

9504075

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Sharon M. Lasker

93-04048

4/95

Name of Respondents

Fahnestock & Co., Inc.
M. Owen Lasker

REPRESENTATION

For Claimant: Charles J. Engel, Jr. Esq., Syracuse, New York.

For Respondents: Charles E. Padgett, Esq. of Fahnestock & Co. Inc. North Conway, New Hampshire.

CASE INFORMATION

Statement of Claim filed: October 4, 1993.

Claimant's Submission Agreement signed on: September 22, 1993.

Joint Statement of Answer filed by Respondents Fahnestock & Co., Inc. and M. Owen Lasker on November 29, 1993.

Respondent, Fahnestock & Co., Inc.'s Submission Agreement signed on: Dec 29, 1993.

HEARING INFORMATION

Hearing Dates/Sessions: December 6, 1994/ Two Sessions
December 7, 1994/ Two Sessions

Hearing Location: Offices of National Association of Securities Dealers, Inc. located in New York City, New York

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CASE SUMMARY

Claimant alleged that on February 3, 1987, Claimant and Respondent M. Owen Lasker ("Lasker"), who at the time was married to Claimant, opened a joint account at Robert C. Carr & Co., Inc. ("Carr") where Respondent Lasker was employed as a registered representative. Claimant further alleged that Lasker misrepresented the investment objectives, trading profits, and net worth of their joint account on an Options Agreement signed by Lasker for their joint account. Claimant also alleged that the Options Agreement gave Lasker the authority to trade uncovered options for the joint account. Claimant further alleged Lasker negligently and recklessly mismanaged the account and made high risk investments which dissipated a good portion of its assets. Claimant next alleged that Claimant and Respondent Lasker were divorced by a Decree of Divorce on May 24, 1991 which provided for a distribution of the proceeds of their joint brokerage account. Claimant also alleged that Carr merged into and became an integral part of Hopper Soliday & Co., Inc., which in turn merged into W.H. Newbold's Son & Co., which in turn merged into Respondent Fahnestock & Co., Inc. ("Fahnestock"). Claimant further alleged that as a result of the mergers, Fahnestock was liable for the alleged wrongful acts of Lasker while he was employed by Carr. Claimant also alleged that Fahnestock knowingly and willingly approved Lasker's fraudulent Options Agreement. Moreover, Claimant alleged Fahnestock was aware of Lasker's incompetence and inexperience in the complex securities trading of uncovered options agreements and is therefore liable for Lasker's wrongful acts.

Respondents Fahnestock and Lasker maintained that the account in question was a normal joint account wherein the investment strategy was agreed upon by both Lasker and Claimant and that any investment decisions were a joint responsibility. Respondents maintained that as a matter of law, Fahnestock was not a successor in interest to Carr nor was it a successor in interest to either Hopper Soliday & Co., Inc. or W.H. Newbold's Son & Co. which both continue in existence. Respondents maintained that Lasker contributed all of the funds in the joint account and further alleged that Claimant accepted a joint responsibility for the decisions and investment strategy of their joint account. In addition respondents maintained that Claimant was an educated person in area of finance and economics capable of exercising control and direction over her and Lasker's joint account. Furthermore, Respondents maintained the settlement of this joint account under their divorce decree limits Claimant's recovery.

RELIEF REQUESTED

Claimant requested: \$360,000 plus interest to the date of the claim.

Respondents requested: Dismissal of complaint for failure to state a claim or a change on forum to New Hampshire where parties resided at the time the account was handled.

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AWARD

After considering the pleading, the testimony and the evidence presented at the hearing and post hearing and the post-hearing memoranda, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Lasker is liable and shall pay Claimant the sum of \$500 per month for a period of six years for a total of \$36,000 without interest constituting a return of principal.
2. Respondent Lasker is liable and shall pay Claimant the sum of \$5,000 which represents reimbursement for Claimant's attorney's fees for this arbitration.
3. Respondent Fahnestock is liable and shall pay to Claimant the sum of \$950 which represents a reimbursement for the \$200 filing fee and \$750 hearing session deposit paid by Claimant.

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FORUM FEES

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

4 sessions X \$750 = \$3,000 minus hearing session deposit of \$750 paid by Claimant = \$2,250 net due.

1. Respondent Fahnestock is assessed the sum of \$2,250 which represents the balance of forum fees due. Respondent Fahnestock is liable and shall pay to the NASD the sum of \$2,250.

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

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Concurring Arbitrators' Signatures

Name

Public Chairperson

David W. Morris
David W. Morris, Esq.

Name

Industry Panelist

Catherine Ladnier

Name

Public Panelist

Timothy J. O'Connor, Esq.

Date of Decision: April 10, 1995

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4/4/95

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