

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

---

In the Matter of the Arbitration Between:

Names of Claimants

Hazel Brendler, Individually and as Executrix of the  
Estate of Richard Brendler

vs.

Case Number: 05-05418  
Hearing Site: Charleston, West Virginia

Names of Respondents

Edward D. Jones & Co., L.P. and  
Michael Amory

---

**NATURE OF THE DISPUTE**

Customers vs. Member and Associated Person

**REPRESENTATION OF PARTIES**

Hazel Brendler, Individually and as Executrix of the Estate of Richard Brendler ("Brendler" or "Claimants"), were represented by James M. Barber, Esq., Charleston, West Virginia.

Edward D. Jones & Co., L.P. ("Edward Jones") and Michael Amory ("Amory"), hereinafter collectively referred to as "Respondents," were represented by Angela Emmerling Bouffard, Esq., Butzel Long, Bloomfield Hills, Michigan.

**CASE INFORMATION**

The Statement of Claim was filed on or about October 21, 2005. The Submission Agreement of Claimant Brendler was signed on or about October 11, 2005.

The Statement of Answer was filed jointly by Respondents, Edward Jones and Amory, on or about December 30, 2005. The Submission Agreement of Respondent Edward Jones was signed on or about November 10, 2005. The Submission Agreement of Respondent Amory on or about January 23, 2006.

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of fiduciary duty and negligence. The causes of action related to an IRA distribution. Claimants asserted that Respondents were negligent in failing to advise Claimants that the beneficiary of the IRA was designated

to be the Estate of the deceased, Richard Brendler, rather than his spouse, Hazel Brendler. Due to Respondents' negligence, Claimant Hazel Brendler incurred tax liability as a result of the IRA distribution being made to the Estate. Furthermore, Claimants alleged because the IRA distribution was placed into a regular account rather than into a tax deferred account, there were additional tax consequences.

Unless specifically admitted in their Answer, Respondents, Edward Jones and Amory, denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant, Hazel Brendler, lacks legal standing to bring suit as an individual against either Respondent; Claimant, Hazel Brendler, has no legal interest, direct or beneficial, in the IRA; Respondents owed Claimant, Hazel Brendler, no legal duty, and Respondents did not breach any duties owed to Mr. Brendler (deceased), or his estate; Claimant, Hazel Brendler, lacks privity as to the IRA agreement; Claimants' causes of action are barred by the applicable two-year statute of limitations; Claimants are barred by the doctrines of laches, estoppel, unclean hands, avoidable consequences, and/or contributory negligence; Respondents acted at all times at the direction of Mr. Brendler (deceased) and/or Claimants; Claimant, Hazel Brendler, expressly waived any claim that she should be beneficiary by signing the spousal consent provision; Mr. Brendler's decision to name his estate as beneficiary may very well have been part of a larger estate planning scheme; the Claimants' estate was not damaged by its designation as beneficiary; the IRA at issue was not "tax-free." Rather, it was "tax-deferred;" Respondents did not owe any duty to provide tax counseling, nor to question Mr. Brendler's estate planning decision, nor to notify customers of adverse estate tax consequence; Respondents satisfied all duties of care, if any, owed to Claimants; Respondents were not the cause, proximate or otherwise, of the damages allegedly suffered by Claimants; Claimants failed to mitigate their alleged damages; Claimants' damages, if any, were caused by the actions of persons other than Respondents; Respondents did not give, nor did Mr. Brendler expect, professional advice concerning estate planning and the disposition of his property after his death; and Respondents did not owe Claimants any duty to questions Mr. Brendler's intentions about the disposition of his assets after his death.

### **RELIEF REQUESTED**

Claimants requested an award in the amount of:

Actual/Compensatory Damages	\$87,470.00
-----------------------------	-------------

Respondents, Edward Jones and Amory, requested that the claims asserted against them be denied in their 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.

### **AWARD**

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

- 1.) Claimants' 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 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 = \$ 225.00

#### **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., L.P.

Member surcharge = \$ 1,100.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$ 1,700.00

#### **Forum Fees and Assessments**

The Panel has assessed forum fees for each hearing session conducted or each decision rendered on a discovery-related motion on the papers. A session is any meeting between

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

One (1) Pre-hearing session with Panel x \$750.00	= \$	750.00
Pre-hearing conference: May 5, 2006	1 session	
Two (2) Hearing sessions x \$750.00	= \$	1,500.00
Hearing Date: November 8, 2006	2 sessions	
Total Forum Fees	= \$	2,250.00

The Panel has assessed \$1,125.00 of the forum fees jointly and severally to Claimants, Hazel Brendler, Individually and as Executrix of the Estate of Richard Brendler.

The Panel has assessed \$1,125.00 of the forum fees jointly and severally to Respondents, Edward D. Jones & Co., L.P. and Michael Amory.

#### **FEE SUMMARY**

Claimants, Hazel Brendler, Individually and as Executrix of the Estate of Richard Brendler, are jointly and severally liable for:

Initial Filing Fee	= \$	225.00
Forum Fees	= \$	1,125.00
Total Fees	= \$	1,350.00
Less payments	= \$	975.00
Balance Due NASD Dispute Resolution	= \$	375.00

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

Member Fees	= \$	3,550.00
Total Fees	= \$	3,550.00
Less payments	= \$	3,550.00
Balance Due NASD Dispute Resolution	= \$	0.00

Respondents, Edward D. Jones & Co., L.P. and Michael Amory, are jointly and severally liable for:

Forum Fees	= \$	1,125.00
Total Fees	= \$	1,125.00
Less payments	= \$	0.00
Balance Due NASD Dispute Resolution	= \$	1,125.00

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

**ARBITRATION PANEL**

Stuart H. Dunn, Esq. - Public Arbitrator, Presiding Chair  
Robert Field - Public Arbitrator  
Phillip R. Clark - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

/s/ Stuart H. Dunn, Esq.  
Stuart H. Dunn, Esq.  
Public Arbitrator, Presiding Chair

11/17/06  
Signature Date

/s/ Robert Field  
Robert Field  
Public Arbitrator

11/21/06  
Signature Date

/s/ Phillip R. Clark  
Phillip R. Clark  
Non-Public Arbitrator

11/15/06  
Signature Date

11/17/06  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

Stuart H. Dunn, Esq. - Public Arbitrator, Presiding Chair  
Robert Field - Public Arbitrator  
Phillip R. Clark - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

Stuart H. Dunn  
Stuart H. Dunn, Esq.  
Public Arbitrator, Presiding Chair

11/17/06  
Signature Date

Robert Field  
Robert Field  
Public Arbitrator

Signature Date

Phillip R. Clark  
Phillip R. Clark  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

**ARBITRATION PANEL**

Stuart H. Dunn, Esq. - Public Arbitrator, Presiding Chair  
Robert Field - Public Arbitrator  
Phillip R. Clark - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

\_\_\_\_\_  
Stuart H. Dunn, Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Robert Field  
Public Arbitrator

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

  
\_\_\_\_\_  
Phillip R. Clark  
Non-Public Arbitrator

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

11/15/2006

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

**ARBITRATION PANEL**

Stuart H. Dunn, Esq. - Public Arbitrator, Presiding Chair  
Robert Field - Public Arbitrator  
Phillip R. Clark - Non-Public Arbitrator

**Concurring Arbitrators' Signatures:**

\_\_\_\_\_  
Stuart H. Dunn, Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
*Robert Field*  
Robert Field  
Public Arbitrator

\_\_\_\_\_  
*11-21-06*  
Signature Date

\_\_\_\_\_  
Phillip R. Clark  
Non-Public Arbitrator

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

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