

STATE OF NORTH CAROLINA
COUNTY OF JOHNSTON

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO: 09-CVS-01402

CHARLES D. MAST,)
)
Plaintiff,)
)
vs.)
)
EDWARD D. JONES & CO.,)
A Limited Partnership,)
BRIAN IVEY, and)
HARTFORD EQUITY SALES)
COMPANY, INC.,)
)
Defendants.)

**RESPONSE TO OBJECTION
TO DESIGNATION**

Defendants hereby respond to Plaintiff’s objection to the designation of this action as within the Business Court’s mandatory jurisdiction.

Defendant Edward D. Jones & Co. (“EDJ”) is a securities broker-dealer firm, licensed with the SEC and the North Carolina Secretary of State. It is regulated by both of these entities and a self-regulatory entity, FINRA. Plaintiff claims that a fiduciary duty is owed to him by EDJ, by reason of three securities accounts he opened with EDJ: two trust accounts and a retirement account. Plaintiff further claims that by virtue of his relationship with EDJ, Defendants Brian Ivey (“Ivey”) and Hartford Equity Sales Company, Inc. (“Hartford”), owed him a fiduciary duty as well.

Specifically, Plaintiff alleges that Neal Haworth (“Haworth”) “was an agent and financial advisor to Edward Jones, acting within the course and scope of his course of scope of his agency, employment and authority of Edward Jones regarding all matters relevant to this matter.” (Complaint, ¶ 5). Haworth is alleged to have acted as an agent as Hartford, such that his actions are imputed to Hartford. (Complaint, ¶ 7). Plaintiff further alleges that Haworth and

EDJ, as well as Hartford and Ivey, “provide investment and insurance advice and services to their clients, including Plaintiff.” (Complaint, ¶¶ 8,9). Additionally, Haworth and EDJ allegedly “advertise that they consider ‘individual needs before anything else.’” Further:

10. Prior to and continuing through the acts complained of Defendants herein, Edward Jones had served as financial advisors to Mast on several personal and business matters, including trust accounts for Mast’s children and retirement accounts for Mast’s business. Haworth and Edward Jones had a fiduciary relationship with Mast during all times relevant hereto.

Plaintiff alleges that Haworth contacted him in June, 2007, concerning making changes relating to two life insurance policies that he owned, and introduced him to Ivey. (Complaint, ¶¶ 14, 16). Plaintiff alleges that he agreed to the transaction that Haworth and Ivey recommended, because he “trusted *Haworth* and if Haworth and Ivey recommended the change, he would do so.” (Complaint, ¶ 19)(emphasis added).

Based in significant part on this relationship arising out of his securities accounts with EDJ, Plaintiff claims that all Defendants owed him fiduciary duties, and seeks compensatory and exemplary damages arising out of the alleged breach of those duties. Indeed, the transaction concerning the issuance of the Hartford policy, standing alone, is insufficient to create a fiduciary relationship. *See Hunter v. The Guardian Life Insurance Company of America*, 162 N.C. App. 477, 482, 593 S.E.2d 595, 599 (2003).

Under applicable law relating to securities broker-dealer accounts, EDJ is not a per se fiduciary. *See Sterner v. Penn*, 159 N.C. App. 626, 583 S.E. 2d 670 (2003); *see also Fekety v. Gruntal & Co., Inc.*, 595 N.Y.S. 2d 190 (App. Div. 1993). EDJ further asserts that pursuant to the jurisprudence developed in interpreting arbitration clauses contained in securities customer account agreements, it is entitled to arbitration of this dispute. *See, e.g., Park v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 159 N.C. App. 120, 582, S.E. 2d 375 (2003). *See*

also Rodriguez de Quijas v. Shearson/American Express, Inc., 490 U.S. 477, 109 S.Ct. 1917 (1989). Resolution of these issues, however, necessarily involve laws relating to securities, and the relationships between broker-dealers and their customers.

Plaintiff's reliance on the definition of "security" in Chapter 78A, while facially appealing, is misplaced. The statute at issue here, G.S. §7A-45.4 provides that a proper case for this Court is "an action that *involves a material issue relating to* [*s*] *ecurites law*." The issues in this case relate to the jurisprudence involving securities broker-dealers, and there are material issues - - as to fiduciary duty, agency, arbitration, and others - - that are related to securities law. The designation is proper.

This the 2nd day of June, 2009.

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on this day the foregoing **RESPONSE TO OBJECTION TO DESIGNATION** was served upon the attorney of record for Plaintiff in this action by depositing copies thereof in the United States mail, postage prepaid and addressed as follows:

Mr. George B. Mast
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This the 2nd day of June, 2009.

/s/ Hannah G. Styron
Hannah G. Styron