

**Award  
NASD**

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In the Matter of the Arbitration Between:

Names of the Claimants

Sloan Horton UTMA  
Nichalaus Horton Trust  
Sloan Horton Trust

Case Number: 01-03281

Names of the Respondents

Edward D. Jones & Co.  
Daryl King

Hearing Site: Little Rock, AR

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**REPRESENTATION OF PARTIES**

For Sloan Horton UTMA ("Horton"), Nichalaus Horton Trust, and Sloan Horton Trust, hereinafter collectively referred to as "Claimants": Gary P. Barket, Esq., Little Rock, AR.

For Edward D. Jones & Co. ("Jones") and Daryl King ("King"), hereinafter collectively referred to as "Respondents": Lisa A. Nielsen, Esq., Greensfelder, Hemker & Gale, P.C., St. Louis, MO.

**CASE INFORMATION**

Statement of Claim filed on or about: June 19, 2001.

Amended Statement of Claim filed on or about: September 20, 2001.

Claimants Horton and Nichalaus Horton Trust signed the Uniform Submission Agreement: May 17, 2001.

Claimant Sloan Horton Trust signed the Uniform Submission Agreement: June 24, 2001.

Respondents' Answer to the Statement of Claim filed by Respondents on or about: September 17, 2001.

Respondents' Answer to the Amended Statement of Claim filed by Respondents on or about: October 4, 2001.

Respondent Jones signed the Uniform Submission Agreement: July 5, 2001.

Respondent King did not file an executed Uniform Submission Agreement.

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of contract; breach of fiduciary duty; violation of state and federal securities laws; violations of the Rules of Fair Practice of the NASD; unsuitable investments and unsuitable methodology; unauthorized transactions; violation of discretionary rules; and, agency and control. The causes of action relate to the purchase and sale of unspecified securities products in Claimants' accounts.

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

including: Claimants cannot establish that a fiduciary relationship exists between the parties; Claimants authorized all transactions in their accounts; and, waiver.

### **RELIEF REQUESTED**

Claimants requested compensatory damages of \$83,148.72, loss of opportunity damages of \$26,000.00, disgorgement of commissions of \$8,500.00, pre- and post-judgment interest, punitive damages, costs, and attorneys' fees.

Respondents requested dismissal of the Statement of Claim.

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

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

The parties have 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:

Respondent Jones is liable for breach of contract, lack of institutional supervision as to unsuitable transactions, violation of Rule 2310, and for unsuitable transactions and shall pay to Claimant Nicholas Horton Trust compensatory damages in the sum of \$50,954.97, inclusive of interest.

Respondent Jones is liable for breach of contract, lack of institutional supervision as to unsuitable transactions, violation of Rule 2310, and for unsuitable transactions and shall pay to Claimant Sloan Horton Trust compensatory damages in the sum of \$29,092.23, inclusive of interest.

Respondent Jones is liable for breach of contract, lack of institutional supervision as to unsuitable transactions, violation of Rule 2310, and for unsuitable transactions and shall pay to Claimant Horton compensatory damages in the sum of \$8,547.50, inclusive of interest.

All of Claimants' claims against Respondent King are dismissed, with prejudice.

Respondent Jones is liable and shall pay to Claimants attorneys' fees in the sum of \$15,000.00 pursuant to the contract between the parties.

Any and all relief not specifically addressed herein, including Claimants' request for punitive damages, is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee = \$300.00

#### **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 = \$1,500.00  
Pre-hearing process fee = \$600.00  
Hearing process fee = \$2,500.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No requests for adjournment were filed in this matter.

#### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were incurred in this matter.

#### **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 @ \$1,125.00 = \$1,125.00  
Pre-hearing conference: February 13, 2002 1 session

Two (2) Hearing sessions @ \$1,125.00 = \$2,250.00  
Hearing Date: June 6, 2002 2 sessions

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Total Forum Fees = \$3,375.00

The Panel has assessed \$1,687.50 of the forum fees jointly and severally to Claimants.  
The Panel has assessed \$1,687.50 of the forum fees to Respondent Jones.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred in this matter.

**FEE SUMMARY**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$300.00
Forum Fees	= \$1,687.50

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Total Fees	= \$1,987.50
Less payments	= \$1,425.00

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Balance Due NASD	= \$562.50
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Respondent Jones is solely liable for:

Member Fees	= \$4,600.00
Forum Fees	= \$1,687.50

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Total Fees	= \$6,287.50
Less payments	= \$4,600.00

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Balance Due NASD	= \$1,687.50
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All balances are payable to NASD and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

B. Jeffrey Pence, Esq.	-	Public Arbitrator, Presiding Chair
John K. Ulrey	-	Public Arbitrator
W. Kirby Lockhart, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/

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B. Jeffrey Pence, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

/s/

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John K. Ulrey  
Public Arbitrator

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Signature Date

/s/

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W. Kirby Lockhart, Esq.  
Non-Public Arbitrator

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Signature Date


July 15, 2002

Date of Service (For NASD office use only)

NASD Dispute Resolution  
Arbitration No. 01-0328:  
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Concurring Arbitrators' Signatures

  
B. Jeffrey Pence, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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John K. Ulrey  
Public Arbitrator

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

\_\_\_\_\_  
W. Kirby Lockhart, Esq.  
Non-Public Arbitrator

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Signature Date

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Date of Service (For NASD office use only)


NASD Dispute Resolution  
Arbitration No. 01-03281  
Award Page 5

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**Concurring Arbitrators' Signatures**

B. Jeffrey Pence, Esq.  
Public Arbitrator, Presiding Chair

Signature Date

  
John K. Ulrey  
Public Arbitrator

7/12/02  
Signature Date

W. Kirby Lockhart, Esq.  
Non-Public Arbitrator

Signature Date

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NASD Dispute Resolution

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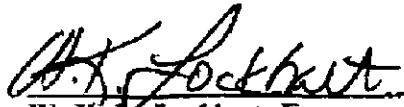
Concurring Arbitrators' Signatures

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B. Jeffrey Pence, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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John K. Ulrey  
Public Arbitrator

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

  
W. Kirby Lockhart, Esq.  
Non-Public Arbitrator

  
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Signature Date

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