

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of Arbitration Between

Name of Claimant

Irene K. Palen

92-04340

Name of Respondent

Fahnestock & Co., Inc.
Lewis Klee

REPRESENTATION

For Claimant Irene K. Palen ("Claimant") appeared James Dolan, Esq., a sole practitioner located in Garden City, New York.

For Respondent Fahnestock & Co., Inc. ("Fahnestock") appeared George Brunelle, a sole practitioner located in New York, New York.

For Respondent Lewis Klee ("Klee") appeared Philip Ransom Shatz, a sole practitioner located in New York, New York.

CASE INFORMATION

Statement of Claim filed: December 23, 1992.

Claimant's Submission Agreement signed on: September 30, 1992.

Respondent Fahnestock's Statement of Answer filed: April 16, 1993.

Respondent Fahnestock did not submit an original, signed Submission Agreement.

Respondent Klee did not submit a Statement of Answer.

Respondent Klee's Submission Agreement signed on: October 24, 1994.

HEARING INFORMATION

Pre-hearing conference:	June 24, 1994	- One Session/ One Arbitrator
Hearing dates/sessions:	October 24, 1994	- Two Sessions
	October 28, 1994	- Two Sessions
	November 21, 1994	- Two Sessions
	November 23, 1994	- Two Sessions

The hearings were held at the National Association of Securities Dealer, Inc.'s offices located in New York City, New York.

CASE SUMMARY

Claimant alleged that Respondents churned her account, executed unauthorized transactions in her accounts, conducted excessive trading and generated enormous commissions. Claimant also alleged that Respondents leveraged her accounts by the use of margin, traded options and purchased unsuitable and speculative securities that were not in Claimant's best interests. Further, Claimant alleged that Respondents breached their fiduciary duty owed to her, that Respondent Fahnestock failed to supervise Respondent Klee and failed to supervise the operation of Claimant's accounts.

Claimant alleged that Respondents violated Section 10(b) of the Securities Exchange Act and Rule 10b-5 of the General Rules and Regulations of the Securities Exchange Commission. In addition, Claimant alleged that Respondents violated Article 3, Section 2, of the NASD Rules of Fair Practice (the "suitability rule") and NASD Rule 405 (the "know your customer rule").

Respondent Fahnestock denied all allegations of wrongdoing as asserted against it in the Statement of Claim.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$325,000.00 and punitive damages in the amount of \$500,00.00. Claimant further requested interest, attorney's fees, costs and disbursements.

Respondent Fahnestock requested that the Statement of Claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

The arbitration panel made the following rulings as to Respondent Fahnestock, who filed an answer in this arbitration, but failed to file an original, signed executed submission of the dispute to NASD arbitration:

1. Pursuant to Section 1 of the NASD code of Arbitration Procedure, the panel found subject matter jurisdiction over this entire controversy and specifically as it related to Respondent Fahnestock.
2. The panel found that Respondent Fahnestock was a member of the NASD at the time the controversy arose. Consequently, the panel found personal jurisdiction over Respondent Fahnestock, pursuant to Section 12(a) of the NASD Code of Arbitration Procedure.
3. In view of (2) above, Respondent Fahnestock was required to execute and file with the NASD an original, signed submission agreement, pursuant to Section 25(b) of the NASD Code of Arbitration Procedure. The panel found that the NASD properly served the Statement of Claim upon Respondent Fahnestock, pursuant to Section 25(a) of the Code.

The arbitration panel made the following ruling as to Respondent Klee, who filed a properly executed submission agreement, but failed to file an answer in this arbitration:

Pursuant to Section 25 of the Code of Arbitration Procedure, Respondent Klee was served with the Statement of Claim and given an opportunity to respond which he failed to do.

At the close of Claimant's case, Respondents Fahnestock and Klee made a motion to dismiss all claims asserted against them. The panel considered this request and ruled that it be denied.

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. 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. All claims against Respondent Fahnestock and Respondent Klee be and hereby are dismissed in their entirety.
2. All claims against Respondent Fahnestock and Respondent Klee for punitive damages be and hereby are dismissed in their entirety.
3. Each party shall bear their respective costs, including attorney's fees.
4. All other claims be and hereby are denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$250.00 non-refundable filing fee and have assessed the following forum fees:

Pre-hearing conference	= \$300.00
8 hearing sessions x \$1,000.00	= <u>\$8,000.00</u>
	\$8,300.00


Respondent Fahnestock be and hereby is liable and shall pay to the NASD the sum of \$8,300.00 representing the outstanding balance of forum fees owed to the NASD.

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

ARBITRATORS' SIGNATURES

Concurring Arbitrators' Signatures:

Allen Kilik, Esq.
Public Chairperson



Daniel B. Berkson, Esq.
Industry Arbitrator

Dissenting Arbitrator's Signature:

Robert A. Castillo
Public Arbitrator

Date of Decision: January 13, 1995

STATE OF:

SS:

COUNTY OF:

On this day of , 1994, before me personally appeared **Allen Kilik, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

STATE OF: *NEW YORK*

SS:

COUNTY OF: *NEW YORK*

On this *13* day of *JANUARY* , 199*5*, before me personally appeared **Daniel B. Berkson, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



ANDREW RUSSELL
Notary Public, State of New York
No. 02RU5034752
Qualified in New York County
Commission Expires Oct. 17, 19*96*

STATE OF:

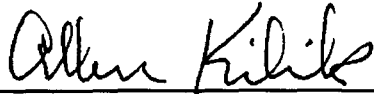
SS:

COUNTY OF:

On this day of , 1994, before me personally appeared **Robert Castillo** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that the executed the same.

ARBITRATORS' SIGNATURES

Concurring Arbitrators' Signatures:



Allen Kilik, Esq.
Public Chairperson

Daniel B. Berkson, Esq.
Industry Arbitrator

Dissenting Arbitrator's Signature:

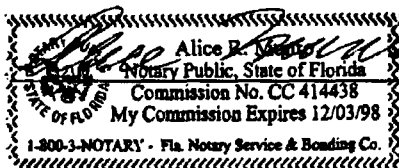
Robert A. Castillo
Public Arbitrator

Date of Decision: January 13, 1995

STATE OF: *FL*
COUNTY OF: *Palm Beach*

SS:

On this *10* day of *January*, 1994, before me personally appeared **Allen Kilik, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



STATE OF:

SS:

COUNTY OF:

On this day of , 1994, before me personally appeared **Daniel B. Berkson, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

STATE OF:

SS:

COUNTY OF:

On this day of , 1994, before me personally appeared **Robert Castillo** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that the executed the same.


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Concurring Arbitrators' Signatures:

Allen Kilik, Esq.
Public Chairperson

Daniel B. Berkson, Esq.
Industry Arbitrator

Dissenting Arbitrator's Signature:



Robert A. Castillo
Public Arbitrator

Date of Decision: 

NASD Date of Decision: January 13, 1995

STATE OF:

SS:

COUNTY OF:

On this day of , 1994, before me personally appeared Allen Killik, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

STATE OF:

SS:

COUNTY OF:

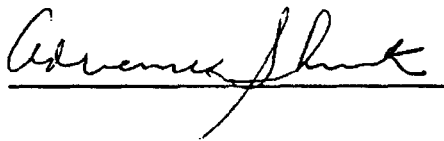
On this day of , 1994, before me personally appeared Daniel B. Berkson, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

STATE OF:

SS:

COUNTY OF:

On this 9 day of Jan^y , 1994, before me personally appeared Robert Castillo known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that the executed the same.



ADREANA SHUNK
Notary Public, State of New York
No. 61-4626764
Qualified in Queens County
Commission Expires 12/31/1998