

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimant

William Frederick Clarke

v.

02-06669
Denver, Colorado

Respondents

Edward D. Jones & Co., LP d/b/a Edward Jones,
Richard L. Warner, Kenneth G. Geske,
Margaret H. Noreus, James A. Kubiak,
Mindy R. Brackelsberg, Stephanie L. Powers,
and James M. Caruso

Nature of Case: Customer v. Member and Associated Persons

REPRESENTATION OF PARTIES

William Frederick Clarke ("**Claimant**") appeared pro se.

Edward D. Jones & Co., LP d/b/a Edward Jones ("**Edward Jones**"), Richard L. Warner ("**Warner**"), Kenneth G. Geske ("**Geske**"), Margaret H. Noreus ("**Noreus**"), James A. Kubiak ("**Kubiak**"), Stephanie L. Powers ("**Powers**") and James M. Caruso ("**Caruso**"), hereinafter referred to as "**Respondents**", were represented by Bradford B. Lear, Esq., of Greensfelder, Hemker & Gale, P.C., St. Louis, Missouri.

Mindy R. Brackelsberg ("**Brackelsberg**") appeared pro se.

CASE INFORMATION

The Statement of Claim was filed on or about November 5, 2002. Submission Agreement of Claimant William Frederick Clarke was signed on or about November 1, 2002.

A Joint Statement of Answer was filed by Respondents Edward D. Jones & Co., LP d/b/a Edward Jones Richard L. Warner, Kenneth G. Geske, Margaret H. Noreus, James A. Kubiak, Stephanie L. Powers, and James M. Caruso on or about January 7, 2003. Submission Agreement of Respondent Edward D. Jones & Co., LP d/b/a Edward Jones was signed on or about December 12, 2002. Submission Agreement of Respondent Richard L. Warner was signed on or about January 7, 2003. Submission Agreement of Respondent Kenneth G. Geske was signed on or about December 20, 2002. Submission Agreement of Respondent Margaret H. Noreus was signed on or about January 6, 2003. Submission Agreement of Respondent James A. Kubiak was signed on or about January 6,

2003. Submission Agreement of Respondent Stephanie L. Powers was signed on or about January 6,
2003. Submission Agreement of Respondent James M. Caruso was signed on or about January 6,
2003. No Answer or Submission Agreement was received from Respondent Mindy R. Brackelsberg.

CASE SUMMARY

Claimant asserted the following causes of action: misrepresentation, breach of fiduciary duty, breach of duty of care, breach of contract, negligence, and failure to supervise. The causes of action related to Claimant's allegation that he suffered a financial loss in one of his accounts due to Respondents gross malfeasance and their failure to fulfill their fiduciary duties. Claimant alleged that Respondents' failure to sell several telecommunication stocks or provide him the cost basis of his various stocks caused the financial loss in the account at issue.

Respondents denied the allegations set forth in the Statement of Claim and asserted defenses including the following; the Statement of Claim failed to state a claim upon which relief can be granted; Claimant's claims are barred by the applicable statute of limitations; Claimant was on notice of, and understood and assumed all of the risks associated with his investment transactions and therefore, is barred from recovering any alleged losses resulting from such transactions; Claimant never authorized or instructed Respondents to sell the stocks at issue and therefore, claims based in the failure to sell such stocks should be dismissed; and to the extent that Claimant has suffered any damages, they are the product of negligent conduct of Claimant such that some or all of his recovery is barred by contributory or comparative negligent acts.

RELIEF REQUESTED

Claimant requested an award of approximately \$20,000 in compensatory damages, interest, attorney's fees, costs and any other relief that the Panel deemed just and proper. At the Arbitration hearing, September 24, 2003, Claimant offered an exhibit, requesting more specific damages, in an amount of \$26,593.62.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs, attorneys' fees and that each individual Respondents record be expunged regarding this matter.

OTHER ISSUES CONSIDERED & DECIDED

On or about September 18, 2003, Claimant dismissed Respondent Mindy R. Brackelsberg with prejudice from this arbitration claim.

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 originals remain on file with NASD Dispute Resolution ("NASD").

AWARD

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

1. Claimant's claims, each and all, are hereby denied and dismissed in their entirety;
2. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied and dismissed with prejudice; and
3. 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 the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 125

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, the member firm is Edward D. Jones & Co., LP d/b/a Edward Jones.

Member surcharge = \$ 425

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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 x \$ 450 = \$ 450

Pre-hearing conference: 04/23/2003 1 session

Six (6) Hearing sessions x \$ 450 = \$ 2,700

Hearing Dates: 09/24/2003 2 sessions
09/25/2003 2 sessions
09/26/2003 2 sessions

Total Forum Fees = \$ 3,150

The Arbitration Panel has assessed \$ 1,575 of the forum fees to William Frederick Clarke.

The Arbitration Panel has assessed \$ 1,575 of the forum fees jointly and severally to Edward D. Jones & Co., LP d/b/a Edward Jones, Richard L. Warner, Kenneth G. Geske, and Margaret H. Noreus.

Fee Summary

Claimant, William Frederick Clarke, is liable for:

Initial Filing Fee	= \$ 125
<u>Forum Fees</u>	<u>= \$ 1,575</u>
Total Fees	= \$ 1,700
<u>Less payments</u>	<u>= \$ 575</u>
Balance Due NASD Dispute Resolution	= \$ 1,125

Respondent, Edward D. Jones & Co., LP d/b/a Edward Jones, is liable for:

<u>Member Fees</u>	<u>= \$ 425</u>
Total Fees	= \$ 425
<u>Less payments</u>	<u>= \$ 425</u>
Balance Due NASD Dispute Resolution	= \$ 0

Respondents, Edward D. Jones & Co., LP d/b/a Edward Jones, Richard L. Warner, Kenneth G. Geske, and Margaret H. Noreus, are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$ 1,575</u>
Total Fees	= \$ 1,575
<u>Less payments</u>	<u>= \$ 0</u>
Balance Due NASD Dispute Resolution	= \$ 1,575

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All balances are due to NASD Dispute Resolution pursuant to Rule 10330(g) of the Code of Arbitration

ARBITRATION PANEL

Mary C. Davis - Public Arbitrator, Presiding Chair

Arbitrator's Signature:

Mary C. Davis
Public Arbitrator, Presiding Chair

Signature Date

11/2/03
Date of Service (NASD use only)

All balances are due to NASD Dispute Resolution pursuant to Rule 10330(g) of the Code of Arbitration

ARBITRATION PANEL

Mary C. Davis - Public Arbitrator, Presiding Chair

Arbitrator's Signature:

Mary C. Davis

Mary C. Davis
Public Arbitrator, Presiding Chair

11/3/03

Signature Date

11/3/03

Date of Service (NASD use only)