

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

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In the Matter of the Arbitration Between:

Joan F. Cammett (Claimant) vs. Frederic Silverman and Fahnestock & Co., Inc.  
(Respondents)

Case Number: 03-00833

Hearing Site: Boston, Massachusetts

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

**REPRESENTATION OF PARTIES**

Claimant Joan F. Cammett hereinafter referred to as "Claimant": David W. Krumsiek, Esq., Preti Flaherty Beliveau Pachios & Haley, Boston, MA.

Respondents Frederic Silverman ("Silverman") and Fahnestock & Co., Inc. ("Fahnestock") hereinafter collectively referred to as "Respondents": Thomas Vays, Esq., Winget, Spadafora & Schwartzberg, LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: February 4, 2003.

Claimant signed the Uniform Submission Agreement: January 31, 2003.

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

Respondent Silverman did not sign the Uniform Submission Agreement.

Respondent Fahnestock signed the Uniform Submission Agreement: April 24, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract, negligence, failure to supervise, breach of fiduciary duty, misrepresentations, omission of facts, manipulations, suitability and buy in. The causes of action relate to the purchase of the Dreyfus High Yield Strategies Fund.

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

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$110,000.00, punitive damages in the amount of \$110,000.00, attorneys' fees and costs in the amount of \$25,000.00, and relief for mental anguish and emotional distress, as the Panel deems appropriate.

Respondent requested that the Panel dismiss the claim in its entirety, exupungement of Silverman's CRD record and that disbursements be assessed against Claimant.

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

Respondent Silverman 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, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

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.

### **ARBITRATOR'S REPORT**

The arbitrators find that Respondent Silverman recommended an unsuitable investment to this Claimant, and that he improperly minimized, if not flatly contradicted, the risks of the investment as disclosed in the prospectus. This investment was not consistent with the Claimant's investment objectives, and Respondent Fahnestock, through its supervisory obligations, should not have approved this investment based upon the investor's assets and objectives as described on her new account form.

### **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. Respondents are jointly and severally liable for and shall pay to Claimant compensatory damages in the amount of \$30,000.00.
2. Respondents are jointly and severally liable for and shall pay to Claimant \$300.00 to reimburse Claimant for the filing fee previously paid to NASD Dispute Resolution.
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 = \$ 300.00

### **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 event 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 or each decision rendered on a discovery-related motion on the papers. 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: July 16, 2003 1 session

Four (4) Hearing sessions @ \$1,125.00 = \$4,500.00

Hearing Dates: April 25, 2006 2 sessions

April 26, 2006 2 sessions

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Total Forum Fees = \$5,625.00

1. The Panel has assessed \$5,625.00 of the forum fees to Respondents jointly and severally.

### **Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee = \$ 300.00

Total Fees = \$ 300.00

Less payments = \$2,125.00

Refund due Claimant = \$1,825.00

*As stated in the "Award" section above, Respondent Oppenheimer shall reimburse Claimant for the filing fee previously paid to NASD Dispute Resolution.*

2. Respondent Fahnestock is solely liable for:

Member Fees = \$5,200.00

Total Fees = \$5,200.00

Less payments = \$5,200.00

Balance Due NASD Dispute Resolution = \$ 0.00

3. Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$5,625.00
<u>Total Fees</u>	= \$5,625.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$5,625.00

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

**ARBITRATION PANEL**

Warren D. Hutchison, Esq.	-	Public Arbitrator, Presiding Chairperson
Barton B. Skeen, Jr., Esq.	-	Public Arbitrator
Amy Lampert	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Warren D. Hutchison, Esq.  
Public Arbitrator, Presiding Chairperson

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Signature Date

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Barton B. Skeen, Jr., Esq.  
Public Arbitrator

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

*Amy Lampert* *Amy D. Lampert*  
\_\_\_\_\_  
Amy Lampert  
Non-Public Arbitrator

*May 22, 2006*

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

*5/22/06*

May 24, 2006

Date of Service (For NASD Dispute Resolution use only)