

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

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In the Matter of the Arbitration Between:

Gail E. Jarand Galante, Individually, and as Executrix of the Estate of Leon Nicholas Jarand, and as Trustee for the Owen Jarand Testamentary Trust, and the Eric Jarand Testamentary Trust (Claimants) v. Edward D. Jones & Co. and Thomas K. Dalton (Respondents)

Case Number: 03-04541

Hearing Site: Buffalo, New York

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

**REPRESENTATION OF PARTIES**

Claimant Gail E. Jarand Galante, IRA ("Galante"), and as Executrix of the Estate of Leon Nicholas Jarand ("Estate"), and as Trustee for the Owen Jarand Testamentary Trust ("Owen Jarand Trust"), and the Eric Jarand Testamentary Trust ("Eric Jarand Trust"), hereinafter collectively referred to as "Claimants": Michael P. McClaren, Esq., Webster Szanyi, LLP, Buffalo, NY.

Respondents Edward D. Jones & Co. ("Edward Jones") and Thomas K. Dalton ("Dalton") hereinafter collectively referred to as "Respondents": David M. Harris, Esq., Greensfelder, Hemker & Gale, P.C., St. Louis, MO.

**CASE INFORMATION**

Statement of Claim filed on or about: June 18, 2003.

Claimants signed the Uniform Submission Agreement: June 13, 2003.

Joint Statement of Answer filed by Respondents on or about: October 6, 2003.

Respondent Edward Jones signed the Uniform Submission Agreement: July 2, 2003.

Respondent Dalton signed the Uniform Submission Agreement: July 16, 2003.

**CASE SUMMARY**

Claimants asserted the following causes of action: violation of the New York State Consumer Fraud Statute (General Business Law § 349); breach of fiduciary duty; intentional misrepresentation; negligent misrepresentation; breach of contract; unsuitable transactions; unsuitable recommendations; failure to follow instructions; and failure to supervise. The causes of action relate to common stock, mutual funds, corporate bonds, and municipal bonds.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$300,000.00; consequential damages; disgorgement and restitution; rescission; lost opportunity; forum fees and costs; attorneys' fees and costs; pre- and post-judgment interest at the legal rate; punitive damages; a disciplinary referral to the NASD; and such other and further relief as the Panel may deem just and proper.

Respondent requested that the claim be denied in its entirety, all costs be assessed against the Claimants, and that this matter be expunged from the record of Respondent Dalton.

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

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.

### **AWARD**

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

1. Claimants' claims are denied in their entirety.
2. Respondent Dalton's request for expungement of his CRD record is denied.
3. Any and all relief not specifically addressed herein is denied.

### **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 = \$300.00

#### **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	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

**Forum Fees and Assessments**

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

One (1) Pre-hearing session with Panel @ \$1,125.00	= \$1,125.00
Pre-hearing conference: May 5, 2004 1 session	
Four (4) Hearing sessions @ \$1,125.00	= \$4,500.00
Hearing Dates: November 9, 2004 2 sessions	
November 10, 2004 2 sessions	
Total Forum Fees	= \$5,625.00

The Panel has assessed \$5,625.00 of the forum fees solely against Respondent Edward Jones.

**Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Total Fees	= \$ 300.00
<u>Less payments</u>	= \$ 1,425.00
Refund Due Claimant	= \$ 1,125.00

2. Respondent Edward Jones is solely liable for:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 5,625.00
Total Fees	= \$10,825.00
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 5,625.00

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

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**ARBITRATION PANEL**

Karin A. Schlosser, Esq.	-	Public Arbitrator, Presiding Chairperson
Philip Marshall, Esq.	-	Public Arbitrator
AnnDrea M. Benson, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Karin A. Schlosser, Esq.  
Public Arbitrator, Presiding Chairperson

11/22/04  
Signature Date

\_\_\_\_\_  
Philip Marshall, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

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AnnDrea M. Benson, Esq.  
Non-Public Arbitrator

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Signature Date

November 24, 2004  
Date of Service (For NASD Dispute Resolution use only)

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Public Arbitrator, Presiding Chairperson

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Signature Date

  
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Philip Marshall, Esq.  
Public Arbitrator

  
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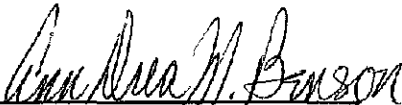
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