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

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In the Matter of the Arbitration Between:

Name of the Claimant

David Wemhoff

Case Number: 02-06536

Name of the Respondents

Edward D. Jones & Co.  
Andrew J. Arkfeld

Hearing Site: Omaha, Nebraska

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

**REPRESENTATION OF PARTIES**

Claimant, David Wemhoff (Claimant) was represented by Gail E. Boliver, Esq., Boliver Law Firm, Omaha, Nebraska.

Respondents Edward D. Jones & Co. and Andrew J. Arkfeld (Respondents) were represented by Wendy S. Menghini, Esq., Greensfelder, Hemker & Gale, P.C., St. Louis, Missouri.

**CASE INFORMATION**

The Statement of Claim was filed on or about October 28, 2002. The Submission Agreement of Claimant David Wemhoff was signed on or about August 29, 2002.

The Joint Statement of Answer was filed by Respondents Edward D. Jones & Co. and Andrew J. Arkfeld on or about February 28, 2003. The Submission Agreement of Respondent Edward D. Jones & Co. was signed on or about December 12, 2002. The Submission Agreement of Respondent Andrew J. Arkfeld was signed on or about January 17, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty; negligence; excessive margin; violations of Nebraska Securities Acts; violations of NASD Rules of Supervision and Suitability; supervision; misrepresentation; negligent supervision; and breach

of contract. The causes of action relate to the order execution of various stocks that included AT&T, Allstate Corporation and Conexant.

Claimant specifically stated the following:

Mr. Wemhoff was advised by Mr. Arkfeld that a balanced portfolio would be a good fit given Mr. Wemhoff's objectives. Mr. Arkfeld advised that he would recommend investing one half of Mr. Wemhoff's cash position in the stock market. It was Mr. Arkfeld's recommendation and strategy that if the stock prices dropped, Mr. Wemhoff should buy more. It was explained to Mr. Wemhoff that this was a concept called "dollar cost averaging." Further, it was Edward Jones' strategy to "buy on bad news". Later, Mr. Arkfeld was to execute that strategy as he recommended to Mr. Wemhoff that he buy AT&T and other shares as the prices fell.

Unless specifically admitted in their Answer, Respondents Edward D. Jones & Co. and Andrew J. Arkfeld denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant ratified all transactions that took place in his Edward Jones' account and therefore, is barred from recovering any alleged loss resulting from such transactions; To the extent that Claimant has suffered any damages, they are the product of the negligent conduct of Claimant or others such that some or all of Claimant's recovery is barred by those contributory or comparative negligent acts; Claimant failed to mitigate his alleged damages and therefore, is barred from recovering any damages to the extent that such damages could have been prevented had Claimant fulfilled his duty to mitigate; The Statement of Claim is barred by the doctrine of waiver; The Statement of Claim is barred by the doctrine of estoppel; The Statement of Claim is barred by the statute of limitations; Claimant was on notice of, understood and assumed the risks associated with the investment transactions he made in his Edward Jones account and therefore, is barred from recovering any alleged losses resulting from such transactions; Claimant authorized and instructed Respondents to enter into all the transactions at issue and therefore, claims based on such transactions should be dismissed; At all times relevant herein, Edward Jones had adequate supervisory mechanisms and safeguards in place and, at all times relevant herein, Edward Jones acted in accordance with these procedures; and to the extent Claimant his claims on the NASD and/or NYSE rules, such rules do not provide for a private cause of action in favor of Claimant and therefore, such claims should be dismissed.

#### **RELIEF REQUESTED**

Claimant David Wemhoff requested:

Compensatory Damages	\$50,000.00
Attorneys' Fees	\$unspecified
Other Costs	\$unspecified

Respondents Edward D. Jones & Co. and Andrew J. Arkfeld requested:

Non-Monetary Relief: Respondents requested that the Panel dismiss all the claims.

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

On November 11, 2003, the Claimant filed a Request for Arbitrator Recusal. The Respondents filed a response on November 17, 2003. On December 1, 2003, Arbitrator, Eric Williams, Esq.

withdrew from the case and Thomas C. Lauritsen, Esq. replaced him on the case.

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "NASD").

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Edward D. Jones & Co. and Andrew J. Arkfeld, are jointly and severally liable for and shall pay to Claimant David Wemhoff the sum of \$24,907.48 as compensatory damages.
2. Respondents, Edward D. Jones & Co. and Andrew J. Arkfeld, are jointly and severally liable for and shall pay to Claimant David Wemhoff the sum of \$4,000.00 as attorney's fees pursuant to Nebraska Rev. Stat. § 8-1118.
3. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

### **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 = \$175.00

#### **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. Accordingly, Edward D. Jones & Co. is a party.

Member surcharge	= \$ 875.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 1,000.00

#### **Forum Fees and Assessments**

The Arbitrator has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$450.00 = \$ 450.00  
Pre-hearing conference: June 3, 2003 1 session

Six (6) Hearing sessions @ \$450.00 = \$ 2,700.00

Hearing Date(s): December 10, 2003 2 sessions

December 11, 2003 2 sessions

December 12, 2003 2 sessions

Total Forum Fees = \$ 3,150.00

The Arbitrator has assessed \$3,150.00 of the forum fees jointly and severally to Edward D. Jones & Co. and Andy Arkfeld.

### Fee Summary

Claimant, David Wemhoff, is solely liable for:

Initial Filing Fee = \$ 175.00

Total Fees = \$ 175.00

Less payments = \$ 625.00

Refund due to the Claimant = \$ 450.00

Respondent, Edward D. Jones & Co., is solely liable for:

Member Fees = \$ 2,625.00

Total Fees = \$ 2,625.00

Less payments = \$ 2,625.00

Balance Due NASD Dispute Resolution = \$ 000.00

Respondent, Edward D. Jones & Co., and Andy Arkfeld are jointly and severally liable for:

Forum Fees = \$ 3,150.00

Total Fees = \$ 3,150.00

Less payments = \$ 225.00

Balance Due NASD Dispute Resolution = \$ 2,925.00

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

### ARBITRATION PANEL

Thomas C. Lauritsen, Esq.

Public Arbitrator, Presiding Chairperson

### Concurring Arbitrators' Signature

/s/ Thomas C. Lauritsen

Thomas C. Lauritsen, Esq

Public Arbitrator, Presiding Chairperson

12/23/03

Signature Date

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**Fee Summary**

**Claimant, David Wemhoff, is solely liable for:**

<b>Initial Filing Fee</b>	<b>= \$ 175.00</b>
<b>Total Fees</b>	<b>= \$ 175.00</b>
<b>Less payments</b>	<b>= \$ 625.00</b>
<b>Refund due to the Claimant</b>	<b>= \$ 450.00</b>

**Respondent, Edward D. Jones & Co., is solely liable for:**

<b>Member Fees</b>	<b>= \$ 2,625.00</b>
<b>Total Fees</b>	<b>= \$ 2,625.00</b>
<b>Less payments</b>	<b>= \$ 2,625.00</b>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 000.00</b>

**Respondent, Edward D. Jones & Co., and Andy Arkfeld are jointly and severally liable for:**

<b>Forum Fees</b>	<b>= \$ 3,150.00</b>
<b>Total Fees</b>	<b>= \$ 3,150.00</b>
<b>Less payments</b>	<b>= \$ 225.00</b>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 2,925.00</b>

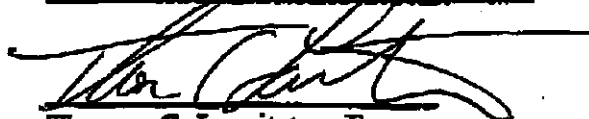
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**ARBITRATION PANEL**

**Thomas C. Lauritsen, Esq.**

**Public Arbitrator, Presiding Chairperson**

**Concurring Arbitrators' Signature**



**Thomas C. Lauritsen, Esq.**  
**Public Arbitrator, Presiding Chairperson**

**12-23-03**  
**Signature Date**