

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between

**Names of Claimants**

Dewey L. Kessler, Jr. Individually,  
and as Personal Representative for the  
Estate of Robert J. Pearson  
Kathleen K. Cook  
Keith K. Kessler  
Kerri L. Kessler  
Sheila P. Comstock

Case No. 01-01136

**Names of Respondents**

Edward D. Jones & Co.  
Jonni J. Post

Hearing Site: Tampa, Florida

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**REPRESENTATION OF PARTIES**

For Claimants Dewey L. Kessler, Jr. Individually, and as Personal Representative for the Estate of Robert J. Pearson, Kathleen K. Cook, Keith K. Kessler, Kerri L. Kessler and Sheila P. Comstock, hereinafter collectively referred to as "Claimants": Thomas F. Shine, Attorney at Law, Melbourne, Florida.

For Respondents Edward D. Jones & Co. ("Jones") and Jonni J. Post ("Post"), hereinafter collectively referred to as "Respondents": Lisa A. Nielsen, Esq. and Timothy M. Huskey, Esq. of Greensfelder, Hemker & Gale, P.C., St. Louis, Missouri.

**CASE INFORMATION**

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

Claimant Dewey L. Kessler, Jr. Individually, and as Personal Representative for the Estate of Robert J. Pearson signed the Uniform Submission Agreement: February 26, 2001.

Claimant Sheila P. Comstock signed the Uniform Submission Agreement: February 28, 2001.

Claimant Kerri L. Kessler signed the Uniform Submission Agreement: February 26, 2001.

Claimant Kathleen K. Cook signed the Uniform Submission Agreement: February

26, 2001.

Claimant Keith K. Kessler signed the Uniform Submission Agreement: February 28, 2001.

Statement of Answer filed by Respondents on or about: May 10, 2001.

Respondent Jones signed the Uniform Submission Agreement: April 3, 2001.

Respondent Post signed the Uniform Submission Agreement: May 10, 2001.

### **CASE SUMMARY**

Claimants asserted the following causes of action: breach of contract; breach of fiduciary duty; self-dealing and violations of self-regulatory organization rules; and, failure to supervise. The causes of action relate to investments in Morgan Stanley 7.25% notes due 2012, New Plan Realty Trust REIT, Lucent Technologies, Inc. stock, Emerson Electric Co. stock and Glendale Federal Bank warrants in Robert J. Pearson's account.

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

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of approximately \$48,000.00; pre-judgment interest at the Florida statutory rate of ten percent; punitive damages in an amount to be determined by the discretion of the arbitration panel; pursuant to Fla. Stat. Section 57.105(1) and (5) (1999), an order from a court of competent jurisdiction requiring Respondent Jones to pay the reasonable attorneys' fees and other costs associated with prosecuting this action; and, such other relief as the Panel may find appropriate under the circumstances.

Respondents requested a dismissal of the claims and an award of Respondents' attorneys' fees and costs.

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

Claimants Kathleen K. Cook, Keith K. Kessler, Kerri L. Kessler, Sheila P. Comstock and Dewey L. Kessler, Jr., individually were not named on the account at issue, that of Robert J. Pearson. Thus, absent a written agreement between the named individuals referenced above and Respondents to arbitrate this matter, or a court order mandating arbitration, Respondents were not required to arbitrate any claims brought by these individuals. Respondents declined to respond to the allegations brought by these individuals in this forum.

The parties agreed that the Award in this matter may be executed in counterpart copies.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondents are liable, jointly and severally, and shall pay to Claimant the Estate of Robert J. Pearson compensatory damages in the sum of \$68,328.83. This sum includes pre-judgment interest calculated at the rate of 10% per annum from January 21, 1998 until March 20, 2002. The award of compensatory damages is based upon Respondents' breach of contract, breach of fiduciary duty and failure to supervise.

Respondent Jones is liable and shall pay to Claimant the Estate of Robert J. Pearson punitive damages in the sum of \$1.00. The award of punitive damages is based upon Respondent Jones' failure to supervise and reckless failure to implement and follow internal policies and procedures.

Respondent Jones is liable and shall pay to Claimant the Estate of Robert J. Pearson the sum of \$175.00 representing reimbursement of the claim filing fee previously paid by Claimants to NASD Dispute Resolution, Inc.

The issues of entitlement to, and amount, if any, of attorneys' fees and costs to be awarded are referred to a court of competent jurisdiction.

All other requests for relief not specifically addressed herein are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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	= \$175.00
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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 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 a party.

Member surcharge	= \$800.00
Pre-hearing process fee	= \$600.00
Hearing process fee	= \$1,000.00

### **Adjournment Fees**

Adjournments requested during these proceedings:

There were no adjournments granted during these proceedings.

### **Forum Fees and Assessments**

The arbitrator panel has the authority to assess 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:

Two Pre-hearing sessions with a single arbitrator x \$450.00	= \$900.00
Pre-hearing conferences: December 4, 2001	1 session
February 22, 2002	1 session
Two Pre-hearing sessions with the Panel x \$600.00	= \$1,200.00
Pre-hearing conferences: October 5, 2001	1 session
March 13, 2002	1 session
Three hearing sessions x \$600.00	= \$1,800.00
Hearing Dates: March 20, 2002	2 sessions
March 21, 2002	1 session
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Total Forum Fees	= \$3,900.00

The panel has assessed the total forum fees of \$3,900.00 to Respondent Jones.

### **Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

### **Fee Summary**

Claimants be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$175.00
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Total Fees	= \$175.00
Less payments	= \$175.00
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Balance Due NASD Dispute Resolution, Inc.	= \$0.00

Respondent Jones be and hereby is solely liable for:

Member Fees = \$2,400.00

Forum Fees = \$3,900.00

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Total Fees = \$6,300.00

Less payments = \$2,400.00

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Balance Due NASD Dispute Resolution, Inc. = \$3,900.00

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

**ARBITRATION PANEL**

*William J. Schifino, Jr* - *Public Arbitrator, Presiding Chair*

*Don Porter* - *Public Arbitrator*

*P. David Isenberg* - *Non-Public Arbitrator*

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/S/\_\_\_\_\_  
William J. Schifino, Jr.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_/S/\_\_\_\_\_  
Don Porter  
Public Arbitrator

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

\_\_\_\_\_/S/\_\_\_\_\_  
P. David Isenberg  
Non-Public Arbitrator

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

April 24, 2002  
Date of Service (For NASD-Dispute Resolution office use only)

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Signature Date

  
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Don Porter  
Public Arbitrator

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<i>Don Porter</i>	-	<i>Public Arbitrator</i>
<i>P. David Isenberg</i>	-	<i>Non-Public Arbitrator</i>

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William J. Schifino, Jr.  
Public Arbitrator, Presiding Chair

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Signature Date

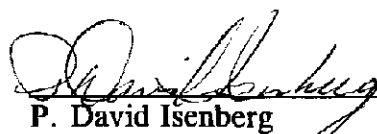
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Don Porter  
Public Arbitrator

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Signature Date

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P. David Isenberg  
Non-Public Arbitrator

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*4/11/02*  
Signature Date

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