

Amended Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

David Beard, Claimant v. Edward D. Jones & Co., L.P. and Lawrence S. Kerson, Respondents

Case Number: 02-06265

Hearing Site: Seattle, Washington

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

REPRESENTATION OF PARTIES

For Claimant:

G. Michael Zeno, Jr., Esq.
Zeno, Drake and Hively, P.S.
Kirkland, Washington

For Respondent Edward D. Jones & Co., L.P.:

David Harris, Esq.
Greensfelder, Hemker &
Gale, PC
St. Louis, Missouri

For Respondent Lawrence S. Kerson:

Lawrence S. Kerson
Pro Se
Kenmore, Washington

CASE INFORMATION

Statement of Claim filed: October 15, 2002

Claimant's Uniform Submission Agreement signed: October 14, 2002

Statement of Answer filed by Respondent Edward D. Jones & Co., L.P.: January 24, 2003

Respondent Edward D. Jones & Co., L.P.'s Uniform Submission Agreement signed: November 7, 2002

CASE SUMMARY

Claimant alleged violation of Washington Securities Act, violation of Missouri Securities Act, violation of Washington's Consumer Protection Act, negligence, breach of fiduciary duty, misrepresentation, fraud, breach of contract, violation of NASD Rules of Fair Practice, vicarious liability, negligent failure to supervise, and violation of federal securities laws. Claimant's allegations involved "new economy" stocks such as Broadvision, California Amplifier, Cell Genesys, Cnet, Genuity, Internet Capital Group, Lucent Technologies, Nortel Networks,

Purchasepro.com, Verticalnet, Vignette Corp., Virata Corp, Wind River Systems, and Worldcom.

Respondent Edward D. Jones & Co., L.P. denied the allegations of wrongdoing set forth in Claimant's Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested unspecified compensatory damages, unspecified punitive damages or treble damages, pre-judgment interest, forum fees, and costs, including attorney's fees.

Respondent Edward D. Jones & Co., L.P. requested dismissal of Claimant's Statement of Claim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Lawrence S. Kerson did not file with NASD Dispute Resolution a properly executed submission agreement, but he is required to submit to arbitration pursuant to NASD's Code of Arbitration Procedure, and he is bound by the determination of the Panel on all issues submitted.

Upon review of the file and the representations made on behalf of Claimant, the undersigned Panel determined that Respondent Lawrence S. Kerson was properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with NASD's Code of Arbitration Procedure.

At the hearing, Claimant's counsel informed the Panel that Respondent Lawrence S. Kerson had filed for bankruptcy protection. Based upon Claimant's representation that Respondent Kerson has filed for bankruptcy protection, the Panel ruled that this matter is stayed with respect to Respondent Kerson.

On October 22, 2004, an Award was served on the parties to this matter. On October 29, 2004, Respondent Edward D. Jones & Co., L.P. filed a Motion to Correct Award. On November 5, 2004, Claimant David Beard filed Beard's Response to Edward Jones' Post-Arbitration Motion. On November 11, 2004, Respondent Edward D. Jones & Co., L.P. filed a Reply in Support of its Motion to Correct Arbitration Award. On December 1, 2004, the Panel ordered the parties to submit to NASD a stipulation regarding Claimant's costs on or before December 20, 2004. The Panel stated in its Order that if the parties are unable to reach an agreement on the issue of Claimant's costs, then each side must submit its own declaration of Claimant's costs on or before December 20, 2004, and then the Chair on behalf of the Panel would hear oral argument regarding this issue. On December 14, 2004, Claimant submitted a response to the Panel's Order, and on December 20, 2004, Respondent Edward D. Jones & Co., L.P. submitted a response to the Panel's Order. On December 22, 2004, Respondent Edward D. Jones & Co. submitted an additional letter in support of its position, and on December 26, 2004, Claimant submitted an

additional letter in support of its position. On January 4, 2005, the Chair and the parties participated in a pre-hearing conference call during which the Chair heard oral argument regarding the parties' positions with respect to Respondent Edward D. Jones & Co., L.P.'s Motion to Correct Award. The Panel rules that it has ongoing jurisdiction to reconsider an award of fees and costs where the original award was based on erroneous factual information. Claimant had proffered various estimates concerning fees and costs since the evidentiary hearing regarding this matter took place on October 11-14, 2004. As Claimant has recently provided finalized exact amounts, the Panel has decided that it can now make a final ruling regarding fees and costs.

The parties 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, testimony, evidence presented at the hearing, and the post-hearing submissions, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent Edward D. Jones & Co., L.P. is liable to and shall pay Claimant David Beard the sum of \$85,000.00 in compensatory damages.
- 2) Respondent Edward D. Jones & Co., L.P. is liable to and shall pay Claimant David Beard the sum of \$71,345.50 in attorney's fees and \$30,412.92 in costs, including expert witness fees. The Award of attorney's fees is made pursuant to the Washington Securities Act.
- 3) Respondent Edward D. Jones & Co., L.P. is liable to and shall pay Claimant interest in the amount of 10% per annum on \$85,000.00 from October 15, 2002 until the date that payment of this Award is made in full.
- 4) As Respondent Edward D. Jones & Co., L.P. has tendered payment to Claimant on the initial Award in the amount of \$233,062.50, Claimant must now refund to Respondent Edward D. Jones & Co., L.P. \$28,241.58, which represents the difference between the costs and attorney's fees awarded to Claimant in the initial Award and the costs and attorney's fees awarded to him in this amended Award.
- 5) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 250.00
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Edward D. Jones & Co., L.P. is a party, and the following fees are assessed:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 2,200.00</u>
Total Member Fees	= \$ 4,450.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

One (1) pre-hearing conference session with the Chair @ \$450.00/session	= \$ 450.00
Pre-hearing conference: January 4, 2005 1 session	

One (1) pre-hearing conference session with the Panel @ \$1,000.00/session	= \$ 1,000.00
Pre-hearing conference: June 3, 2003 1 session	

Eight (8) hearing sessions @ \$1,000.00/session	= \$ 8,000.00
Hearings: October 11, 2004 2 sessions	
October 12, 2004 2 sessions	
October 13, 2004 2 sessions	
October 14, 2004 2 sessions	

Total Forum Fees	= \$ 9,450.00
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The Panel assessed \$9,225.00 of the forum fees to Respondent Edward D. Jones & Co., L.P.

The Panel assessed \$225.00 of the forum fees to Claimant David Beard.

Fee Summary

1. Claimant David Beard is charged with the following fees and costs:

Initial Filing Fee	= \$ 250.00
Forum Fees	= \$ 225.00
Total Fees	= \$ 475.00
Refund Paid to Claimant	= \$ 1,450.00
Less payments	= \$(1,700.00)
Balance Due NASD Dispute Resolution	= \$ 225.00

2. Respondent Edward D. Jones & Co., L.P. is charged with the following fees and costs:

Member Fees	= \$ 4,450.00
Forum Fees	= \$ 9,225.00
Total Fees	= \$ 13,675.00
Less payments	= \$(13,450.00)
Balance Due NASD Dispute Resolution	= \$ 225.00

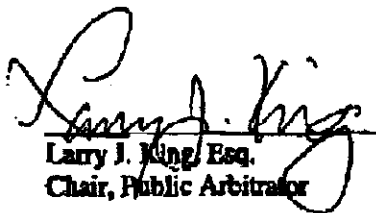
All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

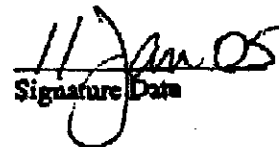
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ARBITRATION PANEL

Larry J. King, Esq.	-	Public Arbitrator, Presiding Chair
Lawrence E. Little, Esq.	-	Public Arbitrator
William W. Anderson	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Larry J. King, Esq.
Chair, Public Arbitrator


Signature Date

Lawrence E. Little, Esq.
Public Arbitrator

Signature Date

William W. Anderson
Non-Public Arbitrator

Signature Date


Date of Service

ARBITRATION PANEL

Larry J. King, Esq.	-	Public Arbitrator, Presiding Chair
Lawrence E. Little, Esq.	-	Public Arbitrator
William W. Anderson	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Larry J. King, Esq.
Chair, Public Arbitrator

Signature Date



Lawrence E. Little, Esq.
Public Arbitrator

1/10/05

Signature Date

William W. Anderson
Non-Public Arbitrator

Signature Date

4/11/05

Date of Service

ARBITRATION PANEL

<i>Larry J. King, Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Lawrence E. Little, Esq.</i>	-	<i>Public Arbitrator</i>
<i>William W. Anderson</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

Larry J. King, Esq.
Chair, Public Arbitrator

Signature Date

Lawrence E. Little, Esq.
Public Arbitrator

Signature Date



William W. Anderson
Non-Public Arbitrator

1-1-05
Signature Date

1/11/05
Date of Service