

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Lisa N. Goldberg, Lisa Novick Goldberg Custodian for Margaret N. Goldberg, and Lisa N. Goldberg IRA (Claimants) v. Fahnestock & Co., Inc. and Bruce Kurchack (Respondents)

Case Number: 02-07551

Hearing Site: New York, New York

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

REPRESENTATION OF PARTIES

Claimants Lisa N. Goldberg ("L. Goldberg"), Lisa Novick Goldberg Custodian for Margaret N. Goldberg ("L. Goldberg Custodian"), and Lisa N. Goldberg IRA ("L. Goldberg IRA") hereinafter collectively referred to as "Claimants": Charles M. O'Rourke, Esq., Woodbury, NY.

Respondents Fahnestock & Co., Inc. ("Fahnestock") and Bruce Kurchack ("Kurchack") hereinafter collectively referred to as "Respondents": Evelyn Bukchin, Esq., Fahnestock & Co., Inc., New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: December 13, 2002.

Opposition to Motion to Dismiss filed by Claimant on or about: May 5, 2003.

L. Goldberg signed the Uniform Submission Agreement: December 13, 2002.

L. Goldberg Custodian signed the Uniform Submission Agreement: December 13, 2002.

L. Goldberg IRA signed the Uniform Submission Agreement: December 13, 2002.

Joint Statement of Answer and Motion to Dismiss filed by Respondents on or about: March 11, 2003.

Fahnestock signed the Uniform Submission Agreement: January 29, 2003.

Kurchack did not sign the Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: fraud; breach of fiduciary duty; breach of contract; negligence; failure to supervise; 10(b)-5 violations and other federal, state, NASD, and NYSE violations; unsuitable recommendations; and unsuitable investment strategies. Claimants' claim involved the Munder International NetNet Fund Class A and Munder Future Technology Fund Class A.

Unless specifically admitted in their Answer and Motion to Dismiss, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$160,000.00; reasonable attorneys' fees; reimbursement of forum fees, filing fees, and all other costs associated with prosecuting this arbitration. In their Opposition to Respondents' Motion to Dismiss, Claimants requested that the motion be denied.

Respondents requested that the Arbitration Panel dismiss the Statement of Claim in its entirety; that all reference to the instant matter be expunged from Kurchack's Form U-4; and that disbursements be assessed against Claimants.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Bruce Kurchack 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.

The Panel notes that the parties stipulated, on the record, that Claimants overpaid the commission for the purchase of the Munder Funds in that they were not given the break points to which they were entitled. Respondents further stipulated that this overpayment would be refunded to Claimants.

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. Respondents are jointly and severally liable for and shall pay to Claimants L. Goldberg, L. Goldberg Custodian, and L. Goldberg IRA compensatory damages in the amount of \$109,499.40.
2. Respondents are jointly and severally liable for and shall pay to Claimants L. Goldberg, L. Goldberg Custodian, and L. Goldberg IRA the sum of \$150.00, to reimburse Claimants for one-half of the filing fee previously paid to NASD Dispute Resolution.

3. Any and all relief not specifically addressed herein 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	= \$300.00
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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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Fahnestock & Co., Inc. is a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

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 @ \$1,125.00	= \$1,125.00
Pre-hearing conference: August 21, 2003 1 session	

Six (6) Hearing sessions @ \$1,125.00	= \$6,750.00
Hearing Dates: March 2, 2004 2 sessions	
March 3, 2004 2 sessions	
March 4, 2004 2 sessions	

Total Forum Fees	= \$7,875.00
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1. The Panel has assessed \$3,937.50 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$3,937.50 of the forum fees jointly and severally against Respondents.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$3,937.50
Total Fees	= \$4,237.50
<u>Less payments</u>	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$2,812.50

As stated in the "Award" section above, Respondents are jointly and severally liable and shall reimburse Claimants for one-half of the filing fee.

2. Fahnestock is solely liable for:

Member Fees	= \$5,200.00
Total Fees	= \$5,200.00
<u>Less payments</u>	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$3,937.50
Total Fees	= \$3,937.50
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$3,937.50

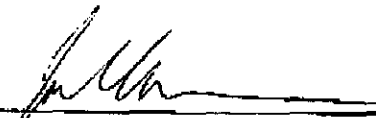
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Jan Louise Ulman, Esq.	-	Public Arbitrator, Presiding Chair
Carole L. Green, Esq.	-	Public Arbitrator
Mary A. Dubas	-	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, which is my award.



Jan Louise Ulman, Esq.
Public Arbitrator, Presiding Chairperson

3/24/04

Signature Date

Carole L. Green, Esq.
Public Arbitrator

Signature Date

Mary A. Dubas
Non-Public Arbitrator

Signature Date

April 1, 2004

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

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Carole L. Green, Esq.	-	Public Arbitrator
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Jan Louise Ulman, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Carole L. Green
Carole L. Green, Esq.
Public Arbitrator

3/31/04
Signature Date

Mary A. Dubas
Non-Public Arbitrator

Signature Date

April 1, 2004
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Public Arbitrator, Presiding Chairperson

Signature Date

Carole L. Green, Esq.
Public Arbitrator

Signature Date



Mary A. Dubas
Non-Public Arbitrator

3/31/04

Signature Date

April 1, 2004
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