

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Maria A. Cote

Case Number: 02-00005

Name of the Respondents
Edward D. Jones & Co.; and
John R. Bingham

Hearing Site: Dallas, Texas

REPRESENTATION OF PARTIES

Claimant Maria Cote ("Cote") was represented by Robert M. Hill, Esq., Claxton & Hill, PLLC, 700 McKinney Place, 3131 McKinney Avenue, Dallas, Texas 75205.

Respondents Edward D. Jones & Co. ("Jones") and John R. Bingham ("Bingham") were represented by Jonathan A. Pace, Esq., Meadows Building, Suite 940, 5646 Milton Street, Dallas, Texas 75206.

CASE INFORMATION

Statement of Claim filed: January 2, 2002.

Claimant Cote signed the Uniform Submission Agreement: December 27, 2001.

Statement of Answer filed by Respondent Jones: February 27, 2002.

Respondent Jones signed the Uniform Submission Agreement: January 10, 2002.

Respondent Bingham did not file an answer, but he did appear and participate in the hearing of this matter and further signed the Uniform Submission Agreement on July 29, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty; negligence; gross negligence; recklessness; violation of the anti-fraud provision of the securities laws; violation of NASD and NYSE rules; and, *respondeat superior*.

The causes of action relate to the following actions:

Ms. Cote was an employee of Microsoft without significant investment experience prior to opening an account with Edward D. Jones, on which Mr. Bingham was the account representative, in July, 1998. Her investment objectives were growth and growth/income. She relied upon Mr. Bingham's advice with regard to how to achieve these investment objectives. The account was a margin account, but it did not contain substantial funds until June, 2000. The account

was funded by Ms. Cote's occasional exercise of Microsoft employee stock options, and the few stocks held in the account were not diversified but were almost uniformly aggressive high tech stocks.

The Claimant further contended that in June, 2000, she received some bad advice from co-workers about exercising all of her non-qualified tax options, and she considered funding the exercise through the use of margin in her Edward D. Jones account, buying and holding the stock in the account. (Both Claimant and Respondent and their respective experts agreed that this was a bad idea with no redeeming features under the circumstances.) The Claimant contended that she asked Mr. Bingham about this idea and that he basically took her order without dissuading her in any way or pointing out that this action was ill-advised. The Claimant contended that Mr. Bingham was overwhelmed with servicing approximately 2200 accounts and opening 30 to 50 new accounts per month. The Claimant exercised options for 6,009 shares of Microsoft on June 16, 2002, at an approximate cost to her (including tax withholding) of \$203,000. The stock was valued at close to \$450,000 at the time of exercise.

The Claimant further contended that as a result of failing to receive proper advice from the Respondents she lost most of the value of her account when Microsoft's price declined in the latter half of 2000 and the first quarter of 2001. She further contended that Edward D. Jones failed to adequately supervise Mr. Bingham, given that his workload was much higher than normal, that there was a series of complaints and errors by Mr. Bingham known to the firm, and that Ms. Cote's portfolio did not appear to be consistent with her investment objectives.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following:

Mr. Bingham did tell Ms. Cote that a buy-and-hold exercise of her Microsoft options was a bad idea but that she persisted in doing so anyway. They contended that she was familiar with margin, have drawn against the margin in her account for a period of several years prior to the exercise of the options in June, 2000, and that she should have known of the risks involved. They further contended that even if she did not appreciate the risk from buying this stock on margin and holding it at the time she exercised the options, that she fully realized the risks and the effects of margin in October, 2000, after she received a series of margin calls and the price of Microsoft and value of her account sharply declined, as evidenced by her testimony at the hearing. She continued to hold the stock, however, as it declined further through April, 2001, when she finally liquidated the position.

The Respondents further contended that Ms. Cote was on notice at all times that her investment portfolio was aggressive and was not diversified, as shown by charts and graphs in the Edward D. Jones monthly statements and disclosures in those statements that her account holdings were inconsistent with her investment

profile.

In addition, Respondent Jones asserted the following affirmative defenses:

1. Claimant has failed to mitigate damages and is barred from collecting damages, if any, at this time;
2. Claimant's contributory negligence bars her from collecting damages;
3. Claimant is guilty of laches in failing to reverse the transactions complained of or complaining in a timely fashion or, in the alternative, selling her shares immediately;
4. Claimant has ratified the transactions because with full knowledge of the transactions, she failed to timely complain and reverse any of the transactions;
5. Claimant is estopped to assert damages for allegedly unauthorized transactions because she received a monthly statement and determined to accept the trade; and,
6. Claimant has waived her cause of action by accepting the trade.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	\$ 250,000.00
Punitive Damages	\$ 500,000.00
Interest	Pre- and post-judgment at the maximum rate allowed by law
Attorneys' Fees	Under Texas law
Other Costs	Unspecified amount

And other Monetary/Non-Monetary Relief, to which Claimant may be entitled. At hearing, Claimant set actual damages at \$194,251.00.

Respondents requested that the Panel dismiss the Statement of Claim.

AWARD

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

1. Respondents Edward D. Jones & Co. and John R. Bingham are jointly and severally liable for and shall pay to the Claimant, Maria A. Cote, the sum of \$61,000.00 in compensatory damages, plus pre-judgment interest from October 1, 2000 through September 1, 2003 in the sum of \$17,792.00, for a total of \$78,792.00;
2. In addition, Respondents Edward D. Jones & Co. and John R. Bingham are jointly and severally liable for and shall pay to the Claimant, Maria A. Cote, post-judgment interest at the rate of 10% per annum, accruing from 30 days after service of the award until the sum is paid in full;
3. Furthermore, Respondents Edward D. Jones & Co. and John R. Bingham are

jointly and severally liable for and shall pay to the Claimant, Maria A. Cote, the sum of \$11,575.00 as costs and expenses;

4. All additional costs of arbitration, including any attorneys' fees, shall be borne by the party incurring the cost; and
5. Any and all relief not specifically addressed herein, including punitive damages, is denied.

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 = \$ 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. Accordingly, Respondent Edward D. Jones & Co. is a party and the following member fees are assessed

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

Adjournment Fees

Fees for postponement of the hearings scheduled for January 21-24, 2003: waived by panel.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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:

Four (4) Hearing sessions @ \$1,200.00	= \$ 4,800.00
Hearing Date: July 29, 2003	2 sessions
July 30, 2003	2 sessions
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Total Forum Fees	= \$ 4,800.00

The Panel has assessed \$4,800.00 of the forum fees jointly and severally to Respondents Edward D. Jones & Co. and John R. Bingham.

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FEE SUMMARY

Claimant, Maria A. Cote is solely liable for:

Initial Filing Fee	= \$ 375.00
Less payments	= \$ 1,575.00
Balance Refunded by NASD Dispute Resolution	= \$ 1,200.00

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

Member Fees	= \$ 7,000.00
Less payments	= \$ 6,500.00
Balance Due NASD Dispute Resolution	= \$ 500.00

Respondents Edward D. Jones & Co. and John R. Bingham are jointly and severally liable for:


Forum Fees	= \$ 4,800.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 4,800.00

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

ARBITRATION PANEL

John Courtade - Public Arbitrator, Presiding Chairperson
Roland D. Freeman - Public Arbitrator
Valynda A. Ewton - Non-Public Arbitrator

Concurring Arbitrators' Signatures


John Courtade
Public Arbitrator, Presiding Chairperson

28 Aug 2003
Signature Date

Roland D. Freeman
Public Arbitrator

Signature Date

Valynda A. Ewton
Non-Public Arbitrator

Signature Date

9/3/03 
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution
Arbitration No. 03-00803
Annex Page 1

STATEMENT

Claimant, Maria A. Cook is solely liable for:

Initial Filing Fee	= \$ 375.00
Less payments	= \$ 1,075.00
Balance Due NASD Dispute Resolution	= \$ 1,500.00

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

Member Fees	= \$ 7,000.00
Less payments	= \$ 6,500.00
Balance Due NASD Dispute Resolution	= \$ 500.00

Respondents Edward D. Jones & Co. and John R. Bingham are jointly and severally liable for:

Forum Fees	= \$ 4,000.00
Less payments	= \$ 1,000.00
Balance Due NASD Dispute Resolution	= \$ 4,000.00

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

ARBITRATION PANEL

John Courtade - Public Arbitrator, Presiding Chairperson
Roland D. Freeman - Public Arbitrator
Valynda A. Burton - Non-Public Arbitrator

Concerning Arbitrators' Signatures


John Courtade
Public Arbitrator, Presiding Chairperson

28 Aug 2003
Signature Date


Roland D. Freeman
Public Arbitrator

9/3/05
Signature Date

Valynda A. Burton
Non-Public Arbitrator

Signature Date

9/3/03 
Date of Service (For NASD Dispute Resolution office use only)

Sent By: John Courtade, P.C.;
08/28/2003 17:10 FAX

Aug-28-03 17:31;

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NASD

NASD Dispute Resolution
Arbitration No. 02-00005
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FEE SUMMARY

Claimant, Maria A. Cote is solely liable for:

Initial Filing Fee	- \$ 375.00
Less payments	= \$ 1,575.00
Balance Refunded by NASD Dispute Resolution	= \$ 1,200.00

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

Member Fees	- \$ 7,000.00
Less payments	= \$ 6,500.00
Balance Due NASD Dispute Resolution	= \$ 500.00

Respondents Edward D. Jones & Co. and John R. Bingham are jointly and severally liable for:

Forum Fees	= \$ 4,800.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 4,800.00

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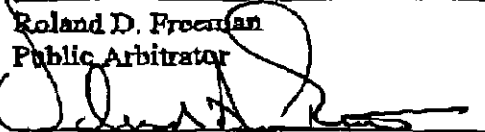
ARBITRATION PANEL

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Concurring Arbitrators' Signatures


John Courtade
Public Arbitrator, Presiding Chairperson

28 Aug 2003
Signature Date

Roland D. Freeman
Public Arbitrator

Valynda A. Ewton
Non-Public Arbitrator

Signature Date
8/29/03
Signature Date

9/3/03
Date of Service (For NASD Dispute Resolution office use only)