

NASD REGULATION, INC.
AWARD

In the Matter of the Arbitration Between

Name of Claimant

Marta Klufas

95-06034

Name of Respondents

Fahnestock & Co., Inc.
Reich & Co., Inc.
Christine G. Hasslach

REPRESENTATION

For Claimant Marta Klufas ("Klufas") appeared John V. McCambley, Esq., a sole practitioner with offices located in Wyckoff, New Jersey.

For Respondent Fahnestock & Co., Inc. ("Fahnestock") appeared Eric J. Shames, Esq., in-house counsel for Fahnestock & Co., Inc. located in New York, New York.

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

Respondent Christine G. Hasslach ("Hasslach") appeared *pro se*.

CASE INFORMATION

Klufas' Statement of Claim was filed on December 19, 1995.
Klufas' Submission Agreement was signed on December 19, 1995.

Fahnestock, Reich, and Hasslach's (collectively "Respondents") filed a Joint Statement of Answer on April 30, 1996.

Fahnestock's Submission Agreement was signed on June 4, 1996.

Reich's Submission Agreement was signed on May 3, 1996.

Hasslach's Submission Agreement was signed on March 21, 1996.

HEARING INFORMATION

Pre-Hearing Conference:	May 14, 1998	One Session
Full Panel		
Hearing Dates/Sessions:	June 9, 1998	Two Sessions
	June 10, 1998	Two Sessions
	June 16, 1998	Two Sessions

The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

CASE SUMMARY

Klufas alleged that, in 1993, Hasslach induced her to transfer her account to Reich, by representing that Hasslach had the expertise and ability to increase the return on her account. Klufas alleged that Hasslach fraudulently and intentionally misled her by assuring her that her account would get special care and attention. Klufas asserted that Hasslach induced her to open a margin account and did not explain the risks of trading on margin. Klufas alleged that, in May 1993, Hasslach, without authorization, purchased 25,000 shares of Zonagen and 5,000 shares of Value Added Communications and sold her General Electric stock. Klufas further alleged that, in the first month her account was open, it incurred a margin debt of \$55,447.00. Klufas alleged that, over the next eighteen months, Hasslach, without authorization, increased the holdings of Zonagen in her account. Klufas asserted that the margin debt in her account reached \$567,618.00 and the interest exceeded the annual income of the account. Klufas further asserted that she had to sell holdings in her account to meet margin calls. Klufas alleged that she demanded that Respondents restore her original positions and buy back all of Zonagen, but they refused. Klufas alleged that Respondents churned her account, made unsuitable transactions in relation to her stated investment objectives, breached their fiduciary duty, and failed to diversify the holdings in her account. Klufas alleged that Reich and Fahnestock failed to supervise Hasslach. Klufas further alleged that Respondents committed common law fraud and violated the Securities Exchange Act of 1934 and the rules of the NASD.

Respondents maintained that Hasslach sent Klufas information regarding Reich and Zonagen, at the request of Klufas' cousin who was a client of Hasslach. Respondents further maintained that, in April 1993, Klufas visited Hasslach and expressed her interest in purchasing Zonagen. Respondents asserted that, on May 7, 1993, Klufas transferred her account to Reich and initiated the purchase of 20,000 shares of Zonagen. Respondents maintained that Klufas represented to Hasslach that her investment goal was to make money, and, therefore, it was agreed that the account would consist of various investments, including equities in emerging growth companies such as Zonagen. Respondents asserted that Klufas still has holdings of Zonagen and, further, that the price of Zonagen has risen in value as to recover virtually all of her realized and unrealized losses. Respondents further asserted that Klufas never expressed dissatisfaction with Hasslach until her account began to lose money. Respondents maintained that Klufas failed to object to any transaction as required by the customer agreement. Respondents maintained that, by failing to object to any account activity for a period of two years, Klufas ratified all trades.

Respondents maintained that Klufas is a wealthy, sophisticated investor who contacted Hasslach specifically to purchase Zonagen. Respondents maintained that Klufas failed to mitigate her damages, despite opportunities to do so.

RELIEF REQUESTED

Klufas requested actual damages of \$500,000.00, plus interest, punitive damages, costs, and counsel fees.

Respondents requested that the Statement of Claim be dismissed in its entirety and that all disbursements be assessed against Klufas.

OTHER ISSUES CONSIDERED & DECIDED

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 original remains 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. Klufas' claims are hereby dismissed in their entirety.
2. All other requests are hereby denied.
3. Respondent Fahnestock shall reimburse Claimant for the \$250.00 Non-Refundable Filing Fee and \$1,000.00 Hearing Session Deposit previously paid by Claimant.

FORUM FEES

Pursuant to Rule 10332(c) of the NASD Regulation Code of Arbitration Procedure, the arbitrators have determined that the NASD will retain the \$250.00 non-refundable filing fee and \$1,000.00 postponement fee deposited by Klufas and have assessed the following Forum Fees:

1 Pre-hearing conference (with panel) x \$1,000.00	=	\$1,000.00
6 Hearing sessions x \$1,000.00	=	<u>\$6,000.00</u>
Total Forum Fees	=	\$7,000.00

1. Fahnestock be and hereby is liable for the sum of \$7,000.00 representing the total amount of forum fees assessed. Claimant previously deposited \$1,000.00 with NASD Regulation, Inc. and therefore, Fahnestock shall remit the \$6,000.00 balance owed.

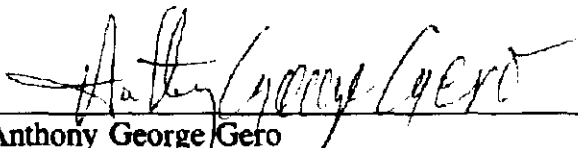
2. Fahnestock be and hereby is liable for and shall pay the sum of \$1,000.00 representing the postponement fee previously assessed.
3. Claimant be and hereby is liable for and shall pay the sum of \$1,000.00 representing the postponement fee previously assessed.
4. Fahnestock shall reimburse Claimant the sum of \$1,250.00 as provided in the "Award" Section above.

Fees are payable to NASD Regulation, Inc.

ARBITRATION PANEL

Andrew Berger, Esq.	-	Public Chairperson
Rebecca A. Novak, Esq.	-	Public Arbitrator
Anthony George Gero	-	Industry Arbitrator

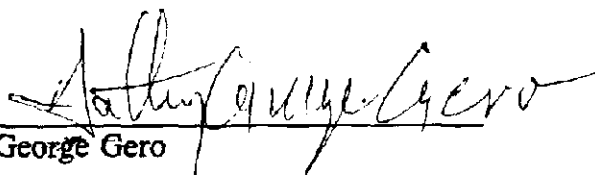
CONCURRING ARBITRATOR'S SIGNATURE



Anthony George Gero
Industry Arbitrator

Date of decision: July 30, 1998

I, **Anthony George Gero**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Anthony George Gero

ARBITRATION PANEL

Andrew Berger, Esq.	-	Public Chairperson
Rebecca A. Novak, Esq.	-	Public Arbitrator
Anthony George Gero	-	Industry Arbitrator

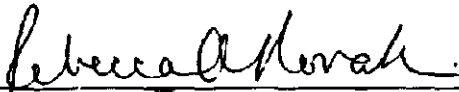
CONCURRING ARBITRATOR'S SIGNATURE



Rebecca A. Novak, Esq.
Public Arbitrator

Date of decision: July 30, 1998

I, Rebecca A. Novak, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

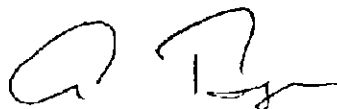


Rebecca A. Novak, Esq.

ARBITRATION PANEL

Andrew Berger, Esq.	-	Public Chairperson
Rebecca A. Novak, Esq.	-	Public Arbitrator
Anthony George Gero	-	Industry Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE



Andrew Berger, Esq.
Chairperson - Public Arbitrator

Date of decision: July 30, 1998

I, **Andrew Berger, Esq.**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Andrew Berger, Esq.