

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Daniel J. Higgins

Case Number: 02-06856

Name of the Respondent
Fahnestock & Co. f/k/a
Josephthal & Co., Inc.

Hearing Site: Atlanta, Georgia

Nature of the Dispute: Associated Person vs. Member.

REPRESENTATION OF PARTIES

For Daniel J. Higgins, hereinafter referred to as "Claimant": Charles M. Dalziel, Jr., Esq. and Joseph B. Alonso, Esq., Brock, Clay, Calhoun, Wilson & Rogers, P.C., Marietta, Georgia.

For Fahnestock & Co. f/k/a Josephthal & Co., Inc., hereinafter referred to as "Respondent": Cory M. Sobel, Esq., Of Counsel, Josephthal, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: November 12, 2002.

Claimant signed the Uniform Submission Agreement: December 4, 2002.

Statement of Answer filed by Respondent on or about: March 4, 2003.

Respondent signed the Uniform Submission Agreement: April 10, 2002.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty and/or negligence; tortious interference with business relations/misappropriation of business opportunities; fraud; breach of contract and implied contractual duty of good faith and fair duty; unfair business practices; and, violation of NASD Conduct Rules. The causes of action relate to Respondent's alleged failure to fulfill its obligations to Claimant under their employment agreement and the alleged wrongful termination of Claimant.

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

RELIEF REQUESTED

Claimant requested that the Panel enter an award in favor of Claimant and against Respondent for actual damages of not less than \$90,000.00, expenses of litigation including attorneys' fees, and punitive damages, and such other and further relief that the Panel deemed just and proper.

Respondent requested that the Statement of Claim be dismissed and that costs, expenses and disbursements be assessed against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the undersigned arbitrators (the "Panel") have decided in full and final resolution of the issues submitted for determination as follows:

Respondent is found liable for breach of fiduciary duty and breach of implied contractual duty of good faith and fair duty and shall pay to Claimant compensatory damages in the amount of \$27,041.00, interest specifically excluded.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages and attorney's fees, are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (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
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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	= \$1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,700.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No requests for adjournments for which fees were assessed were granted in this matter.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were incurred in this matter.

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 Pre-hearing session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: October 10, 2003 1 session	
One Pre-hearing session with the Panel @ \$750.00	= \$ 750.00
Pre-hearing conference: July 3, 2003 1 session	
Three Hearing sessions @ \$750.00	= \$2,250.00
Hearing Dates: November 19, 2003 2 sessions	
November 20, 2003 1 session	
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Total Forum Fees	= \$3,450.00

The Panel has assessed the total forum fees of \$3,450.00 to Respondent.

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.

No administrative costs were incurred in this matter.

FEE SUMMARY

Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 225.00
Total Fees	= \$ 225.00
<u>Less payments</u>	= \$ 225.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent is solely liable for:

Member Fees	= \$3,550.00
Forum Fees	= \$3,450.00
Total Fees	= \$7,000.00
Less payments	= \$3,550.00
Balance Due NASD Dispute Resolution	= \$3,450.00

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

ARBITRATION PANEL

Marion Smith, II, Esq.	-	Public Arbitrator, Presiding Chair
Steven P. Gregory, Esq.	-	Public Arbitrator
Daniel H. Kolber, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

_____/S/_____
Marion Smith, II
Public Arbitrator, Presiding Chair

Signature Date

_____/S/_____
Steven P. Gregory, Esq.
Public Arbitrator

Signature Date

_____/S/_____
Daniel H. Kolber, Esq.
Non-Public Arbitrator

Signature Date

December 4, 2003
Date of Service (For NASD Dispute Resolution office use only)

Respondent is solely liable for:

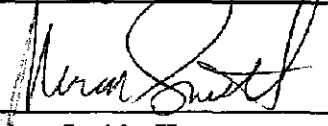
Member Fees	= \$3,550.00
<u>Forum Fees</u>	<u>= \$3,450.00</u>
Total Fees	= \$7,000.00
<u>Less payments</u>	<u>= \$3,550.00</u>
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Steven P. Gregory, Esq.	-	Public Arbitrator
Daniel H. Kolber, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Marion Smith, II
Public Arbitrator, Presiding Chair

12/1/03

Signature Date

Steven P. Gregory, Esq.
Public Arbitrator

Signature Date

Daniel H. Kolber, Esq.
Non-Public Arbitrator

Signature Date

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

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Respondent is solely liable for:

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Steven P. Gregory, Esq.	-	Public Arbitrator
Daniel H. Kolber, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Marion Smith, II
Public Arbitrator, Presiding Chair

Signature Date

Steven P. Gregory, Esq.
Public Arbitrator

11/25/03

Signature Date

Daniel H. Kolber, Esq.
Non-Public Arbitrator

Signature Date

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

Respondent is solely liable for:

Member Fees	= \$3,550.00
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Steven P. Gregory, Esq.	-	Public Arbitrator
Daniel H. Kolber, Esq.	-	Non-Public Arbitrator

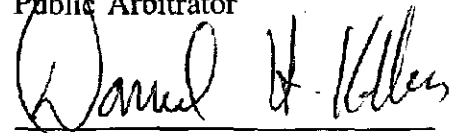
Concurring Arbitrators' Signatures

Marion Smith, II
Public Arbitrator, Presiding Chair

Signature Date

Steven P. Gregory, Esq.
Public Arbitrator

Signature Date



Daniel H. Kolber, Esq.
Non-Public Arbitrator

11/30/03

Signature Date

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