

N.A.S.D. AMENDED AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Myron S. Eckstein, TTEE/General Sheet St
Myron S. Eckstein, TTEE/General Sheet St

vs.

92-02358

Name of Respondents

Fahnestock & Co., Inc.
Edward A. Viner & Co., Inc.
E.A. Viner Holdings, Ltd.
William McLaren

REPRESENTATION

For Claimant: Steven L. Gardner, Esq. of McDonald, Hopkins, Burke & Haber Co., L.P.A.
Cleveland, Ohio.

For Respondents: Steven L. Wasserman, Esq., Honohan, Harwood, Chernett & Wasserman,
Cleveland, Ohio.

CASE INFORMATION

Statement of Claim filed: July 15, 1992.

Claimant's Submission Agreement signed on: August 20, 1992.

Joint Statement of Answer filed by Respondents Edward A. Viner & Co., E. A. Viner Holdings,
Ltd. and Fahnestock & Co. on: October 19, 1992.

Respondent Edward A. Viner & Co., Inc., E.A. Viner Holdings, Ltd., Submission Agreement
signed on: October 16, 1992.

Respondent McLaren did not file an Answer or Submission Agreement as required by the NASD Rules of Arbitration Procedure.

HEARING INFORMATION

Hearing Dates/Sessions: June 15, 1993 - 2 sessions
 June 16, 1993 - 2 sessions
 July 8, 1993 - 2 sessions

Hearing Location: NASD offices located in Cleveland, Ohio.

CASE SUMMARY

Claimant alleged that Respondent William McLaren ("McLaren") was employed by Respondent Fahnestock & Co. ("Fahnestock") (successor in interest of Respondent Viner & Co. and Edward Viner & Co.) and acted as the investment manager and securities broker for Claimants. Claimants alleged that during this time Claimants relied upon Respondent McLaren for investment advice and management of investments and Respondent McLaren was aware that Claimants' objectives were conservative investments with minimal risks. Claimants contended that despite having knowledge of these objectives Respondent McLaren recommended and/or effected the purchase and sale of certain securities which were contrary to Claimants' investment needs and purposes. Claimants further contended that these investments were in securities of small and relatively unknown companies which carried significant risk and were of poor quality; virtually all of the investments were in securities that were highly speculative with little or no income producing potential. Claimants alleged that through its actions Respondents violated federal and state securities laws, NASD and NYSE Regulations. Claimants further alleged that Respondent breached their fiduciary duty to Claimants and made negligent misrepresentations, and committed acts which caused Claimants to suffer losses in their accounts.

Respondents Edward A. Viner & Co., E.A. Viner Holdings and Fahnestock & Co. maintained that Claimants failed to specifically alleged facts or violations which give rise to the claims. Respondents further objected to the timeliness of the claim and maintained the claims are barred due to laches and applicable statutes of limitations. Respondents maintained that Claimants assumed the risk in transactions of the investments, the claims are barred by waiver or estoppel. Respondents maintained they provided Claimants with monthly statements of transactions and they had ample time and opportunity to become familiar with the activities of Respondent McLaren. Respondents further asserted a third party claim against Respondent McLaren for any award made against them and asserted a Counterclaim against Claimant for breaching his fiduciary duties.

RELIEF REQUESTED

Claimant requested \$169,733.00 in compensatory damages, interest, attorney fees and cost and other such relief as the panel seems just and proper.

Respondent requested all claims be dismissed.

AWARD

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

1. Respondent Fahnestock & Co., Inc. be and hereby is Liable and shall pay Claimant the sum of \$146,488.00 inclusive of interest.
2. Each party shall bear their own costs.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

6 sessions x \$750.00 = \$4,500.00 less \$1500.00 hearing session deposits = \$3000.00 net due.

Claimant be and hereby is liable and shall pay the NASD the sum of \$1500.00 to represent forum fees.

Respondent Fahnestock be and hereby is liable and shall pay the NASD the sum of \$1500.00 to represent forum fees.

The NASD shall retain the \$200.00 filing fee and \$750.00 hearing session deposited by Claimant and the \$500.00 filing fee and \$750.00 hearing session deposit by Respondent Fahnestock & Co.

Award #92-02358

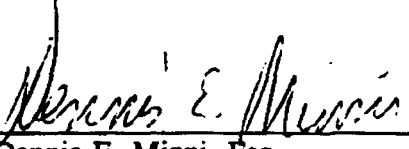
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Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATORS' SIGNATURE

Charles H. Joseph, Jr.
Industry Arbitrator

Michael A. Wypasek, Esq.
Public Arbitrator



Dennis E. Minni, Esq.
Public Arbitrator

Date of Decision: February 7, 1994


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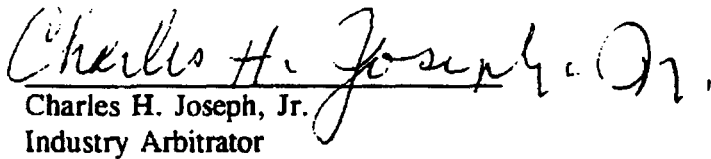
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