

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Lee A. Wolpov as Beneficiary of
Fahnestock & Company Incorporated,
Custodian for Harold Wolpov under
IRA Account Number A87-7701274-T55

Case No. 99-00480

Name of Respondent

Fahnestock & Company, Incorporated

REPRESENTATION OF PARTIES

For Claimant Lee A. Wolpov as Beneficiary of Fahnestock & Company Incorporated,
Custodian for Harold Wolpov under IRA Account Number A87-7701274-T55 ("Wolpov"):
Douglas A. Blankman, Esq., Kopelman and Blankman, P.A., Fort Lauderdale, Florida.

For Respondent Fahnestock & Company, Incorporated ("Fahnestock"): Eric J. Schames,
Esq., Fahnestock & Co., Inc., New York, New York.

CASE INFORMATION

Statement of Claim filed on or about February 2, 1999.

Claimant Wolpov signed the Uniform Submission Agreement on or about January 26, 1999.

Statement of Answer filed by Respondent Fahnestock on or about June 23, 1999.

Respondent Fahnestock signed the Uniform Submission Agreement on or about May 5, 1999.

CASE SUMMARY

Claimant alleged the following: that Claimant is the sole surviving child of Harold Wolpov who had been employed as a broker by Fahnestock & Co., Inc. at their Hallandale, Florida

office; that Claimant asked Mr. Russell Pollack at the Fahnestock office in New York to close out all existing accounts under the name of Harold Wolpov; that Mr. Pollack instructed Claimant to send him a letter directing him to close out all existing accounts of his father for which he was the designated beneficiary together with a certified copy of a death certificate; that in accordance with Mr. Pollack's instructions, Claimant forwarded the requested letter and documents; that within approximately thirty days he received the proceeds of his father's 401K Plan; that approximately fourteen months later, Claimant contacted Fahnestock's New York office to determine who had been designated as beneficiary of his father's IRA accounts; that in August of 1998, Fahnestock informed Claimant that his father had two IRA accounts and that he was the designated beneficiary of both accounts; that he was then instructed what to do in order to claim those accounts as beneficiary; that between May of 1997 when Claimant first instructed Fahnestock to close out all existing accounts of his father for which he was the designated beneficiary, until August of 1998 when the accounts were finally distributed to Claimant, Account # A87-7701274 had declined in value approximately \$17,122.46 and the second IRA, Account # A87-7701514 had increased in value approximately \$18,252.00; and, that Fahnestock acted negligently and breached its fiduciary duty in not transferring both IRA Accounts to him in May of 1997 when they were directed to do so resulting in Claimant losing the ability to direct the disposition of the securities in both IRA accounts resulting in a loss of \$17,122.46, plus interest, in Account # A87-7701274.

Respondent alleged the following: that three months after the death of Harold Wolpov, Claimant contacted Fahnestock's Director of Benefits, Russell Pollack, and requested that Mr. Pollack close out all existing accounts under the name of Harold Wolpov of which Claimant was the designated beneficiary; that Mr. Pollack instructed Claimant to contact the Fahnestock Hallandale branch office where his father worked to inquire whether Claimant was the beneficiary of any brokerage accounts or IRA accounts held at Fahnestock by Harold Wolpov; that in response to Claimant's request, Mr. Pollack liquidated all accounts relating to Harold Wolpov's employee benefits and delivered the proceeds to Claimant; that Claimant waited five months before he contacted Fahnestock's Hallandale branch office, at which time Claimant asserts he was first made aware of the two Fahnestock IRA accounts held by his father; that Respondent was neither negligent, nor did it breach its fiduciary duty to Claimant; that Mr. Pollack clearly explained to Claimant that Claimant needed to contact Fahnestock's Hallandale branch office and inquire about the existence of any brokerage accounts that his father may have held at Fahnestock; that Claimant did not follow Mr. Pollack's instructions; and, that the accounts' performance, for the period in question, resulted in a net gain and, therefore, Claimant suffered no damage.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$17,122.46, plus interest.

Respondent requested dismissal of the Statement of Claim and reimbursement of its costs and expenses.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent filed a Motion to Dismiss and Motion for Costs and Expenses on July 27, 1999. The Claimant did not file a response. The motion was denied by the Chairperson, Scott Willick, on September 28, 1999.

AWARD

After considering the pleadings and the testimony and evidence presented at the hearing, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's Statement of Claim is denied in its entirety.
2. The parties shall bear their own costs incurred in this arbitration.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Regulation, Inc. will retain the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 100.00
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Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is Fahnestock & Co., Inc.

Member surcharge	= \$ 400.00
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Forum Fees and Assessments

The Arbitrator assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with

the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator x \$300.00 = \$ 300.00
Pre-hearing Conference: July 28, 1999 1 session

One (1) Hearing session x \$300.00 = \$ 300.00
Hearing Date: September 13, 1999 1 session

Total Forum Fees = \$ 600.00

The Arbitrator has assessed the total forum fees of \$600.00 to Respondent.

Fee Summary

Claimant is hereby solely liable for:

Initial Filing Fee	= \$ 100.00
Total Fees	= \$ 100.00
<u>Less payments</u>	<u>= \$ 100.00</u>
Balance Due NASD Regulation, Inc.	= \$ 0.00

Respondent is hereby solely liable for:

Member Fees	= \$ 400.00
Forum Fees	= \$ 600.00
Total Fees	= \$1000.00
<u>Less payments</u>	<u>= \$ 800.00</u>
Balance Due NASD Regulation, Inc.	= \$ 200.00

All balances are due and payable to NASD Regulation, Inc.

NASD Regulation, Inc. Office of Dispute Resolution
Arbitration No. 99-00480

Arbitrator Signature


/s/
Scott Willick
Chairperson

Date of Decision

10/23/99
Date of Service (For NASD office use only)

NASD Regulation, Inc. Office of Dispute Resolution
Arbitration No. 99-00480

Arbitrator Signature


Scott Willick
Chairperson

OCTOBER 21, 1999
Date of Decision

Date of Service (For NASD office use only)