

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Diane Reed

Claimants

AWARD

vs.

CASE NO. 88-03059

Kenneth Brown
Brown & Hawk, Inc.
Fahnestock & Co., Inc.

Respondents

SUMMARY OF ISSUES

This case was filed on September 30, 1988. Claimant alleged Respondents fraudulently invested her funds in unsuitable, speculative common stocks, bonds and options, failed to disclose the risks of margin and options trading, misrepresented the potential return on her investments, churned her account, breached their fiduciary duty to Claimant, failed to supervise the Respondent registered representative, and caused intentional infliction of emotional distress. Respondents maintained that the investment program designed and executed by Respondents was solicited by, fully explained to and authorized by Claimant. Respondents further maintained that the losses in the account were attributable to adverse market conditions as well as to investment decisions made solely by Claimant. Respondent Fahnestock maintained it had no liability whatever to Claimant because it acted only as clearing agent for the other Respondents.

DAMAGES AND RELIEF REQUESTED

Claimant requested an award of \$33,666.74 plus interest, return of commissions paid, and costs. Claimant also requested an award of \$200,000.00 for intentional infliction of emotional distress, as well as \$200,000.00 in punitive damages. Respondent Fahnestock requested dismissal of the claim, requested an award of all costs, and asserted a cross-claim against the other Respondents for indemnification in the event of an unfavorable award. Respondents Brown and Brown & Hawk, Inc. requested dismissal of all claims and an award of attorneys' fees and costs.

DAMAGES AND RELIEF AWARDED

On November 2 and 3, 1989 in San Diego, California, the undersigned arbitrators heard the controversy in four sessions between the parties as set forth in submissions to arbitration signed by Claimant on August 26, 1988, and by Respondents Kenneth Brown and Brown & Hawk, Inc. on November 10, 1988, and by Respondent Fahnestock & Co., Inc. on December 5, 1988.

The arbitration panel, having considered the pleadings, the testimony, the evidence presented at the hearing and the post-hearing submissions, has determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents Kenneth Brown and Brown & Hawk, Inc. are jointly and severally liable for and shall pay to Claimant the sum of \$6,876.12 (commissions) plus interest charges of \$360.00, plus interest on the total of these two amounts from 9/12/86 to 12/5/89 at the legal rate of 10%, for a total of \$9,572.12 on the suitability cause of action.
2. All other claims brought by Claimant are dismissed, including the claim for punitive damages.
3. The counterclaim of Respondents Kenneth Brown and Brown & Hawk, Inc., for attorneys' fees and costs is dismissed.
4. The cross-claim of Fahnestock & Co. against Kenneth Brown and Brown & Hawk, Inc. for indemnification is dismissed.
5. The parties shall each bear their respective costs including attorneys' fees.
6. Pursuant to Section 43 of the National Association of Securities Dealers, Inc. ("NASD") Code of Arbitration Procedure, the NASD shall retain the \$750.00 filing fee previously deposited by the Claimant.


OTHER ISSUES

Respondents' Motion for Directed Verdict was granted on the second day of hearing with respect to the following causes of action only: churning; disclosure of margin and options risks; common law fraud; intentional infliction of emotional distress.

ARBITRATORS CONCURRING

DATE SERVED: 1/8/90

STEVEN J. ROBERTS, Esq.



JAMES H. GORMSEN

A. JAMES MIRANTI