

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

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In the Matter of the Arbitration Between:

Name of the Claimant

Earl J. Bauer and Rita Ann Bauer, as  
Trustees of The Bauer Family Trust

Case Number: 04-00523

Name of the Respondents

Edward D. Jones & Co. and  
Michael Allan Goethals

Hearing Site: Dallas, Texas

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**NATURE OF THE DISPUTE**

Public Customer v. Member Firm and Associated Person

**REPRESENTATION OF PARTIES**

Claimant Earl J. Bauer and Rita Ann Bauer, as Trustees of The Bauer Family Trust, hereinafter referred to as "Claimants": Mark A. Bukaty, Esq. of Dallas, Texas.

Respondents Edward D. Jones & Co. ("Jones") and Michael Allan Goethals ("Goethals"), hereinafter collectively referred to as "Respondents": Jonathan A. Pace, Esq. of the firm of Pace & Rickey, L.L.P., located in Dallas, Texas.

**CASE INFORMATION**

Statement of Claim filed: January 27, 2004.

Claimants signed the Uniform Submission Agreement: February 26, 2004.

Statement of Answer filed by Respondents on: March 24, 2004.

Respondent Jones signed the Uniform Submission Agreement: February 13, 2004.

Respondent Goethals signed the Uniform Submission Agreement: February 18, 2004.

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of contract; overcharge of commissions; negligence; failure to supervise; failure to execute; breach of fiduciary duty; misrepresentation and non-disclosure; and trading dispute. The causes of action related to Claimants' investments in the common stock of Phone.com and Mirant.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Claimants have failed to mitigate their damages and are barred from collecting damages, if any, at this time. Claimants cannot complain of a failure to place a sell order and then continue to hold the stock after their complaint. Claimants have still held on to the Mirant stock;
2. Claimants have ratified the transactions because with full knowledge of the transactions, they failed to timely complain or reverse any of the transactions;
3. Claimants have waived any cause of action by accepting the trades in their account;
4. Claimant is guilty of laches in failing to reverse the transactions complained of or complaining in a timely fashion or, in the alternative, selling the shares immediately; and
5. The claims are barred by the doctrines of ratification and estoppel. Claimants held the purchases watching them go up and then back down and, therefore, are estopped from complaining of the transactions.

#### **RELIEF REQUESTED**

Claimants requested:

Compensatory Damages	\$46,938.56
Punitive Damages	\$ 5,000.00
Interest	\$ 6,519.45
Attorneys' Fees	\$15,000.00
Other Costs	\$ 625.00

Respondents requested that the Panel dismiss the claims of the Claimants and assess the cost of the arbitration against the Claimants.

#### **AWARD**

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

1. Respondents Edward D. Jones & Co. and Michael Allan Goethals are jointly and severally liable for and shall pay to the Claimant, The Bauer Family Trust, the sum of \$19,222.86 as compensatory damages;
2. In addition, Respondents Edward D. Jones & Co. and Michael Allan Goethals are jointly and severally liable for and shall pay to the Claimant, The Bauer Family Trust, the sum of \$175.00 as reimbursement of the claim filing fee;
3. The parties shall bear their own costs of arbitration, including any attorneys' fees, except for those sums specifically enumerated herein; and,
4. 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 = \$ 175.00

**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 and the following member fees are assessed:

Member surcharge = \$ 875.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$ 1,000.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed: None.

**Forum Fees and Assessments**

The Arbitrator has assessed forum fees for each session conducted. A 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:

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00 = \$ 900.00  
Pre-hearing conferences: August 9, 2004 1 session  
November 8, 2004 1 session  
Two (2) Hearing sessions @ \$450.00 = \$ 900.00  
Hearing Date: March 8, 2005 2 sessions  
Total Forum Fees = \$ 1,800.00

The Arbitrator has assessed \$1,800.00 of the forum fees jointly and severally to Respondents Edward D. Jones & Co. and Michael Allan Goethals.

**EEE SUMMARY**

Claimants Earl J. Bauer and Rita Ann Bauer, as Trustees of The Bauer Family Trust are liable for:

Initial Filing Fee = \$ 175.00  
Less payments = \$ 625.00  
Balance Refunded by NASD Dispute Resolution = \$ 450.00

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Respondent Edward D. Jones & Co. is solely liable for:

Member Fees	= \$ 2,625.00
Less payments	= \$ 2,625.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents Edward D. Jones & Co. and Michael Allan Goethals are jointly and severally liable for:

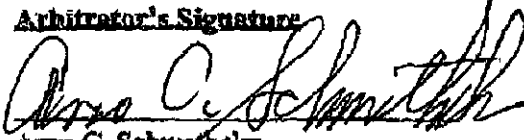
Forum Fees	= \$ 1,800.00
Less Payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 1,800.00

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

**ARBITRATION PANEL**

Arno C. Schwethelm - Public Arbitrator, Presiding Chairperson

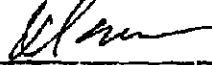
Arbitrator's Signature



Arno C. Schwethelm  
Public Arbitrator, Presiding Chairperson

3-31-2005

Signature Date

3/31/05 

Date of Service (For NASD Dispute Resolution office use only)