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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Arthur J. DeBold and M. Dawn Watkins

93-03694

Name of Respondent(s)

A.G. Edwards & Sons, Inc.  
Fahnestock & Co., Inc.  
J.B. Hanauer & Co., Inc.  
Christopher A. Westerfield

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REPRESENTATION

For Claimants Arthur DeBold ("DeBold") and M. Dawn Watkins ("Watkins"): Michael R. Casey, Esq., Casey and Molchan, Fort Lauderdale, Florida.

For Respondent, A.G. Edwards & Sons, Inc. ("A.G. Edwards"): Clay L. Grumke, Esq., A.G. Edwards & Sons, Inc., St. Louis, Missouri.

For Respondent, Fahnestock & Co., Inc. ("Fahnestock"): Charles E. Padgett, Fahnestock & Co., Inc., New York, New York.

For Respondent, J.B. Hanauer & Co., Inc. ("Hanauer"): David H. Lichter, Esq., Kenny Nachwalter Seymour Arnold Critchlow & Spector, Miami, Florida.

For Respondent, Christopher A. Westerfield ("Westerfield"): pro se (see "Other Issues").

CASE INFORMATION

Statement of Claim filed: September 14, 1993.

Claimants' Watkins and DeBold Submission Agreement signed on: September 14, 1993.

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Statement of Answer filed by Respondent, A.G. Edwards on: October 28, 1993. Respondent, A.G. Edwards's, Submission Agreement signed on October 28, 1993 by Stephen G. Sneeringer Vice President and Counsel for A.G. Edwards.

Statement of Answer filed by Respondent, Fahnestock on: October 15, 1993. Respondent, Fahnestock's, Submission Agreement signed on December 8, 1993 by Charles Padgett on behalf of Fahnestock.

Statement of Answer filed by Respondent, J.B. Hanauer on: November 15, 1993. Respondent, J.B. Hanauer's, Submission Agreement signed on September 30, 1993 by Greg Plifka, Executive Vice President of J.B. Hanauer.

Respondent, Westerfield, did not submit a Statement of Answer or execute a Submission Agreement as required by Sections 12 and 25 of the Code of Arbitration Procedure (see "Other Issues").

### **HEARING INFORMATION**

On August 30, August 31, September 1, December 12, and December 20, 1994 in Fort Lauderdale, Florida, hearings lasting 9 sessions were conducted.

### **CASE SUMMARY**

Claimants alleged that Respondent, Westerfield, prevailed upon Claimant DeBold to allow him to liquidate Debold's entire portfolio of utility stocks and mutual or money market funds and to reinvest the proceeds in other mutual funds, stocks, and municipal bonds and open a margin account through Respondent Hanauer. Claimants further alleged that Claimant DeBold agreed to follow Westerfield to Fahnestock and move his accounts to Fahnestock. Claimants further alleged that Claimant Debold agreed to follow Westerfield to A.G. Edwards and move his accounts to A.G. Edwards. Claimants also alleged that Westerfield, Fahnestock, and A.G. Edwards, bought and sold securities in DeBold's account at an excessive rate and frequency in view of the nature of the account, the securities traded, and the investment objectives of Debold. More specifically, the Claimants alleged the following violations in connection with the purchase of said securities: (1) Claim Against Hanauer and Westerfield for the violation of Section 517.301 of the Florida Securities and Investor Protection Act, (2) Claim against Hanauer and Westerfield for Breach of fiduciary and/or contractual duty, (3) Claim against Hanauer for improper supervision, (4) Claim against Fahnestock and Westerfield for the violation of Section 517.301 of the Florida Securities and Investor Protection Act, (5) Claim against Fahnestock and Westerfield for violation of Florida Common Law Fraud, (6) Claim against Fahnestock and Westerfield for breach of fiduciary and/or contractual duty, (7) Claim against Fahnestock for Improper Supervision, (8) Claim against A.G. Edwards and

Westerfield for violation of Section 517.301 of the Florida Securities and Investor Protection Act, (9) Claim against A.G. Edwards and Westerfield for violation of Florida Common Law Fraud, (10) Claim against A.G. Edwards and Westerfield for breach of fiduciary and/or contractual duty, and (11) Claim against A.G. Edwards for improper supervision.

Respondent A.G. Edwards denied all allegations of wrongdoing and maintained that at all times A.G. Edwards appropriately supervised Watkins and DeBold's accounts at A.G. Edwards, based upon the information that was allegedly recorded on the New Account Card for the Claimants accounts and their investment history.

Respondent Fahnestock denied all allegations of wrongdoing and maintained that the Claimants granted discretionary authority to the Respondent, Westerfield, to purchase and sell securities and commodities upon their behalf. Thus, Fahnestock allegedly had full discretionary authority over the Claimants accounts.

Respondent Hanauer denied all allegations of wrongdoing and contended that every trade in the Claimants' account was approved in advance by Claimant Watkins. Hanauer further alleged that Watkins was a joint tenant on the Claimants account and was given full trading authorization by Claimant DeBold. Hanauer also contended that representatives of Hanauer confirmed the trading in the account and Watkins reported satisfaction with Westerfield after the trading in the Claimants' account and after the placing of the account on margin. In addition, Hanauer contended that the securities purchased in the account, which consisted of tax free municipal bonds and bond funds and blue chip and other equities were not unsuitable for the Claimants. Hanauer further asserted that Claimants' claim for violation of Florida's Securities and Investor Protection Act was barred by the applicable statute of limitation.

Respondent Westerfield did not submit a Statement of Answer and did not appear at the hearing (see "Other Issues").

#### **RELIEF REQUESTED**

Claimants requested an Award of compensatory damages, attorney's fees, punitive damages, interest, and costs in the aggregate amount of \$2,000,000.00.

Respondent A.G. Edwards and Fahnestock requested that all claims asserted by the Claimants be dismissed.

Respondent Hanauer requested that all claims asserted by the Claimants be dismissed; alternatively, Hanauer requested that Claimants not be awarded anything and that the Claimants be required to pay all of Hanauer's costs and attorney's fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

1. Respondent, Westerfield, failed to submit an executed Submission Agreement, a Statement of Answer as required by Sections 12 and 25 of the Code and did not appear at the hearing. This Panel finds that it has jurisdiction pursuant to Section 12 of the NASD Code of Arbitration Procedure because Westerfield was an associated person at the time this controversy arose.
2. This Panel finds due notice to Respondent, Westerfield based upon the evidence contained in the record of proceedings.
3. The Panel wishes to advise the parties that they are making a referral of Respondent, Westerfield to the NASD's District Business Conduct Committee.
4. Prior to the Panel's hearing, the Claimants settled with the Respondents Hanauer and A.G. Edwards.
5. 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. Respondents Fahnestock and Westerfield are found not to be liable to the Claimants.
2. Claimants' request for costs, attorney's fees and punitive damages is denied.

### **OTHER COSTS**

Other than the Forum Fees detailed below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

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**FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$9,000.00 (9 hearing sessions x \$1,000 per hearing session).

1. Claimants are hereby assessed \$4,500.00 for which the NASD shall retain \$1,000 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$3,500.00.
2. Respondents Westerfield, Fahnestock are hereby assessed \$4,500.00, jointly and severally, payable to the National Association of Securities Dealers, Inc.
3. The NASD shall retain the non-refundable filing fee of \$250.00 paid by the Claimants.

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

**Concurring Arbitrators' Signatures****Name****Public/Industry**

15/  
Nancy C. Wear, Esq.

**Public**

15/  
George Davis

**Industry**

15/  
John Morak

**Public**

Date of Decision: 2-17-95