

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Donald Adamson, and Donald and Diane Adamson, Joint Tenants, (Claimants) vs. Fahnestock & Co., Inc., Todd M. Nejaime, Gilford Securities, Inc. and Reich & Co., Inc. (Respondents).

Case Number: 99-03005

Hearing Site: Salt Lake City, Utah

REPRESENTATION OF PARTIES

Claimants, Donald Adamson, and Donald and Diane Adamson, Joint Tenants, (hereinafter collectively referred to as "Claimants"): Sean O'Shea, Esq., The Chrysler Building, 405 Lexington Avenue, 43rd Floor, New York, NY 10174.

Respondent, Fahnestock & Co., Inc., (hereinafter referred to as "Fahnestock"): Eric J. Schames, Esq., 125 Broad Street, 16th Floor, New York, NY 10004.

Respondent, Todd M. Nejaime, (hereinafter referred to as "Nejaime"): Martin P. Unger, Esq., Blank, Rome, Tenzer, Greenblatt, LLP, The Chrysler Building, 405 Lexington Avenue, New York, NY 10174.

Respondent, Gilford Securities, Inc., (hereinafter referred to as "Gilford"): Norman S. Lawi, Esq., 850 Third Avenue, 14th Floor, New York, NY 10022.

Respondent, Reich & Co., Inc. (hereinafter referred to as "Reich"): Service could not be perfected as to this Respondent.

CASE INFORMATION

Statement of Claim filed on or about: July 2, 1999

Claimants signed the Uniform Submission Agreement: August 6, 1999

Statement of Answer filed by Respondent, Fahnestock, on or about: November 11, 1999

Respondent, Fahnestock, did not sign a Uniform Submission Agreement.

Statement of Answer filed by Respondent, Nejaime, on or about: November 18, 1999

Respondent, Nejaime, signed the Uniform Submission Agreement: November 11, 1999

Statement of Answer filed by Respondent, Gilford, on or about: December 13, 1999

Respondent, Gilford, did not sign a Uniform Submission Agreement.

Amended Statement of Answer filed by Respondent, Nejaime, on or about: July 11, 2000

CASE SUMMARY

Claimants asserted the following causes of action: breach of contract against Respondent Gilford; breach of fiduciary duty and negligence against Respondents Nejaime and Gilford; violation of Rule 3010 of the NASD Conduct Rules against Respondent Gilford for failure to provide sufficient control or supervision over the activities of a registered representative; violation of and Rules 2310, IM2310-2 and 2120 of the NASD Conduct Rules against Respondent Nejaime and Gilford; violation of Section 10(b) of the 1934 Securities Exchange Act and Rule 10b-5 against Respondents Nejaime and Gilford; and successor liability against Respondent Fahnestock.

Unless specifically admitted in its Answer, Respondent, Fahnestock, generally denied the allegations made in the Statement of Claim and asserted the following defenses: Fahnestock was improperly named as a party as Claimants were never clients of or had a contract with Fahnestock to arbitrate claims.

Unless specifically admitted in its Answer, Respondent, Nejaime, denied the allegations made in the Statement of Claim and asserted the following defenses: Claimants' claims are barred by the applicable statute of limitations; Claimants made their own investment decisions; and Claimants continued to employ Respondent Nejaime as their registered representative after the alleged wrongdoing. In his Amended Statement of Answer, Respondent, Nejaime, contended that Claimants improperly alleged actions against him that were libelous.

Unless specifically admitted in its Answer, Respondent, Gilford, denied the allegations made in the Statement of Claim and asserted the following defenses: Claimants were estopped from bringing the claim because the action had allegedly already been adjudicated in a civil court forum; Claimants failed to meet their burden of proof to establish any causes of action; the claims are barred by the applicable statute of limitations; the claims are barred by the theories of primary negligence, contributory negligence, waiver and consent, ratification; and the unclean hands doctrine.

RELIEF REQUESTED

Claimants requested joint and several liability against Respondents Nejaime, Gilford and Fahnestock in the amount of:

Compensatory Damages	\$1,889,846
Punitive Damages	\$3,00,000
Attorneys' Fees	Unspecified.

Respondent Nejaime requested:

Costs	Unspecified costs and forum fees.
Monetary/Non-Monetary Relief	That the case be dismissed with

prejudice and that the Panel award such other relief as deemed proper.

Respondent Gilford requested:
Monetary/Non-Monetary Relief

That the case be dismissed in its entirety, costs and expenses be imposed, and that Respondent Gilford be awarded such other relief as the Panel deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents, Fahnestock and Gilford, did not file with the NASD Dispute Resolution, Inc. a properly executed submission to arbitration but are required, as members of the NASD, to submit to arbitration pursuant to the Code. Moreover, having answered the claim and appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

Service could not be perfected as to Respondent Reich.

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.

AWARD

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

1. The Motion to Dismiss filed by Respondent Fahnestock was granted because the Claimants failed to provide any evidence regarding the corporate structure or organization of Reich or Fahnestock, and did not establish that Fahnestock was the corporate successor of Reich.
2. The liability of Reich was not properly before the Panel, as service on Reich was never perfected. Accordingly, Reich is dismissed, but without prejudice.
3. Respondents Nejaime and Gilford are jointly and severally liable and shall pay Claimants \$200,000.
4. Respondent Nejaime is solely liable for and shall pay Claimants an additional \$300,000 for a total award of \$500,000.
5. The entire award shall include post judgment interest at the New York post judgment statutory rate.

6. Claimants and Respondents Nejaime, Gilford and Fahnestock shall be responsible for the payment of forum fees as follows: Claimants shall pay 25% of the forum fees, Respondent Nejaime shall pay 25% of the forum fees, Respondent Gilford shall pay 25% of the forum fees, and Respondent Fahnestock shall pay 25% of the forum fees.
7. All other claims are denied in their entirety.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$500
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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 firms that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firms are parties:

Member surcharge for Fahnestock	= \$2500
Pre-hearing process fee Fahnestock	= \$600
<u>Hearing process fee Fahnestock</u>	<u>= \$4500</u>
Total Member Fees for Fahnestock	= \$7600
Member surcharge for Gilford	= \$2500
Pre-hearing process fee Gilford	= \$600
<u>Hearing process fee Gilford</u>	<u>= \$4500</u>
Total Member Fees for Gilford	= \$7600

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Four (4) Pre-hearing sessions with Panel x \$1200	= \$4800
Pre-hearing conferences:	
April 13, 2000	1 session
June 28, 2000	1 session
August 17, 2000	1 session
August 31, 2000	1 session
Ten (10) Hearing sessions x \$1200	= \$12,000

Hearing Dates	September 6, 2000	2 sessions
	September 7, 2000	2 sessions
	September 11, 2000	4 sessions
	September 12, 2000	2 sessions
Total Forum Fees		= \$16,800

The Panel has assessed \$4200 of the forum fees jointly and severally to Claimants.
The Panel has assessed \$4200 of the forum fees to Respondent Nejaime.
The Panel has assessed \$4200 of the forum fees to Respondent Gilford.
The Panel has assessed \$4200 of the forum fees to Respondent Fahnestock.

Fee Summary

Claimants hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 500
<u>Forum Fees</u>	= \$ 4200
Total Fees	= \$ 4700
<u>Less payments</u>	= \$ 1800
Balance Due NASD Dispute Resolution, Inc.	= \$ 2900

Respondent, Gilford is hereby is solely liable for:

Member Fees	= \$ 7600
<u>Forum Fees</u>	= \$ 4200
Total Fees	= \$11,800
<u>Less payments</u>	= \$ 5600
Balance Due NASD Dispute Resolution, Inc.	= \$ 6200

Respondent, Fahnestock is hereby is solely liable for:

Member Fees	= \$ 7600
<u>Forum Fees</u>	= \$ 4200
Total Fees	= \$11,800
<u>Less payments</u>	= \$ 5600
Balance Due NASD Dispute Resolution, Inc.	= \$ 6200

Respondent, Nejaime is hereby solely liable for:

<u>Forum Fees</u>	= \$ 4200
Total Fees	= \$ 4200
<u>Less Payments</u>	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$ 4200

All balances are due to NASD Dispute Resolution, Inc. Inc. and are payable within 30 days of the service date of this Award.

NASD Dispute Resolution, Inc.

Arbitration No. 99-03005

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Concurring Arbitrators' Signatures



Kevin D. Swenson, Esq.

Public Arbitrator, Presiding Chair

10/9/00
Signature Date

Nyle G. Barnes, Esq.

Public Arbitrator

Signature Date

William R. Smith

Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

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Concurring Arbitrators' Signatures

Kevin D. Swenson, Esq.
Public Arbitrator, Presiding Chair

Signature Date



Nyle G. Barnes, Esq.
Public Arbitrator

10. 10. 2000
Signature Date

William R. Smith
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)