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

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In the Matter of the Arbitration Between:

Name of the Claimant

Lee Hartzmark

Case Number: 05-02657

Names of the Respondents

Gee Gee Morgan and Stephanie A. Tarver,  
tenants by the entireties

Gee Gee Morgan IRA

Virginia Meade, Trustee for the Virginia Meade Trust

Dated 12/19/95

Virginia Meade IRA

Hearing Site: Boca Raton, Florida

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Nature of the Dispute: Associated Person vs. Customer.

**REPRESENTATION OF PARTIES**

For Lee Hartzmark, hereinafter referred to as "Claimant": Steven L. Wasserman, Esq., Chernett Wasserman Yarger & Pasternak, Cleveland, Ohio.

For Gee Gee Morgan and Stephanie A. Tarver, tenants by the entireties, Gee Gee Morgan IRA, Virginia Meade, Trustee for the Virginia Meade Trust Dated 12/19/95 and Virginia Meade IRA, hereinafter collectively referred to as "Respondents": Delmer Gowing, Esq., Ocean Ridge, Florida.

**CASE INFORMATION**

Joint Request for Stipulated Award and Expungement Order filed on or about: April 11, 2005.

Claimant signed the Uniform Submission Agreement: June 1, 2005.

Respondents did not file signed Uniform Submission Agreements.

**CASE SUMMARY**

Respondents commenced an arbitration proceeding against Claimant in May 2001, NASD Dispute Resolution Case No. 01-02603, which alleged certain conduct related to Claimant's sales practices concerning the Respondents' brokerage accounts, including unauthorized trading, common law fraud, negligence, negligent supervision and breach of fiduciary duty. The claims related to various private placement investments and managed accounts.

Claimant and his member firm, Fahnestock & Co. nka Oppenheimer & Co., denied all the allegations contained in the Statement of Claim and asserted various affirmative defenses.

**RELIEF REQUESTED**

The parties jointly requested the expungement of Claimant's NASD Central Registration Depository (the "CRD") record in NASD Dispute Resolution Case No. 01-02603.

**OTHER ISSUES CONSIDERED AND DECIDED**

Respondents did not file with NASD Dispute Resolution properly executed submissions to arbitration but, having filed a joint request for expungement, are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and are bound by the determination of the Panel on all issues submitted.

On or about October 27, 2003, the parties entered into a Settlement Agreement in NASD Dispute Resolution Case No. 01-02603, whereby Claimant agreed to purchase, for good and valuable consideration and fair market value, certain securities owned by Respondents, and Respondents dismissed their claims, in the entirety, against Claimant and Fahnstock & Co. Inc n/k/a Oppenheimer Inc. The Settlement Agreement further provided that the parties would agree to submit a request to NASD Dispute Resolution for the expungement of Claimant Hartzmark's NASD CRD record with respect to NASD Case No. 01-02603.

Claimant and Respondents jointly request that NASD Dispute Resolution issue a Stipulated Award directing the foregoing expungement, as Claimant can satisfy at least one of the findings required by NASD Rule 2130, to wit: the claims and allegations of the Respondents' claims were false and clearly erroneous.

The parties have agreed that the Stipulated Award in this matter may be entered in counterpart copies or that a signed handwritten Stipulated Award may be entered.

**AWARD**

After considering the Joint Request for Stipulated Award and Order of Expungement, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

After considering the parties' submissions, the confidential settlement agreement and the facts and circumstances of the claims in accordance with NASD Rule 2130, the undersigned Arbitrator has decided that the claims and allegations in NASD Dispute Resolution Arbitration No. 01-02603 were false and clearly erroneous.

Therefore, the Arbitrator recommends the expungement of all reference to NASD Dispute Resolution Arbitration No. 01-02603 from Lee Hartzmark's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Lee Hartzmark must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate

documents.

### **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 = \$ 250.00

#### **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, Fahnestock & Co. Inc. employed the associated person and was a member of NASD at the time the following fees were assessed:

Member surcharge	= \$1,500.00
<u>Pre-hearing process fee</u>	<u>= \$ 750.00</u>
Total Member Fees	= \$2,250.00

#### **Adjournment Fees**

No requests for adjournments were filed 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 cancellation fees were assessed in this matter.

#### **Injunctive Relief Fees**

No injunctive relief fees were incurred during this proceeding.

#### **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 a single arbitrator @ \$450.00	= \$450.00
<u>Pre-hearing conference: October 6, 2005 1 session</u>	<u></u>
Total Forum Fees	= \$450.00

Pursuant to the parties' agreement, the Arbitrator has assessed \$450.00 of the forum fees 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 not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during this proceeding.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 250.00
Forum Fees	= \$ 450.00
Total Fees	= \$ 700.00
Less payments	= \$ 700.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Fahnestock & Co.n/k/a Oppenheimer & Co. is solely liable for:

Member Fees	= \$ 2,250.00
Total Fees	= \$ 2,250.00
Less payments	= \$ 2,250.00
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**

*Debra S. Herman, Esq.*

*Sole Public Arbitrator*

**Arbitrators' Signature**

/s/

Debra S. Herman, Esq.  
Sole Public Arbitrator

11/04/05

Signature Date

11/04/05

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

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Arbitration No. 05-02657  
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Debra S. Herman, Esq.

- Sole Public Arbitrator

Arbitrators' Signature



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11/4/05  
Signature Date

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