

12-0959

IN THE CIRCUIT COURT OF HANCOCK COUNTY, WEST VIRGINIA

BOARD OF TRUSTEES  
OF THE WEIRTON POLICEMEN'S  
PENSION AND RELIEF FUND,

Plaintiff,

v.

CIVIL ACTION NO. 10-C-123R

STEELOAKS INVESTMENT ADVISORS,  
INC., THE JONES FINANCIAL COMPANIES,  
LLLP, EDJ HOLDING COMPANY, INC.,  
EDWARD D. JONES & CO., L.P., and  
CURT RANDY GROSSMAN,

Defendants.

June 19 2012  
Entered In Civil Order Book  
No. 79 Page 184  
Brenda A. Jackson  
Clerk of said Court

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

On May 4, 2012, came plaintiff Board of Trustees of the Weirton Policemen's Pension and Relief Fund ("Plaintiff"), by counsel, and defendants The Jones Financial Companies, LLLP, EDJ Holding Company, Inc., Edward D. Jones & Co., L.P., and Curt Randy Grossman (collectively, "Defendants"), for a hearing on Defendants' Motion to Compel Arbitration and Stay the Action (the "Motion")<sup>1</sup>.

Upon consideration of the Motion, the papers in the Court's file, the arguments of counsel, and the law, the Court hereby issues the following Findings of Fact, Conclusions of Law, and Order:

**FINDINGS OF FACT**

1. Plaintiff is a pension fund created pursuant to the West Virginia Code and ordinance of the City of Weirton. Trustees of Plaintiff have included former mayors of Weirton.

<sup>1</sup> A copy of the transcript from this hearing is attached as Exhibit A.

2. Defendant Edward D. Jones & Co. L.P. (“Edward Jones”) is a registered broker-dealer. It is a Missouri partnership and is authorized to do business in the State of West Virginia.

3. Defendant The Jones Financial Companies LLLP is the parent company of Edward Jones and is a Missouri partnership.

4. Defendant EDJ Holding Company is affiliated with Edward Jones and The Jones Financial Companies LLLP, and is a Missouri corporation.

5. Defendant Curt Randy Grossman is a registered financial advisor who is employed by Edward Jones in Pittsburgh, Pennsylvania.

6. In 2006, Plaintiff opened three investment accounts with Edward Jones. As part of account-opening documentation, Plaintiff entered into an Edward Jones Account Agreement and Disclosure Statement for each of its three accounts.

7. The Edward Jones Account Agreement and Disclosure Statement contains an express Arbitration Agreement that is also incorporated by reference into its signature page, the Fiduciary/Trust Account Authorization and Acknowledgement Form.

8. Plaintiff agreed to terms of the Edward Jones Account Agreement and Disclosure Statement by signing the Fiduciary/Trust Account Authorization and Acknowledgement Form, which says in bold print, **“The Edward Jones Account Agreement and Disclosure Statement contains, on page 19, paragraph 2, a binding arbitration provision which may be enforced by the parties”** and continues, “By my/our signature(s) below, I/we have received a copy of this document including a schedule of fees and Edward Jones Privacy Notice and agree to its terms and conditions.”

9. Plaintiff accepted the terms of the Edward Jones Account Agreement and Disclosure Statement when it opened these accounts. The Trustees of the Plaintiff, on behalf of

the Plaintiff, executed the Edward Jones Fiduciary Trust Account Authorization and Acknowledgement Form, which is the signature page for the Edward Jones Account Agreement and Disclosure Statement, for all three accounts on March 27, 2006, and did so again on August 20, 2007, February 3, 2009, and on September 28 and October 2, 8, and 16, 2009. In total, Plaintiff executed the Account Authorization and Acknowledgement Form on more than ten occasions.

10. By signing the Edward Jones Fiduciary/Trust Account Authorization and Acknowledgement Form, each Trustee affirmed the Plaintiff's acceptance of the terms of the Edward Jones Account Agreement and Disclosure Statement and agreed that the Plaintiff was bound thereby.

11. Plaintiff maintained its investment accounts with Edward Jones for approximately four years. During that time, in addition to re-executing its account agreements with Edward Jones, it engaged in trading activity, received account statements, and communicated regularly with Edward Jones employees including Grossman.

12. The Arbitration Agreement contained in the Edward Jones Account Agreement and Disclosure Statement states:

Any controversy arising out of or relating to any of my accounts or transactions with you, your officers, directors, agents, and/or employees for me, to this Agreement, or to the breach thereof, or relating to transactions or accounts maintained by me with any of your predecessor or successor firms by merger, acquisition or other business combinations from the inception of such accounts shall be settled by arbitration in accordance with the rules then in effect of the Board of Directors of the New York Stock Exchange, Inc., or the National Association of Securities Dealers, Inc. as I may elect.

13. The Arbitration Agreement also clearly explains that Plaintiff and Edward Jones give up the right to sue each other in court, including a right to trial by jury, and sets forth an overview of the arbitral process. It is set forth in bold type.

14. The Fiduciary/Trust Account Authorization and Acknowledgement Form also contains an independent representation by the Plaintiff that, by signing it, the Plaintiff agrees to the provisions in the Edward Jones Account Agreement and Disclosure Statement, including the Arbitration Agreement. It states:

The Edward Jones Account Agreement and Disclosure Statement contains, on page 19, paragraph 2, a binding arbitration provision which may be enforced by the parties. By my/our signature(s) below, I/we have received a copy of this document including a schedule of fees and Edward Jones Privacy Notice and agree to its terms and conditions. I further understand that this document allows my investment representative to accept my/our verbal instructions to initiate and/or terminate the services described.

### CONCLUSIONS OF LAW

1. By enacting the Federal Arbitration Act (“FAA”), Congress created a national policy favoring the enforcement of arbitration agreements in requiring courts to “rigorously enforce agreements to arbitrate.” Shearson/Am. Express, Inc. v. McMahan, 482 U.S. 220, 226 (1987).

2. Under the FAA, an arbitration clause in a contract involving a commercial transaction is valid, irrevocable and enforceable. 9 U.S.C. § 2. The FAA applies because there is a written Arbitration Agreement between the parties, and that Arbitration Agreement is part of a contract involving a commercial transaction. See e.g. State ex rel. TD Ameritrade, Inc. v. Kaufman, 692 S.E.2d 293, (W. Va. 2010); State ex rel. Clites v. Clawges, 224 W. Va. 299, 305;

Rashid v. Schenk Construction Company, Inc., 190 W. Va. 363, 367 (W. Va. 1993) citing  
Maxum Foundations, Inc. v. Salus Corp., 779 F.2d 974, 978 (4th Cir. 1985).

3. In determining whether to grant a motion to compel arbitration under the FAA, the Court need only determine, (a) whether a valid arbitration agreement exists between the parties, and, (b) whether plaintiff's claims fall within the substantive scope of the arbitration agreement. Ruckdeschel v. Falcon Drilling Company, L.L.C., 693 S.E.2d 815, 821 (W.Va. 2010).

4. In light of the arbitration provision in the Edward Jones Account Agreement and Disclosure, Plaintiff's multiple signatures on the Fiduciary/Trust Account Authorization and Acknowledgement Form, and the parties' nearly four year relationship for brokerage services, a valid arbitration agreement exists. Board of Education of the County of Berkeley v. W. Harley Miller, Inc., 160 W.Va. 473, 236 S.E.2d 439 (1977).

5. Plaintiff's three claims - charging negligence, breach of fiduciary duty, and breach of the implied covenant of good faith and fair dealing - fall entirely within the scope of the Arbitration Agreement.

6. The Arbitration Agreement between Plaintiff and Edward Jones clearly states that it shall govern "any controversy arising out of or relating to any of [Plaintiff's] accounts or transactions with [Edward Jones], [its] officers, directors, agents and/or employees for [Plaintiff], or to this agreement, or the breach thereof, or relating to transactions or accounts maintained by me with any of your predecessor or successor firms ... shall be settled by arbitration."

7. The allegations in the Complaint relate entirely and exclusively to Plaintiff's accounts with Edward Jones, and Defendants' handling of those accounts: Plaintiff alleges that Defendants failed to obtain a certain account performance, and that this purported failure arose

from Defendants' failure to comply with certain duties and regulations that, Plaintiff claims, would have led to other investment choices. The claims in the Complaint are all asserted against all Defendants. Plaintiff makes no attempt to differentiate certain claims against certain Defendants.

8. It is well established that a nonsignatory parent company may arbitrate a claim if its subsidiary is a signatory to an arbitration agreement and the charges against the parent and the subsidiary involve inherently inseparable facts. International Paper Co. v. Schwabedissen Maschinenen & Anlagen GMBH, 206 F.3d 411, 417 (4th Cir. 2000); J.J. Ryan & Sons v. Rhone Poulenc Textile, S.A., 863 F.2d 315, 320-21 (4th Cir. 1988) (quoting Sam Reisfeld & Son Import Company v. S.A. Eteco, 530 F.2d 679, 681). Accordingly, the non-signatory Defendants may arbitrate the claims asserted against them by Plaintiff.

9. The Court finds that the Arbitration Agreement is not procedurally or substantively unconscionable.

10. Under the FAA, a court must stay "any suit or proceeding" pending arbitration of "any issue referable to arbitration under an agreement in writing for such arbitration." 9 U.S.C. § 3. Burlington Ins. Co. v. Trygg-Hansa Ins. Co. AB, 9 Fed. Appx. 196, 200 (4th Cir. N.C. 2001); State ex rel. Clites v. Clawges, 224 W. Va. 299, 307 (W. Va. 2009).

11. This matter must be stayed pending the conclusion of arbitration of Plaintiff's claims.

### **ORDER**

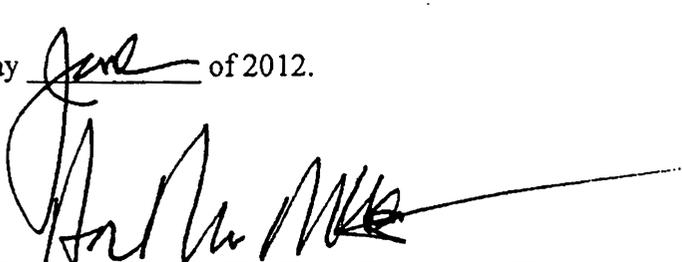
Based on the foregoing, the Court hereby **ORDERS**

1. Defendants' Motion to Compel Arbitration and Stay the Action is **GRANTED**;  
and

2. This civil action shall be, and is hereby, **REFERRED** to arbitration pursuant to the terms of the arbitration agreement contained in the Edward Jones Account Agreement and Disclosure Statement and **STAYED** pending the outcome of arbitration.

The Clerk of Court is hereby directed to send certified copies of this Order to all counsel of record.

Entered this 18<sup>th</sup> day June of 2012.

  
The Honorable Arthur M. Recht  
Judge, Circuit Court of Hancock County, West Virginia

PRESENTED BY:

  
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*The Jones Financial Companies, LLLP,*  
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*Edward D. Jones & Co., L.P., and*  
*Curt Randy Grossman*

**A TRUE COPY**

Attests:  
  
Clerk, Circuit Court, Hancock County  
  
Deputy