

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Bernadette Flory (Claimant) v. Edward D. Jones & Co., L.P. (Respondent)

Case Number: 03-05558

Hearing Site: Boston, Massachusetts

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

Claimant Bernadette Flory ("Flory") hereinafter referred to as "Claimant": John P. Kincade, Esq., Winstead Sechrest & Minick, P.C., Dallas, TX.

Respondent Edward D. Jones & Co., L.P. ("Edward Jones") hereinafter referred to as "Respondent": David M. Harris, Esq., Greensfelder, Hemker & Gale, P.C., St. Louis, MO.

CASE INFORMATION

Statement of Claim filed on or about: July 28, 2003.

Motion to Dismiss Answer or Preclude Testimony filed by Claimant on or about: December 9, 2003.

Claimant signed the Uniform Submission Agreement: July 10, 2003.

Amended Answer and Affirmative Defenses filed by Respondent on or about: March 2, 2004.

Memorandum in Opposition to Claimant's Motion to Dismiss Answer or Preclude Testimony filed by Respondent on or about: March 9, 2004.

Respondent signed the Uniform Submission Agreement: August 6, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: failure to supervise; fraud in the offer/sale or in connection with the purchase or sale of securities; unauthorized trading; breach of fiduciary duty; negligence/breach of industry standards; unsuitability; common law fraud – misrepresentation and omission, negligent misrepresentation, and fraudulent inducement; respondeat superior; and blue sky violations. The causes of action relate to shares of stock including, but not limited to, Amazon, Cisco, Grey Wolf, Nokia, Novell, Priceline, Qualcomm, Sportsline, China.com, Ericsson, Biofiltration, and KLA Tencor.

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

RELIEF REQUESTED

Claimant requested compensatory damages in the amounts of \$36,000.00 and \$200,000.00; interest; costs; attorneys' and consulting fees; and punitive damages.

Respondent requested that Claimant's claims be dismissed in their entirety.

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.

ARBITRATORS' REPORT

1. Vincent Quattrocche (VQ) induced Claimant to move a large portion of her Fidelity accounts to Respondent. VQ used his position as manager of the New Canaan, Connecticut branch office of Respondent to cultivate Claimant as a new client. VQ told her he was an experienced money manager. Claimant showed him her Fidelity statements. Thereupon he advised Claimant that she had too much technology in her account, including Cisco Systems, that her account was too aggressive, over concentrated and needed to be more conservative and diversified. VQ told her she did not know what she was doing with her investments and that he could help her fix the imbalance in her accounts. He said he would sell some technology stocks and invest in more conservative stocks so as to diversify her investments. Based on those representations, Claimant moved many of the stocks in her Fidelity accounts, including her Cisco Systems stock, a large percentage of her holdings, to Respondent. Claimant reasonably relied on VQ. Respondent held VQ out as its agent and manager of the New Canaan office and in written material to customers encouraged them to seek the assistance and guidance of Respondent's investment representatives and office managers such as VQ. Claimant told VQ that she would need money from her investments for college expenses for her children, that she would occasionally need to take income for expenses and that she wanted long-term growth in her accounts for retirement. Claimant demonstrated that she had relied upon VQ by establishing growth, and growth and income as the objectives of her individual account with Respondent and growth, growth and income as aggressive the objectives of her IRA account with Respondent.
2. VQ controlled Claimant's account. No discretion was given to VQ, but he made trades in her account, many of which were unsuitable and/or without her authorization. VQ falsified commission information on confirmations so as to understate commissions. VQ forged her signature on a nonsolicitation letter for the unauthorized purchase of the technology stock, Biofiltration. When Claimant raised questions with VQ as to certain trades and matters shown on her account statements, VQ told Claimant she must trust him and that he would handle things for her. Again Claimant reasonably relied on the

continued assurances of VQ as to many of the unauthorized and unsuitable trades in dispute. But VQ did not do what he said he would. He did not work with Claimant to reduce the over concentration in Cisco Systems, the overall high level of technology and aggressive stocks, the undue risk in the account and the lack of diversification. Ironically some of the trades made which were at least arguably in line with Claimant's objectives, such as Bristol-Myers, Hartford and Lord Abbett, may have induced Claimant to continue to rely on VQ's assurances. The same seems true as to VQ's apparent promise of lower commissions on trades.

3. VQ was the agent of Respondent and as to the wrongful actions on his part, the Respondent's supervision and compliance systems and operations were inadequate under the circumstances. There was no onsite supervision and compliance, no audits of Claimant's accounts, no exception or concentration reports, no contact by Respondent with Claimant about the performance of her accounts or her satisfaction with VQ as her investment representative, and inadequate Respondent responses to early VQ problems and violations of Respondent's rules and policies, as to a number of accounts in the New Canaan office. This egregious neglect by Respondent occurred notwithstanding the over-concentration, higher risk and aggressive nature of investments in both of Claimant's accounts, which were way out of line with the stated objectives for her accounts, and even the purchase of an entirely inappropriate penny stock in her IRA account. Adequate supervision and compliance efforts starting with VQ's violation of Respondent's rules in 1999 and 2000 could have prevented much of the loss in Claimant's investment accounts.
4. Respondent argues that Claimant should be held to the strict contract language of her account documents, which limit Respondent's liability and responsibility for losses (despite misrepresentations and wrongful actions of the part of Respondent's agent, VQ). But Respondent in fact advocates a double standard here, because Respondent itself conducted practices in this case which run counter to the documents. For example, confirmations were often hand-delivered to Claimant and other New Canaan customers rather than being mailed as required by the documents. Some of these hand-delivered confirmations were falsified by VQ. Respondent also argues that the account statements received by Claimant warned clients about the dangers of technology concentration and the need to diversify if technology concentration was too high, which it was in Claimant's case. Thus, the argument goes, Claimant should be responsible for the fact that her accounts were not diversified as promised by VQ. However these account statements also induced clients to rely on their investment representative. The statements referred clients to their investment representative for help, and to determine the right diversification in their accounts, based on the individual's situation. This is in fact what Claimant did in this case by seeking and relying upon the advice and assurances of VQ.
5. Claimant bears some responsibility for the losses experienced in her accounts. The risky over-concentration in technology stocks in her Fidelity accounts based largely upon casual recommendations of friends and the fact that she had no investment adviser shows that Claimant was inexperienced and naïve regarding her investments. But she understood the goals and objectives involved in moving her accounts to Respondent. She also should have taken action to protect herself by reviewing her account agreements,

account statements and confirmations more carefully and seeking help sooner either from Respondent or other sources when VQ continued not to live up to his promises, the over concentration in technology stocks continued and account values dropped. Such actions on her part would have mitigated her losses.

6. In analyzing the losses experienced by Claimant and assessing the appropriate amount of damages which should be awarded to Claimant, the Panel took the following factors into consideration:
 - a. Claimant's shared responsibility for the losses as discussed above.
 - b. Some trades were authorized or suitable, such as Bristol-Myers, Hartford and Lord Abbett.
 - c. Most of the losses were unrealized and some of the unrealized losses probably would have been experienced even if the account had been more balanced and conservative, because of the fact that the entire stock market dropped in value during the relevant time periods.
 - d. No punitive damages were awarded because while Respondent egregiously neglected some of its duties and did not live up to all relevant standards, Respondent did not intentionally or outrageously cause the losses in this case. No attorney's fees or costs are awarded because no statutory or contract bases was shown nor any intentional or outrageous wrongdoing by Respondent. Also the evidence revealed that Claimant is not incurring all of her fees and costs in this case, because all or most of them are being paid for by a benefactor, who was not a party in this case, nor shown to have a legal right to be reimbursed by an award in this case.

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. Respondent is liable for and shall pay to Claimant compensatory damages of \$130,000, plus interest at a rate of 8% per annum accruing from 30 days after the date of the award until the award is paid in full.
2. Respondent is liable for and shall pay to Claimant the sum of \$300.00 to reimburse her for the non-refundable filing fee previously paid to NASD Dispute Resolution.
3. Any and all relief not specifically addressed herein, including punitive damages, 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., L.P. is a party.

Member surcharge = \$1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$2,750.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

August 5-6, 2004, adjournment by Claimant = \$ 1,125.00

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 a single arbitrator @ \$450.00 = \$ 450.00

Pre-hearing conference: September 15, 2004 1 session

One (1) Pre-hearing session with Panel @ \$1,125.00 = \$1,125.00

Pre-hearing conference: March 2, 2004 1 session

Four (4) Hearing sessions @ \$1,125.00 = \$4,500.00

Hearing Dates: January 6, 2005 2 sessions

January 7, 2005 2 sessions

Total Forum Fees = \$6,075.00

1. The Panel has assessed \$6,075.00 of the forum fees against Respondent.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee = \$ 300.00

Adjournment Fee = \$1,125.00

Total Fees = \$1,425.00

Less payments = \$1,425.00

Balance Due NASD Dispute Resolution = \$ 0.00

As stated in the Award section above, Respondent is liable for and shall pay to Claimant \$300.00 to reimburse her for the non-refundable filing fee previously paid to NASD Dispute Resolution.

2. Respondent is solely liable for:

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	<u>= \$ 6,075.00</u>
Total Fees	= \$11,275.00
<u>Less payments</u>	<u>= \$ 5,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 6,075.00

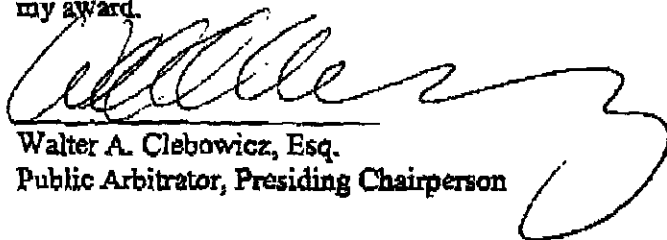
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Walter A. Clebowicz, Esq.	-	Public Arbitrator, Presiding Chairperson
David Plimpton, Esq.	-	Public Arbitrator
Anne M. McCarver	-	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.



Walter A. Clebowicz, Esq.
Public Arbitrator, Presiding Chairperson

1/24/05

Signature Date

David Plimpton, Esq.
Public Arbitrator

Signature Date

Anne M. McCarver
Non-Public Arbitrator

Signature Date

January 25, 2005

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

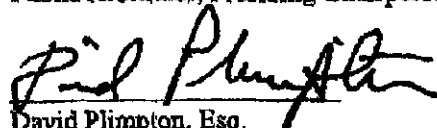
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Walter A. Clebowicz, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



David Plimpton, Esq.
Public Arbitrator

Signature Date

Anne M. McCarver
Non-Public Arbitrator

Signature Date

January 25, 2005
Date of Service (For NASD Dispute Resolution use only)

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Public Arbitrator, Presiding Chairperson

Signature Date

David Plimpton, Esq.
Public Arbitrator

Signature Date



Anne M. McCarver
Non-Public Arbitrator

Signature Date

January 25, 2005

Date of Service (For NASD Dispute Resolution use only)