

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

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In the Matter of the Arbitration Between

Name of Claimant

Joshua S. Cunningham

and

Case Number: 04-08568  
Hearing Site: Houston, Texas

Names of Respondents

Edward D. Jones & Co. and  
Stanley Alvin Cunningham

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**NATURE OF DISPUTE**

Customer v. Member Firm and Associated Person

**REPRESENTATION OF PARTIES**

Joshua S. Cunningham ("**Claimant**") was represented by Lisa L. Fountain, Esq., The Law Office of Lisa L. Fountain, New Braunfels, Texas.

Edward D. Jones & Co ("**Edward Jones**") and Stanley Alvin Cunningham ("**Cunningham**"), hereinafter collectively referred to as "Respondents," were represented by David J. Simmons, Esq., Greensfelder, Hemker & Gale, P.C., St. Louis, Missouri.

**CASE INFORMATION**

The Statement of Claim was filed on or about December 20, 2004. The Submission Agreement of Claimant, Joshua S. Cunningham, was signed on or about March 21, 2005. On or about April 5, 2005, Claimant filed a Response to Respondents' Motion to Dismiss and filed Claimant's Motion for Default. On or about April 8, 2005, Claimant filed a First Amended Statement of Claim. On or about September 2, 2005, Claimant filed a Second Amended Statement of Claim.

A Motion to Dismiss was filed jointly by Respondents, Edward D. Jones & Co. and Stanley Alvin Cunningham, on or about March 16, 2005. The Submission Agreement of Respondent, Edward D. Jones & Co., was signed on or about January 28, 2005. The Submission Agreement of Respondent, Stanley Alvin Cunningham, was signed on or about March 16, 2005. On or about April 14, 2005, Respondents filed a Response to Claimant's Motion for Default. On or about September 20, 2005, Respondents jointly filed an Answer and Affirmative Defenses to the Second Amended Statement of Claim.

### **CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract, breach of fiduciary duty, negligence, failure to supervise and misrepresentations. The causes of action related to the purchase of various aggressive growth stocks in Claimant's custodial account. Claimant alleged that Respondent Cunningham purchased aggressive growth stocks, including but not limited to Cisco Systems, Lucent Technologies, Nortel Networks, and Nvidia Corp., which were inappropriate for the purpose of the custodial account – funding his college tuition. Claimant also alleged that his investment goals were primarily growth and income.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: all claims are barred by the statute of limitations; the Texas Deceptive Trade Practices Act does not apply in this case; Claimant ratified all transactions that took place in the custodial account and therefore, Joshua is barred from recovering any alleged losses resulting from such transactions; Claimant failed to mitigate his alleged damages; to the extent that Claimant has suffered any damages, they are the product of the negligent conduct of Claimant such that some or all of his recovery is barred by those contributory or comparative negligent acts; and Claimant failed to allege any wrongful conduct on the part of Respondent, Cunningham and/or Edward D. Jones in connection with a specific investment transaction and therefore, Claimant failed to state a claim upon which relief can be granted.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$154,089.96
Punitive/Exemplary Damages	\$500,000.00
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

On or about July 14, 2005, the Panel issued an Order as follows: 1) Respondents' Motion to Dismiss Claimant, Mary Cunningham, only from the arbitration, is hereby granted without

prejudice, to bring the claim in another forum; and 2) Claimant's Motion for Default is hereby denied.

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 NASD Dispute Resolution ("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.) Claimant's claims, each and all, are hereby denied and dismissed with prejudice;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 3.) Any relief not specifically enumerated, including punitive damages and attorneys' fees, is hereby denied with prejudice.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee = \$ 375.00

#### **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. In this matter, the member firm is Edward D. Jones & Co.

Member surcharge = \$ 2,250.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$ 4,000.00

### **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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel x \$1,200.00		= \$ 2,400.00
Pre-hearing Conferences: June 20, 2005	1 session	
July 14, 2005	1 session	
Four (4) Hearing sessions x \$1,200.00		= \$ 4,800.00
Hearing Date(s): January 9, 2006	2 sessions	
January 10, 2006	2 sessions	
Total Forum Fees		= \$ 7,200.00

The Arbitration Panel has assessed \$3,600.00 of the forum fees to Joshua S. Cunningham.

The Arbitration Panel has assessed \$3,600.00 of the forum fees jointly and severally to Edward D. Jones & Co. and Stanley Alvin Cunningham.

### **Fee Summary**

Claimant, Joshua S. Cunningham, is liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 3,600.00
Total Fees	= \$ 3,975.00
Less payments	= \$ 1,575.00
Balance Due NASD Dispute Resolution	= \$ 2,400.00

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

Member Fees	= \$ 7,000.00
Total Fees	= \$ 7,000.00
Less payments	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents, Edward D. Jones & Co. and Stanley Alvin Cunningham, are jointly and severally liable for:

Forum Fees	= \$ 3,600.00
Total Fees	= \$ 3,600.00
Less payments	= \$ 0.00

Balance Due NASD Dispute Resolution

= \$ 3,600.00

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

**ARBITRATION PANEL**

John K. Boyce, III., Esq. - Public Arbitrator, Presiding Chair  
Daniel J. Pagnano, Esq. - Public Arbitrator  
Leslie Bernard Jallans - Non-Public Arbitrator

Concurring Arbitrators:

/s/ John K. Boyce, III, Esq.  
John K. Boyce, III, Esq.  
Public Arbitrator, Presiding Chair

January 13, 2006  
Signature Date

/s/ Daniel J. Pagnano, Esq.  
Daniel J. Pagnano, Esq.  
Public Arbitrator

January 12, 2006  
Signature Date

/s/ Leslie Bernard Jallans  
Leslie Bernard Jallans  
Non-Public Arbitrator

January 13, 2006  
Signature Date

January 13, 2006  
Date of Service (For NASD office use only)

Balance Due NASD Dispute Resolution

**= \$ 3,600.00**

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**ARBITRATION PANEL**

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Daniel J. Pagnano, Esq. - Public Arbitrator  
Leslie Bernard Jallans - Non-Public Arbitrator

**Concurring Arbitrators:**

John K. Boyce, III., Esq.  
Public Arbitrator, Presiding Chair

1/12/06  
Signature Date

**Daniel J. Pagnano, Esq.**  
**Public Arbitrator**

**Signature Date**

**Leslie Bernard Jallans**  
Non-Public Arbitrator

**Signature Date**

Date of Service (For NASD office use only)

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Public Arbitrator, Presiding Chair



Daniel J. Pagnano, Esq.  
Public Arbitrator

Signature Date

  
Signature Date

Leslie Bernard Jallans  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

Balance Due NASD Dispute Resolution = \$ 3,600.00

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Signature Date

\_\_\_\_\_  
Daniel J. Pagnano, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

*Leslie B Jallans*  
\_\_\_\_\_  
Leslie Bernard Jallans  
Non-Public Arbitrator

*1-13-2006*  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Date of Service (For NASD office use only)