
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Fahnestock & Co. Inc.

Case Number: 03-05021

Name of the Respondent
Miguel A. Rivera

Hearing Site: Boca Raton, Florida

Name of Third Party Respondent
Eric J. Shames

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

REPRESENTATION OF PARTIES

For Fahnestock & Co. Inc., hereinafter referred to as "Claimant": Theodore A. Krebsbach, Esq., Krebsbach & Snyder, P.C., New York, New York and Evelyn Bukchin, Esq., Office of General Counsel, Fahnestock & Co., Inc.

For Miguel A. Rivera, hereinafter referred to as "Respondent": David Wechsler, Esq., Wechsler & Cohen, LLP, New York, New York.

For Eric J. Shames, hereinafter referred to as "Third Party Respondent": Theodore A. Krebsbach, Esq., Krebsbach & Snyder, P.C., New York, New York and Evelyn Bukchin, Esq., Office of General Counsel, Fahnestock & Co., Inc.

CASE INFORMATION

Statement of Claim filed on or about: July 8, 2003.

Claimant signed the Uniform Submission Agreement: July 8, 2003.

Statement of Counterclaim, Third-Party Claim and Answer filed by Respondent on or about: October 10, 2003.

Respondent signed the Uniform Submission Agreement: October 9, 2003.

Reply to Counterclaim and Statement of Answer to Third Party Claim filed by Claimant and Third Party Respondent on or about: December 4, 2003.

Third Party Respondent did not file an executed Uniform Submission Agreement.

Motion to Dismiss Third Party Respondent Claims filed by Claimant and Third Party Respondent on or about: February 28, 2005.

Response to Motion to Dismiss Third Party Respondent Claims filed by Respondent on or about: March 8, 2005.

Reply in Support of Motion to Dismiss Third Party Respondent Claims filed by Claimant and Third Party Respondent on or about: March 10, 2005.

Sur-reply in Opposition to Motion to Dismiss Third Party Respondent Claims filed by Respondent on or about: March 11, 2005.

CASE SUMMARY

Claimant asserted that Respondent failed and refused to repay the unpaid principal balance loaned by Claimant to Respondent pursuant to an executed promissory note.

Unless specifically admitted in his Answer, Respondent denied the allegations made in the Statement of Claim and asserted various defenses. Additionally, Respondent asserted the causes of action of fraudulent inducement and breach of the covenant of good faith and fair dealing against Claimant, and asserted the causes of action of slander per se and prima facie tort against Claimant and Third Party Respondent.

Unless specifically admitted in their Reply to Counterclaim and Statement of Answer to Third Party Claim, Claimant and Third Party Respondent denied the allegations made in the Counterclaim and Third Party Claim, and asserted various defenses.

RELIEF REQUESTED

Claimant requested actual damages in the amount of \$242,663.00, interest at the rate of 8% from June 30, 2003 through the date of the arbitration award, reimbursement of NASD Dispute Resolution filing fees in the amount of \$3,825.00, and attorneys' fees related to the cost of collection in the amount of \$3,000.00. Additionally, Claimant requested dismissal of Respondent's Counterclaim and such other and further relief as deemed appropriate by the Panel.

Respondent requested the following relief:

- (a) As to Claimant: compensatory damages in excess of \$500,000.00, unpaid commissions, an unspecified amount of punitive damages, interest, attorneys' fees, costs, disbursements and consequential damages.
- (b) As to Claimant and Third Party Respondent, collectively: compensatory damages in excess of \$250,000.00, punitive damages in excess of \$500,000.00, interest, attorneys' fees, costs, disbursements and consequential damages.

Third Party Respondent requested dismissal of Respondent's Third Party Claim and such other and further relief as deemed appropriate by the Panel.

OTHER ISSUES CONSIDERED AND DECIDED

Third Party Respondent did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the third party claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

Claimant and Third Party Respondent filed a Motion to Dismiss the claims asserted against Third Party Respondent which asserted, among other things, that there is no legal basis for the claims against Third Party Respondent. In his response, Respondent asserted, among other things, that the Motion to Dismiss was filed in any untimely manner and that Respondent's claims are sufficient as a matter of law. On or about March 16, 2005, the Panel issued an Order that denied Claimant and Third Party Respondent's Motion to Dismiss, without prejudice.

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, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimant is liable on the claims of fraudulent inducement and breach of the covenant of good faith and fair dealing and shall pay to Respondent compensatory damages in the amount of \$242,663.00.

Respondent is liable for failure to repay the promissory note and shall pay to Claimant compensatory damages in the amount of \$242,663.00.

Third Party Respondent is liable on the claim for slander and shall pay to Respondent compensatory damages in the amount of \$1.00.

Any and all claims for relief not specifically addressed herein, including Respondent's request for punitive damages, and Claimant's and Respondent's respective requests for interest and attorneys' fees, are 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	= \$1,000.00
Counterclaim filing fee	= \$ 500.00

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, Claimant is a member firm and a party.

Member Surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,000.00
Total Member Fees	= \$7,450.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were assessed in this matter.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session.

No three-day cancellation fees were assessed in this matter.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

Injunctive relief fees were not assessed in this matter.

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:

Three (3) Pre-hearing sessions with the Panel @ \$1,200.00/session	= \$ 3,600.00
Pre-hearing conferences:	
January 5, 2004	1 session
March 30, 2004	1 session
March 16, 2005	1 session
Eight (8) Hearing sessions @ \$1,200.00/session	= \$ 9,600.00
Hearing Dates:	
March 21, 2005	2 sessions
March 22, 2005	2 sessions
March 23, 2005	2 sessions
March 24, 2005	2 sessions
Total Forum Fees	= \$13,200.00

The Panel has assessed the total forum fees of \$13,200.00 to Claimant.

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 are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred in this matter.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 7,450.00
Forum Fees	= \$13,200.00
Total Fees	= \$21,650.00
Less Payments	= \$ 7,325.00
Balance Due NASD Dispute Resolution	= \$14,325.00

Respondent is solely liable for:

Counterclaim/Third Party Claim Filing Fee	= \$ 500.00
Total Fees	= \$ 500.00
Less Payments	= \$ 500.00
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

Martin A. Feigenbaum, Esq.	-	Public Arbitrator, Presiding Chairperson
Stanley Seidman	-	Public Arbitrator
Berthold T. Berkwich	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/
Martin A. Feigenbaum, Esq.
Public Arbitrator, Presiding Chairperson

April 27, 2005
Signature Date

/s/
Stanley Seidman
Public Arbitrator

April 25, 2005
Signature Date

/s/
Berthold T. Berkwich
Non-Public Arbitrator

April 27, 2005
Signature Date

April 28, 2005
Date of Service (For NASD Dispute Resolution office use only)

ARBITRATION PANEL

Martin A. Feigenbaum, Esq.

Stanley Seidman

Berthold T. Berkwich

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Public Arbitrator, Presiding Chairperson

Public Arbitrator

Non-Public Arbitrator

Concurring Arbitrators' Signatures

Martin A. Feigenbaum, Esq.

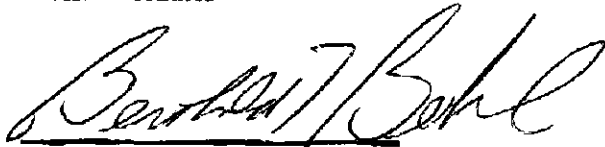
Public Arbitrator, Presiding Chairperson

Signature Date

Stanley Seidman

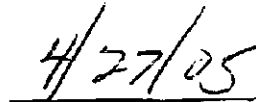
Public Arbitrator

Signature Date



Berthold T. Berkwich

Non-Public Arbitrator



Signature Date

Date of Service (For NASD Dispute Resolution office use only)

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ARBITRATION PANEL

FL ARBITRATION

Martin A. Feigenbaum, Esq.
Stanley Seidman
Berthold T. Berkwich

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Public Arbitrator, Presiding Chairperson
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

Martin A. Feigenbaum, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Stanley Seidman
Public Arbitrator

4-25-05

Signature Date

Berthold T. Berkwich
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

ARBITRATION PANEL

Martin A. Feigenbaum, Esq.
Stanley Seidman
Berthold T. Berkwich

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Public Arbitrator, Presiding Chairperson
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures


Martin A. Feigenbaum, Esq.
Public Arbitrator, Presiding Chairperson


Signature Date

Stanley Seidman
Public Arbitrator

Signature Date

Berthold T. Berkwich
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)