

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

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In the Matter of the Arbitration Between

Name of Claimant

The Rita B. Miller, individually and as Trustee of the Rita B. Miller Trust

and

04-07648  
Chicago, Illinois

Name of Respondents

Edward D. Jones & Co.  
Daniel Joseph Holohan

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

**REPRESENTATION OF PARTIES**

The Rita B. Miller, individually and as Trustee of the Rita B. Miller Trust ("**Claimant**") was represented by Peter B. Shaeffer, Esq., Chicago, Illinois.

Edward D. Jones & Co. ("**Respondent**") and Daniel Joseph Holohan ("**Respondent**") hereinafter referred to as ("**Respondents**") were represented by Lisa A. Nielsen, Esq. and Elizabeth M. Conran, Esq., Greensfelder, Hemker & Gale, P.C., St. Louis, Missouri.

**CASE INFORMATION**

The Statement of Claim was filed on or about November 3, 2004. Submission Agreement of Claimant The Rita B. Miller, individually and as Trustee of the Rita B. Miller Trust was signed on October 20, 2004.

Respondents' Answer and Affirmative Defenses to the Statement of Claim was filed by Respondents Edward D. Jones & Co. and Daniel Joseph Holohan on or about January 19, 2005. Submission Agreement of Respondent Edward D. Jones & Co. was signed on November 10, 2004 by Cynthia Doria. Submission Agreement of Respondent Daniel Joseph Holohan was signed on January 31, 2005.

### **CASE SUMMARY**

Claimant asserted the following causes of action: violation of Illinois Securities Law; breach of fiduciary duty and negligent misrepresentation. It was specifically alleged as follows:

From prior to September 1998 through the closing of the accounts, Edward Jones and Holohan recommended and effected direct mutual fund and UIT investments which were exclusively or almost exclusively in the mutual funds and UIT companies with which Edward Jones had revenue sharing relationships.

Edward Jones recommended investment in two (2) insurance products which, on information and relief were issued by insurance companies with which Edward Jones had a revenue sharing relationship, and in which the only sub-account investments were made in mutual funds with which Edward Jones had an additional revenue sharing relationship.

At no time did Edward Jones or Holohan disclose to Mrs. Miller the existence of the material conflict of interest caused them by the existence of and participating in the revenue sharing relationships with the mutual fund, UIT and insurance companies.

Mrs. Miller was not afforded the break-point savings to which she was entitled given the extent and concentration of her mutual fund purchases.

Edward Jones and Holohan caused transactions to be effected for Mrs. Miller which were motivated by their own financial interest and not the best interests of Mrs. Miller.

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

Mr. Holohan and Claimant first met in 1997 while Mr. Holohan was introducing himself and Edward Jones to people living in Claimant's neighborhood. Almost six months after they met Claimant opened two accounts with Edward Jones, an Individual Retirement Account ("IRA") and a trust account. Prior to opening her account with Edward Jones, Claimant had at least two accounts with Fidelity Investments that contained mainly growth and aggressive stocks. Fidelity Investments is a discount brokerage firm, which means that while Claimant was at Fidelity she was responsible for choosing her own investments without the assistance of a Fidelity broker.

When Claimant came to Edward Jones, Mr. Holohan recommended more managed investments such as mutual funds, annuities and a variable life insurance product.

he also recommended more growth and growth and income investments and less aggressive investments. The purpose of making these recommendations was to diversify Claimant's 100% stock portfolio and to place her in investments that were more inline with her investment objectives. Claimant's portfolio while at Edward Jones was valued at over \$1,000,000. This coupled with the fact that Claimant invested in growth and aggressive stocks while at Fidelity clearly contradicts the poor old widow image that the Statement of Claim attempts to portray, and further demonstrates that Claimant is in fact a wealthy and intelligent investor.

### **RELIEF REQUESTED**

Claimant requested rescission of the mutual fund transactions, the sub-account transactions and the insurance product transactions or, alternatively, her damages resulting from the purchase of the securities. Claimant's damages were estimated to be \$500,000.00 at the time of filing the Statement of Claim.

Respondents requested that the Statement of Claim be dismissed in its entirety.

### **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. Respondents, Edward D. Jones & Co., and Daniel Joseph Holohan, are jointly and severally liable for and shall pay to Claimant, The Rita B. Miller, individually and as Trustee of the Rita B. Miller Trust, the sum of \$457,914.00 (**Four Hundred Fifty Seven Thousand Nine Hundred Fourteen Dollars and No Cents**).
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 attorney 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 7, 2005	1	session		
1	Pre-hearing session(s) with Panel	x	1,125.00	\$	1,125.00
	April 8, 2005	1	session		
8	Hearing sessions	x	1,125.00	\$	9,000.00
	May 23, 2006	2	sessions		
	May 24, 2006	2	sessions		
	May 25, 2006	2	sessions		
	May 26, 2006	2	sessions		
	Total Forum Fees			\$	10,575.00

The Arbitration Panel has assessed \$10,575.00 of the forum fees jointly and severally to Edward D. Jones & Co., and Daniel Joseph Holohan.

**Fee Summary**

Claimant, The Rita B. Miller, individually and as Trustee of the Rita B. Miller Trust, is 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

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 Daniel Joseph Holohan, are jointly and severally liable for:

<u>Forum Fees</u>	= \$	10,575.00
Total Fees	= \$	10,575.00
<u>Less payments</u>	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	10,575.00

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

**ARBITRATION PANEL**

John Fennig, Esq. - Public Arbitrator, Presiding Chair  
Donald M. Thompson, Esq. - Public Arbitrator  
Georgia K. Fountoulakis - Non-Public Arbitrator

Concurring Arbitrators:

John Fennig  
John Fennig, Esq.  
Public Arbitrator, Presiding Chair

6/5/06  
Signature Date

Donald M. Thompson  
Donald M. Thompson, Esq.  
Public Arbitrator

6/5/06  
Signature Date

Georgia K. Fountoulakis  
Georgia K. Fountoulakis  
Non-Public Arbitrator

6/5/06  
Signature Date

6/6/06  
Date of Service (For NASD office use only)