

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Harold and Lauren C. Resnitzky

96-00262

Name of Respondents

Fahnestock & Co., Inc.
Peter Petronzi

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on January 18, 1996, Claimants Harold and Lauren C. Resnitzky ("Claimants"), who appeared Pro Se, alleged that Respondent Fahnestock & Co., Inc. ("Fahnestock") and Respondent Peter Petronzi ("Petronzi") gave them unsuitable investment advice. Claimants further alleged that they purchased shares of Paragon Mortgage Corp. ("Paragon") based on the advice of Petronzi, a broker at Fahnestock. Claimants contended that on June 2, 1993, they bought 1,000 shares of Paragon at \$1.6875 per share and that these shares were sold in October of 1993 for a \$772.00 profit. Claimants further contended that on August 2, 1993, they purchased 1,000 shares of Paragon at \$2.03 per share. Claimants asserted that in December of 1993, they acquired 1,000 shares of Paragon at \$2.25 and purchased a second 1,000 shares at \$2.31. Claimants further asserted that upon the completion of these purchases, they owned three thousand shares of Paragon and had made a total investment of \$5,931.00 in Paragon stock. Claimants alleged that the value of Paragon, as of December 31, 1993, had declined to \$1.00 per share, representing a 57% decline of the market value from the date the shares were last purchased. Claimants further alleged that the risks of the investment were never disclosed, that Petronzi and Fahnestock had assured them that Paragon was a conservative company, and that they would never have invested in Paragon had they known that it was a speculative stock. Claimants contended that due to the wrongdoing of the Respondents, they have suffered damages for which the Respondents should be held liable.

Respondent Fahnestock & Co., Inc. and Respondent Peter Petronzi, through their representative and in-house counsel, Eric J. Shames, Esq., maintained that Claimants were fully informed about the specific business of Paragon, were suitable for the purchase, and understood the risk associated with purchasing a low priced security. Respondents further maintained that at no time did Petronzi guarantee Paragon's performance or state it was a conservative and risk-free investment. Respondents alleged that in June and August of 1993, Claimants purchased a total of 2,000 shares of Paragon, and on November 2, 1993, sold 1,000 shares at \$2.75, realizing a profit of \$772.00.

Respondents further alleged that Claimants were mailed information on Paragon's management difficulties and that the Claimants chose not to sell their shares after this information had been provided. Respondents maintained that the Claimants continued to invest with Respondents for more than a year before filing this claim and at no time did they ever claim that they were ill-advised by Respondents or sold an unsuitable investment. Respondents maintained that they had committed no wrongdoing and requested that the claims against them be dismissed.

RELIEF REQUESTED

Claimants Harold and Lauren C. Resnitzky requested \$5,459.00 in actual damages and interest on the above amount at the rate of 9% a year.

Respondent Fahnestock & Co., Inc. and Respondent Peter Petronzi requested that the claims be dismissed. Respondents also requested that legal fees and disbursements associated with the defense of this matter be assessed against Claimants.

AWARD

Pursuant to Section 10302 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Diane Getzler, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants Harold and Lauren C. Resnitzky on December 29, 1995, and by the Respondent Fahnestock & Co., Inc. on May 3, 1996, and by the Respondent Peter Petronzi on April 19, 1996.

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. Respondents Fahnestock & Co., Inc. and Peter Petronzi are jointly and severally liable and shall pay to Claimants Harold and Lauren C. Resnitzky \$3,000.00 in actual damages.
2. The parties shall bear their respective costs.
3. All other relief requests are denied.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants Harold and Lauren C. Resnitzky shall be retained by the NASD, Inc. Respondents Fahnestock & Co., Inc. and Peter Petronzi are jointly and severally liable and shall pay to Claimants Harold and Lauren C. Resnitzky \$150.00 as reimbursement of the filing fee.

AFFIRMATION

I, **DIANE GETZLER, ESQ.**, 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.



DIANE GETZLER, ESQ.

DATE OF DECISION: November 15, 1996