

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

J. Brent Packard, Claimant v. Edward D. Jones & Co., L.P., John B. Packard, Jr., Rosalie J. Smith, Karrie S. Michael, and Timothy M. Kelly, Respondents

Edward D. Jones & Co., L.P., Cross-Claimant v. John B. Packard, Jr., Cross-Respondent

Case Number: 03-04335

Hearing Site: Salt Lake City, Utah

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

REPRESENTATION OF PARTIES

For Claimant:

Justin D. Heideman, Esq.
Ascione, Heideman & McKay
Provo, Utah

For Respondent/Cross-Respondent
John B. Packard, Jr.:

Anthony V. Rippa, Esq.
Abbott & Walker
Provo, Utah

For Respondent/Cross-Claimant
Edward D. Jones & Co., L.P. and Respondents
Karrie S. Michael and Timothy M. Kelly:

Lawrence R. Goldberg, Esq.
Goldberg Katz LLC
St. Louis, Missouri

For Respondent Rosalie J. Smith:

Mark O. Morris, Esq.
Snell & Wilmer
Salt Lake City, Utah

CASE INFORMATION

Statement of Claim filed: June 12, 2003

Amended Statement of Claim filed: February 9, 2004

Claimant's Uniform Submission Agreement signed: June 11, 2003

Statement of Answer and Cross-Claim filed by Respondent/Cross-Claimant Edward D. Jones & Co., L.P.: September 4, 2003

Respondent/Cross-Claimant Edward D. Jones & Co., L.P.'s Uniform Submission Agreement signed: July 18, 2003

Joint Answer to the Amended Statement of Claim by Respondent/Cross-Claimant Edward D. Jones & Co., L.P., and Respondents Karrie S. Michael, and Timothy M. Kelly filed: March 17, 2004

Respondent Karrie S. Michael's Uniform Submission Agreement signed: March 26, 2004

Respondent Timothy M. Kelley's Uniform Submission Agreement signed: March 30, 2004

CASE SUMMARY

In his Initial and Amended Statements of Claim, Claimant alleged violation of §10(b) and Rule 10b-5 and 10(b)5-(a) of the Exchange Act, violation of §62-22-4(a) of the Utah Code Ann., violation of the Utah Uniform Securities Act § 62-1-1(2), failure to supervise, breach of fiduciary duty, omission of facts, unauthorized trading, fraudulent or negligent misrepresentation, fraudulent concealment, breach of fiduciary duty, theft by deception, wrongful appropriation, forgery, conversion, and violation of NASD and NYSE Rules involving investments in unspecified contracts in commodities.

In his Amended Statement of Claim, Claimant named Timothy M. Kelly and Karrie S. Michael as Respondents and reasserted the causes of action as alleged in the Initial Statement of Claim against all named Respondents.

Respondent/Cross-Claimant Edward D. Jones & Co. L.P., and Respondents Timothy M. Kelly and Karrie S. Michael denied the allegations of wrongdoing as set forth in the Initial and Amended Statement of Claim.

In the Cross-Claim, Respondent/Cross-Respondent Edward D. Jones & Co. L.P. alleged that Cross-Respondent John B. Packard Jr. is solely responsible for the losses, if any, sustained by Claimant.

Respondent/Cross-Respondent John B. Packard, Jr. did not file a Statement of Answer to the Cross-Claim.

RELIEF REQUESTED

In the Initial and Amended Statements of Claim, Claimant requested treble compensatory damages on the sum of \$2, 000,000.00 for a total of \$6,000,000.00, pre-judgment interest of 12% per annum, attorney's fees in an amount equal to 40% of the award pursuant to Utah Securities Act § 61-1-22(1)(a) and the client agreement, post judgment interest at a rate of 12 % per annum until the award is paid, unspecified punitive damages, and costs.

Respondent/Cross-Claimant Edward D. Jones & Co., L.P., and Respondents Timothy M. Kelly and Karrie S. Michael requested dismissal of the Claimant's Initial and Amended Statements of Claim in their entirety.

In its Cross-Claim, Respondent/Cross-Claimant Edward D. Jones & Co., L.P. requested indemnity from Respondent/Cross-Respondent John B. Packard, Jr. for any damages awarded against Edward D. Jones & Co., L.P.

OTHER ISSUES CONSIDERED AND DECIDED

On November 26, 2003, Respondent Rosalie J. Smith, moved the Panel for an Order dismissing the Statement of Claim against her. On December 19, 2003, a telephonic pre-hearing conference was held, all the parties and the Panel participated in the conference. After due deliberation in an executive session, the Panel granted the motion. Respondent Rosalie Smith was dismissed from the arbitration without prejudice.

On December 19, 2003, the Panel ruled that pursuant to NASD Rule 10314(b)(2)(C), Respondent/Cross-Respondent John B. Packard, Jr. is barred from presenting any arguments or defenses at the hearing.

Respondent/Cross-Respondent John B. Packard, Jr. did not file with the NASD Dispute Resolution a properly executed submission agreement but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

Respondent Rosalie J. Smith did not file with the NASD Dispute Resolution a properly executed submission agreement.

At the hearing, Claimant dismissed all claims against Respondents Timothy M. Kelly and Karrie S. Michael.

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

- 1) Respondent/Cross-Respondent John B. Packard, Jr. is liable to and shall pay to Claimant treble compensatory damages in the sum of \$6,000,000.00.
- 2) Respondent/Cross-Respondent John B. Packard, Jr. is liable to and shall pay to Claimant attorney's fees in an amount equal to 40% of the amount awarded as compensatory damages. Accordingly, Respondent/Cross-Respondent John B. Packard, Jr. is liable to and shall pay to Claimant attorney's fees in the sum of \$2,400,000.00 million pursuant to the Utah Securities Act.
- 3) The Panel found that the actions of Respondent/Cross-Claimant Edward D. Jones & Co., L.P. after September 19, 2001 constituted a breach of fiduciary duty. The Panel also found that after September 19, 2001, Respondent/Cross-Claimant Edward D. Jones & Co., L.P. was negligent in its failure to supervise Respondent/Cross-Respondent John B. Packard, Jr., and is therefore liable under the theory of Respondent Superior. Accordingly, Respondent/Cross-Respondent Edward D. Jones & Co., L.P. is liable to and shall pay to Claimant compensatory damages in the sum of \$74,338.10.
- 4) Respondent/Cross-Claimant Edward D. Jones & Co., L.P. is liable to and shall pay to Claimant interest at a rate of 3.28 percent per annum (pursuant to the rate set by the Utah State Court) on the sum of \$74,338.10, from September 19, 2001 until the Award is paid in full.
- 5) Respondent/Cross-Claimant Edward D. Jones & Co., L.P.'s Cross-Claim against Respondent/Cross-Respondent John B. Packard, Jr. is denied in its entirety.
- 6) Except as noted above, the parties shall bear their respective costs, including attorney's fees.
- 7) 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	= \$ 600.00
Respondent Edward D. Jones & Co., L.P.'s Cross-Claim filing fee	= \$2,500.00

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	= \$3,350.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	= \$ 5,500.00
Total Member Fees	= \$ 9,600.00

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 Panel. The following fees are assessed:

(3) Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$ 3,600.00
Pre-hearing conferences:	
November 11, 2003	1 session
December 19, 2003	1 session
April 16, 2004	1 session

(10) Hearing sessions @ \$1,200.00/session	= \$12,000.00
Hearings:	
April 26, 2004	2 sessions
April 27, 2004	2 sessions
April 28, 2004	2 sessions
April 29, 2004	2 sessions
April 30, 2004	2 sessions

Total Forum Fees	= \$15,600.00
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The Panel assessed \$15,600.00 of the forum fees to Respondent/Cross-Claimant Edward D. Jones & Co., L.P.

Fee Summary

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

Initial Filing Fee	= \$ 600.00
<u>Less payments</u>	<u>= \$(1,800.00)</u>
Refund Due Claimant	= \$(1,200.00)

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

Member Fees	= \$ 9,600.00
Filing Fees	= \$ 2,500.00
<u>Forum Fees</u>	<u>= \$15,600.00</u>
Total Fees	= \$ 27,700.00
<u>Less payments</u>	<u>= \$(13,300.00)</u>
Balance Due NASD Dispute Resolution	\$ 14,400.00

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.

ARBITRATION PANEL

Bruce G. Cohen, J.D.	-	Non-Public Arbitrator, Presiding Chair
James Cannon Lewis, Esq.	-	Public Arbitrator
John G. Manley, Esq.	-	Public Arbitrator

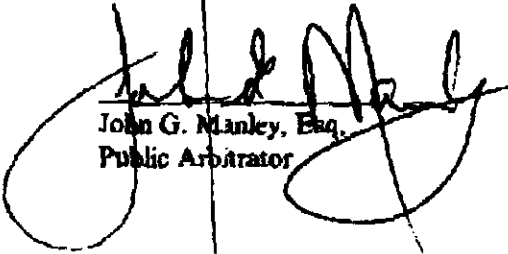
Concurring Arbitrators' Signatures

Bruce G. Cohen, J.D.
Chair, Non-Public Arbitrator

Signature Date

James Cannon Lewis, Esq.
Public Arbitrator

Signature Date



John G. Manley, Esq.
Public Arbitrator

5/18/04

Signature Date

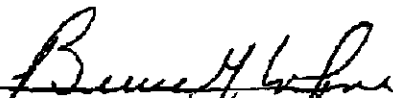
5/19/04

Date of Service

ARBITRATION PANEL

Bruce G. Colne, J.D.	-	Non-Public Arbitrator, Presiding Chair
James Cannon Lewis, Esq.	-	Public Arbitrator
John G. Manley, Esq.	-	Public Arbitrator

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Bruce G. Colne, J.D.
Chair, Non-Public Arbitrator

05-18-2004
Signature Date

James Cannon Lewis, Esq.
Public Arbitrator

Signature Date

John G. Manley, Esq.
Public Arbitrator

Signature Date

5/19/04
Date of Service

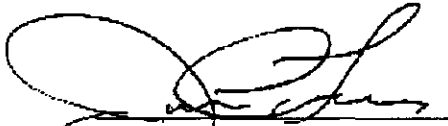
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Chair, Non-Public Arbitrator

Signature Date



James Cannon Lewis, Esq.
Public Arbitrator

5-19-04

Signature Date

John G. Manley, Esq.
Public Arbitrator

Signature Date

5/19/04

Date of Service