

AWARD  
SASD Dispute Resolution, Inc.

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In the Matter of the Arbitration Between

Name of Claimants

Manuel J. Baraban, individually and as Trustee  
and Lois N. Baraban, individually and as Trustee

and

99-02356  
Kansas City, Missouri

Name of Respondents

Fahnestock & Co., Inc.  
Robert Franklin Anthony

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**REPRESENTATION OF PARTIES**

Manuel J. Baraban, individually and as Trustee and Lois N. Baraban, individually and as Trustee ("Claimants") were represented by Jane L. Stafford, Esq., Spencer Fane Britt & Browne, LLP, Kansas City, Missouri.

Fahnestock & Co., Inc. ("Respondent Fahnestock") and Robert Franklin Anthony ("Respondent Anthony") were represented by Eric J. Shames, Esq., Fahnestock & Co., Inc. and John W. Shaw, Esq., Berkowitz, Feldmiller, Stanton, Brandt, Williams & Stueve, LLP, Kansas City, Missouri.

**CASE INFORMATION**

The Statement of Claim was filed on or about May 21, 1999. Response to Counterclaim was filed on or about September 10, 1999. Submission Agreement of Claimants Manuel J. Baraban, individually and as Trustee and Lois N. Baraban, individually and as Trustee was signed on May 10, 1999.

Statement of Answer and Counterclaim was filed by Respondents Fahnestock & Co., Inc. and Robert Franklin Anthony on or about August 19, 1999. Respondents' Reply to Claimants' Response to Counterclaim was filed on or about October 4, 1999. Submission Agreement of Respondent Fahnestock & Co., Inc. was signed on August 13, 1999 by Eric J. Shames. Submission Agreement of Respondent Robert Franklin Anthony was signed on August 17, 1999.

**CASE SUMMARY**

Claimants alleged as follows:

Claimants worked and saved their entire lives to enjoy a retirement free from worry. Believing Respondents would protect their savings and act in their best interests, Claimants liquidated certificates of deposits to make investments with respondents. However, instead of managing Claimants' funds as appropriate to their age, status in life, desires and investment objectives, respondents made aggressive and risky investments for them, including option writing and a real estate investment trust. Respondents made these risky investments for the Claimants based on material misrepresentations and omissions as to the nature of the investments and in wanton and wilful disregard of the claimants' rights and interests.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that the Claimants are sophisticated investors with aggressive investment objectives. It was also stated that Mr. Baraban consistently made his own investment decisions, continually calling on Respondent Anthony for information on the status of the Claimants' accounts and for updates on their stock and option positions. Respondents further stated that Mr. Baraban would often override the recommendations of respondent Anthony.

#### **RELIEF REQUESTED**

Claimants respectfully request the arbitration panel to issue an award in their favor and against respondents, jointly and severally, as follows:

- i. For an award of compensatory damages in an approximate amount of \$622,508 representing the actual losses of the Claimants and in such amounts as demonstrated at the hearing.
- ii. For interest on all damages awarded, as allowed by the Kansas Statutes at 15% per annum or as otherwise may be allowed.
- iii. For an award of reasonable attorneys' fees.
- iv. For an award of costs, disbursements, and expenses.
- v. For an award of punitive damages sufficient to punish and deter this conduct.
- vi. For such other relief as shall be deemed just and equitable.

Respondents respectfully request that the Claim of Manuel J. Baraban and Lois N. Baraban be dismissed and that costs, fees and disbursements be assessed against them. Respondents also seek an Order removing this matter from Respondent Anthony's permanent record.

#### **SIDED & 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(s) remain on file with the NASD Dispute Resolution, Inc. (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. Respondents Fahnestock & Co., Inc. and Robert Franklin Anthony shall be and hereby are jointly and severally liable for and shall pay to the Claimants Manuel J. Baraban, individually and as Trustee and Lois N. Baraban, individually and as Trustee the sum of \$85,107.00 (Eighty Five Thousand One Hundred Seven Dollars) as compensatory damages.
2. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

### FEES

Pursuant to the Code, the following fees are assessed:

#### Filing Fees

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$375.00

#### Member Fees

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

Member surcharge	= \$2,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$3,500.00

### Forum Fees and Assessments

The Arbitration Panel 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(s) with a single arbitrator x \$450.00 = \$ 450.00

Pre-hearing conference(s): May 22, 2000 1 session

One (1) Pre-hearing session(s) with Panel x \$1,200.00 = \$ 1,200.00

Pre-hearing conference(s): March 9, 2000 1 session

Fifteen (15) Hearing sessions x \$1,200.00 = \$18,000.00

Hearing Date(s): October 17,2000 2 sessions

October 18,2000 2 sessions

October 19,2000 1 session

December 7,2000 2 sessions

December 8,2000 2 sessions

December 14,2000 3 sessions

December 15,2000 3 sessions

Total Forum Fees = \$19,650.00

The Arbitration Panel has assessed \$9,825.00 of the forum fees to Manuel J. Baraban, individually and as Trustee and Lois N. Baraban, individually and as Trustee.

The Arbitration Panel has assessed \$9,825.00 of the forum fees jointly and severally to Fahnestock & Co., Inc. and Robert Franklin Anthony.

### Fee Summary

Claimants, Manuel J. Baraban, individually and as Trustee and Lois N. Baraban, individually and as Trustee, shall be and hereby are liable for:

Initial Filing Fee = \$ 375.00

Forum Fees = \$ 9,825.00

Total Fees = \$10,200.00

Less payments = \$ 1,575.00

Balance Due NASD Dispute Resolution, Inc. = \$ 8,625.00

Respondent, Fahnestock & Co., Inc., shall be and hereby is liable for:

Member Fees = \$ 6,100.00

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<u>Forum Fees</u>	=	0.00
Total Fees	= \$	6,100.00
<u>Less payments</u>	= \$	6,100.00
Balance Due NASD Dispute Resolution, Inc	= \$	0.00

Respondents, Fahnestock & Co., Inc. and Robert Franklin Anthony, shall be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$	9,625.00
Balance Due NASD Dispute Resolution, Inc	= \$	9,625.00

All balances are due to NASD Dispute Resolution, Inc.

Dated:

/s/ James A. Hayes

James A. Hayes  
Public Arbitrator, Presiding Chair

December 26, 2000

James A. Hayes  
Public Arbitrator, Presiding Chair

/s/ Kurt A. Harper

Kurt A. Harper, J.D.  
Public Arbitrator

December 22, 2000

Kurt A. Harper, J.D.  
Public Arbitrator

/s/ David K. Richards

David K. Richards, Esq.  
Industry Arbitrator

December 22, 2000

David K. Richards, Esq.  
Industry Arbitrator

NASD Dispute Resolution, Inc.

Arbitration No. 99-02356

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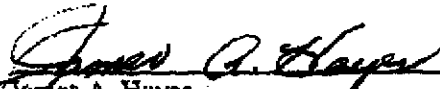
<u>Forum Fees</u>	= \$ 0.00
<u>Total Fees</u>	= \$ 6,100.00
<u>Less payments</u>	= \$ 6,100.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

Respondents, Pahnestock & Co., Inc. and Robert Franklin Anthony, shall be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 9,825.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 9,825.00

All balances are due to NASD Dispute Resolution, Inc.

Dated:

  
James A. Hayes  
Public Arbitrator, Presiding Chair

Dec. 26, '00

Kurt A. Harper, J.D.  
Public Arbitrator

David K. Richards, Esq.  
Industry Arbitrator

Kurt A. Harper, J.D.  
Public Arbitrator

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Arbitration No. 99-02356  
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<u>Forum Fees</u>	= \$ 0.00
<u>Total Fees</u>	= \$ 6,100.00
<u>Less payments</u>	= \$ 6,100.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

Respondents, Fahnestock & Co., Inc. and Robert Franklin Anthony, shall be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 9,825.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 9,825.00

All balances are due to NASD Dispute Resolution, Inc.

Dated:

\_\_\_\_\_  
James A. Hayes  
Public Arbitrator, Presiding Chair

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Kurt A. Harper, J.D.  
Public Arbitrator

\_\_\_\_\_  
David K. Richards, Esq.  
Industry Arbitrator

\_\_\_\_\_  
12/22/00  
Kurt A. Harper, J.D.  
Public Arbitrator

NASD Dispute Resolution, Inc.  
Arbitration No. 99-02356  
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<u>Forum Fees</u>	= \$ 0.00
<u>Total Fees</u>	= \$ 6,100.00
<u>Less payments</u>	= \$ 6,100.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

Respondents, Fahnestock & Co., Inc. and Robert Franklin Anthony, shall be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 9,825.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 9,825.00

All balances are due to NASD Dispute Resolution, Inc.

Dated:

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James A. Hayes  
Public Arbitrator, Presiding Chair

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David K. Richards, Esq.  
Industry Arbitrator

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Kurt A. Harper, J.D.  
Public Arbitrator

Dec 22, 2000