

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Hazel Bryan (Claimant) v. Fahnestock & Co., Inc., James J. Mariani, Michael Fasciglione, Henry Arthur Fichtner, Josephthal & Co., Inc., and Oppenheimer & Co., Inc. (Respondents)

Case Number: 03-03335

Hearing Site: New York, New York

Nature of the Dispute: Customer v. Members and Associated Persons.

REPRESENTATION OF PARTIES

Claimant Hazel Bryan ("Bryan") hereinafter referred to as "Claimant": Joseph H. Lilly, III, Esq., New York, NY.

Respondents Fahnestock & Co., Inc. ("Fahnestock"), James J. Mariani ("Mariani"), Michael Fasciglione ("Fasciglione"), Henry Arthur Fichtner ("Fichtner"), Josephthal & Co., Inc. ("Josephthal"), and Oppenheimer & Co., Inc. ("Oppenheimer") hereinafter collectively referred to as "Respondents": Margarita L. Landaburu, Esq., Office of the General Counsel, Fahnestock & Co., Inc., New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: May 6, 2003.

Reply to Respondents' Motion to Dismiss filed on or about: September 30, 2003.

Amended Statement of Claim filed on or about: November 20, 2003.

Reply to Respondents' Amended Answer and Motion to Dismiss filed on or about: January 14, 2004.

Claimant signed the Uniform Submission Agreement: May 2, 2003.

Joint Statement of Answer and Motion to Dismiss filed by Respondents on or about: September 3, 2003.

Joint Amended Answer and Motion to Dismiss filed by Respondents on or about: December 24, 2003.

Respondent Fahnestock signed the Uniform Submission Agreement: June 30, 2003.

Respondent Mariani signed the Uniform Submission Agreement: December 31, 2003.

Respondent Fasciglione signed the Uniform Submission Agreement: January 6, 2004.

Respondent Fichtner signed the Uniform Submission Agreement: December 31, 2003.

Respondent Josephthal did not sign the Uniform Submission Agreement.

Respondent Oppenheimer did not sign the Uniform Submission Agreement.

CASE SUMMARY

In her Statement of Claim and Amended Statement of Claim, Claimant asserted the following causes of action: unauthorized trading; failure to supervise; churning; breach of fiduciary duty; misrepresentations; manipulations; and omission of fact. Claimant's claim involved the purchase and sale of various mutual funds and common stock.

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

RELIEF REQUESTED

In her Statement of Claim and Amended Statement of Claim, Claimant requested compensatory damages in the amount of \$75,175.00; interest; punitive damages in the amount of \$500,000.00; costs; attorneys' fees; and disbursements. In her Reply to Respondents' Motion to Dismiss and her Reply to Respondents' Amended Answer and Motion to Dismiss, Claimant requested that the Motion to Dismiss be denied in all respects.

Respondents requested that the Statement of Claim be dismissed in all respects, and attorneys' fees and disbursements be assessed against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents Josephthal and Oppenheimer did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements 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 or about November 20, 2003, Claimant amended her claim to include Josephthal and Oppenheimer as Respondents.

During the hearing, Claimant amended her Statement of Claim to decrease the amount of compensatory damages sought from \$75,175.00 to \$54,152.00.

After the Claimant's case, Respondent Fichtner moved to dismiss the claims against him. The Panel granted the motion to dismiss, and upon consent of all parties, granted his request for an expungement of all reference to the above captioned arbitration from Respondent Fichtner's registration records maintained by the NASD Central Registration Depository ("CRD").

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, and 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 Fahnestock and Mariani are jointly and severally liable for and shall pay to Claimant compensatory damages in the amount of \$30,000.00.
2. Respondents Fahnestock, Mariani and Fasciglione are jointly and severally liable for and shall pay to Claimants compensatory damages in the amount of \$6,000.00.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Henry Arthur Fichtner's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Henry Arthur Fichtner must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.
4. 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	= \$ 375.00
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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 persons at the time of the events giving rise to the dispute. Accordingly, Fahnestock & Co., Inc. is a party.

Member surcharge	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$4,000.00

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 @ \$1,200.00	= \$ 1,200.00
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Pre-hearing conference:	January 5, 2004	1 session	
Twelve (12) Hearing sessions @ \$1,200.00			= \$ 14,400.00
Hearing Dates:	July 20, 2004	2 sessions	
	July 21, 2004	2 sessions	
	July 22, 2004	2 sessions	
	August 25, 2004	2 sessions	
	September 21, 2004	2 sessions	
	October 14, 2004	2 sessions	
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Total Forum Fees			= \$15,600.00

The Panel has assessed \$15,600.00 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 not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

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| 1. Claimant requested duplication of hearing tapes | = \$ | 180.00 |
| 2. Respondents requested duplication of hearing tapes | = \$ | 180.00 |

Fee Summary

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| 1. Claimant is solely liable for: | |
| Initial Filing Fee | = \$ 375.00 |
| Administrative Costs | = \$ 180.00 |
| Total Fees | = \$ 555.00 |
| Less payments | = \$ 375.00 |
| Balance Due NASD Dispute Resolution | = \$ 180.00 |
| 2. Respondent Fahnestock is solely liable for: | |
| Member Fees | = \$ 7,000.00 |
| Administrative Costs | = \$ 180.00 |
| Forum Fees | = \$15,600.00 |
| Total Fees | = \$22,780.00 |
| Less payments | = \$ 7,000.00 |
| Balance Due NASD Dispute Resolution | = \$15,780.00 |


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

ARBITRATION PANEL

Martin Jay Siegel, Esq.	-	Public Arbitrator, Presiding Chairperson
Jerome Lowengrub, CPA	-	Public Arbitrator
Louis Wald, Esq.	-	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 is which is my award.



Martin Jay Siegel, Esq.
Public Arbitrator, Presiding Chairperson

10/20/04

Signature Date

Jerome Lowengrub, CPA
Public Arbitrator

Signature Date

Louis Wald, Esq.
Non-Public Arbitrator

Signature Date

October 26, 2004

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

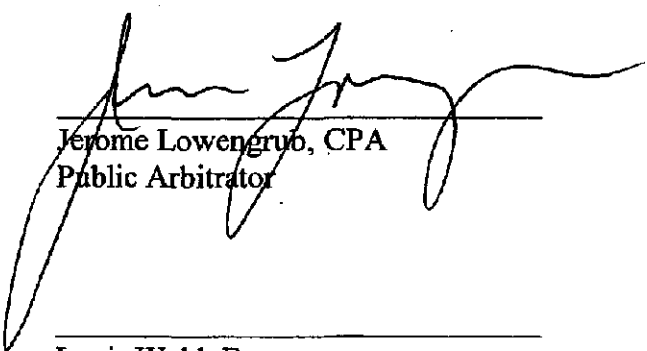
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Jerome Lowengrub, CPA	-	Public Arbitrator
Louis Wald, Esq.	-	Non-Public Arbitrator

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Martin Jay Siegel, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Jerome Lowengrub, CPA
Public Arbitrator

10/19/04

Signature Date

Louis Wald, Esq.
Non-Public Arbitrator

Signature Date

October 26, 2004

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Martin Jay Siegel, Esq.	-	Public Arbitrator, Presiding Chairperson
Jerome Lowengrub, CPA	-	Public Arbitrator
Louis Wald, Esq.	-	Non-Public Arbitrator

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Martin Jay Siegel, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Jerome Lowengrub, CPA
Public Arbitrator

Signature Date



Louis Wald, Esq.
Non-Public Arbitrator

10/22/04

Signature Date

October 26, 2004

Date of Service (For NASD Dispute Resolution use only)