

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

William F. Doerrler

Award No.
94-02200

Name of Respondents

Fahnestock and Company, Incorporated
Mary Ann Niederhauser

REPRESENTATION

For Claimant, William F. Doerrler ("Claimant"), appeared R. Paul Bohlin, Esq., a sole practitioner located in New York City, New York.

For Respondents, Fahnestock and Company, Inc. and Mary Ann Niederhauser ("Respondents"), appeared Eric Shames, Esq. from Fahnestock & Co., Inc. located in New York City, New York.

CASE INFORMATION

Statement of Claim was filed on May 5, 1994.

Claimant's Submission Agreement was signed on May 5, 1994.

Statement of Answer was filed by Respondents on October 3, 1994

Fahnestock & Co., Inc.'s Submission Agreement was signed on October 17, 1994.

Mary Ann Niederhauser failed to execute a Submission Agreement.

HEARING INFORMATION

Hearing Date/Sessions: August 18, 1994 - 2 sessions

Hearing Location: The hearings were held at the offices of the National Association of Securities Dealers, Inc. located in New York, New York.

CASE SUMMARY

Claimant alleged that he is the life beneficiary of a testamentary trust created under the will of his father and that Respondent, Mary Ann Niederhauser, is the trustee of the trust, responsible for all investment decisions and also the registered representative administering the trust. Claimant alleged that as of February 27, 1987, the trust account had a portfolio value of \$125,658.56 which declined to \$29,854.37 as of December, 1993. Claimant further alleged that Respondent Niederhauser entered into a series of 131 separate transactions in the account, generating commissions totalling \$14,232.29.

Claimant alleged that Respondent Niederhauser blatantly ignored a trustee's duty of preservation of the trust capital and the value of the stock declined by 75%. In addition, Claimant alleged that Fahnestock and Co., Inc. was required to monitor and supervise the activities of each of its registered representatives and failed to do so with respect to Respondent Niederhauser's actions.

Respondent Niederhauser admitted that she is the trustee of the testamentary trust and also a registered representative of Fahnestock and Co., Inc. Respondents deny that any breach of fiduciary duty occurred. Respondents reserved the right to submit an Amended Answer upon the receipt from the Claimant of interrogatories, admissions and documents.

RELIEF REQUESTED

Claimant requested \$110,000.00 in damages, as well as such other and further exemplary damages as the panel may assess in his favor, together with interest thereon and all costs of the proceeding.

OTHER ISSUES CONSIDERED & DECIDED

On October 4, 1994, Claimant filed Motion to Strike Answer and to bar defenses pursuant to Section 25 of the Code of Arbitration Procedure.

Respondents filed an Answer to the Motion to Strike on October 7, 1994 stating that when the information requested on October 4, 1994 is received, a basis for an Amended Answer will exist.

The parties have agreed that the Award in this matter may be executed in counterpart copies and 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 Respondents Fahnestock and Co., Inc. and Mary Ann Niederhauser be and hereby dismissed in their entirety.
- 2) Each party shall bear their respective costs, including attorney's fees.
- 3) All other claims be and hereby are denied.

FORUM FEES

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

Non-refundable filing fee:	\$200.00
Hearing Session Deposit: (\$750.00 x 2 sessions)	<u>\$1,500.00</u>
Total Fees:	\$1,700.00

- 1) Claimant paid \$950.00 and is due a refund of \$100.00
- 2) Respondent be and hereby is liable and shall pay to the NASD the sum of \$850.00 representing one-half of the outstanding forum fees.

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

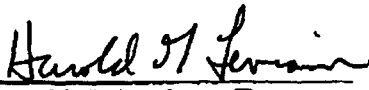
ARBITRATION PANEL

Harold G. Levinson, Esq	-	Public Chairperson
R. Bruce Reymann	-	Industry Panelist
Kenneth M. Felder	-	Public Panelist

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I, Harold G. Levinson, Esq., do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.


Harold G. Levison, Esq.

Date of Decision: Sept 7, 1995

NASD Date of Decision: September 13, 1995

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I, Kenneth M. Felder, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.

A handwritten signature in cursive script, reading "Kenneth M. Felder". The signature is written in dark ink and is positioned above a horizontal line.

Kenneth M. Felder

NASD Date of Decision: September 13, 1995

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I, R. Bruce Reymann, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.


R. Bruce Reymann

Date of Decision: August 18, 1995

NASD Date of Decision: September 13, 1995