

**AWARD**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between

Name of Claimant

James V. Rider and Judy K. Rider

and

99-05308  
Kansas City, Missouri

Name of Respondents

Fahnestock & Co., Inc.  
Terry Beeman

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**REPRESENTATION OF PARTIES**

James V. Rider and Judy K. Rider ("**Claimants**") were represented by Roger N. Walter, Esq. And Susan R. Schrag, Esq., Morris, Laing, Evans, Brock & Kennedy, Chtd., Topeka, Kansas.

Fahnestock & Co., Inc. ("**Respondent Fahnestock**") and Terry Beeman ("**Respondent Beeman**") were represented by Eric J. Shames, Esq., Fahnestock & Co., Inc., New York, New York and J. Michael Vaughan, Esq., Walters Bender Strohbehn & Vaughan, P.C., Kansas City, Missouri.

**CASE INFORMATION**

The Statement of Claim was filed on or about November 24, 1999. Amended Statement of Claim was filed on or about May 22, 2000. Submission Agreement of Claimants James V. Rider and Judy K. Rider was signed on November 18, 1999.

Statement of Answer was filed by Respondents Fahnestock & Co., Inc. and Terry Beeman on or about January 26, 2000. Respondents' Amended Statement of Answer was filed on or about June 14, 2000. Submission Agreement of Respondent Fahnestock & Co., Inc. was signed on January 3, 2000 by Eric J. Shames. Submission Agreement of Respondent Terry Beeman was undated.

**CASE SUMMARY**

Claimants submitted the following summary:

Claimants allege that Respondent Beeman churned their joint brokerage account, i.e. that Beeman exercised control over the account, that through that control he effected trading in the account that was excessive in light of the circumstances and investment objectives of the Claimants and that he acted with the intent to defraud or with willful, wanton or reckless

disregard for the interests of the Claimants. Claimants allege that this conduct constituted violations of securities laws, the NASD Conduct Rules and the Rules of New York Stock Exchange. Claimants also allege that Respondent Fahnstock is also liable for Beeman's conduct under the express provisions of the Kansas Securities Act [K.S.A. 17-1268(b)], and at common law. Claimants have further alleged that Respondents recommended an unsuitable investment, strategy and failed to disclose this to Claimants, breached a fiduciary duty owed to Claimants, and acted negligently with respect to the management and supervision of the Claimants' investment account. Finally, Claimants allege that Respondent Fahnstock failed to reasonably supervise and control Respondent Beeman.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that Claimants are sophisticated, wealthy investors who, at all times, maintained complete control over their account. It was also stated that Dr. Rider particularly enjoyed trading in technology, pharmaceutical, and Internet based companies. In addition, Respondents stated that during 1997 and 1998, 396 of the 522 trades executed in Claimants' account were unsolicited. Respondents further stated that Respondent Berman never recommended an increase in trading, in fact, he strongly advised against it and tried to discourage Dr. Rider from pursuing his aggressive investment strategy.

### **RELIEF REQUESTED**

In the Amended Statement of Claim, Claimants requested an award against Respondents for the following:

- i. Loss of investment principal over the life of the account in excess of \$569,000;
- ii. Loss of investment opportunity or income based on the "well-managed" portfolio theory, and/or interest at the rate of 15% per annum as set forth in K.S.A. 17-1268(a), not to exceed \$500,000;
- iii. Punitive damages, not to exceed \$1 million;
- iv. Attorneys' fees as provided in K.S.A. 17-1268 and the law generally; and
- v. Such other relief as deemed fair and equitable under the circumstances.

At the hearing, Claimants requested that the Arbitration Panel enter an award compensating them for a lost investment principal of either \$673,494 or \$565,575. They further requested an award of either statutory damages of 15% interest under the Kansas Securities Act [K.S.A. 17-1268(a)] or loss of investment opportunity based on the "well-managed portfolio" theory, and attorneys' fees. This resulted in a total compensatory damage claim ranging from \$1,419,083 to \$2,287,733. Claimants also requested punitive damages against the Respondents.

Respondents requested that the claims asserted against them be dismissed in all respects, and attorneys' fees and disbursements be assessed against Claimants.

### **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(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 Terry Beeman shall be and hereby are jointly and severally liable for and shall pay to Claimants James V. Rider and Judy K. Rider the sum of \$74,241.25 (Seventy Four Thousand Two Hundred Forty One Dollars and Twenty Five Cents) as compensatory damages.
2. Interest at the rate of 9% per annum is awarded on the above stated sum from and inclusive of the date this award is served to and inclusive of the date this award is paid in full.
3. Respondents Fahnestock & Co., Inc. and Terry Beeman shall be and hereby are jointly and severally liable for and shall pay to Claimants James V. Rider and Judy K. Rider the extra expenses of Claimants' expert witness as per the stipulation of the parties made on the record of this matter.
4. 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.
5. 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 = \$500.00

### **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 is Fahnestock & Co., Inc.

|                         |              |
|-------------------------|--------------|
| Member surcharge        | = \$2,500.00 |
| Pre-hearing process fee | = \$ 600.00  |
| Hearing process fee     | = \$4,500.00 |

### **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 Panel x \$1,200.00 = \$ 1,200.00

Pre-hearing conference(s): September 29, 2000 1 session

Ten (10) Hearing sessions x \$1,200.00 = \$12,000.00

|                  |                         |                   |
|------------------|-------------------------|-------------------|
| Hearing Date(s): | February 5, 2001        | 2 sessions        |
|                  | February 6, 2001        | 2 sessions        |
|                  | February 7, 2001        | 3 sessions        |
|                  | <u>February 8, 2001</u> | <u>3 sessions</u> |

Total Forum Fees = \$13,200.00

The Arbitration Panel has assessed \$0.00 of the forum fees to James V. Rider and Judy K. Rider.

The Arbitration Panel has assessed \$13,200.00 of the forum fees jointly and severally to Fahnestock & Co., Inc. and Terry Beeman.

### **Fee Summary**

Claimants, James V. Rider and Judy K. Rider, shall be and hereby are jointly and severally liable for:

|   |              |
|---|--------------|
| Initial Filing Fee                                      | = \$ 500.00  |
| <u>Forum Fees</u>                                       | = \$ 0.00    |
| Total Fees  | = \$ 500.00  |
| <u>Less payments</u>                                    | = \$1,700.00 |
| Balance to be refunded by NASD Dispute Resolution, Inc. | = \$1,200.00 |

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

|   |              |
|---|--------------|
| Member Fees                               | = \$7,600.00 |
| <u>Forum Fees</u>                         | = \$ 0.00    |
| Total Fees                                | = \$7,600.00 |
| <u>Less payments</u>                      | = \$7,600.00 |
| Balance Due NASD Dispute Resolution, Inc. | = \$ 0.00    |

Respondents, Fahnestock & Co., Inc. and Terry Beeman, shall be and hereby are jointly and severally liable for:

|   |               |
|---|---------------|
| <u>Forum Fees</u>                         | = \$13,200.00 |
| Balance Due NASD Dispute Resolution, Inc. | = \$13,200.00 |

All balances are due to NASD Dispute Resolution, Inc.

Dated:

/s/ Barton P. Cohen  
Barton P. Cohen, Esq.  
Public Arbitrator, Presiding Chair

February 15, 2001

/s/ Robert D. Garrett  
Robert D. Garrett, Esq.  
Public Arbitrator

undated

/s/ Lewis R. Mills  
Lewis R. Mills, Esq.  
Industry Arbitrator

February 16, 2001

NASD Dispute Resolution, Inc.  
Arbitration No. 99-05308  
Award Page 5 of 5

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

|   |              |
|---|--------------|
| Member Fees                               | = \$7,600.00 |
| <u>Forum Fees</u>                         | = \$ 0.00    |
| Total Fees                                | = \$7,600.00 |
| <u>Less payments</u>                      | = \$7,600.00 |
| Balance Due NASD Dispute Resolution, Inc. | = \$ 0.00    |

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|   |               |
|---|---------------|
| <u>Forum Fees</u>                         | = \$13,200.00 |
| Balance Due NASD Dispute Resolution, Inc. | = \$13,200.00 |

All balances are due to NASD Dispute Resolution, Inc.

Barton P. Cohen  
Barton P. Cohen, Esq.  
Public Arbitrator, Presiding Chair

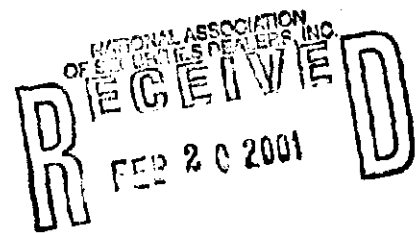
Dated:

02/15/01

Robert D. Garrett, Esq.  
Robert D. Garrett, Esq.  
Public Arbitrator

Lewis R. Mills, Esq.  
Lewis R. Mills, Esq.  
Industry Arbitrator

NASD Dispute Resolution, Inc.  
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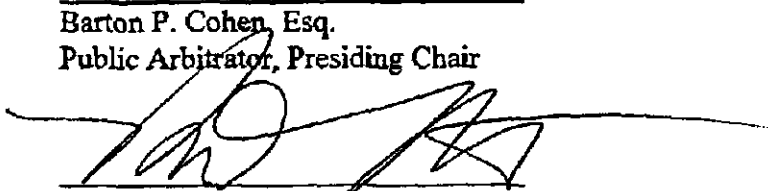
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|---|---------------|
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| Balance Due NASD Dispute Resolution, Inc. | = \$13,200.00 |

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 Public Arbitrator, Presiding Chair

  
 Robert D. Garrett, Esq.  
 Public Arbitrator

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 Lewis R. Mills, Esq.  
 Industry Arbitrator

NASD Dispute Resolution, Inc.

Arbitration No. 99-05308

Award Page 5 of 5

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|   |              |
|---|--------------|
| Member Fees                               | = \$7,600.00 |
| Forum Fees                                | = \$ 0.00    |
| Total Fees                                | = \$7,600.00 |
| Less payments                             | = \$7,600.00 |
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| Forum Fees                                | = \$13,200.00 |
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Public Arbitrator, Presiding Chair

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16 Feb 01