

NASD REGULATION, INC.  
AWARD

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In the Matter of the Arbitration Between

Name of Claimant

Steven A. Goodman

96-05303

Name of Respondents

Fahnestock & Co., Inc.  
Donald Will Mercurio

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**REPRESENTATION**

For Claimant Steven A. Goodman ("Claimant") appeared Lloyd S. Clareman, Esq., a sole practitioner with offices located in New York, New York.

For Respondents Fahnestock & Co., Inc. ("Fahnestock") and Donald Will Mercurio ("Mercurio"), collectively referred to as "Respondents", appeared Marvin G. Pickholz, Esq., of the firm Hoffman Pollock & Pickholz LLP, located in New York, New York.

**CASE INFORMATION**

Statement of Claim filed on: November 26, 1996.

Claimant's Submission Agreement signed on: November 22, 1996.

Respondents filed a Joint Statement of Answer on: March 10, 1997.

Respondent Fahnestock's Submission Agreement signed on: March 11, 1997.

Respondent Mercurio's Submission Agreement signed on: December 16, 1996.

**HEARING INFORMATION**

Hearing Dates/Sessions:	January 21, 1998	Two Sessions
	January 22, 1998	Two Sessions
	January 29, 1998	Two Sessions
	February 2, 1998	Two Sessions

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

### **CASE SUMMARY**

Claimant alleged that Respondent Mercurio executed unauthorized trades in his account resulting in losses. Claimant further alleged that these trades occurred shortly before Mercurio began serving a three month suspension imposed by the NYSE for a prior violation of industry rules of conduct. Claimant also alleged that Respondent Fahnestock concealed Mercurio's suspension, saying he was on vacation and, therefore, are also liable for the damages incurred by Claimant.

Claimant further asserted that he attempted to contact Mercurio and, when he could not, he spoke to Joe Barthel ("Barthel"). Barthel put him in contact with Robert Neuhoff ("Neuhoff"), with whom Claimant could register a complaint and Eric Shames ("Shames"), an attorney for Fahnestock. Claimant alleged that, in a conference call with Neuhoff and Shames, he was advised to sell the shares. Claimant further alleged that he was informed that, as far as Fahnestock was concerned, there had been no unauthorized trading in his account. Claimant further alleged that, in order to mitigate his losses, he liquidated the positions. Claimant also alleged that the actions of Respondents violated securities laws, rules and regulations and that Respondent Fahnestock is liable under the doctrine of respondeat superior.

Respondents maintained that Claimant and Mercurio had a long-standing professional and personal relationship and that all trades in the account were discussed with, and authorized by, Claimant. Respondents further maintained that the trades in the account were consistent with Claimant's investment objectives and prior trades and that Claimant, by not complaining of the seven disputed trades, ratified them. Respondents also maintained that Claimant was sent monthly statements and confirmations and, therefore, knew of the transactions and did not register a complaint until the stocks lost money. Respondents maintained that Respondent Mercurio disclosed to Claimant that he was being subjected to an NYSE investigation. Respondents further maintained that Mercurio informed Claimant of his three month suspension as a result of those proceedings. Respondents also maintained that Mercurio entered no trade on behalf of Claimant without Claimant's prior authorization and that all securities laws, rules and regulations were followed in the handling of Claimant's account.

### **RELIEF REQUESTED**

Claimant requested damages in the amount of \$254,190.00, plus interest, the costs of this arbitration, and punitive damages in an amount the panel deemed just and appropriate.

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

### **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.

During the hearing, Respondents made a motion for summary disposition following Claimant's direct testimony. The panel reserved decision to be decided in the award. It is the decision of the panel that this award disposes of said motion.

### **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. Claimant's claims are hereby dismissed in their entirety.
2. Respondent Fahnestock be and hereby is liable and shall reimburse Claimant the sum of \$200.00 representing the non-refundable filing fee and the sum of \$750.00 representing the hearing session deposit previously paid by Claimant.
3. All other requests for relief are hereby denied.

### **FORUM FEES**

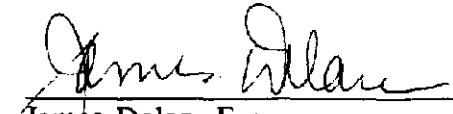
Pursuant to Rule 10332(c) of the NASD Regulation Code of Arbitration Procedure, the arbitrators have determined that the NASD will retain the \$200.00 non-refundable filing fee deposited by Claimant as well as the \$350.00 member surcharge deposited by Respondent Fahnestock, and have assessed the following Forum Fees:

8 Hearing sessions x \$750.00	=	\$6,000.00
Total Forum Fees	=	\$6,000.00

1. Respondent Fahnestock be and hereby is liable for total forum fees of \$6,000.00 and shall pay to NASD Regulation, Inc. the sum of \$5,250.00 representing part of the total forum fees assessed.
2. Respondent Fahnestock be and hereby is liable and shall pay Claimant the sum of \$200.00 as reimbursement of the non-refundable filing fee and the sum of \$750.00 as reimbursement of the hearing session deposit as provided in the "Award" section above.

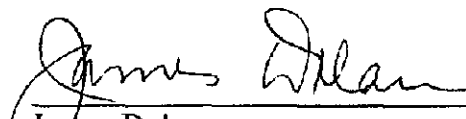
Fees are payable to NASD Regulation, Inc.

**ARBITRATORS' SIGNATURES**


  
James Dolan, Esq.  
Chairperson - Public Arbitrator

Date of decision: March 23, 1998

I, James Dolan, 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.

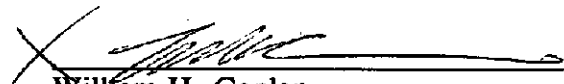
  
James Dolan

ARBITRATORS' SIGNATURES

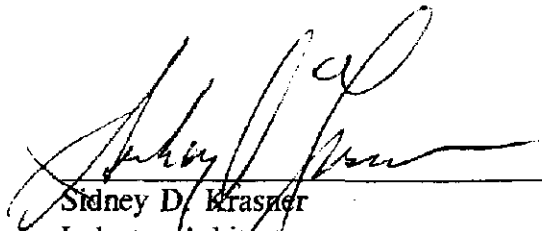
  
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William H. Conlan  
Public Arbitrator

Date of decision: March 23, 1998

I, **William H. Conlan**, 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.

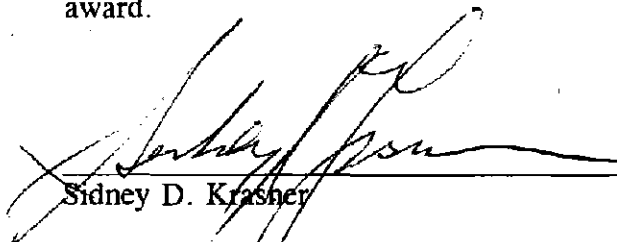
  
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William H. Conlan

ARBITRATORS' SIGNATURES

  
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Sidney D. Krasner  
Industry Arbitrator

Date of decision: March 23, 1998

I, **Sidney D. Krasner**, 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.

  
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Sidney D. Krasner