

Award
FINRA Office of Dispute Resolution

In the Matter of the Arbitration Between:

Claimant/Counter-Respondent

Edward Peacock, Esq., Administrator of the Estate
of Margie R. Gerrard

Case Number: 14-03102

vs.

Respondents/Counter-Claimants

Edward D. Jones & Co., L.P. and
James E. Gunn

Hearing Site: Memphis, Tennessee

And

Third-Party Claimants

Edward D. Jones & Co., L.P. and
James E. Gunn

vs.

Third Party Respondent

Louis R. Zemek

Nature of the Dispute: Customer vs. Member and Associated Person

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimant Edward Peacock, Esq., Administrator of the Estate of Margie R. Gerrard ("Claimant"): Scott T. Beall, Esq., Law Office of Scott T. Beall, Memphis, Tennessee.

For Respondents Edward D. Jones & Co., L.P. ("EDJ") and James E. Gunn ("Gunn"), hereinafter collectively referred to as "Respondents": Clinton J. Simpson, Esq., Baker, Donelson, Bearman, Caldwell & Memphis, Tennessee.

For Third-Party Respondent Louis R. Zemek ("Zemek"): Roy O. Parker, Jr., Esq., Parker Law, Tupelo, Mississippi. Mr. Parker appeared at the hearing without previously having entered an appearance on behalf of Zemek. At the hearing, Attorney Parker stated that Zemek is in active U.S. Military service, but is not foreign-deployed and is state-side.

CASE INFORMATION

Statement of Claim filed on or about: October 1, 2014.
Claimant signed the Submission Agreement: September 30, 2014.
Claimant did not file an Answer to Counterclaim.

Statement of Answer, Counterclaim, and Third-Party Claim filed jointly by Respondents on or about: December 17, 2014.
EDJ signed the Submission Agreement: December 15, 2014.
Gunn signed the Submission Agreement: November 21, 2014.

Zemek did not sign the Submission Agreement.
Zemek did file an Answer to the Third-Party Claim.

CASE SUMMARY

Claimant asserted the following causes of action: negligence (against EDJ and Gunn), failure to supervise and negligent supervision (against EDJ), breach of fiduciary duty and breach of duty of loyalty (against EDJ and Gunn), aiding and abetting conversion (against EDJ and Gunn), and suitability (against EDJ and Gunn).

The causes of action related to Claimant's allegations that Respondents allowed Zemek to open a Power of Attorney investment account with margin privileges in Margie R. Gerrard's name, relying on an EDJ Power of Attorney Affidavit that Zemek forged. Claimant asserted that Zemek then withdrew funds from the Power of Attorney account on margin for his personal use.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Respondents asserted the following cause of action in their Counterclaim: indemnification. The cause of action related to Respondents' allegations that Margie R. Gerrard agreed to hold Respondents harmless from transactions made in reliance on a Power of Attorney Affidavit & Indemnification Form that she executed before a notary.

Respondents asserted the following causes of action in their Third-Party Claim: intentional misrepresentation, negligent misrepresentation, and indemnification. The causes of action related to Respondents' claims that Zemek misrepresented the financial needs and situation of Margie R. Gerrard as her Power of Attorney.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested Compensatory Damages in the amount of \$524,000.00, lost income/dividends/gains in the amount of \$30,000.00 or prejudgment interest, whichever is greater, lost money paid in income taxes and penalties, pre-judgment and post-judgment interest, punitive damages, attorneys' fees, costs, and all other appropriate relief.

In their Answer, Respondents requested that Claimant's Statement of Claim be dismissed and that Respondents be awarded their costs, expenses, attorneys' fees, and other appropriate relief. Respondents also requested that their registration records maintained by the Central Registration Depository ("CRD") be expunged of all references to this matter.

In their Counterclaim, Respondents requested indemnification, costs, attorneys' fees, interest, and other appropriate relief.

In their Third-Party Claim, Respondents requested indemnification, costs, attorneys' fees, interest, and other appropriate relief.

At the close of the hearing, Respondents specified their demand for damages in their Third-Party Claim as the amount paid to Claimant in settlement of Claimant's initial Claim, pursuant to the Indemnification Agreement signed by Zemek. Respondents further specified their additional damage demand for reimbursement of their attorneys' fees in the range of \$25,000.00-\$50,000.00, stating that by September 14, 2016, they would submit their sworn and itemized affidavit of fees/costs/expenses for consideration by the Panel. During the hearing, Respondents' counsel clarified that matters related to this case have been pending for approximately ten years before the state trial courts (Chancery and Circuit) of Mississippi and before FINRA. Respondents' counsel further clarified that the specified range of \$25,000.00-\$50,000.00 concerns only his and his firm's services concerning Respondents' Third-Party Claim before FINRA over the last 1.5-2 years.

In their post-hearing submission, Respondents requested attorneys' fees in the amount of \$59,656.50.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

On or about February 18, 2016, Claimant voluntarily dismissed all claims against EDJ and Gunn with prejudice. On or about February 18, 2016, Respondents advised that they were only pursuing their Third-Party Claims. As such, the Panel did not adjudicate Claimant's claims or Respondents' counterclaims, with the exception of Respondents' request for expungement.

Zemek did not appear at the hearing. Through counsel and on the record at the hearing on September 13, 2016, Zemek moved for an adjournment of the hearing. Respondents objected to Zemek's Motion for Adjournment. The Panel denied Zemek's Motion for Adjournment on the record and proceeded with the hearing. Attorney Parker remained throughout the hearing, declining to participate beyond observing, declining to cross-examine witnesses, and declining to state any rebuttal and/or opening or closing statements or summations. Attorney Parker was affirmatively asked and/or invited to participate throughout the hearing. Attorney Parker renewed his oral Motion for Adjournment at the conclusion of the hearing. The Panel reaffirmed its prior denial of Zemek's Motion for Adjournment on the record. Zemek's Motion for Adjournment was

never submitted to the Panel in writing. Attorney Parker cited his reasons in support of his oral Motion for Adjournment as follows: (1) no personal service of process had been effected on Zemek by Respondents (shown otherwise by Respondents' evidence); (2) applicable statutes of limitations expired before the Third-Party Claim was filed (not briefed or argued to the Panel); (3) Respondents failed to appear and participate in discovery during Zemek's alleged Federal Bankruptcy proceedings (no proof given that Respondents knew of an alleged bankruptcy or were ever named as creditors therein or given notice thereof); (4) Respondents never requested a lift of the automatic stay in Bankruptcy Court (see prior parenthetical); and (5) Zemek is alleged to be protected from these proceedings by the Federal Civil Relief Act as a member of the active U.S. Military (no proof was submitted to the Panel in support of these claims).

The Panel found that Attorney Parker appeared without prior notice to the Panel and provided insignificant/minimal notice to Respondents' counsel of his purportedly late retention by Zemek.

Zemek did not file with FINRA Dispute Resolution a properly executed Submission Agreement, but is required to submit to arbitration pursuant to various written agreements with EDJ and the Code and, having appeared through counsel at the hearing, is bound by the determination of the Panel on all issues submitted.

The Panel relied on the testimony of Respondents' expert witness presented during the hearing, EDJ Compliance Department reviews, and Claimant's exhibits presented during the hearing, including a Mississippi embezzlement indictment/Alford Plea against Zemek.

Respondents filed a post-hearing submission on or about September 16, 2016.

The Panel requested that Respondents file a BrokerCheck® Report relevant to this matter in its Order dated September 30, 2016. Respondents filed a BrokerCheck® Report for Gunn on or about October 12, 2016.

The Panel's Order dated April 17, 2017, addressed issues of military service as follows:

The Panel is informed by FINRA and its staff that Third-Party Respondent Zemek presently is serving active duty in the U.S. Military to whom the Service Members Civil Relief Act ["SCRA"], 50 U.S.C. App. Secs. 501-597b(1) and FINRA Rule IM-1000-2 apply. At the in-person hearing of September 13, 2016 in Memphis, Tennessee, the Panel found that Mr. Zemek was given at least 90 days' prior notice of that hearing and of its time, date and place; and that while Mr. Zemek personally did not appear at that hearing, Attorney Roy O. Parker appeared on Mr. Zemek's behalf. However, the Panel was not provided with any facts at that hearing as to how Mr. Zemek's military duty requirements materially affected Mr. Zemek's ability to appear at that September 13, 2016, hearing. Nor was the Panel provided with any letter or other communication from Mr. Zemek's commanding officer stating that Mr. Zemek's current military duty prevented his appearance on that date, or that military leave was not authorized for Mr. Zemek to attend that hearing.

Nonetheless, the effective date of this Order is hereby delayed for ninety (90) calendar days from the date of this Order to allow Mr. Zemek to submit to FINRA any documentation or written communication setting forth: (1) facts stating the manner in which his military duty requirements materially affected his ability to appear at the September 13, 2016, hearing, (2) how such would affect his appearance at any subsequent hearing, and (3) stating a date after which Mr. Zemek will be available to appear, together with a letter or other communication addressed and delivered to FINRA from Mr. Zemek's commanding officer stating that Mr. Zemek's military duty prevented his appearance at the September 13, 2016, hearing and how his current military duties will prevent, if that is the case, his appearance at any subsequent hearing and that military leave is still not authorized for him at the time of the letter.

Zemek did not file a response to the Panel's Order dated April 17, 2017. Accordingly, the Panel has determined that service has been perfected on Zemek and this Award shall be entered.

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, and the post-hearing submission, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Louis R. Zemek is liable for and shall pay to Edward D. Jones & Co., L.P. the sum of \$290,000.00 in compensatory damages as reimbursement for the settlement paid pursuant to the Indemnification Agreement.
2. Louis R. Zemek is liable for and shall pay to Edward D. Jones & Co., L.P. the sum of \$50,000.00 in attorneys' fees pursuant to the Indemnification Agreement.
3. All monetary claims asserted by James E. Gunn are denied.
4. Edward D. Jones & Co., L.P.'s request for expungement is denied.
5. The Panel recommends the expungement of all references to the above-captioned arbitration from registration records maintained by CRD for Respondent James E. Gunn (CRD #4041664), with the understanding that, pursuant to Notice to Members 04-16, Respondent James E. Gunn must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 12805 of the Code, the Panel has made the following Rule 2080 affirmative finding of fact:

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds;

The Panel has made the above Rule 2080 finding based on the following reasons:

Claimant waived appearance at the recorded evidentiary hearing conducted in person on September 13, 2016, and submitted no proof tying Gunn to any alleged wrongful actions involving the account(s) at issue in this case and/or the handling of those account(s). Additionally, the Panel found that Gunn complied with all regulatory requirements in opening and managing the account(s) at issue, per expert witness testimony offered at the hearing.

The Panel reviewed Gunn's BrokerCheck® Report and the settlement documents, considered the amount of payments made to any party, and considered other relevant terms and conditions of the settlement. The Panel found that the settlement was not conditioned on Claimant not opposing the request for expungement. The Panel also found that Gunn did not contribute to the settlement amount and that Gunn did not previously file a request for expungement of the same disclosure from CRD.

The Panel was made aware during the September 13, 2016, hearing of the settlement dollar amount, as Respondents sought compensatory damages for that amount. The settlement amount, however, did not materially figure into the Panel's expungement decision in this case.

Respondents established that they had provided a copy of their expungement request to Edward Peacock, Esq., Administrator of the Estate of Margie R. Gerrard prior to the hearing September 13, 2016. Claimant did not oppose Respondents' expungement request.

In recommending expungement, the Panel relied upon the following documentary or other evidence: the testimony of Respondents' expert witness and the Compliance Department reviews contained in Respondents' Hearing Exhibits Notebook.

6. Any and all relief not specifically addressed herein, including punitive damages, is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

FINRA Dispute Resolution assessed a filing fee* for each claim:

Initial Claim Filing Fee	= \$ 1,575.00
Counterclaim and Third-Party Filing Fee	= \$ 2,450.00

**The filing fee is made up of a non-refundable and a refundable portion.*

FINRA Office of Dispute Resolution previously deferred the Claimant's filing fee of \$1,575.00. Upon conclusion of the matter, the Panel determined to waive the fee.

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Edward D. Jones & Co., L.P. is assessed the following:

Member Surcharge	= \$ 2,250.00
Pre-Hearing Processing Fee	= \$ 750.00
Hearing Processing Fee	= \$ 4,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

December 8-10, 2015, adjournment by Respondents	= \$ 1,200.00
<hr/> Total Adjournment Fees	<hr/> = \$ 1,200.00

The Panel has assessed \$600.00 of adjournment fees to Edward Peacock, Esq., Administrator of the Estate of Margie R. Gerrard

The Panel has assessed \$600.00 of the adjournment fees jointly and severally to Edward D. Jones & Co., L.P., James E. Gunn, and Louis R. Zemek.

Hearing Session Fees and Assessments

The Panel has assessed hearing session 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:

Three (3) Pre-hearing sessions with the Panel @ \$1,200.00/session	= \$ 3,600.00
Pre-hearing conferences: May 5, 2015	1 session
November 23, 2015	1 session
March 22, 2016	1 session
Two (2) Hearing sessions @ \$1,200.00/session	= \$ 2,400.00
Hearing Date: September 13, 2016	2 sessions
<hr/> Total Hearing Session Fees	<hr/> = \$ 6,000.00

The Panel has assessed \$800.00 of the hearing session fees to Edward Peacock, Esq., Administrator of the Estate of Margie R. Gerrard.

The Panel has assessed \$2,600.00 of the hearing session fees jointly and severally to Edward D. Jones & Co., L.P. and James E. Gunn.

The Panel has assessed \$2,600.00 of the hearing session fees to Louis R. Zemek.

All balances are payable to FINRA Office of Dispute Resolution and are due upon receipt.

ARBITRATION PANEL

Patricia Best Vital	-	Public Arbitrator, Presiding Chairperson
Thomas L. Maschmeyer, Jr.	-	Public Arbitrator
Walter Phillip Scott	-	Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument, which is my award.

Concurring Arbitrators' Signatures

/s/ Patricia Best Vital
Patricia Best Vital
Public Arbitrator, Presiding Chairperson

08/30/17
Signature Date

/s/ Thomas L. Maschmeyer, Jr.
Thomas L. Maschmeyer, Jr.
Public Arbitrator

08/30/17
Signature Date

/s/ Walter Phillip Scott
Walter Phillip Scott
Public Arbitrator

08/31/17
Signature Date

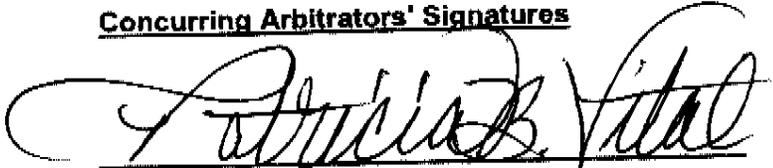
08/31/17
Date of Service (For FINRA Office of Dispute Resolution office use only)

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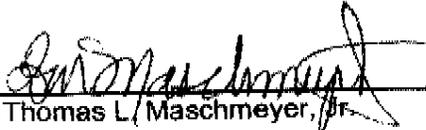
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Signature Date

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Signature Date

Walter P Scott

Walter Phillip Scott
Public Arbitrator

08/31/2017

Signature Date

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