

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant  
Ronald A. Mote

Case Number: 04-02395

Name of the Respondents  
Edward D. Jones & Co. and  
Michael Jon Engelstad

Hearing Site: Indianapolis, Indiana

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**NATURE OF DISPUTE**

Customer vs. Member Firm and Associated Person

**REPRESENTATION OF PARTIES**

Richard M. Blaiklock, Esq. of the law firm Lewis Wagner, located in Indianapolis, Indiana represented Claimant Ronald A. Mote ("Mote") hereinafter referred to as "Claimant."

Timothy M. Huskey, Esq. of the law firm Greensfelder, Hemker & Gale, P.C., located in St. Louis, Missouri, represented the Respondents, Edward D. Jones & Co. ("Edward Jones") and Michael Jon Engelstad ("Engelstad"), hereinafter collectively referred to as "Respondents."

**CASE INFORMATION**

Statement of Claim filed on April 2, 2004. Claimant Mote signed the Uniform Submission Agreement on March 31, 2004.

Statement of Answer jointly filed by Respondents Edward Jones and Engelstad on June 16, 2004. Respondent Edward Jones signed the Uniform Submission Agreement on April 14, 2004. Respondent Engelstad signed the Uniform Submission Agreement on April 19, 2004.

Respondent filed a Motion to Dismiss on February 21, 2005. Claimant filed his response on March 16, 2005.

Claimant filed a Motion to Amend Statement of Claim on March 15, 2005. Respondents filed a response and opposition on April 5, 2005.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty, misrepresentations, unsuitability, omission of facts and failure to supervise. The causes of action relate to various stocks including, Aware, Inc., Compuware Corp., Broadcom Corp. and Covad Communications Group. Claimant asserted that the investments recommended to him by Respondents were highly volatile, high risk and unsuitable to his investments needs and objectives.

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

1. The Statement of Claim should be dismissed in whole or in part because Claimant has failed to state a claim upon which relief may be granted.
2. Claimant authorized and ratified all transaction that took place in his Edward Jones accounts. Therefore, he is barred from recovering any alleged loss resulting from such transactions.
3. To the extent that Claimant has suffered any damages, they are the product of the negligent conduct of Claimant or others such that some or all of Claimant's recovery is barred by those contributory or comparative negligent acts.
4. Claimant failed to mitigate his alleged damages; therefore, he is barred from recovering any damages to the extent that such damages could have been prevented had Claimant fulfilled his duty to mitigate.
5. The Statement of Claim is barred by the doctrines of waiver and estoppel.
6. The Statement of Claim is barred in whole or in part by the applicable statutes of limitations.
7. Claimant was on notice of, understood, and assumed the risks associated with the investment transactions he made in his Edwards Jones' accounts; therefore, he is barred from recovering any alleged losses resulting from such transactions.
8. Claimant authorized and instructed Respondents to enter into all of the transactions at issue and therefore, claims based on such transactions should be dismissed.
9. At all times relevant herein, Edward Jones had adequate supervisory mechanisms and safeguards in place governing the actions of its investment representatives, including Mr. Engelstad and, at all times relevant herein, Edward Jones acted in accordance with these procedures. Accordingly, Edward Jones is not liable for the losses Claimant allegedly incurred and such claims should be dismissed.
10. Claimant's Statement of Claim fails to state a claim for fraud or negligent misrepresentation or any claim based on alleged fraud or negligent misrepresentation because Claimant has failed to allege or identify any misrepresentation made on behalf of Edward Jones in connection with any particular investment transaction.
11. Claimant's claims based on or alleging misrepresentations should be dismissed as Claimant has failed to allege actionable material statements upon which Claimant could have reasonably relied in order to impose liability on Edward Jones.
12. Any claims purportedly based on the NASD and NYSE rules should be dismissed because such regulatory rules do not provide private litigants with a private cause of action.
13. The Statement of Claim should be dismissed because Edward Jones did not assume the fiduciary duties that are outlined in the Statement of Claim.

#### **RELIEF REQUESTED**

Claimant requested \$650,000.00 in compensatory damages; \$1,000,000.00 in punitive damages; interest at 8% per annum; attorney's fees and costs.

Respondents Edward Jones and Engelstad requested denial and dismissal of the Statement of Claim in its entirety.

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

A pre-hearing conference was held on March 21, 2005 on Respondents' Motion to Dismiss. After reviewing the pleadings submitted by the parties and arguments were heard, the Panel denied Respondents' motion. In addition, it was ordered that Respondents are not barred from raising statute of limitation issues as an affirmative defense at the hearing.

On April 7, 2005, a pre-hearing conference was held wherein parties argued Claimant's Motion to Amend Statement of Claim. In an Order dated April 7, 2005, the Panel granted Claimant's Motion.

During the hearing of this matter following the close of Claimant's case, Respondents moved for directed verdict.

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, 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. The oral motion for directed verdict filed by Respondents, Edward D. Jones and Michael Jon Engelstad, is granted.
2. Any and all claims asserted by Claimant, Ronald A. Mote, are denied.
3. Except as otherwise specified herein, parties shall bear their own costs, including attorneys' fees.
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	= \$ 500.00
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#### **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 is a party and is assessed the following:

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,000.00

### **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: March 9, 2005 1 session

Three (3) Pre-hearing sessions with Panel @ \$1,200.00 = \$ 1,200.00  
Pre-hearing conferences: September 7, 2004 1 session  
March 21, 2005 1 session  
April 7, 2005 1 session

Seven (7) Hearing sessions @ \$1,200.00 = \$ 8,400.00  
Hearing Dates: April 27, 2005 2 sessions  
April 28, 2005 3 sessions  
April 29, 2005 2 sessions

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Total Forum Fees = \$12,450.00

1. The Panel assessed 50% of the total forum fees in the amount of \$6,225.00 solely to Claimant Ronald A. Mote.
2. The Panel assessed 50% of the total forum fees in the amount of \$6,225.00 jointly and severally to Respondents Edward D. Jones & Co. and Michael Jon Engelstad.

### **FFS SUMMARY**

1. Claimant, Ronald A. Mote, is solely liable for:

Initial Filing Fee	= \$ 500.00
<u>Forum Fees</u>	<u>= \$ 6,225.00</u>
Total Fees	= \$ 6,725.00
<u>Less payments</u>	<u>= \$ 1,700.00</u>
Balance Due NASD Dispute Resolution	= \$ 5,025.00

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

Member Fees	= \$ 8,550.00
<u>Less payments</u>	<u>= \$ 8,550.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents, Edward D. Jones & Co. and Michael Jon Engelstad, are jointly and severally liable for:

Forum Fees	= \$ 6,225.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 6,225.00

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

**ARBITRATION PANEL**

Richard A. Van Kalker, Esq.	-	Public Arbitrator, Presiding Chairperson
Monette E. Draper, Esq.	-	Public Arbitrator
Tim V. Young	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/ Richard A. Van Kalker, Esq.  
Richard A. Van Kalker, Esq.  
Public Arbitrator, Presiding Chairperson

5/3/05  
Signature Date

/s/ Monette E. Draper, Esq.  
Monette E. Draper, Esq.  
Public Arbitrator

5/3/05  
Signature Date

/s/ Tim V. Young  
Tim V. Young  
Non-Public Arbitrator

5/3/05  
Signature Date

5/3/05  
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution  
Arbitration No. 04-02395  
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Monette E. Draper, Esq.	-	Public Arbitrator
Tim V. Young	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



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Public Arbitrator, Presiding Chairperson

5/3/05

Signature Date

Monette E. Draper, Esq.  
Public Arbitrator

Signature Date

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Public Arbitrator

5/3/05  
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Tim V. Young  
Non-Public Arbitrator

Signature Date

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NASD Dispute Resolution  
Arbitration No. 04-02385  
Award Page 5 of 5

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Richard A. Van Kalker, Esq.	-	Public Arbitrator, Presiding Chairperson
Monette E. Draper, Esq.	-	Public Arbitrator
Tim V. Young	-	Non-Public Arbitrator

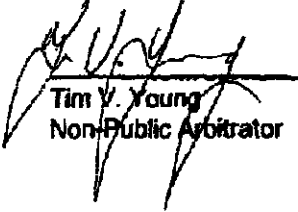
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