

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

SBU, Inc. of Illinois
SBU, Inc., a Missouri Corporation

No. 91-03675

Name of Respondents

B.C. Christopher Securities Co.
Fahnestock & Co., Inc.
Jim Rogers

REPRESENTATION OF PARTIES

For Claimants: Mark G. Schrader, Esq., of Jennings, Jacknewitz & Schrader, P.C., Belleville, Illinois.

For Respondents B.C. Christopher Securities Co. and Fahnestock & Co., Inc.: H. Clay Billingsly, Esq., of Klutho, Cody, Kilo, Flynn, Billingsly & Trame, P.C., St. Louis, Missouri.

Respondent Jim Rogers failed to appear at the hearing.

CASE INFORMATION

Statement of Claim filed: November 19, 1991.

Claimant SBU, Inc. of Illinois' Submission Agreement signed on: December 12, 1991.

Joint Motion to Dismiss, Motion for More Definite Statement or, in the alternative, Statement of Answer filed by Respondents, B.C. Christopher Securities Co. and Fahnestock & Co., Inc. on or about: January 27, 1992.

Respondent B.C. Christopher Securities Co.'s Submission Agreement signed on: January 22, 1992.

Respondent Fahnestock & Co., Inc.'s Submission Agreement signed on: January 22, 1992.

The NASD does not have any record of Respondent Jim Rogers having filed a Statement of Answer or a Submission to Arbitration.

HEARING INFORMATION

Hearing dates: June 17, 1992. One (1) session.
June 18, 1992. Two (2) sessions.

Hearing Location: St. Louis, Missouri.

CASE SUMMARY

Claimant SBUI, Inc. of Illinois ("SBUI") alleged violations of the Illinois Deceptive Trade Practices Act, breach of contract and fiduciary duty, failure to make a trade, failure to execute an order, misrepresentations and omissions, negligence, and fraud on the part of respondents Fahnestock & Co., Inc. ("FCI"), B.C. Christopher Securities Co. ("BCSC"), and Jim Rogers ("Rogers"). The allegations arose out of a transaction in Nike October 60 Puts (the "Puts").

SBUI also alleged that Rogers had been an employee of BCSC, and that BCSC was a wholly-owned subsidiary of FCI. Claimant further alleged that shortly after the purchase of the Puts, they had increased in value by \$120,000.00. SBUI alleged having immediately informed respondents of the desire to sell in several phone conversations in which SBUI had allegedly received reassurances and recommendations to retain the Puts. SBUI next alleged that by August of 1990, the increase in value had dropped to \$63,000.00, and that in September of 1990, SBUI had been informed that neither the purchase nor the sale of the Puts had been consummated by the respondents despite their numerous representation to SBUI to the contrary.

For their joint Statement of Answer, BCSC and FCI denied every allegation made in the Statement of Claim. In addition, BCSC and FCI alleged that SBUI had prescribed the price of 1/4 for the Puts, and that there were no trades in that security on either July 19 or July 23, the orders were not filled. BCSC and FCI further alleged that at no time between July 19, 1990 and September 28, 1990, did the Puts trade at the price of 1/4, and therefore, BCSC and FCI alleged that filling the order had been impossible. Moreover, BCSC and FCI alleged that SBUI could not

allege that it had paid consideration for the Puts, and at no time was SBUI billed for the purchase price of the Puts.

Respondent Jim Rogers did not file an Answer to the Statement of Claim.

In the Amended Statement of Claim, SBU, Inc., a Missouri Corporation ("SBUM") was added as a Claimant to the Statement of Claim. SBUM made the same assertions and allegations as were contained in the original Statement of Claim.

RELIEF REQUESTED

Claimant requested an Award against all Respondents, individually and severally in the amount of \$63,000.00 or \$120,000.00 plus filing fees, interest and attorney's fees.

BCSC and FCI requested that the Statement of Claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file, the panel has determined that Respondent Jim Rogers had been properly served with the Statement of Claim pursuant to Sections 13 and 25 of the Code of Arbitration Procedure ("the Code"). The panel also determined that Respondent Jim Rogers had received due notice of the hearing as required under Section 26 of the Code, and that the arbitration of the matter would proceed pursuant to Section 29 of the Code.

On June 17, 1992, respondents BCSC and FCI made a joint Motion to Dismiss the Claim on the grounds that the wrong party in interest had brought the arbitration. After hearing argument from all parties present at the hearing, and deliberation, the panel ruled that the hearing would resume on June 18, 1992 at 9:00 a.m. to allow claimant to amend the claim and add the Missouri Corporation as an additional claimant, and to allow respondents the chance to conduct discovery of SBU, Inc., a Missouri Corporation. SBU, Inc., a Missouri Corporation was further ordered to sign new Submission Agreements, and the claimants were to submit the amended claim to the NASD on June 17, 1992.

The parties have agreed that the Award in this matter may be

executed by 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 originals remain on file with the 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, B.C. Christopher Securities Co., Fahnestock & Co., Inc., and Jim Rogers are jointly and severally liable for, and shall pay to Claimants, SBU, Inc. of Illinois and SBU, Inc., a Missouri Corporation the sum of \$20,794.00 as satisfaction for their claims herein.

2. Each party shall bear their own costs of this arbitration, including attorney's fees, except as set forth more fully below.

3. Forum fees for this arbitration shall be assessed amongst the parties as set forth below.

FORUM FEES

Pursuant to Section 43 (c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

3 hearing sessions X \$750.00 = \$2,250.00

Pursuant to Section 43 (c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$200.00, and shall retain the hearing session deposit in the amount of \$750.00 previously paid to the NASD by Claimant.

Additional forum fees in the amount of \$500.00 are assessed against respondent B.C. Christopher Securities Company.

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Additional forum fees in the amount of \$500.00 are assessed against respondent Fahnstock & Co., Inc.

Additional forum fees in the amount of \$500.00 are assessed against respondent Jim Rogers.

Fees are payable to the National Association of Securities Dealers, Inc.

CONCURRING ARBITRATORS

Dated:

June 25, 1992

Charles Clardy s/s
Presiding Chair
Public Arbitrator

June 25, 1992

Anthony J. Soukenik s/s
Public Arbitrator

June 25, 1992

Timothy M. Kelly s/s
Industry Arbitrator