

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Barbra J. Wright

and

03-02658
Phoenix, Arizona

Name of Respondents

Edward D. Jones & Co.
Reed C. Lowden, Jr.

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

REPRESENTATION OF PARTIES

Barbra J. Wright ("**Claimant**") was represented by Jeffrey M. Jones, Esq., Old Sacramento, California.

Edward D. Jones & Co. ("**Respondent Edward D. Jones & Co.**") and Reed C. Lowden, Jr. ("**Respondent Lowden**") (collectively as "**Respondents**") were represented by Sandra B. Gallini, Esq., Greensfelder, Hemker & Gale, PC, St. Louis, Missouri.

CASE INFORMATION

The Statement of Claim was filed on or about April 11, 2003. Claimant's Opposition to Respondents' Motion to Strike was filed on or about September 24, 2003. Claimant's Opposition to Respondents' Motion to Dismiss was filed on or about November 4, 2004. Submission Agreement of Claimant Barbra J. Wright was signed on April 11, 2003.

Respondents' Answer and Affirmative Defenses to the Statement of Claim was filed by Edward D. Jones & Co. and Reed C. Lowden, Jr. on or about August 1, 2003. Respondents' Edward D. Jones & Co. and Reed C. Lowden, Jr. filed a Motion to Strike on or about August 1, 2003. Respondents' Reply Brief in Support of their Motion to Strike was filed on or about December 1, 2003. Respondents' Second Motion for Sanctions (Dismissal) was filed on or about September 28, 2004. Reply of Respondents' to Claimant's Response to the Second Motion for Sanctions was filed on or about November 5, 2004. Submission Agreement of Respondent Edward D. Jones & Co. was signed on or about May 16, 2003 by Cynthia A. Doria. Submission Agreement of Respondent Reed C. Lowden, Jr. was signed on or about June 9, 2003.

CASE SUMMARY

Claimant alleged that:

On February 16, 2000, Mr. Lowden liquidated the securities in Ms. Wright's IRA account *without her authorization or knowledge*. [emphasis provided] On February 18, 2000, Mr. Lowden transferred out practically the entire balance of Mrs. Wright's IRA account, \$56,319.55 in cash, again *without her authorization or knowledge*. [emphasis provided] ... The funds were transferred to a joint account at Edward D. Jones & Co., L.P. in the name of Mrs. Wright and her now deceased husband, John Wright, account number.... Four days later, on February 23, 2000, Mr. Lowden, at the request of his good friend John Wright and *again without the knowledge or consent of Mrs. Wright*, [emphasis provided] wire transferred these funds, plus other joint funds, in the total amount of \$78,370.16, to an account at Banc One, Account number.... Mrs. Wright never saw any of these funds again. Mr. Lowden never apprized Ms. Wright of any these transactions. In addition, Ms. Wright unnecessarily incurred taxes, penalties and interest because of this premature withdraw from her IRA.

Upon learning of the liquidation and transfer of her IRA account, Ms. Wright immediately contacted Edward D. Jones. She was informed by Mr. Lowden's assistant, Pam, that Mr. Lowden had liquidated and transferred her IRA account at the verbal request of her husband, John Wright. These actions were confirmed by her late husband.

Ms. Wright promptly wrote to Edward D. Jones complaining of this activity on May 9, 2000, less than three months after the unauthorized transactions. ... Mr. Lowden claimed to have spoken to Ms. Wright prior to the transfer and claimed he had received her authorization for the liquidation and transfer. Edward D. Jones summarily denied her claim by letter dated June 23, 2000.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated:

Claimant's allegation of unauthorized trading in her individual retirement account ("IRA") are unfounded. The liquidation and transfer of the investments in Claimant's IRA were the culmination of a series of conversations between Claimant, her husband and Mr. Lowden about liquidating all of the couple's investments with Respondents in order to open a new restaurant. During those conversations, Mr. Lowden explained the consequences of taking a premature distribution from an IRA. Despite these warnings, however, Claimant and her husband decided to go forward with their plans. Thus, with Claimant's clear authorization and consent, Mr. Lowden executed the liquidation and transfer of investments within Claimant's IRA. Any loss claimed to be suffered by Claimant is due to the business and

personal decisions she made with her husband. Respondents are not responsible for those losses.

RELIEF REQUESTED

Claimant requested an award in the amount of not less than \$56,319.55 in out of pocket damages, plus rescissionary damages, compensatory damages, consequential damages, general damages, disgorgement and restitution, punitive damages, costs and disbursements, and attorneys' fees.

Respondents request that Claimant's action be dismissed in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

By letter dated November 8, 2004, the parties were advised as follows:

After considering the submissions of the parties, the Arbitration Panel has decided Respondents' Motion for Dismissal is denied.

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 the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Edward D. Jones & Co. and Reed C. Lowden, Jr. shall be and hereby are jointly and severally liable for and shall pay to Claimant Barbra J. Wright the sum of \$69,489.55 (**Sixty-Nine Thousand Four Hundred Eighty-Nine Dollars and Fifty-Five Cents**) as compensatory damages.
2. Claimant Barbra J. Wright shall be and hereby is liable for and shall pay to Respondents' Edward D. Jones & Co. and Reed C. Lowden, Jr. the sum of \$746.00 (**Seven Hundred Forty-Six and No Cents**) as sanctions for failure to comply with the Panel's Order to Produce.
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, not specifically awarded or otherwise provided for above.

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 (waived by NASD) = \$225.00

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 Edward D. Jones & Co.

Member surcharge	\$	1,100.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	1,700.00
Total Member Fees	\$	<u>3,550.00</u>

Adjournment Fees

Adjournments requested during these proceedings:

May 25-27, 2004, adjournment requested by Claimant (waived by Arbitration Panel) = \$750.00

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(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

3	Pre-hearing session(s) with Panel	x	750.00	\$	2,250.00
	December 4, 2003	1	session		
	April 16, 2004	1	session		
	June 3, 2004	1	session		
3	Hearing sessions	x	750.00	\$	2,250.00
	November 16, 2004	2	sessions		
	November 17, 2004	1	sessions		
	Total Forum Fees			\$	4,500.00

The Arbitration Panel has assessed \$2,250.00 of the forum fees to Barbra J. Wright.
The Arbitration Panel has assessed \$2,250.00 of the forum fees jointly and severally to Edward D. Jones & Co. and Reed C. Lowden, Jr.

Fee Summary

Claimant, Barbra J. Wright, shall be and hereby is liable for:

<u>Forum Fees</u>	= \$	2,250.00
Total Fees	= \$	2,250.00
<u>Less payments</u>	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	2,250.00

Respondent, Edward D. Jones & Co., shall be and hereby is liable for:

Member Fees	= \$	3,550.00
Total Fees	= \$	3,550.00
<u>Less payments</u>	= \$	-3,550.00
Balance Due NASD Dispute Resolution	= \$	0.00

Respondents, Edward D. Jones & Co. and Reed C. Lowden, Jr. shall be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$	2,250.00
Total Fees	= \$	2,250.00
<u>Less payments</u>	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	2,250.00

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Henry L. Dahl, Jr. - Public Arbitrator, Presiding Chair
Darrell P. Ladmirault - Public Arbitrator
Douglas E. McArthur - Non-Public Arbitrator

Concurring Arbitrators:

Henry L. Dahl, Jr.
Public Arbitrator, Presiding Chair

Nov. 19, 2004
Signature Date

Darrell P. Ladmirault
Public Arbitrator

Signature Date

Douglas E. McArthur
Non-Public Arbitrator

Signature Date

11/23/04
Date of Service (For NASD office use only)


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Public Arbitrator

11-19-04
Signature Date

Douglas E. McArthur
Non-Public Arbitrator

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Non-Public Arbitrator

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