

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Estate of Judy McClellan
Marcy Hill

Case Number: 20-02010

vs.

Respondents

Edward Jones
Timothy Jeffrey Dolan
Robert D. Hickey

Hearing Site: Birmingham, Alabama

Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

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

This case was decided by a majority-public panel.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimants Estate of Judy McClellan (“Judy McClellan”) and Marcy Hill (“Marcy Hill”): Kira Fonteneau, Esq., The Five Points Law Group, LLC, Birmingham, Alabama.*

Hereinafter, Judy McClellan and Marcy Hill are collectively referred to as “Claimants”.

For Respondents Timothy Jeffrey Dolan (“Dolan”) and Edward Jones (“Edward Jones”): Laura A. Pizzitola, Esq. and Joshua D. Jones, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

Respondent Robert D. Hickey (“Hickey”) appeared pro se.

Hereinafter, Dolan, Edward Jones and Hickey are collectively referred to as “Respondents”.

*FINRA recorded the appearance of Claimants’ counsel at the time of filing of the Statement of Claim. Counsel’s representation of Claimants may have ended with the parties’ settlement. Please see the Other Issues Considered and Decided section of this Award for information on whether Claimants’ counsel appeared at the expungement hearing.

CASE INFORMATION

Statement of Claim filed on or about: June 24, 2020.
Claimants signed the Submission Agreement: June 24, 2020.

Statement of Answer filed by Edward Jones and Dolan on or about: August 20, 2020.
Statement of Answer filed by Hickey on or about: August 24, 2020.
Edward Jones signed the Submission Agreement: August 20, 2020.
Dolan signed the Submission Agreement: August 24, 2020.
Hickey did not sign the Submission Agreement.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: fraud; conversion; negligence or wantonness; and conspiracy. The causes of action relate to Judy McClellan's Individual Retirement Account ("IRA") and cash accounts with Edward Jones.

In their Statement of Answer, Edward Jones and Dolan denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

In his Statement of Answer, Hickey denied the allegations made in the Statement of Claim and noted that he adopts the answer given by Edward Jones and Dolan.

RELIEF REQUESTED

In the Statement of Claim, Claimants requested:

1. Compensatory damages;
2. Punitive damages;
3. Pre-judgment and post-judgement interest;
4. Attorneys' fees;
5. Expert witness fees;
6. Costs; and
7. Such other and further relief to which Claimants may be entitled and which the Panel deems equitable and just in the circumstances.

In the Statement of Answer, Edward Jones and Dolan requested:

1. Claimants take nothing by their claims and their claims be dismissed in their entirety, with prejudice; and
2. The Central Registration Depository ("CRD") records of Dolan be expunged of this matter.

In his Statement of Answer, Hickey did not set forth a specific relief request.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

Hickey did not file a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure (“Code”) and, having answered the claim, is bound by the determination of the Panel on all issues submitted.

On January 12, 2022, Claimants filed a notice of settlement. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim.

On January 20, 2022, Dolan filed a Motion for Expungement, to which no response was filed.

The Panel conducted a recorded hearing by videoconference on January 26, 2022, so the parties could present oral argument and evidence on Dolan’s request for expungement.

Claimants did not participate in the expungement hearing.

The Panel reviewed Dolan’s BrokerCheck® Report.

The Panel also reviewed the settlement documentation, considered the amount of payment made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Panel noted that the settlement was not conditioned on any party to the settlement not opposing the request for expungement and that Dolan did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: Dolan’s BrokerCheck® Report; Dolan’s CRD records; the pleadings filed in the case; contact notes memorializing the transactions at issue; the “Change of Beneficiary” documents at issue; and the signed Settlement Agreement.

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:

The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2064685) from registration records maintained by the CRD for Respondent Timothy Jeffrey Dolan (CRD Number 5485868) with the understanding that, pursuant to Notice to Members 04-16, Respondent Timothy Jeffrey Dolan must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 12805 of the Code, the Panel has made the following Rule 2080 affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous.

The claim, allegation, or information is false.

The Panel has made the above Rule 2080 findings based on the following reasons:

After being duly sworn, Dolan testified concerning his relationship with Judy McClellan and her common law husband, Hickey, who was designated as the beneficiary on an IRA and a cash account. Dolan also introduced six exhibits in support of his expungement request, including his CRD records, contact notes memorializing the transactions at issue, the "Change of Beneficiary" documents at issue, and the signed Settlement Agreement.

At issue was whether Dolan had participated in a fraud by facilitating Judy McClellan's "Transfer on Death Agreement Beneficiary Designation Form" from her daughter, Marcy Hill, to Hickey. The Panel unanimously determined that Dolan's conduct throughout was appropriate and that he did everything that he could to confirm that Judy McClellan was of sound mind and that she consciously intended to name Hickey as the beneficiary on the IRA and cash accounts.

Based on the evidence introduced at the hearing, the Panel concludes that the allegations and claims leveled against Dolan within the Statement of Claim are false and clearly erroneous, and that the request for expungement should be granted under Rules 2080(b)(1)(A) and 2080(b)(1)(C).

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

FINRA Dispute Resolution Services assessed a filing fee* for each claim:

Initial Claim Filing Fee	= \$	1,575.00
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**The filing fee is made up of a non-refundable and a refundable portion.*

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. Accordingly, as a party, Edward Jones is assessed the following:

Member Surcharge	= \$	1,900.00
Member Process Fee	= \$	3,750.00

Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

September 28 – October 1, 2021, postponement requested by Parties	= \$	Waived
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Hearing Session Fees and Assessments

The Panel has assessed hearing session fees for each session conducted. 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:

Two (2) pre-hearing sessions with a single Arbitrator @ \$450.00/session	= \$	900.00
Pre-Hearing Conferences: July 20, 2021	1 session	
August 16, 2021	1 session	
Two (2) pre-hearing sessions with the Panel @ \$1,125.00/session	= \$	2,250.00
Pre-Hearing Conferences: October 14, 2020	1 session	
January 10, 2022	1 session	
One (1) hearing session on expungement request @ \$1,125.00/session	= \$	1,125.00
Hearing: January 26, 2022	1 session	
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Total Hearing Session Fees	= \$	4,275.00

The Panel has assessed \$1,912.50 of the hearing session fees jointly and severally to Claimants.

The Panel has waived \$450.00 of the hearing session fees.

The Panel has assessed \$787.50 of the hearing session fees jointly and severally to Respondents.

The Panel has assessed \$1,125.00 of the hearing session fees to Dolan.

All balances are payable to FINRA Dispute Resolution Services and are due upon receipt.

ARBITRATION PANEL

Earle J. Schwarz	-	Public Arbitrator, Presiding Chairperson
Marvin Kent Speigner, Jr.	-	Public Arbitrator
Victor L. Hayslip	-	Non-Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument, which is my award.

Concurring Arbitrators' Signatures

Earle J. Schwarz

Earle J. Schwarz
Public Arbitrator, Presiding Chairperson

02/24/2022

Signature Date

Marvin Kent Speigner, Jr.

Marvin Kent Speigner, Jr.
Public Arbitrator

02/24/2022

Signature Date

Victor L. Hayslip

Victor L. Hayslip
Non-Public Arbitrator

02/24/2022

Signature Date

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February 24, 2022

Date of Service (For FINRA Dispute Resolution Services use only)