

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

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In the Matter of the Arbitration Between:

Peggy Dempe and Peggy Dempe, IRA (Claimant) v. Fahnestock & Co., Inc., Josephthal & Co., Inc., and Andrew Kevlahan (Respondents)

Case Number: 03-04232

Hearing Site: New York, New York

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

**REPRESENTATION OF PARTIES**

Claimants Peggy Dempe ("Dempe") and Peggy Dempe, IRA ("Dempe IRA") hereinafter collectively referred to as "Claimants": Richard W. Vallario, Esq., Nutley, NJ.

Respondents Fahnestock & Co., Inc. ("Fahnestock"), Josephthal & Co., Inc. ("Josephthal"), and Andrew Kevlahan ("Kevlahan") hereinafter collectively referred to as "Respondents": Tamarah Francois, Esq., and Andrew Kohler, Esq., Fahnestock & Co., Inc., New York, NY. Previously represented by: Cory Sobel, Esq., Fahnestock & Co., Inc., New York, NY.

**CASE INFORMATION**

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

Dempe signed the Uniform Submission Agreement: June 3, 2003.

Statement of Answer and Motion to Dismiss filed by Respondent Fahnestock on or about: August 1, 2003.

Fahnestock did not sign the Uniform Submission Agreement.

Joint Statement of Answer filed by Respondents Josephthal and Kevlahan on or about: August 1, 2003.

Josephthal signed the Uniform Submission Agreement: September 2, 2003.

Kevlahan signed the Uniform Submission Agreement: September 2, 2003.

**CASE SUMMARY**

Claimants asserted the following causes of action: suitability; negligence; fraudulent misrepresentation; and failure to supervise. Claimants' claim involved unspecified securities.

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

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

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$16,500.00; attorneys' fees; forum fees; and for such other relief as the arbitration panel may determine is suitable.

Respondent Fahnestock requested an award dismissing it from this proceeding in its entirety; recommending that this claim be expunged from its CRD record; and awarding it such other and further relief as the Panel deems just and appropriate.

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

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

Respondent Fahnestock 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 Arbitrator on all issues submitted.

During the hearing, Fahnestock renewed its motion to dismiss the claims against it, believing that Josephthal should be responsible. The Arbitrator reserved his ruling until the conclusion of the case.

### **AWARD**

After considering the pleadings, and the testimony and evidence presented at the hearing, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Fahnestock, Josephthal, and Kevlahan are jointly and severally liable for and shall pay to Claimant Dempe compensatory damages in the amount of \$11,000.00.
2. Respondent Josephthal is liable for and shall to Claimants the sum of \$125.00, to reimburse Claimants for 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 = \$125.00

#### 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 events giving rise to the dispute. Accordingly, Josephthal & Co., Inc. is a party.

Member surcharge = \$425.00

#### Forum Fees and Assessments

The Arbitrator has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two Pre-hearing sessions with the sole arbitrator @ \$450.00 = \$ 900.00

Pre-hearing conferences: December 5, 2003 1 session  
January 16, 2004 1 session

Two (2) Hearing sessions @ \$450.00 = \$ 900.00

Hearing Date: March 30, 2004 2 sessions

Total Forum Fees = \$1,800.00

1. The Arbitrator has assessed \$1,800.00 of the forum fees against Josephthal.

### Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee = \$ 125.00

Total Fees = \$ 125.00

Less payments = \$ 575.00

Balance Due NASD Dispute Resolution = \$ 450.00

*As stated in the "Award" section above, Respondent Josephthal is liable for and shall reimburse Claimants for the \$125.00 filing fee.*

2. Josephthal is solely liable for:

Member Fees	= \$ 425.00
<u>Forum Fees</u>	<u>= \$1,800.00</u>
Total Fees	= \$2,225.00
<u>Less payments</u>	<u>= \$ 425.00</u>
Balance Due NASD Dispute Resolution	= \$1,800.00

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

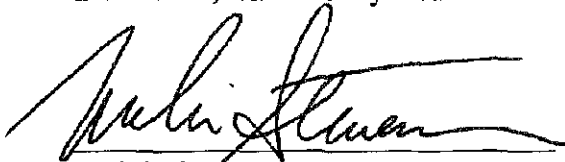
Melvin Steuerman

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Sole Public Arbitrator

**Concurring Arbitrator's Signature**

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.



Melvin Steuerman  
Sole Public Arbitrator

4/20/04

Signature Date

April 22, 2004

Date of Service (For NASD Dispute Resolution use only)