

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Don E. McLeod

Case Number: 01-6296

Name of the Respondents
Josephthal & Co., Inc. and its successor in
interest, Fahnestock & Co., Inc.,
Christopher K. Somers

Hearing Site: Washington, DC

REPRESENTATION OF PARTIES

Claimant, Don E. McLeod ("McLeod"), hereinafter referred to as "Claimant", was represented by W. Scott Greco, Esq. and Frederick D. Greco, Esq., Greco & Greco, P.C., McLean, Virginia.

Respondents, Josephthal & Co, Inc. ("Josephthal"), Fahnestock and Co., Inc. ("Fahnestock") and Christopher K. Somers ("Somers"), hereinafter collectively referred to as "Respondents", were represented by John M. Myers, Esq., Montgomery, McCracken, Walker & Rhoads, Philadelphia, Pennsylvania.

CASE INFORMATION

Statement of Claim filed on November 20, 2001.

Claimant signed the Uniform Submission Agreement on November 20, 2001.

Statement of Answer filed by Respondents Josephthal and Somers on February 12, 2002.

Statement of Answer filed by Respondent Fahnestock on or about January 2, 2003.

Respondent Josephthal did not sign the Uniform Submission Agreement.

Respondent Fahnestock did not sign the Uniform Submission Agreement.

Respondent Somers did not sign the Uniform Submission Agreement

Claimant filed a Motion to Bar Presentation of Arguments and Defenses of Respondents Josephthal and Somers on February 8, 2002.

Respondents Josephthal and Somers filed a Response to Motion to Bar Presentation of Arguments and Defenses on February 12, 2002.

Claimant filed a Motion to Bar Presentation of Arguments and Defenses of Respondent Fahnestock on April 17, 2002.

CASE SUMMARY

Claimant asserted the following causes of action, among others: unauthorized trading; breach of fiduciary duty; securities fraud; unsuitability; negligence; and, churning. These causes of action related to the purchase and sale of the stock of Critical Path and I-2 Technologies.

Unless specifically admitted in its Answer, Respondents Josephthal and Somers denied the allegations made in the Statement of Claim and asserted the following defenses: failure to state a claim upon which relief can be granted; assumption of risk; estoppel; laches; failure to plead fraud with particularity; and, ratification.

Respondent Fahnstock adopted the Answer of Respondents Josephthal and Somers.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	\$ 1,003,725.20
Punitive Damages	\$ 2,000,000.00
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondents requested that the Panel deny the claims in their entirety and assess the costs and expenses of the proceeding against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

Claimant's Motions to Bar Presentation of Arguments and Defenses were denied.

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

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. Respondents are jointly and severally liable to Claimant and shall pay him the sum of \$1,003,725.20 in compensatory damages plus simple interest at the rate of 6% per annum from July 18, 2000 until payment in full of this Award;

2. Respondents are jointly and severally liable to Claimant and shall pay him the sum of \$1,300,000.00 in punitive damages, pursuant to Virginia common law which allows punitive damages “where there is misconduct or malice, or such recklessness or negligence as evinces a conscious disregard of the rights of others. . . .” Diaz Vicente v. Obenauer, 736 F. Supp. 679, 695 (E.D. Va. 1990);
3. Respondents are jointly and severally liable to Claimant and shall pay him the sum of \$774,863.00 in attorneys’ fees pursuant to the Virginia Securities Act, Va. Code § 13.0-522;
4. Respondents are jointly and severally liable to Claimant and shall pay him the sum of \$500.00 as reimbursement of his filing fee;
5. The parties shall bear their respective costs, except as to costs addressed above and Fees specifically addressed below; and,
6. Any and all relief not specifically addressed herein is denied in its entirety.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$ 500.00
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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 firms that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Josephthal & Co., Inc. and Fahnestock & Co., Inc. are parties.

Josephthal & Co., Inc.	
Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,000.00

Fahnestock & Co., Inc.	
Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,000.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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 Panel @ \$ 1,200.00 = \$ 1,200.00
Pre-hearing conference: September 23, 2002 1 session

Nine (9) Hearing sessions @ \$ 1,200.00 = \$ 10,800.00
Hearing Dates: January 28, 2003 2 sessions
January 29, 2003 3 sessions
January 30, 2003 2 sessions
February 3, 2003 2 sessions

Total Forum Fees = \$ 12,000.00

The Panel has assessed \$ 12,000.00 of the forum fees joint and severally to Respondents.

Fee Summary

1. Claimant is assessed:

Initial Filing Fee = \$ 500.00
Total Fees = \$ 500.00
Less payments = \$ 1,800.00
Refund Due Claimant = \$ 1,300.00

2. Respondent Josephthal is assessed:

Member Fees = \$ 8,550.00
Total Fees = \$ 8,550.00
Less payments = \$ 8,550.00
Balance Due NASD Dispute Resolution = \$ 0.00

3. Respondent Fahnestock is assessed:

Member Fees = \$ 8,550.00
Total Fees = \$ 8,550.00
Less payments = \$ 8,550.00
Balance Due NASD Dispute Resolution = \$ 0.00

4. Respondents are jointly and severally assessed:

Forum Fees = \$ 12,000.00
Total Fees = \$ 12,000.00
Less Payments = \$ 0.00
Balance Due NASD Dispute Resolution = \$ 12,000.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

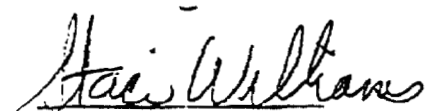
Arbitration No. 01-6296

Award Page 5

ARBITRATION PANEL

- Staci Williams - Public Arbitrator, Chairperson
- Diane S. Gold - Public Arbitrator, Panelist
- Patricia J. Randolph - Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures



Staci Williams
Public Arbitrator, Chairperson

03/15/03

Signature Date

Diane S. Gold
Public Arbitrator, Panelist

Signature Date

Patricia J. Randolph
Non-Public Arbitrator, Panelist

Signature Date

March 17, 2003

Date of Service (For NASD Dispute Resolution office use only)

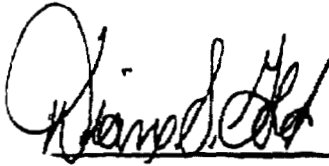
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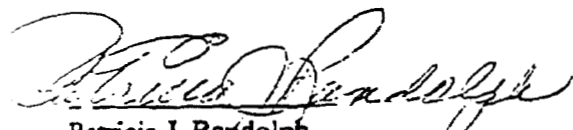
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