

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Robert C. and Eleanor T. Olson

95-00856

Name of Respondents

Fahnestock and Co., Inc.
Marc Andor Menton
Bruce Kurchack
Paul Chropuvka

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 17, 1995, Claimants, Robert C. and Eleanor T. Olson, who appeared Pro Se, alleged that Respondents Fahnestock and Co., Inc. ("Fahnestock"), Marc Andor Menton ("Menton"), Bruce Kurchack ("Kurchack") and Paul Chropuvka ("Chropuvka"), failed to execute a transaction and breached their fiduciary duties. Claimants further alleged that on February 24, 1992, Respondent Menton, purchased for their account 500 shares of XOMA Corp. at \$23.00 per share. Claimants contended that Menton advised them to hold this stock for seven days after the settlement date of March 3, 1992, so they could "make an additional \$4,000.00 on March 10, 1992". Claimants further contended that they expected Menton to sell the XOMA stock on March 10, 1992, at which time it was trading at \$23.50 per share, but he neglected to do so. Claimants alleged that on March 11, 1992, a fax was sent to Menton to confirm proceeds from the sale of all XOMA stock held in their portfolio but the stock was not sold until July 30, 1992. Claimants further alleged that they have suffered a loss for which Respondents should be held liable.

Respondents, Fahnestock and Company, Inc., Marc Andor Menton, Bruce Kurchack and Paul Chropuvka, through their representative, Eric J. Shames, Esq., in-house counsel for Fahnestock, maintained that they did not make a guarantee to Claimants of any kind and under no circumstance were Claimants

offered an "incentive bonus". Respondents further maintained that they did not improperly execute Claimants sell order for XOMA. Respondents contended that no contract existed, or in the alternative, if one did exist it needed to be in writing, signed by the party to be charged, namely one of the Respondents. Respondents further contended that they are not responsible for the loss of the Claimants and accordingly should not be held liable.

RELIEF REQUESTED

Claimants, Robert C. and Eleanor T. Olson, requested \$9,000.00 in actual damages.

Respondents, Fahnestock and Company, Inc., Marc Andor Menton, Bruce Kurchack and Paul Chropuvka, requested that the claims of the Claimants be dismissed.

OTHER ISSUES CONSIDERED AND DECIDED

The arbitrator reviewed and considered all documentation submitted by the parties regarding the Motion to Dismiss Respondent Paul Chropuvka. The arbitrator granted the motion.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Rose Marie Baron, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on February 16, 1995. The Respondents did not submit Submission Agreements as required by Sections 8 and 10 of the NASD Code of Arbitration Procedure.

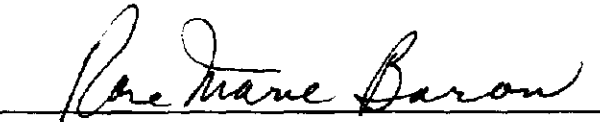
And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of the Claimants, Robert C. and Eleanor T. Olson, against the Respondents, Fahnestock and Company, Inc., Marc Andor Menton, Bruce Kurchack and Paul Chropuvka, are dismissed in their entirety.
2. The parties shall bear their respective costs.

3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants Robert C. and Eleanor T. Olson, shall be retained by the NASD, Inc.

AFFIRMATION

I, **ROSE MARIE BARON**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Rose Marie Baron

Date of Decision: August 16, 1995