

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

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In the Matter of the Arbitration Between

Name of Claimant

James Del Hauncher, Joanne Gray Hauncher, James Del Hauncher  
Trust and Joanne Gray Hauncher Trust

and

04-07014  
Phoenix, Arizona

Name of Respondents

Edward D. Jones & Co.  
Scott L. Wirgau  
Christian Weekly Baker

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Nature of the Dispute: Customer vs. Member and Associated Persons.

**REPRESENTATION OF PARTIES**

James Del Hauncher, Joanne Gray Hauncher, James Del Hauncher Trust and Joanne Gray Hauncher Trust ("**Claimants**") were represented by Donald W. Ronald, Esq., Sun City West, Arizona.

Edward D. Jones & Co. ("**Respondent ED Jones**") and Scott L. Wirgau ("**Respondent Wirgau**") and hereinafter referred to as ("**Respondents**") were represented by Dennis K. Egan, Esq., Butzel Long, Bloomfield Hills, Michigan.

Christian Weekly Baker ("**Respondent Baker**") appeared *pro se*.

**CASE INFORMATION**

The Statement of Claim was filed on or about October 4, 2004. Submission Agreement of Claimant James Del Hauncher, Joanne Gray Hauncher, James Del Hauncher Trust and Joanne Gray Hauncher Trust was signed on September 28, 2004.

Statement of Answer was filed by Respondents Edward D. Jones & Co. and Scott L. Wirgau on or about November 29, 2004. Submission Agreement of Respondent Edward D. Jones & Co. was signed on October 11, 2004. Submission Agreement of Respondent Scott L. Wirgau was signed on November 15, 2004.

Statement of Answer was filed by Respondent Christian Weekly Baker on or about December 8, 2004. Submission Agreement of Respondent Christian Weekly Baker was signed on December 1, 2004.

### CASE SUMMARY

Claimants alleged that

The investment experience of both Claimants' is limited, and their understanding of investment terminology is minimal. Claimants represented that they were retired, and wanted to be able to enjoy retirement without worry or concern over financial security. They did not want to return to work. They instructed Baker to pursue an investment program that would provide sufficient income for their needs. Claimants relied on Baker to guide them in investing this unexpected windfall, received as an inheritance from Mrs. Hauncher's aunt.

Claimants were assured by Baker that they would not have to worry about finances or income, and that they would be able to enjoy retirement and would "not be able to spend what they had." Claimants relied on Baker's representations and recommendations for investing their funds. Baker continued throughout the relationship to represent to the Claimants that their portfolio was safe, and that they could continue to enjoy retirement without concern over finances. Claimants received the income regularly, and periodically made principal requests without comprehending the trading expenses incurred in providing the income stream, nor the significant risk exposure of the investment portfolio.

In addition, Claimants alleged:

The Claimants' investments were made in a combination of Growth, Aggressive Growth and Emerging Growth mutual funds, almost exclusively in certain preferred mutual funds with which Jones is alleged to have an undisclosed revenue sharing agreement. (John M. Spahn, et. al., v. Edward D. Jones & Co., et. al., United States District Court, Eastern District, Missouri, January, 2004) According to the Definition of Terms offered by Jones, Aggressive Growth investments offer high risk in exchange for potentially higher principal growth, but typically offer little or no income. Again, according to Jones, Growth mutual funds offer little or no dividend income, but rely on principal growth to reward the investor with a return.

Neither of these investment categories is compatible with an investor who wants a steady stream of income, and doesn't want to worry about having to return to work. In addition to the inappropriate risk objective, Baker purchased Class A shares for the bulk of the investments, which are more suitable for a buy and hold investment strategy. This account required regular redemption of assets in order to generate requested income thereby causing Claimants to incur additional fees in Class A share transactions than would have been incurred in a Class B portfolio. Investments were made in a variety of fund families over the various

accounts, depriving the Claimants the "break point" discounts for large mutual fund purchases that should have been available to them.

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

Claimants were a couple in their early 50's who transferred prior investment accounts over the [sic] Respondents Edward Jones and continued to invest in growth and growth & income mutual funds. They were perfectly happy with these investments as long as the markets went up. But when they went down, they looked for someone to blame and settled on their former brokers, Respondents Baker and Wirgau. But Wirgau did not recommend or implement the investment of which they complain. In fact, he assisted Claimants in avoiding additional market losses.

#### **RELIEF REQUESTED**

Claimants requested an award as follows:

- A. Rescission Damages against Respondents in an amount to be proven at the arbitration, but in any event no less than \$299,255.50;
- B. Consequential damages against all Respondents according to proof to be adduced at the arbitration of this matter;
- C. Pre-Award interest against all Respondents;
- D. Costs of this arbitration against all Respondents;
- E. Reasonable attorneys' fees against all Respondents;
- F. Punitive damages against all Respondents in an amount according to proof to be adduced at the arbitration of this matter; and
- G. Such other and further relief as the arbitration panel may deem just and equitable.

Respondents requested that the claims asserted against them be dismissed, that all forum fees be charged to Claimants, and that the Panel order Scott Wirgau's CRD record to be expunged of this action.

#### **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 and the post-hearing submissions, if any, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Edward D. Jones & Co. and Christian Weekly Baker are jointly and severally liable for and shall pay to Claimants James Del Hauncher, individually and as Trustee of the James Del Hauncher Trust and Joanne Gray Hauncher, individually and as Trustee of the Joanne Gray Hauncher Trust the sum of \$40,000.00 (**Forty Thousand Dollars and No Cents**) as compensatory damages.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Scott L. Wirgau's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Scott L. Wirgau must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
  - a. Pursuant to Rule 2130, the arbitration panel has made the following affirmative findings of fact:
    - i. The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.
3. 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.
4. 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

### **Adjournment Fees**

Adjournments requested during these proceedings:

Hearing Date(s), September 13-16, 2005, adjournment requested by Claimants = \$1,125.00  
Fee waived.

Hearing Date(s), January 31-February 3, 2006 adjournment requested jointly to = \$1,125.00  
mediate. Fee waived.

### **Forum Fees and Assessments**

The Arbitration Panel assesses forum fees for each hearing session conducted or each decision rendered on a discovery-related motion on the papers.. 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 Panel	@	1,125.00	\$	1,125.00
	February 7, 2005	1	session		
6	Hearing sessions	@	1,125.00	\$	6,750.00
	February 21, 2006	3	sessions		
	February 22, 2006	2	sessions		
	February 23, 2006	1	sessions		
	Total Forum Fees			\$	7,875.00

The Arbitration Panel has assessed \$3,937.50 of the forum fees jointly and severally to James Del Hauncher, Joanne Gray Hauncher, James Del Hauncher Trust and Joanne Gray Hauncher Trust.

The Arbitration Panel has assessed \$3,937.50 of the forum fees jointly and severally to Edward D. Jones & Co., and Christian Weekly Baker.

**Fee Summary**

Claimants, James Del Hauncher, Joanne Gray Hauncher, James Del Hauncher Trust and Joanne Gray Hauncher Trust are jointly and severally liable for:

Initial Filing Fee	= \$	300.00
Forum Fees	= \$	3,937.50
Total Fees	= \$	4,237.50
<u>Less payments</u>	= \$	-1,457.00
Balance due NASD Dispute Resolution	= \$	2,780.50

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

Member Fees	= \$	5,200.00
Total Fees	= \$	5,200.00
<u>Less payments</u>	= \$	-5,200.00
Balance Due NASD Dispute Resolution	= \$	0.00

Respondents, Edward D. Jones & Co. and Christian Weekly Baker, are jointly and severally liable for:

<u>Forum Fees</u>	= \$	3,937.50
Total Fees	= \$	3,937.50
<u>Less payments</u>	= \$	-282.00
Balance Due NASD Dispute Resolution	= \$	3,655.50

**All balances are due to NASD Dispute Resolution**

**ARBITRATION PANEL**

Ronald Edward Hibbing, Esq. - Public Arbitrator, Presiding Chair  
Daniel J. Danvir - Public Arbitrator  
Stephanie P. Lebhar - Non-Public Arbitrator

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Concurring Arbitrators:

Ronald E. Hibbing  
Ronald Edward Hibbing, Esq.  
Public Arbitrator, Presiding Chair

March 16, 2006  
Signature Date

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Daniel J. Danvir  
Public Arbitrator

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Signature Date

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Stephanie P. Lebhar  
Non-Public Arbitrator

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Signature Date

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Date of Service (For NASD office use only)

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Public Arbitrator, Presiding Chair

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Daniel J. Danvir  
Public Arbitrator

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Signature Date

*03/16/06*  
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Signature Date

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Stephanie P. Lebhar  
Non-Public Arbitrator

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