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**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant

Lee Ryan Thoss

Case Number: 04-01539

Names of the Respondents

Edward D. Jones & Co., L.P. d/b/a Edward Jones

Edward Jones Investment, Inc.

Bruce W. Espy

James L. Faubert

Hearing Site: Orlando, Florida

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

**REPRESENTATION OF PARTIES**

Lee Ryan Thoss, hereinafter referred to as "Claimant", appeared *pro se*.

For Edward D. Jones & Co., L.P. d/b/a Edward Jones ("Edward Jones"), Edward Jones Investment, Inc. ("Edward Jones Investment"), Bruce W. Espy ("Espy") and James L. Faubert ("Faubert"), hereinafter collectively referred to as "Respondents": Trae D. Meyr, Esq., Greensfelder, Hemker & Gale, P.C., St. Louis, Missouri.

**CASE INFORMATION**

Statement of Claim filed on or about: March 4, 2004.

Amended Statement of Claim filed on or about: December 9, 2004.

Claimant signed the Uniform Submission Agreement on: March 3, 2004.

Statement of Answer filed by Respondents Edward Jones and Espy on or about: June 10, 2004.

Claimant's Reply to Respondents Edward's and Espy's Statement of Answer filed on or about: June 15, 2004.

Statement of Answer to Amended Statement of Claim filed by Respondent Faubert on or about: January 24, 2005.

Respondent Edward Jones signed the Uniform Submission Agreement on: March 29, 2004.

Respondent Espy signed the Uniform Submission Agreement on: April 6, 2004.

Respondent Faubert did not file an executed Uniform Submission Agreement.

Respondent Edward Jones Investment did not file a Statement of Answer or executed Uniform Submission.

### **CASE SUMMARY**

Claimant alleged the following causes of action: 1) breach of fiduciary duty; 2) unauthorized transfer of variable annuity sub-accounts to a fixed sub-account; 3) unauthorized trading; 4) embezzlement; 5) misrepresentation; 6) fraud; 7) failure to execute instructions; and 8) overcharges. The causes of action relate to Claimant's investment in the Hartford Life Director VII variable annuity.

Unless specifically admitted in their Answers, Respondents Edward Jones, Espy and Faubert denied the allegations made in the Statement of Claim and asserted various defenses.

### **RELIEF REQUESTED**

Claimant requested: 1) compensatory damages in the amount of \$48,135.00; 2) costs; and 3) such other relief the undersigned arbitrator (the "Arbitrator") deemed just and proper.

Respondents Edward Jones, Espy and Faubert requested: 1) dismissal of Claimant's claims in their entirety; 2) costs; and 3) expungement of all reference to the above captioned arbitration from Respondents Espy's and Faubert's registration records maintained by the NASD Central Registration Depository ("CRD").

### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondent Faubert did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Arbitrator on all issues submitted.

On or about May 20, 2004, the parties stipulated to Claimant's dismissal of his claims against Respondent Edward Jones Investment.

On or about August 31, 2004, Claimant filed his motion to amend his Statement of Claim to add James Faubert as a party. On or about September 17, 2004, Respondents Edward Jones and Espy filed their response. On or about September 20, 2004, the Arbitrator granted the motion.

On or about September 7, 2004, Claimant filed his motion to amend his Statement of Claim to add The Hartford Investment Products Services as a party. On or about October 11, 2004, the Arbitrator granted Claimant's motion. The Hartford Investment Products Services is a non-member of NASD and did not voluntarily submit to arbitration. Therefore, The Hartford Investment Products Services was not a party to the above-referenced arbitration proceeding and the Arbitrator made no determination with respect to The Hartford Investment Products Services.

At the evidentiary hearing, Respondent Faubert moved for dismissal of Claimant's claims on the basis that Claimant did not properly serve his Amended Statement of Claim upon Respondent Faubert. The Arbitrator

denied the motion upon determining that Claimant provided sufficient notice of Claimant's claims against Respondent Faubert, and that Respondent Faubert was represented by counsel, and appeared and testified at the evidentiary hearing.

At the conclusion of Claimant's case-in-chief, Respondents Edward Jones, Faubert and Espy moved for a directed verdict on the claims of breach of fiduciary duty, misrepresentation, unauthorized trading, and embezzlement. The Arbitrator granted the motion as to the claim of embezzlement and denied the motion as to all other claims.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims against Respondents Edward Jones, Espy and Faubert are denied in their entirety.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Faubert's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Faubert must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Espy's registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Espy must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
4. Any and all claims or relief not specifically addressed herein are denied.

### FEES

Pursuant to the Code, the following fees are assessed:

#### Filing Fees

NASD 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, Respondent Edward Jones is a member firm and a party.

Member surcharge = \$ 875.00

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

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments requested during these proceedings for which fees were assessed.

#### **Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

There were no three-day cancellation fees assessed during these proceedings.

#### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

There were no injunctive relief fees assessed during these proceedings.

#### **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:

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00 per session	= \$ 900.00
Pre-hearing conferences:	
July 15, 2004	1 session
October 6, 2004	1 session
Four (4) Hearing sessions @ \$450.00 per session	= \$1,800.00
Hearing Dates:	
February 9, 2005	2 sessions
February 10, 2005	2 sessions
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Total Forum Fees	= \$2,700.00

The Arbitrator has assessed the total forum fees in the amount of \$2,700.00 to Respondent Edward Jones.

#### **Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

**Fee Summary**

Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 175.00
<u>Total Fees</u>	= \$ 175.00
<u>Less payments</u>	= \$ 175.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Edward Jones is solely liable for:

<u>Member Fees</u>	= \$2,625.00
<u>Forum Fees</u>	= \$2,700.00
<u>Total Fees</u>	= \$5,325.00
<u>Less payments</u>	= \$2,625.00
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.

**ARBITRATION PANEL**

*Jacob I. Levine*

*Sole Public Arbitrator*

**Arbitrator's Signature**

/s/  
Jacob I. Levine  
Sole Public Arbitrator

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Signature Date

February 11, 2005

Date of Service (For NASD Dispute Resolution office use only)

Feb 11 2005 5:55PM NASD

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There were no administrative costs incurred during these proceedings.

Fee Summary

Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 175.00
<u>Total Fees</u>	= \$ 175.00
<u>Less payments</u>	= \$ 175.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Respondent Edward Jones is solely liable for:

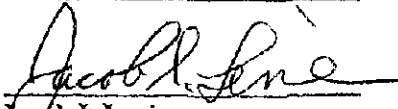
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ARBITRATION PANEL

Jacob I. Levine

Sole Public Arbitrator

Arbitrator's SignatureJacob I. Levine  
Sole Public Arbitrator2/11/05

Signature Date

Date of Service (For NASD Dispute Resolution office use only)