

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Marie B. Yvon (Claimant) v. Edward Jones Investments and John E. Zahner
(Respondents)

Case Number: 03-02618

Hearing Site: Albany, New York

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

REPRESENTATION OF PARTIES

Claimant Marie B. Yvon ("Yvon") hereinafter referred to as "Claimant": Kathleen Eldergill, Esq., Beck & Eldergill, P.C., Manchester, CT.

Respondent Edward D. Jones & Co. ("Edward Jones") and John E. Zahner ("Zahner") hereinafter collectively referred to as "Respondents": Sandra B. Gallini, Esq., Greensfelder, Hemker & Gale, PC., St. Louis, MO.

CASE INFORMATION

Statement of Claim filed on or about: April 4, 2003.

Claimant signed the Uniform Submission Agreement: April 21, 2003.

Joint Statement of Answer filed by Respondents on or about: June 25, 2003.

Edward Jones signed the Uniform Submission Agreement: May 8, 2003.

Zahner signed the Uniform Submission Agreement: May 13, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: misrepresentation; unsuitability; omission of fact; and breach of fiduciary duty. Claimant's claim involved annuities.

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

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$38,104.28; punitive damages in an amount necessary to prevent or deter future conduct of this kind; attorneys' fees; and costs.

Respondent requested that the Statement of Claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents' Motion in Limine, dated January 2, 2004, and Claimant's request to amend the Statement of Claim, dated January 5, 2004, were settled by counsel for the parties, without decision or intervention by the Arbitrator, as follows: Respondents' counsel withdrew objection to Claimant's witness, Richard Fochi, testifying and Claimant's counsel agreed not to designate Mr. Fochi as an "expert"; and Respondents' counsel agreed to withdraw the opposition to the request to amend, which was then therefore granted by the Arbitrator.

ARBITRATOR'S REPORT

At the hearings, relevant documentary evidence and witness' testimony were efficiently introduced and thoroughly and ably examined by the respective counsel for the parties. On balance, Claimant has proved by a fair preponderance of the evidence that, taking into account all of the evidence – particularly the facts relating to her age, her present financial circumstances, the tenuousness of a very substantial portion of the total of the joint income of Claimant and her husband, and her long history of investing in fixed income instruments, the investment recommended by Respondents was very unsuitable for her. Accordingly, Claimant is entitled to an award, jointly and severally against Respondents, in the amount of \$38,104.28 as compensation, through the conclusion of the hearings, for all damages sustained by her.

AWARD

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

1. Respondents are jointly and severally liable for and shall pay to Claimant compensatory damages in the amount of \$38,104.28, plus interest at the rate of 9% per annum from January 16, 2004 through the date of payment of the Award.
2. 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 = \$175.00

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, Edward D. Jones & Co. is a party.

Member surcharge	= \$ 875.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,000.00

Forum Fees and Assessments

The Arbitrator has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with the Arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: October 22, 2003 1 session	

Five (5) Hearing sessions @ \$450.00	= \$2,250.00
Hearing Dates: January 14, 2004 2 sessions	
January 15, 2004 3 sessions	

Total Forum Fees	= \$2,700.00
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1. The Panel has assessed \$2,700.00 of the forum fees jointly and severally against Respondents.

Fee Summary

1. Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 175.00
Total Fees	= \$ 175.00
<u>Less payments</u>	= \$ 625.00
Refund Due	= \$ 450.00

2. Edward Jones is solely liable for:

<u>Member Fees</u>	= \$2,625.00
Total Fees	= \$2,625.00
<u>Less payments</u>	= \$2,625.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$2,700.00
Total Fees	= \$2,700.00
<u>Less payments</u>	= \$ 0.00

Balance Due NASD Dispute Resolution

= \$2,700.00

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

ARBITRATOR

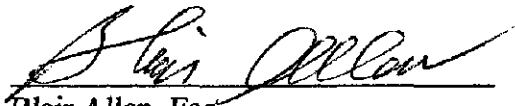
Blair Allen, Esq.

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Public Arbitrator, Presiding Chair

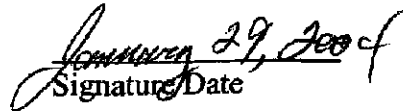
Arbitrator's Signature

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.



Blair Allen, Esq.

Public Arbitrator, Presiding Chairperson


Signature Date

February 3, 2004

Date of Service (For NASD Dispute Resolution use only)