

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Jack Diener

Case No. 99-04304

Name of Respondents

Fahnestock & Co., Inc.
Bruce A. Hartzmark

Hearing Location: Washington, DC

REPRESENTATION OF PARTIES

Claimant Jack Diener ("Claimant") was represented by Roger W. Van Deusen, Esq. of the law firm of Chattman Gaines & Stern, P.C., Cleveland, OH.

Respondents Fahnestock & Co., Inc. ("Fahnestock") and Bruce Hartzmark ("Hartzmark") hereinafter collectively referred to as "Respondents" were represented by William E. Mahoney, Jr., Esq. of the law firm of Stradley, Ronon, Stevens & Young, LLP, Philadelphia, PA and Eric J. Shames, Chief Legal Officer, Fahnestock & Co., Inc., New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: September 14, 1999
Claimant signed the Uniform Submission Agreement: September 7, 1999

Statement of Answer filed by Respondents on or about: December 31, 1999
Respondents did not file a signed Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: unauthorized trading, breach of fiduciary duty, undue influence, unjust enrichment and negligence. The causes of action relate to the alleged unauthorized purchases of Continucare Corp. stock.

Respondents denied all allegations of wrongdoing and maintained, among other things, the

following defenses: Respondents acted in good faith and did not induce the alleged acts; the damages allegedly suffered by Claimant have no causal relationship with any act committed by or legally attributable to Respondents; all trades were expressly authorized by the Claimant, or alternatively were subsequently ratified by the Claimant; Claimant did not reasonably rely to his detriment on any action or inaction of Respondents or any action or inaction legally attributable to Respondents; Respondents discharged their responsibilities in a professional and ethical manner; Respondents owed no fiduciary duty to Claimant under the circumstances alleged or, in the alternative, there was no breach of any such duty; and, Respondents were not negligent and exercised due care and diligence.

RELIEF REQUESTED

Claimant, in his Statement of Claim, requested:

Compensatory Damages	\$165,294.00
Interest	at the legal rate
Other Costs and expenses	unspecified

Respondent Fahnestock and Hartzmark, in their Answer, requested that the Statement of Claim in all respects be dismissed and that disbursements be assessed against him.

OTHER ISSUES CONSIDERED AND DECIDED

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

Respondents, at the start of the process, made a Motion to Dismiss which was denied.

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. That Claimant's claim is denied in its entirety.
2. That the parties shall bear their respective costs, including attorneys' fees except as Fees are specifically addressed below.

3. That any and all claims for relief not specifically addressed herein are denied in their entirety.

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 = \$ 300

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 events giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge = \$1,500

Pre-hearing process fee = \$ 600

Hearing process fee = \$2,500

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

One (1) Pre-hearing session with Panel x \$1,125 = \$1,125
Pre-hearing conference: October 25, 2000 1 session

Two (2) Hearing sessions x \$1,125 = \$2,250
Hearing Date: May 15, 2001 2 sessions

Total Forum Fees = \$3,375

The Panel has assessed forum fees as follows:

1. Claimant is assessed forum fees in the amount of \$1,687.50.
2. Respondents Fahnestock and Hartzmark are jointly and severally assessed forum fees in the amount of \$1,687.50.

Fee Summary

Claimant is assessed the following fees:

Initial Filing Fee = \$ 300.00

Forum Fees = \$1,687.50

Total Fees = \$1,987.50

<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 562.50

Respondent Fahnestock is assessed the following fees:

Member Fees	= \$4,600
Total Fees	= \$4,600
<u>Less payments</u>	<u>= \$4,600</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 0

Respondents Fahnestock and Hartzmark are jointly and severally assessed:


<u>Forum Fee</u>	<u>= \$1,687.50</u>
Balance Due NASD Dispute Resolution, Inc.	= \$1,687.50

All balances are due and payable to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

<i>Caryl S. Bernstein, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Barry E. Shapiro</i>	-	<i>Public Arbitrator, Panelist</i>
<i>John J. Muldowney</i>	-	<i>Non-Public Arbitrator, Panelist</i>

Concurring Arbitrators' Signatures


Caryl S. Bernstein, Esq.
Public Arbitrator, Presiding Chairperson

May 31, 2001
Signature Date

Barry E. Shapiro
Public Arbitrator, Panelist

Signature Date

John J. Muldowney
Non Public Arbitrator, Panelist

Signature Date

June 5, 2001
Date of Service (For NASD-DR office use only)

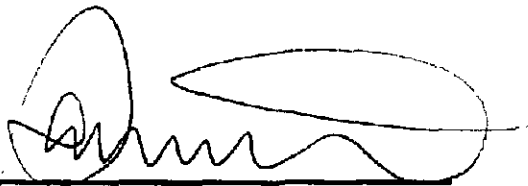
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