim, Fahnestock requested compensatory damages in the amount of \$30,000.00; interest at the rate of 8% from August 6, 2002 through the date of the award; NASD filing fees; and attorneys' fees. In its Reply to Counterclaims, Fahnestock requested that Barnett's Counterclaims be dismissed and that costs, expenses, and

disbursements be assessed against him.

In his Answer, Barnett requested dismissal of the Statement of Claim; a judgment on his Counterclaim against Fahnestock in an amount to be determined at the hearing; costs and disbursements, including reasonable attorneys' fees; and such other relief as the Panel deems appropriate.

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

In NASD Dispute Resolution ("NASD DR") Arbitration No. 02-06041, Fahnestock did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and, having answered the claim, and appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

In NASD DR Arbitration No. 02-06249, Barnett did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and, having answered the claim, and appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

On or about April 14, 2003, Barnett and Reback filed a Motion to Consolidate NASD DR Arbitration No. 02-05807 with NASD DR Arbitration Nos. 02-06041 and 02-06249. On or about May 9, 2003, Fahnestock filed its response. By letter dated June 5, 2003, NASD DR notified the parties that the consolidation of these three cases was considered by the Panel in 02-05807 and that the Panel determined to grant the Motion to Consolidate. Subsequently, all three cases then proceeded under NASD DR No. 02-05807.

On or about October 8, 2004, Fahnestock filed its post-hearing memorandum and on October 11, 2004, Reback and Barnett filed a Motion to Preclude this submission as untimely. After considering all submissions regarding this Motion, the Panel determined to grant the Motion to Preclude. Accordingly, Fahnestock's Post-Hearing Memorandum of Law and Reback and Barnett's Reply thereto were not forwarded to or considered by the Panel.

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, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Fahnestock's claims for reimbursement of the balance due on the promissory notes of

Barnett and Reback are denied in their entirety.

2. Barnett and Reback's claims for compensatory damages as a result of employment with Fahnestock are denied in their entirety.
3. Fahnestock is liable for and shall pay to Reback and Barnett attorneys' fees in the amount of \$30,000.00. The Panel awarded attorneys' fees as a sanction for Fahnestock's failure to adhere to NASD rules regarding the production of documents in a timely fashion and the failure to meet the requirements of NASD Rule 10321.
4. 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:

##### **02-05807**

Initial claim filing fee	= \$1,000.00
Reback's Counterclaim filing fee	= \$ 250.00

##### **02-06041**

Initial claim filing fee	= \$ 300.00
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##### **02-06249**

Initial claim filing fee	= \$1,000.00
Barnett's Counterclaim filing fee	= \$ 250.00

#### **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 persons at the time of the events giving rise to the dispute. Accordingly, Fahnestock & Co., Inc. is a party.

##### **02-05807**

Member surcharge	= \$ 600.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,200.00

02-06041

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00

02-06249

Member surcharge	= \$ 600.00
Pre-hearing process fee	= \$ 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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel @ \$1,000.00	= \$ 1,000.00
Pre-hearing conference: April 30, 2003 1 session	

Twenty-six (26) Hearing sessions @ \$1,125.00	= \$29,250.00
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Hearing Dates:	September 23, 2003	2 sessions
	September 24, 2003	2 sessions
	December 10, 2003	2 sessions
	December 11, 2003	2 sessions
	December 12, 2003	2 sessions
	May 19, 2004	2 sessions
	May 20, 2004	2 sessions
	July 28, 2004	2 sessions
	July 29, 2004	2 sessions
	August 10, 2004	2 sessions
	August 11, 2004	2 sessions
	September 7, 2004	2 sessions
	September 8, 2004	2 sessions

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Total Forum Fees	= \$30,250.00
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The Panel has assessed \$30,250.00 of the forum fees against Fahnestock.

**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 are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

1. Fahnestock requested photocopies and tape duplication	= \$288.75
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2. Reback requested photocopies and tape duplication = \$563.50

**Fee Summary**

1. Fahnestock is solely liable for:	
Initial Filing Fee (02-05807)	= \$ 1,000.00
Initial Filing Fee (02-06249)	= \$ 1,000.00
Member Fees (02-05807)	= \$ 3,550.00
Member Fees (02-06041)	= \$ 2,450.00
Member Fees (02-06249)	= \$ 1,350.00
Forum Fees	= \$30,250.00
Administrative Costs	= \$ 288.75
Total Fees	= \$39,888.75
Less payments	= \$10,325.00
Balance Due NASD Dispute Resolution	= \$29,563.75
2. Reback is solely liable for:	
Counterclaim filing fee (02-05807)	= \$ 250.00
Administrative Costs	= \$ 563.50
Total Fees	= \$ 813.50
Less payments	= \$ 875.00
Refund Due Reback	= \$ 61.50
3. Respondent Barnett is solely liable for:	
Counterclaim filing fee (02-06249)	= \$ 250.00
Total Fees	= \$ 250.00
Less payments	= \$ 250.00
Balance Due NASD Dispute Resolution	= \$ 0.00
4. Barnett and Reback are jointly and severally liable for:	
Initial filing fee (02-06041)	= \$ 300.00
Total Fees	= \$ 300.00
Less payments	= \$ 300.00
Balance Due NASD Dispute Resolution	= \$ 0.00

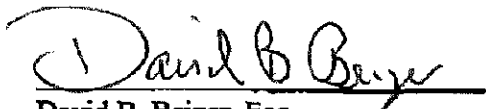
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.
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**ARBITRATION PANEL**

David B. Beizer, Esq.	-	Public Arbitrator, Presiding Chairperson
Jerome Lowengrub, CPA	-	Public Arbitrator
Ravi Jethmal	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument in which is my award.



David B. Beizer, Esq.  
Public Arbitrator, Presiding Chairperson

11/15/04  
Signature Date

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Jerome Lowengrub, CPA  
Public Arbitrator

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

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Ravi Jethmal  
Non-Public Arbitrator

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Signature Date

December 2, 2004

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Date of Service (For NASD Dispute Resolution use only)



**ARBITRATION PANEL**

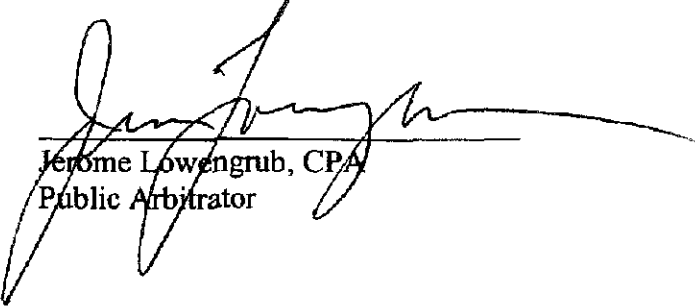
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Public Arbitrator, Presiding Chairperson

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Signature Date

  
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Jerome Lowengrub, CPA  
Public Arbitrator

11/17/04  
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Signature Date

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11/18/04  
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Signature Date

December 2, 2004

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