

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Charles McCallum
and Constance McCallum

Case Number: 20-03639

vs.

Respondents

Edward D. Jones & Co., L.P.
and Bryan Tutton

Hearing Site: Chicago, Illinois

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. Member and Associated Person

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimants Charles McCallum, and Constance McCallum (“Claimants”): Paul A. Albarran, Esq., Varnum LLP, Grand Rapids, Michigan. *

For Respondents Edward D. Jones & Co., L.P. (“Edward Jones”), and Bryan Tutton (“Tutton”), collectively, “Respondents”: Roger P. Meyers, Esq., Bush Seyferth PLLC, Troy, Michigan.

*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: October 28, 2020.

Claimants signed the Submission Agreement: October 12, 2020.

Statement of Answer filed on or about: December 18, 2020.

Edward Jones signed the Submission Agreement: December 4, 2020.

Tutton signed the Submission Agreement: December 14, 2020.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: failure to follow instructions, unsuitability, failure to supervise, and respondeat superior. The causes of action related to Claimants' allegation that Tutton ignored their instructions to withdraw their funds before the stock market abruptly crashed as a result of the COVID-19 pandemic, resulting in financial loss.

Unless specifically admitted in the Statement of Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimants requested \$84,243.24 in compensatory damages, plus interest, reasonable costs and attorneys' fees, and punitive and exemplary damages in an amount that the Panel deems reasonable.

In the Statement of Answer, Respondents requested that Claimants recover nothing and expungement of all references to this matter from Tutton's Central Registration Depository ("CRD") registration records.

OTHER ISSUES CONSIDERED AND DECIDED

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

On November 22, 2021, the parties filed a voluntary notice of settlement. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim.

On November 29, 2021, Tutton filed a Motion for Expungement, to which no response was filed.

The Panel conducted a recorded hearing by videoconference on December 1, 2021, so the parties could present oral argument and evidence on Tutton's request for expungement.

Neither Claimants nor Claimants' counsel participated in the expungement hearing. Edward Jones did not appear at the expungement hearing.

The Panel reviewed Tutton's BrokerCheck® Report. The Panel noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrence in the CRD.

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 Tutton did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: Tutton's testimony and Tutton's Exhibits to the Motion for Expungement.

The Award in this matter may be executed in counterpart copies.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and any post-hearing submissions, 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 2081911) from registration records maintained by the CRD for Respondent Bryan Daniel Tutton (CRD Number 5732964) with the understanding that, pursuant to Notice to Members 04-16, Respondent Bryan Daniel Tutton 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 of Arbitration Procedure (“Code”), the Panel has made the following Rule 2080 affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; and

The claim, allegation, or information is false.

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

Claimants alleged that Tutton failed to execute their instructions to sell their securities holdings. This was a false claim. Tutton acted as a fiduciary and serviced his clients’ needs faithfully. He followed their instructions and acted as required by law and FINRA regulations.

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	= \$ 975.00
Counterclaim Filing Fee	= \$ 1,575.00

**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	= \$ 1,100.00
Member Process Fee	= \$ 3,750.00

Postponement Fees

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

August 11-12, 2021, postponement requested by Respondents	= \$ 1,125.00
August 25-26, 2021, postponement requested by Parties	= \$ 1,125.00
<hr/> Total Postponement Fees	<hr/> = \$ 2,250.00

The Panel has assessed \$562.50 of the postponement fees jointly and severally to Claimants.

The Panel has assessed \$1,687.50 of the postponement fees jointly and severally to Respondents.

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

Two (2) pre-hearing sessions with the Panel @ \$1,125.00/session	= \$ 2,250.00
Pre-Hearing Conferences: April 2, 2021	1 session
September 15, 2021	1 session
One (1) hearing session on expungement request @ \$1,125.00/session	= \$ 1,125.00
Hearing: December 1, 2021	1 session
<hr/> Total Hearing Session Fees	<hr/> = \$ 3,375.00

The Panel has assessed \$1,125.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$1,125.00 of the hearing session fees jointly and severally to Respondents.

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

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

ARBITRATION PANEL

Philip J. Glick	-	Public Arbitrator, Presiding Chairperson
Hugh John Totten	-	Public Arbitrator
Dennis C. Waldon	-	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

Philip J. Glick

Philip J. Glick
Public Arbitrator, Presiding Chairperson

12/08/2021

Signature Date

Hugh John Totten

Hugh John Totten
Public Arbitrator

12/08/2021

Signature Date

Dennis C. Waldon

Dennis C. Waldon
Public Arbitrator

12/08/2021

Signature Date

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December 09, 2021

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