

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Edgar Moser, Jr.

Case Number: 03-02432

Names of the Respondents

Fahnestock & Co., Inc.

Gruntal & Co., LLC

Fred H. Johnson, III

Lee Fensterstock

Albert G. Lowenthal

Hearing Site: Raleigh, NC

Nature of the Dispute: Customer v. Member, Non-Member and Associated Persons.

REPRESENTATION OF PARTIES

Claimant, Edgar Moser, Jr., hereinafter referred to as "Claimant", was represented by Robert G. McIver, Esq., Hunter, Higgins, Milcs, Elam & Benjamin, PLLC, Greensboro, North Carolina.

Respondent, Fahnestock & Co., Inc. ("Fahnestock"), was represented by Edward J. Boyle, Esq., Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, New York, New York.

Respondent, Gruntal & Co., LLC ("Gruntal"), was represented by Donald N. Cohen, Gruntal & Co., LLC, New York, New York.

Respondent, Fred H. Johnson, III, represented himself.

Respondent, Lee Fensterstock, was represented by William D. Briendel, Esq., Greenberg Traurig, LLP, New York, New York.

Respondent, Albert G. Lowenthal, was represented by Eric J. Shames, Esq., Josephthal & Co., Inc., New York, New York.

CASE INFORMATION

Statement of Claim filed on April 3, 2003.

Claimant signed the Uniform Submission Agreement on March 26, 2003.

Statement of Answer filed by Respondent Fahnestock on June 30, 2003.

Respondent Johnson did not file a Statement of Answer with NASD Dispute Resolution.

Statement of Answer and Motion to Dismiss filed by Respondent Fensterstock on June 30, 2003.

Statement of Answer and Motion to Dismiss filed by Respondent Lowenthal on June 30, 2003.

A representative of Respondent Fahnestock signed the Uniform Submission Agreement on July 6, 2003.

Respondents Johnson, Fensterstock and Lowenthal did not file Uniform Submission Agreements

with NASD Dispute Resolution.

Claimant filed a Response to Respondents Fensterstock and Lowenthal's Motions to Dismiss on July 24, 2003.

CASE SUMMARY

Claimant asserted the following causes of action, among others: violation of various NASD Rules, violations of North Carolina Securities Act, negligence, breach of contract, failure to supervise, breach of fiduciary duty and *respondeat superior*. The causes of action relate to the purchase and sale of Lucent Technologies common stock, AOL common stock, PSINET, Inc. common stock and Nortel Network common stock.

Unless specifically admitted in its Answer, Respondent Fahnestock denied the allegations made in the Statement of Claim and asserted the following defenses, among others: contributory negligence, comparative negligence, authorization, ratification, Respondent did not make any misrepresentations or omissions of material facts to Claimant, Respondent did not owe Claimant any fiduciary duty, and failure to state a claim upon which relief may be granted.

Unless specifically admitted in his Answer, Respondent Fensterstock denied the allegations made in the Statement of Claim and asserted the following defenses, among others: Claimant's claims are barred by the doctrines of ratification, waiver, estoppel, contributory negligence, laches and assumption of the risk; failure to mitigate damages; and failure to state a claim upon which relief may be granted.

Unless specifically admitted in his Answer, Respondent Lowenthal denied the allegations made in the Statement of Claim and asserted the following defenses, among others: contributory negligence, comparative negligence, Respondent did not make any misrepresentations or omissions of material facts to Claimant, Respondent did not owe Claimant any fiduciary duty, and failure to state a claim upon which relief may be granted.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	amount unspecified
Punitive Damages	amount unspecified
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondent Fahnestock requested that the Statement of Claim be dismissed with prejudice and that costs and attorneys' fees be assessed against Claimant.

Respondent Fensterstock requested that the Statement of Claim be dismissed with prejudice, that forum fees be assessed against Claimant, and that the Arbitration Panel (the "Panel") order the

expungement of all reference to this matter from Respondent Fensterstock's Central Registration Depository ("CRD") record.

Respondent Lowenthal requested that the Statement of Claim be dismissed with prejudice.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents Fensterstock and Lowenthal did not file with NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to the Code and, having answered the claim, are bound by the determination of the Panel on all issues submitted.

On October 29, 2002, Gruntal & Co., Inc. filed a Voluntary Petition in the United States Bankruptcy Court. Pursuant to this filing, all matters concerning Gruntal & Co., Inc. were indefinitely stayed.

On October 16, 2003, Claimant dismissed all claims against Respondent Johnson.

On February 17, 2004, the Panel granted Respondents Fensterstock and Lowenthal's Motions to Dismiss and Respondents Fensterstock and Lowenthal were dismissed from the arbitration.

The parties 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. Claimant's claims are denied in their entirety;
2. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent Fensterstock's registration records maintained by the CRD with the understanding that, pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Fensterstock must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
3. The parties shall bear their respective costs, except as Fees are specifically addressed herein; and
4. Any and all relief not specifically addressed herein, including punitive damages, 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 = \$ 250.00

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. Accordingly, Respondent Fahnestock is a party.

Member surcharge = \$ 1,500.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 2,200.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

July 19-21, 2004, adjournment by Claimant waived

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(s): May 18, 2004 1 session

One (1) Pre-hearing session with Panel @ \$ 1,000.00 = \$ 1,000.00

Pre-hearing conference: December 8, 2003 1 session

Three (3) Hearing sessions @ \$ 1,000.00 = \$ 3,000.00

Hearing Dates: July 13, 2004 2 sessions

July 14, 2004 1 session

Total Forum Fees = \$ 4,450.00

The Panel has assessed \$ 4,450.00 of the forum fees to Claimant.

Fee Summary

1. Claimant is assessed and shall pay:

Initial Filing Fee = \$ 250.00

Forum Fees = \$ 4,450.00

Total Fees	= \$ 4,700.00
Less payments	= \$ 1,250.00
Balance Due NASD Dispute Resolution	= \$ 3,450.00

2. Respondent Fahnestock is assessed and shall pay:


Member Fees	= \$ 4,450.00
Total Fees	= \$ 4,450.00
Less payments	= \$ 4,450.00
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.

ARBITRATION PANEL

John A. Meadows, Esq.	-	Public Arbitrator, Presiding Chairperson
Leonard Landsman	-	Public Arbitrator, Panelist
James W. A. Black	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures


John A. Meadows, Esq.
Public Arbitrator, Presiding Chairperson

July 29, 2004
Signature Date

Leonard Landsman
Public Arbitrator, Panelist

Signature Date

James W. A. Black
Non-Public Arbitrator, Panelist

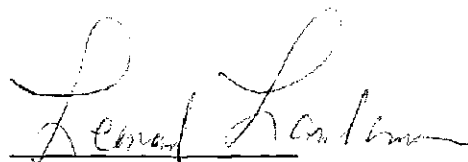
Signature Date

July 30, 2004
Date of Service (For NASD Dispute Resolution office use only)

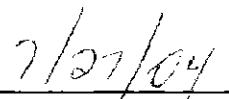
Concurring Arbitrators' Signatures

John A. Meadows, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



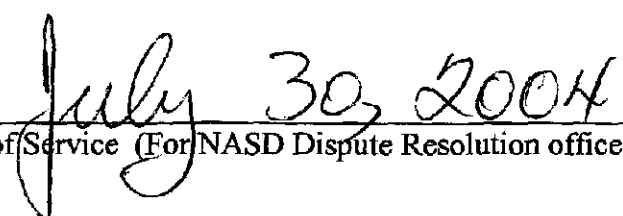
Leonard Landsman
Public Arbitrator, Panelist



Signature Date

James W. A. Black
Non-Public Arbitrator, Panelist

Signature Date



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Concurring Arbitrators' Signatures

John A. Meadows, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Leonard Landsman
Public Arbitrator, Panelist

Signature Date

James W. A. Black
James W. A. Black
Non-Public Arbitrator, Panelist

27 July 2004
Signature Date

July 30, 2004
Date of Service (For NASD Dispute Resolution office use only)