

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimants

Bonnie Henderson, John M. Kelly and Bonnie Henderson and Leslie  
M. Frith Custodial Acct., Bonnie Henderson, Custodian

and

03-05107  
Dallas, Texas

Name of Respondents

Edward D. Jones & Co.  
Brent A. Gough

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

**REPRESENTATION OF PARTIES**

Bonnie Henderson, John M. Kelly and Bonnie Henderson and Leslie M. Frith Custodial Acct., Bonnie Henderson, Custodian ("**Claimants**") were represented by N. Henry Simpson, Esq. , Simpson, Woolley, McConachie, L.L.P., Dallas, Texas.

Edward D. Jones & Co. ("**Respondent Edward Jones**") and Brent A. Gough ("**Respondent Gough**") hereinafter referred to as ("**Respondents**") were] represented by Jonathan A. Pace, Esq., Pace & Rickey, L.L.P., Dallas, Texas.

**CASE INFORMATION**

The Statement of Claim was filed on or about July 14, 2003. Submission Agreement of Claimant Bonnie Henderson was signed on July 9, 2003. Submission Agreement of Claimants John M. Kelly and Bonnie Henderson was signed on July 24, 2003. Submission Agreement of Claimant Leslie M. Frith Custodial Acct., Bonnie Henderson, Custodian was signed on July 31, 2003.

Edward D. Jones & Co.'s and Brent A. Gough's Response to Statement of Claim was filed on or about October 4, 2003. Submission Agreement of Respondent Edward D. Jones & Co. was signed on August 11, 2003 by Cynthia A. Doria. Submission Agreement of Respondent Brent A. Gough was signed on September 10, 2003.

### CASE SUMMARY

In Claimant's Pre-Hearing Brief and Motion to Take Notice of Certain Laws of the State of Missouri, Claimants summarized the claims asserted in this matter as follows:

Mrs. Henderson has brought claims against Respondents for committing fraudulent and manipulative acts while establishing, holding, and managing her accounts. Claims specific to respondent Gough are that he recommended wholly unsuitable investments for Mrs. Henderson's retirement account, he falsely guaranteed the results of investing in the manner which he recommended, and he misrepresented the quality and nature of the investments. Claims specific to Respondent Jones are that he failed to adequately supervise Respondent Gough in his establishing and maintaining of Mrs. Henderson's Jones' accounts.

More specifically, Respondents violated Article III, Section 2 and Rule 2310 (Suitability) of the NASD Rules of Fair Practice ("NASD Rules") and Rule 723 (suitability) of the New York Stock Exchange Rules by trading in unsuitable securities in Mrs. Henderson's account. Respondent Jones specifically violated Rule 27 (Supervision) of the NASD Rules, NASD Art. III and Rule 405 ("know your customer") of the NYSE both of which require Respondent Jones to diligently supervise Respondent Gough in the establishment of the account as well as the handling of the account. Further, Respondents violated Rules 1 (Principles of Trade) and 19 (Use of Fraudulent Devices) of the NASD Rules by fraudulently misrepresenting to Mrs. Henderson the nature of her investments. Finally, Respondents violated the following provisions by misrepresenting the nature and qualities of the investments to Mrs. Henderson: Section 10(b) of the Securities Act of 1934 and Rule 10b-5 of the Securities Exchange Commission; Art. 581-33 of the Texas Securities Act; Section 27.01 of the Texas Business & Commerce Code; and Section 17.46 of the Texas Deceptive Trade Practice-Consumer Protection Act.

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

The Statement of Claim is simply contrary to the facts. Mrs. Henderson opened an account with Edward Jones in October of 1995. At the time, she was working in Dallas and opened the account at the office of Jack Kaye in Plano, Texas. She represented to Mr. Kaye that she was a single parent in the nursing industry and desired to be very aggressive so she could retire within approximately ten years. She stated that she wanted at least a million dollars (\$1,000,000.00) at the end of that time. Mr. Kaye discussed the risk with her, but she insisted on being aggressive in her investments. Her initial three investments were \$11,000.00 each in the Putman New Opportunity Funds, the Putman OTC Emerging Growth Funds, and the Van Kampen American Capital Emerging Growth Fund. Each of these funds is considered aggressive by Edward Jones. She then proceeded to trade through Mr. Kaye individual stocks as well as continuing to increase her investments in aggressive mutual funds. All of these investments utilized margin to the fullest extent possible for the entire four years. At the end of February, 1999, Mrs. Henderson's single account reflected stocks of a value of \$171,522.00, mutual funds with a value of \$173,340.00 and margin debt of \$187,127.00. The account held eighteen individual stocks. According to Edward Jones' asset category, four were categorized as aggressive, eleven growth, and three as

growth and income. She held nine different mutual funds. Four were categorized as aggressive, three as growth, and two as growth and income. In March, 1999, she transferred the account to Brent Gough in Aledo.

In the initial meeting with Mr. Gough, Mrs. Henderson complained about the trading in the account as it had been handled by Jack Kaye. She indicated she still wanted to retire within five years and wanted to increase her account to a million dollars (\$1,000,000.00). She indicated she believed she had \$300,000.00 invested at the time. Mr. Gough attempted to explain that because of the margin, she only had half that amount and that it would be very difficult and highly unlikely that she would reach her stated goal within five years. He did, however, recommend that she cease being quite so aggressive and moderate her trading more toward growth and income in the long term.

In April, 1999, Mrs. Henderson retained Andrew Pratt, an attorney, and filed a complaint against Jack Kaye. The complaint was dropped after discovery.

Mrs. Henderson agreed to take Mr. Gough's advice on the individual stocks. In April, 1999, ten of the individual stocks were sold. The proceeds of \$70,127.00 reduced the margin to approximately \$100,000.00 in the account. The seven remaining individual stocks were all among Edward Jones' buy recommendations. They were Compaq Computer, Dollar General, Pepsico, Walgreen, Walmart, Walt Disney, and Wells Fargo. Only Compaq was categorized as aggressive. Mr. Gough did not liquidate the mutual funds. As we know, the market in 1999 was a bull market. By the end of November, 1999, the individual stocks had a value of \$82,084.00. The mutual funds had increased to \$260,247.00. Margin was at \$109,687.00. Occasionally, individual stocks were sold and repositioned. For example, in November, the Disney was sold and UPS and Sun Microsystems were purchased.

At the end of March, 2000, not surprisingly, Mrs. Henderson's account reached its highest value. The stocks were valued at \$80,128.00, the mutual funds had increased to \$343,823.00, and the margin was \$112,315.00. Her highest value in the account was the resulting \$311,648.00.

The volatility in the market continued. In April, the mutual funds lost over \$33,000.00. In May, they lost over \$40,000.00. In June, the mutual funds gained \$47,000.00, but lost an additional \$15,000.00 in July.

In August, 2000, Mrs. Henderson purchased three more mutual funds, \$15,000.00 of Hartford Global Health, \$15,000.00 of Hartford Global Technology, and \$30,000.00 of Hartford Midcap Funds. The mutual funds continued to lose value and by the end of February, 2001, the stocks were \$81,031.00, the mutual funds \$281,600.00, and the margin at \$185,941.00. Thus, her account value had come down from over \$300,000.00 to \$176,753.00. Almost all of the loss was the result of the decline of the mutual funds. This continued until additional big losses occurred after September 11, 2001. At the end of that month, the stocks were valued at \$67,881.00, the mutual funds \$175,295.00, and the margin debt at \$158,280.00. The value in her account had declined \$84,959.00. During this month, several mutual funds were sold to pay margin debt. When Mrs. Henderson transferred her account in March, 2003, the account value was \$112,699.00. At no time had Mrs. Henderson changed from her desire to be aggressive and to increase the value of her stock even though she understood the risk. Mr. Gough, in fact, reduced this risk by ceasing the active trading of individual stocks.

From the facts set forth above, it is apparent that the claim should be summarily dismissed. A true copy of the Complaint against Jack Kaye is attached as Exhibit "A" and is incorporated herein. It is dated April 27, 1999. The Statement of Claim is dated July 10, 2003, more than four years after Mrs. Henderson's initial complaint. The securities about which she complains were for the most part purchased between 1995 and the transfer made in March, 1999. Thus, the Complaint is barred as a matter of law by the four year statute of limitations. Furthermore, the doctrines of ratification, estoppel and laches preclude this claim.

### **RELIEF REQUESTED**

Claimants requested an award of compensatory damages in the amount of \$240,000.00; punitive damages in an amount to be determined in the discretion of the Arbitration Panel; pre-award and post-award interest; attorneys fees pursuant to Tex. Civ. Prac. And Rem. Code Ann. Sec. 38.001 et seq.; section 27.01 and DTPA section 17.50 in an amount equal to 40% of the total recovery, as well as other direct costs in this matter; damages for lost opportunity costs; return of commissions and margin interest and fees charged; and all other and further relief to which the Panel may determine she is entitled.

Respondents requested that the claims asserted against them be dismissed.

### **OTHER ISSUES CONSIDERED & 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. 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. The claims asserted in this matter shall be and hereby are denied in their entirety.
2. 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.
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, 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 = \$300.00

### **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(s) is Edward D. Jones & Co.

Member surcharge	\$	1,700.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	2,750.00
Total Member Fees	\$	5,200.00

### **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:

1	Pre-hearing session(s) with a single arbitrator	x	\$450.00	\$	450.00
	November 5, 2004	1	session		
1	Pre-hearing session(s) with Panel	x	1,125.00	\$	1,125.00
	May 4, 2004	1	session		
5	Hearing sessions	x	1,125.00	\$	5,625.00
	December 6, 2004	3	sessions		
	December 7, 2004	2	sessions		
	Total Forum Fees			\$	7,200.00

The Arbitration Panel has assessed \$7,200.00 of the forum fees to Edward D. Jones & Co.

### **Fee Summary**

Claimants, Bonnie Henderson, John M. Kelly and Bonnie Henderson and Leslie M. Frith Custodial Acct., Bonnie Henderson, Custodian shall be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$	300.00
Total Fees	= \$	300.00
<u>Less payments</u>	= \$	-1,425.00
Balance to be refunded by NASD Dispute Resolution	= \$	-1,125.00

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

Member Fees	= \$	5,200.00
<del>Forum Fees</del>	= \$	<del>7,200.00</del>
Total Fees	= \$	12,400.00
Less payments	= \$	-5,200.00
Balance Due NASD Dispute Resolution	= \$	7,200.00

All balances are due to NASD Dispute Resolution

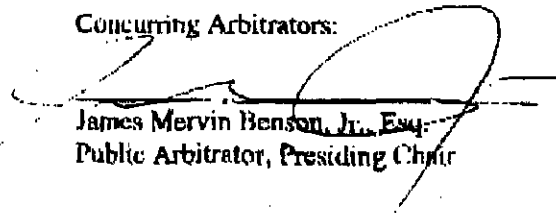
**ARBITRATION PANEL**

James Mervin Benson, Jr., Esq. - Public Arbitrator, Presiding Chair

Robert J. Gregory - Public Arbitrator

Keith L. Saunders - Non-Public Arbitrator


Concurring Arbitrators:

  
James Mervin Benson, Jr., Esq.  
Public Arbitrator, Presiding Chair12-23-04  
Signature DateRobert J. Gregory  
Public Arbitrator

Signature Date

Keith L. Saunders  
Non-Public Arbitrator

Signature Date

12/31/04   
Date of Service (For NASD office use only)

NASD Dispute Resolution  
Arbitration No. 03-05107  
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Respondent, Edward D. Jones & Co., shall be and hereby is liable for:

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Robert J. Gregory - Public Arbitrator  
Keith L. Saunders - Non-Public Arbitrator

Concurring Arbitrators:

James Mervin Benson, Jr., Esq.  
Public Arbitrator, Presiding Chair

Signature Date

  
Robert J. Gregory  
Public Arbitrator

12-20-04  
Signature Date

Keith L. Saunders  
Non-Public Arbitrator

Signature Date

12/31/04 KLS  
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Arbitration No. 03-05107  
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Robert J. Gregory - Public Arbitrator  
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James Mervin Benson, Jr., Esq.  
Public Arbitrator, Presiding Chair

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Robert J. Gregory  
Public Arbitrator

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Signature Date

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Keith L. Saunders  
Non-Public Arbitrator

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