

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimants

Roxanne Wermuth and David Wermuth

and

Case Number: 03-06130
Hearing Site: Troy, Michigan

Respondents

Fahnestock & Co., Inc., and
Jeffrey D. Bishop

NATURE OF DISPUTE

Customers v. Member and Associated Person

REPRESENTATION OF PARTIES

Roxanne Wermuth and David Wermuth ("Claimants") were represented by Laurence S. Schultz, Esq., Driggers, Schultz & Herbst, P.C., Troy, Michigan.

Fahnestock & Co., Inc. ("Fahnestock") and Jeffrey D. Bishop ("Bishop"), hereinafter collectively referred to as "Respondents," were represented by Cory M. Sobel, Esq., Oppenheimer & Co., Inc., New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about August 22, 2003. The Submission Agreement of Roxanne Wermuth and David Wermuth was signed on or about July 30, 2003.

The Statement of Answer was filed jointly by Respondents on or about January 21, 2004. The Submission Agreement of Fahnestock & Co., Inc. was signed on or about November 17, 2003, by Eric J. Shames. The Submission Agreement of Jeffrey D. Bishop was signed on or about June 8, 2004.

Respondents filed a Motion for Sanctions on or about November 9, 2004. Claimants filed a Response to the Motion on or about November 12, 2004.

Respondents requested sanctions in their motion filed February 11, 2005. Claimants responded on or about February 15, 2005.

CASE SUMMARY

Claimants asserted the following legal bases for their Statement of Claim: breach of fiduciary duty; misrepresentations and deceptive devices, breach of contract; violation of NASD and NYSE rules; and liability under principal/agent theories. The causes of action related to the recommendation and purchase of equity mutual funds including Munder Fund Class B, Index Series Growth Portfolio B, Putnam OTC Emerging Growth Fund Class B, Seligman Communications and Information Fund Class B, and VanKampen Emerging Growth Fund Class B. Claimants asserted that these investments ignored Claimants' need for safety and preservation of capital. Claimants also asserted that Respondent Bishop advised her that a margin loan did not have to be paid back.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Respondents discharged their responsibilities in a professional and ethical manner, in good faith and within the parameters of accepted brokerage procedure, as well as all exchange and governmental regulations; there were no misrepresentations or omissions of material facts in Respondents' dealings with Claimants; and Respondents exercised due care and diligence and were not negligent.

RELIEF REQUESTED

Claimants requested an award in the amount of \$125,000.00, plus refund of commissions and margin interest, lost opportunity damages, punitive/exemplary damages, interest, costs, forum fees, attorneys' fees, and such other damages of relief as may be awarded.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

At the hearing, both sides orally moved for sanctions. The panel took all oral and written motions and requests for sanctions under advisement. The panel denies all motions and requests for sanctions herein.

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

AWARD

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

- 1.) Respondents, Fahnestock & Co., Inc., Jeffrey D. Bishop, are jointly and severally liable for and shall pay to Claimants, Roxanne Wermuth and David Wermuth, the sum of \$75,000.00 in compensatory damages;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 3.) Any relief not specifically enumerated, including punitive damages and attorney fees, is hereby denied with prejudice.

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 (fee waived) = \$ 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. In this matter, the member firm is Fahnestock & Co., Inc.

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00

Adjournment Fees

Adjournments requested during these proceedings:

February 21, 2005, adjournment requested jointly (fee waived by panel) = \$ 1,125.00

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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 x \$450.00 = \$ 450.00
Pre-hearing conference: October 15, 2004 1 session

Three (3) Pre-hearing sessions with Panel x \$1,125.00 = \$ 3,375.00
Pre-hearing conferences: June 28, 2004 1 session
December 20, 2004 1 session
February 18, 2005 1 session

Five (5) Hearing sessions x \$1,125.00 = \$ 5,625.00
Hearing Dates: February 22, 2005 2 sessions
February 23, 2005 2 sessions
February 24, 2005 1 session

Total Forum Fees = \$9,450.00

The Arbitration Panel has assessed \$9,450.00 of the forum fees jointly and severally to Fahnestock & Co., Inc., and Jeffrey D. Bishop.

Fee Summary

Claimants, Roxanne Wermuth and David Wermuth, are jointly and severally liable for:

Forum Fees	= \$	0.00
Total Fees	= \$	0.00
Less payments	= \$	0.00
Balance Due NASD Dispute Resolution	= \$	0.00

Respondent, Fahnestock & Co., Inc., is liable for:

Member Fees	= \$	5,200.00
Total Fees	= \$	5,200.00
Less payments	= \$	5,200.00
Balance Due NASD Dispute Resolution	= \$	0.00

Respondents, Fahnestock & Co., Inc., and Jeffrey D. Bishop, are jointly and severally liable for:

Forum Fees	= \$	9,450.00
Total Fees	= \$	9,450.00
Less payments	= \$	0.00
Balance Due NASD Dispute Resolution	= \$	9,450.00

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

ARBITRATION PANEL

Kenneth J. Safran, Esq. - Public Arbitrator, Presiding Chair
Robert J. Scafuri, Esq. - Public Arbitrator
Garrick A. Rollert, J.D. - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Kenneth J. Safran, Esq.
Kenneth J. Safran, Esq.
Public Arbitrator, Presiding Chair

02/24/05
Signature Date

/s/ Robert J. Scafuri, Esq.
Robert J. Scafuri, Esq.
Public Arbitrator

02/24/05
Signature Date

/s/ Garrick A. Rollert, J.D.
Garrick A. Rollert, J.D.
Non-Public Arbitrator

02/24/05
Signature Date

02/24/05
Date of Service (For NASD office use only)

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2-24-05

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