

**Amended Award**  
**NASD Dispute Resolution**

---

In the Matter of the Arbitration Between:

Edward D. Jones & Company, L.P., (Claimant) vs. Jay S. Tobias and Salomon Smith Barney, Inc., (Respondents)

Case Number: 01-00598

Hearing Site: Boston, Massachusetts

---

**REPRESENTATION OF PARTIES**

Claimant, Edward D. Jones & Company, L.P., hereinafter referred to as "Claimant": Lawrence R. Goldberg, Esq., Goldberg, Katz & Stansen, P.C., St. Louis, MO.

Respondent, Jay S. Tobias ("Tobias"): David A. Stein, Esq., Luboja & Thau, LLP, New York, NY.

Respondent, Salomon Smith Barney, Inc. ("SSB"): David A. Stein, Esq., Luboja & Thau, LLP, New York, NY. Previously represented by: Joseph E. Gehring, Esq., Kasowitz, Benson, Torres & Friedman, LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: February 5, 2001.

Claimant signed the Uniform Submission Agreement: February 5, 2001.

Statement of Answer filed by Tobias on or about: June 18, 2001.

Tobias signed the Uniform Submission Agreement: June 26, 2001.

Statement of Answer filed by SSB on or about: April 16, 2002.

SSB did not sign a Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract; theft of trade secrets; breach of fiduciary duties; unfair competition; and violation of the Maine Trade Secrets Act.

Unless specifically admitted in his Answer, Tobias denied the allegations made in the Statement of Claim and asserted the following defenses: the injunctive relief Claimant seeks is broader than the employment contract upon which it sues purportedly demands, and is decidedly contrary to the public interest; Tobias' actions were consistent with the custom and practice in the securities industry; Claimant's requested relief is contrary to the rules of the NASD, which rules, as a member firm, Claimant agreed to be bound by; virtually all of Tobias' client relationships were developed on his own time, and through his own individual hard work; Claimant has commenced this retaliatory arbitration proceeding in a vindictive effort to punish a departing financial consultant, and thus to discourage its remaining brokers from likewise considering a change of employment; Claimant has not been irreparably harmed, and is therefore not entitled to injunctive relief; and Claimant has no basis legally or equitably to prevent Respondent from leaving its employ.

Unless specifically admitted in its Answer, SSB denied the allegations made in the Statement of Claim and asserted the following defenses: SSB has acted in a highly professional manner with respect to its recruiting practices; the Statement of Claim fails to set out any wrongful conduct on the part of SSB; there is no contention, nor could there be, that SSB itself is a party to, or has agreed to be bound by, any contractual arrangements or restrictive covenants that Tobias may have entered into with Claimant; and Claimant has no basis for seeking the relief requested from SSB in this case.

### **RELIEF REQUESTED**

Claimant requested that:

1. A permanent injunctive order be issued enjoining Tobias and SSB, directly or indirectly, alone or in concert with others, including any officer, agent, employee, and/or representative of SSB from:
  - a. Using, disclosing, or transmitting information including all books, records, documents, and information pertaining to Claimant's business activities, including but not limited to customers, customers' accounts, and the names, addresses, or other information related to said customers and accounts, and that all original documents, and copies thereof, be immediately returned to Claimant;
  - b. Contacting, attempting to contact, soliciting or attempting to solicit, do business with or attempt to do business with, accept business from, or otherwise render or attempt to render any services whatsoever to, for, or on behalf of any person or entity who or which is, was or had been serviced by Tobias at any time during Tobias' employment (excluding relatives of Tobias) or whose name became known to Tobias as a result of his employment with Claimant for a period of one year; and

- c. Any and all other such acts as the Panel deems appropriate for injunctive relief;
2. Claimant be awarded actual damages in an amount to be decided by the Panel to adequately compensate Claimant for the monetary harm inflicted upon it by Respondents and to preclude Respondents from being unjustly enriched as a result of Tobias' breach of contract and breach of fiduciary duties and Respondents' unfair competition;
3. Claimant be awarded exemplary damages in an amount to be decided by the Panel to punish Respondents for their wrongdoing and deter like conduct in the future, said actual and exemplary damages not to exceed \$1,000,000.00;
4. Claimant be awarded all of its costs, including attorneys' fees, filing fees, and forum fees; and
5. Claimant be awarded such other and further relief as the Panel deems appropriate under the circumstances.

Tobias requested that Claimant's Statement of Claim be dismissed.

SSB requested that the Statement of Claim be dismissed and that it be awarded its fees and costs in this proceeding.

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

SSB did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure and, having answered the claim, appeared and testified at the hearing, is 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, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Salomon Smith Barney and Tobias are jointly and severally responsible for and shall pay to Claimant the sum of \$212,129.78 as compensatory damages.
2. All other requests for relief are hereby denied.

### **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 = \$ 1,250.00

#### **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. In this matter, Edward D. Jones & Company, L.P. and Salomon Smith Barney, Inc. are parties.

##### **Edward D. Jones & Company, L.P.**

Member surcharge	= \$ 2,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 3,500.00

##### **Salomon Smith Barney, Inc.**

Member surcharge	= \$ 2,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 3,500.00

#### **Adjournment Fees**

Adjournments requested during these proceedings:

July 30 & 31 and Aug. 1, 2002, adjournment by Respondents	= WAIVED
---	----------

#### **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 arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: June 25, 2002 1 session	

Two (2) Pre-hearing sessions with Panel x \$1,200.00	= \$ 2,400.00
Pre-hearing conferences: January 24, 2002 1 session	
April 25, 2002 1 session	

Four (4) Hearing sessions x \$1,200.00		= \$ 4,800.00
Hearing Dates:	January 7, 2003	2 sessions
	January 8, 2003	2 sessions
<hr/>		
Total Forum Fees		= \$7,650.00

1. The Panel has assessed all of the forum fees against jointly and severally against Respondents.

### **Injunctive Fees**

Injunctive Relief filing fee = \$ 2,500.00

### **Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 1,250.00
Member Fees	= \$ 6,100.00
Injunctive Relief Filing Fee	= \$ 2,500.00
Total Fees	= \$ 9,850.00
<u>Less payments</u>	<u>= \$11,050.00</u>
Refund Due Claimant	= \$ 1,200.00

2. SSB is solely liable for:

<u>Member Fees</u>	<u>= \$ 6,100.00</u>
Total Fees	= \$ 6,100.00
<u>Less payments</u>	<u>= \$ 4,100.00</u>
Balance Due NASD Dispute Resolution	= \$ 2,000.00

3. Respondents are jointly and severally liable for:

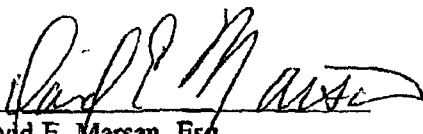
<u>Forum Fees</u>	<u>= \$ 7,650.00</u>
Total Fees	= \$ 7,650.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 7,650.00

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

**ARBITRATION PANEL**

David E. Marsan, Esq.	-	Public Arbitrator, Presiding Chair
Colette Manoil, Esq.	-	Public Arbitrator
Theodore R. Turner, Jr.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
David E. Marsan, Esq.  
Public Arbitrator, Presiding Chair

4-23-03  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Colette Manoil, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

**Dissenting Arbitrator's Signature**

\_\_\_\_\_  
Theodore R. Turner, Jr.  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

April 28, 2003  
\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

David E. Marsan, Esq.	-	Public Arbitrator, Presiding Chair
Colette Manoil, Esq.	-	Public Arbitrator
Theodore R. Turner, Jr.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

---

David E. Marsan, Esq.  
Public Arbitrator, Presiding Chair

---

Signature Date



---

Colette Manoil, Esq.  
Public Arbitrator



---

Signature Date

**Dissenting Arbitrator's Signature**

---

Theodore R. Turner, Jr.  
Non-Public Arbitrator

---

Signature Date

---

April 28, 2003  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

David E. Marsan, Esq.	-	Public Arbitrator, Presiding Chair
Colette Manoil, Esq.	-	Public Arbitrator
Theodore R. Turner, Jr.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

---

David E. Marsan, Esq.  
Public Arbitrator, Presiding Chair

---

Signature Date

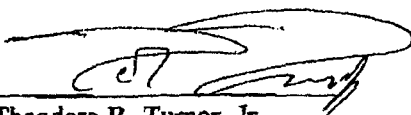
---

Colette Manoil, Esq.  
Public Arbitrator

---

Signature Date

**Dissenting Arbitrator's Signature**



---

Theodore R. Turner, Jr.  
Non-Public Arbitrator

4-23-03

---

Signature Date

April 28, 2003

---

Date of Service (For NASD Dispute Resolution use only)