

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Albert Sarfati, Esther Sarfati, and Norman Sarfati (Claimants) v. Prime Charter n/k/a Fahnestock & Co., Inc. and Adi Elfenbein (Respondents)

Case Number: 03-06195

Hearing Site: New York, New York

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

REPRESENTATION OF PARTIES

Claimants Albert Sarfati ("A. Sarfati"), Esther Sarfati ("E. Sarfati"), and Norman Sarfati ("N. Sarfati") hereinafter collectively referred to as "Claimants": Howard M. Rosenfield, Esq., Farmington, CT.

Respondents Prime Charter n/k/a Fahnestock & Co., Inc. ("Prime Charter") and Adi Elfenbein ("Elfenbein") hereinafter collectively referred to as "Respondents": Tamarah M. Francois, Esq., Prime Charter, Ltd., New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: August 22, 2003.

Response to Respondents' Motion to Dismiss filed on or about: January 8, 2004.

Claimants signed the Uniform Submission Agreement: September 23, 2003.

Joint Statement of Answer and Motion to Dismiss filed by Respondents on or about: December 26, 2003.

Respondents' Reply to Claimants' Response to Respondents' Motion to Dismiss filed on or about: January 21, 2004.

Respondent Prime Charter signed the Uniform Submission Agreement: December 26, 2003.

Respondent Elfenbein did not sign the Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary duty; misrepresentations, omissions, and manipulative devices in violation of Sections 10(b) and 20(a) of the Exchange Act and Rule 10b-5; churning; violations of the Connecticut Uniform Securities Act; violations of the Connecticut Unfair Trade Practices Act; unsuitable trading; common law fraud;

conversion; recklessness; breach of contract; and failure to supervise. The causes of action relate to Lee County, Florida AAA/insured bonds and Indianapolis, IN Airport bonds.

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

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$100,000.00; costs and expenses; punitive damages; reasonable attorneys' fees pursuant to the Florida Arbitration Code, F.S. 682.01 *et seq* and/or the Federal Arbitration Act, 9 U.S.C. 1 *et seq*, and as mandated by the decisions of the Supreme Court of Florida and Florida's lower appellate courts; and such other relief as the Arbitration Panel deems just and proper.

Respondents requested that the Statement of Claim be dismissed in its entirety with prejudice; that fees and costs be awarded to Respondents; and such other relief as the Arbitration Panel deems appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Elfenbein 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 Panel on all issues submitted.

Claimant E. Sarfati did not appear at the hearings in this matter.

On or about December 8, 2004, the parties were notified that Arbitrator Bunis withdrew from the Panel. On or about December 13, 2004, the parties notified NASD Dispute Resolution that they unanimously agreed to proceed with the remaining two arbitrators.

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. The Panel finds no liability on behalf of Respondents Prime Charter and Elfenbein. The Panel further finds no breach of fiduciary duty by Respondents, nor any breach of contract, failure to supervise, or unauthorized trading by Respondents. Therefore, Claimants' claims are denied in their entirety.
2. Any and all relief not specifically addressed herein, including punitive damages, 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 = \$225.00

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, Prime Charter, Ltd. is a party.

Member surcharge = \$1,100.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$1,700.00

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 @ \$750.00 = \$ 750.00

Pre-hearing conference: April 29, 2004 1 session

Two (2) Hearing sessions @ \$750.00 = \$1,500.00

Hearing Date: December 14, 2004 2 sessions

Total Forum Fees = \$2,250.00

1. The Panel has assessed \$2,250.00 of the forum fees jointly and severally against Claimants.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee = \$ 225.00

Forum Fees = \$2,250.00

Total Fees = \$2,475.00

Less payments = \$ 975.00

Balance Due NASD Dispute Resolution = \$1,500.00

2. Respondent Prime Charter is solely liable for:

Member Fees = \$3,550.00

Total Fees = \$3,550.00

Less payments = \$4,600.00

Refund Due Prime Charter = \$1,050.00

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

ARBITRATION PANEL

Brenna L. Stewart, Esq.
Scott R. Almas, Esq.

- Public Arbitrator, Presiding Chairperson
- 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 which is my award.

Brenna L. Stewart, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Scott R. Almas, Esq.
Non-Public Arbitrator

Signature Date

December 20, 2004

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Brenna L. Stewart, Esq.
Scott R. Almas, Esq.

- Public Arbitrator, Presiding Chairperson
- 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 which is my award.



Brenna L. Stewart, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Scott R. Almas, Esq.
Non-Public Arbitrator

Signature Date

December 20, 2004

Date of Service (For NASD Dispute Resolution use only)