

**Award**  
**FINRA Office of Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimant  
Charles Koontz

Case Number: 16-03301

vs.

Respondents  
Edward Jones  
David Karl Holman

Hearing Site: Baltimore, Maryland

vs.

Third Party Respondents  
Don A. Coldsmith  
Nelson L. Hoachlander  
Randall L. Koontz  
Bernice Schick

**and**

Counterclaim Claimant  
Don Coldsmith

vs.

Counterclaim Respondent  
Charles Koontz

**and**

Crossclaim Claimant  
Don Coldsmith

vs.

Crossclaim Respondents  
Edward Jones  
David Karl Holman

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

This case was decided by a majority-public panel.

## **REPRESENTATION OF PARTIES**

For Claimant Charles Koontz: Clinton Barkdoll, Esq., Kulla, Barkdoll & Stewart, P.C., Waynesboro, Pennsylvania.

For Respondents Edward Jones, and David Karl Holman: Daniel J. Donovan, Esq., Donovan & Rainie, LLC, Baltimore, Maryland.

For Respondents Don A. Coldsmith, and Randall L. Koontz: Alexandra M. Sipe, Esq., Maxwell Sipe Law Offices, LLC, Waynesboro, Pennsylvania.

Respondent Nelson L. Hoachlander: Pro Se.

Respondent Bernice Schick: Pro Se.

## **CASE INFORMATION**

Statement of Claim filed on or about: November 11, 2016.

Answer to Edward Jones and Holman's Counterclaim filed on or about: February 9, 2017.

Answer to Coldsmith's Counterclaim filed on or about: March 27, 2017.

Charles Koontz signed the Submission Agreement: November 11, 2016.

Edward Jones and David Karl Holman's Statement of Answer, Counterclaim against Charles Koontz and Third-Party Claim filed against Randall Koontz, Schick, Hoachlander and Coldsmith on or about: February 1, 2017

Edward Jones signed the Submission Agreement: January 30, 2017.

David Karl Holman signed the Submission Agreement: November 23, 2016.

Don A. Coldsmith's Statement of Answer to Respondents' Third-Party Claim; Counterclaim against Charles Koontz and Crossclaim against Edward Jones and Holman filed by on or about: March 16, 2017.

Don A. Coldsmith signed the Submission Agreement: February 12, 2017.

Randall L. Koontz signed the Submission Agreement: February 4, 2017.

Nelson L. Hoachlander signed the Submission Agreement: February 7, 2017.

Bernice Schick signed the Submission Agreement: February 7, 2017.

## **CASE SUMMARY**

Claimant asserted the following cause of action: misrepresentations.

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

Unless specifically admitted in the Statement of Answer to Edward Jones and Holman's Third-Party Claim, Coldsmith denied the allegations made in the Third-Party Claim and asserted various affirmative defenses.

Unless specifically admitted in the Answer to Coldsmith's Counterclaim, Charles Koontz denied the allegations made in the Counterclaim and asserted various affirmative defenses.

Unless specifically admitted in the Answer to Coldsmith's Crossclaim, Crossclaim Respondents Edward Jones and Holman denied the allegations made in the Crossclaim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested unspecified compensatory damages, attorneys' fees, costs, and specific performance: enforcement of TOD.

In the Supplemental Statement of Claim, Claimant requested attorneys' fees costs and other monetary relief as follows: (a) \$985.00 paid to Bell Insurance for the bond required by the Franklin County Court; (b) \$4,575.00 due to missing the Pennsylvania inheritance tax discount payment, due to the delay caused in processing the disputed TOD designations; (c) \$18,150.00 (annualized), due to lost interest/returns on the frozen Edward Jones account. This assumes an annual rate of return of 3% on the frozen account; (d) \$190.00 in filing fees to the Franklin County Court; and (e) legal fees of \$4,800 related to matters directly related to the instant dispute (including the filing of special court petitions and a court hearing).

In the Statement of Answer, Counterclaim and Third-Party Claim, Respondents Edward Jones and Holman requested that the Claimant be awarded no damages, and that all costs, expenses, attorneys' fees incurred by Respondents herein in connection with these proceedings be awarded to Respondents against Claimant/Counterclaim-Respondent and all of the Third-Party Respondents and Interested Parties as set forth above. Respondents also requested expungement of this matter from the CRD records of David Holman. Respondents also seek an Order similar to a declaratory judgment authorizing Edward Jones to disburse the assets in the Account.

In the Answer to the Counterclaim, Claimant requested that the Counterclaims set forth against him be dismissed and that Mr. Leight's account be processed according to the most recent TOD designations prior to Mr. Leight's death.

In his Answer to Respondents Edward Jones and Holman's Third-Party Claim, Counterclaim and Crossclaim, Respondent Coldsmith requested that the Panel disburse the funds in the account in accordance with the beneficiary designations signed by decedent John R. Leight, for the reasons herein; that Respondents Edward Jones and Holman be awarded no damages; and that all costs, expenses, attorneys' fees incurred by him in connection with these proceedings be assessed against Claimant.

In the Answer to Coldsmith's Crossclaim, Respondent Edward Jones and Holman requested that the Crossclaim be denied in their entirety.

In the Answer to Coldsmith's Counterclaim, Claimant requested that the Counterclaim be dismissed.

### **OTHER ISSUES CONSIDERED AND DECIDED**

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

After Claimant's case-in-chief, Respondent Holman filed a Motion to Dismiss. Claimant opposed the motion. After due consideration, the Panel granted Respondent Holman's Motion to Dismiss on the grounds that there was insufficient evidence of individual fault by Respondent Holman.

At the hearing, Respondent Holman withdrew his request for expungement of his CRD records because the occurrence is not reportable.

Respondents Bernice Schick and Nelson L. Hoachlander did not appear at the evidentiary hearing. Upon review of the file, the Panel determined that Respondents Bernice Schick and Nelson L. Hoachlander have been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondents present, in accordance with the Code.

The parties present at the hearing 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 submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claim against Respondent Holman is dismissed with prejudice.
2. Respondent Edward Jones is ordered to pay to Charles Koontz the sum of \$21,319.19 from the John Robert Leight Account.
3. Respondent Edward Jones is ordered to pay to Randall L. Koontz the sum of \$6,158.50 from the John Robert Leight Account.
4. Respondent Edward Jones is ordered to pay to Don A. Coldsmith the sum of \$6,158.50 from the John Robert Leight Account.
5. Respondents Edward Jones is ordered to distribute the principle funds of the John Robert Leight account, less the amounts stated in paragraphs 1, 2 and 3 above, in equal shares to Don A. Coldsmith, Charles E. Koontz, Randy L. Koontz, Bernice Schick and Nelson L. Hoachlander based on the TOD dated December 17, 2010.
6. Respondent Edward Jones is liable for and shall pay to Claimant Charles Koontz the sum of \$375.00 to reimburse Claimant for the non-refundable filing fee previously paid to FINRA Dispute Resolution.

7. Don Coldsmith's Counterclaim is denied in its entirety.
8. Any and all claims for relief not specifically addressed herein, including attorneys' fees, are denied.

### **FEES**

Pursuant to the Code of Arbitration Procedure, the following fees are assessed:

#### **Filing Fees**

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

Initial Claim Filing Fee	=\$ 1,575.00
Counterclaim Filing Fee	=\$ 1,575.00
Third-Party Claim Filing Fee	=\$ 1,700.00

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

#### **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 Jones is assessed the following:

Member Surcharge	=\$ 1,900.00
Member Process Fee	=\$ 3,750.00

#### **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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) pre-hearing session with the Panel @ \$1,125.00/session	=\$1,125.00
Pre-hearing conference: June 28, 2017	1 session

Two (2) hearing sessions @ \$1,125.00/session	=\$2,250.00
Hearing Dates: September 13, 2017	2 sessions

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Total Hearing Session Fees	=\$3,375.00
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The Panel has assessed the \$3,375.00 hearing session fees to Respondent Edward Jones.

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

**ARBITRATION PANEL**

Laura A. Kaster	-	Public Arbitrator, Presiding Chairperson
Thomas James Hirsch	-	Public Arbitrator
John H Adair, II	-	Non-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**



**October 16, 2017**

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Laura A. Kaster  
Public Arbitrator, Presiding Chairperson

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Signature Date

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Thomas James Hirsch  
Public Arbitrator

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Signature Date

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John H Adair, II  
Non-Public Arbitrator

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Signature Date

**October 20, 2017**

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Date of Service (For FINRA Office of Dispute Resolution office use only)

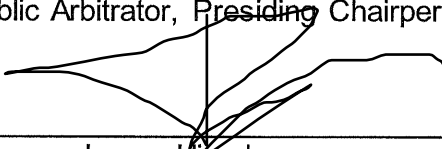
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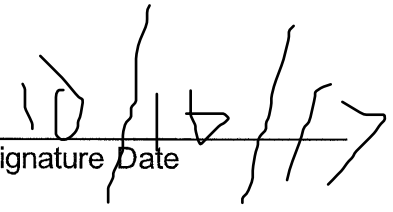
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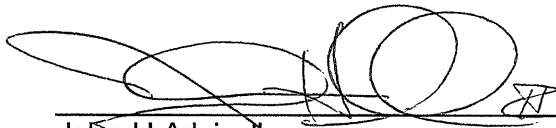


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Signature Date



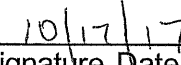
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Signature Date



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Signature Date

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Thomas James Hirsch  
Public Arbitrator

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Signature Date

  
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John H Adair, II  
Non-Public Arbitrator

10/17/17  
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Signature Date

**October 20, 2017**  
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