

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between:

Frederic A. and Janet Lee Horowitz, (Claimants) vs. Edward D. Jones & Co. and Bruce C. Pierce, (Respondents).

Case Number: 99-01199

Hearing Site: Seattle, Washington

REPRESENTATION OF PARTIES

Frederic A. and Janet Lee Horowitz "Claimants": Shannon L. McDougald, Esq., Perkins Cole LLP, Seattle Washington.

Edward D. Jones & Co. "EDJ": Michael R. Scott, Esq., Hillis, Clark, Martin & Peterson, Seattle, Washington.

Bruce C. Pierce "Pierce": Represented himself.

CASE INFORMATION

Statement of Claim filed on or about: March 12, 1999.

Claimants signed their Uniform Submission Agreements on: March 10, 1999.

Statement of Answer filed by Respondent EDJ on or about: June 2, 1999.

EDJ executed the Uniform Submission Agreement: April 14, 1999.

Bruce Pierce filed his Answer on or about: June 3, 1999.

RELIEF REQUESTED

Claimants requested:

1. For the violation of Washington's Securities Act, the rescission of all transactions and a return of all capital, interest and attorneys' fees.
2. For violation of Washington's Consumer Protection Act, damages according to proof, interest, attorneys' fees, and treble damages pursuant to statute.
3. For breach of fiduciary duty and fraud and negligent misrepresentation, loss or return and punitive damages.
4. Emotional distress damages.
5. Joint and several liability against EDJ and Pierce.

6. For such other and further relief as the arbitration panel may deem just and proper.

Respondent EDJ requested:

1. Denial of all claims and an assessment of all costs, including attorneys' fees, against Claimants.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Bruce Pierce did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

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.

SUMMARY & AWARD

The entire panel concurs in the following findings:

Edward D. Jones & Co. employed Bruce C. Pierce. Edward D. Jones was not negligent in their supervision of Bruce C. Pierce, but his account books should have "flagged" Edward D. Jones that something might be amiss. Pierce, in an effort to reap higher commissions for himself, exceeded the scope of his employment by allowing the Horowitzes to participate in a short-term or day-trading program represented as either the "Goldman Sachs Day-trading Program" or a day or short-trading program based up Goldman Sachs' research. Whichever way it was represented to the Horowitzes, the day-trading program was improper. The Horowitzes were inexperienced investors with little understanding of the risks of day-trading on margin. Under the doctrine respondeat superior, the Panel is finding Edward D. Jones & Co. jointly and severally liable with Bruce C. Pierce for the Panel's award in this arbitration. We do not believe the Edward D. Jones & Co. failed to properly supervise Bruce C. Pierce, and, in fact, acted properly in dismissing him. However, ultimately, as his employer, we do hold Edward D. Jones & Co. jointly and severally liable in this award.

Claimants have failed to prove Emotional Distress and we Dismiss that claim.

Claimants' claim does not fall under the Washington State Consumer Protection Act for the reasons stated in Respondent Edward Jones' Arbitration Memorandum, Arbitrator's Exhibit #3.

Edward D. Jones & Co. did not make any negligent or fraudulent representations to the Claimants. Bruce C. Pierce did.

The Horowitzes lost \$31,770.06 in trades where the holding period was less than 30 days (source: Respondent. Edward D. Jones' account summary prepared by James Keating, S8, pg. 1). Claimant's expert, Ed Horowitz, and Respondent Edward Jones' expert witness, James Keating, agreed on the definitions of day-and short-term trading as trades with the stocks being held one day or under 30 days, respectfully.

In October, 1998, the Horowitzes received roughly \$220,000 after selling all of the equity positions in their account. They now claim that following the unauthorized sale of the 4500 shares of Western Wireless on the morning of October 8, 1999, they were "paralyzed by the shock," could not have reinvested the funds, and are now, seeking the benefit of 20-20 hindsight on the market's turnaround. They are asking for the rescission of both the arguably improper trade and the authorized trades following Bruce Pierce's conversations with Frederic Horowitz on October 8, 1998. The Panel rejects this contention and believes that laches applies. The Horowitzes had previously bought and sold Western Wireless in their account and nothing prevented them from doing so again with the proceeds after liquidating their entire account at Edward D. Jones.

Each party shall be responsible for their own legal fees. Forum fees will also be shared equally with the exception of the June 2, 2000, hearing date which shall be assessed to Claimants as it was their expert who was unavailable to testify during the earlier sessions. Because of their lack of foresight in scheduling we are assessing the June 2, 2000 forum costs to the Claimants.

The panel is awarding \$158,850.30 (5x the loss from day and short term trades made in their account) to Claimants and Respondents shall be jointly and severally liable for such award.

Forum fees shall be equally apportioned with the exception of the June 2, 2000 session which shall be apportioned to the Claimants for the reasons noted above.

All other claims in the Statement of Claim or made orally at the hearing which are not specifically addressed above are dismissed;

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$250

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 EDJ, the member firm, is a party.

Member surcharge	= \$1,200
Pre-hearing process fee	= \$ 600
Hearing process fee	= \$2,000

Adjournment Fees

The adjournment fee of \$600 for the April 25, 2000 adjournment necessitated by the parties mutual discovery disputes shall be split between Claimants and EDJ.

Forum Fees and Assessments

The 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:

One (1) Pre-hearing session(s) with a single arbitrator x \$300 = \$ 300
Pre-hearing conference(s): March 30, 2000 1 session.

One (1) Pre-hearing session(s) with Panel x \$600 = \$ 600
Pre-hearing conference(s): November 3, 1999 1 session.

Seven (7) Hearing sessions x \$600 = \$4,200
Hearing Date(s): May 8, 2000 2 sessions;
May 9, 2000 2 sessions;
May 10, 2000 2 sessions;
June 2, 2000 1 session.

Total Forum Fees = \$5,100

1. The Panel has assessed \$2,850 of the forum fees to Claimants.
2. The Panel has assessed \$2,250 of the forum fees to the jointly and severally to the Respondents.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 250
Adjournment Fee	= \$ 300
<u>Forum Fees</u>	<u>= \$2,850</u>

Total Fees	= \$3,400
<u>Less payments</u>	= \$ 850
Balance Due NASD Regulation, Inc.	= \$2,550

2. Respondent EDJ is solely liable for:

Member Fees	= \$3,800
Adjournment Fee	= \$ 300
Total Fees	= \$4,100
<u>Less payments</u>	= \$3,800
Balance Due NASD Regulation, Inc.	= \$ 300

3. Respondents EDJ and Pierce are jointly and severally liable for:

<u>Forum Fees</u>	= \$2,250
Balance Due NASD Regulation, Inc.	= \$2,250

All balances are due and payable to NASD Regulation, Inc.

Concurring Arbitrators' Signature(s)



Richard L. Warner, Esq.
Public Arbitrator, Presiding Chair

06/29/00
Signature Date

John E. Edison, Esq.
Public Arbitrator

Signature Date

John F. Robbins, CFA
Industry Arbitrator

Signature Date

Date Served:

JUN 30 2000

Date Served:

JUN 30 2000

NASD Regulation, Inc. Office of Dispute Resolution
Arbitration No. 99-01199
Award Page 5 of 5

Total Fees	= \$3,400
<u>Less payments</u>	= \$ 850
Balance Due NASD Regulation, Inc.	= \$2,550

2. Respondent EDJ is solely liable for:

Member Fees	= \$3,800
Adjournment Fee	= \$ 300
Total Fees	= \$4,100
<u>Less payments</u>	= \$3,800
Balance Due NASD Regulation, Inc.	= \$ 300

3. Respondents EDJ and Pierce are jointly and severally liable for:

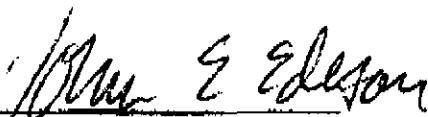
<u>Forum Fees</u>	= \$2,250
Balance Due NASD Regulation, Inc.	= \$2,250

All balances are due and payable to NASD Regulation, Inc.

Concurring Arbitrators' Signature(s)

Richard L. Warner, Esq.
Public Arbitrator, Presiding Chair

Signature Date


John E. Edison, Esq.
Public Arbitrator

6-30-2000
Signature Date

John F. Robbins, CFA
Industry Arbitrator

Signature Date

Date Served:

JUN 30 2000

NASD Regulation, Inc. Office of Dispute Resolution
Arbitration No. 99-01199
Award Page 5 of 5

Total Fees	= \$3,400
<u>Less payments</u>	<u>= \$ 850</u>
Balance Due NASD Regulation, Inc.	= \$2,550

2. Respondent EDJ is solely liable for:

Member Fees	= \$3,800
Adjournment Fee	= \$ 300
Total Fees	= \$4,100
<u>Less payments</u>	<u>= \$3,800</u>
Balance Due NASD Regulation, Inc.	= \$ 300

3. Respondents EDJ and Pierce are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$2,250</u>
Balance Due NASD Regulation, Inc.	= \$2,250

All balances are due and payable to NASD Regulation, Inc.

Concurring Arbitrators' Signature(s)

Richard L. Warner, Esq.
Public Arbitrator, Presiding Chair

Signature Date

John E. Edison, Esq.
Public Arbitrator

Signature Date



John P. Robbins, CFA
Industry Arbitrator

6-29-00

Signature Date

Date Served:

JUN 30 2000