

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

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In the Matter of the Arbitration Between:

Noel C. Wilson, Ruth E. Wilson, Noel C. & Ruth E. Wilson Family Revocable Trust and Noel C. & Ruth E. Wilson Family Trust, Claimants v. Martin R. McDonald and Edward D. Jones & Co., L.P., Respondents

Case Number: 04-04929

Hearing Site: San Francisco, California

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

**REPRESENTATION OF PARTIES**

For Claimants:

Maureen A. Lenihan, Esq.  
Hunter Richey Di Benedetto  
& Eisenbeis, LLP  
Sacramento, California

For Respondents:

David H.S. Commins, Esq.  
Commins & Templeton  
San Francisco, California

**CASE INFORMATION**

Statement of Claim filed: July 9, 2004

Claimants' Pre-Hearing Brief filed: June 6, 2005

Claimants' Uniform Submission Agreement signed: July 30, 2004

Joint Statement of Answer filed by Respondents Martin R. McDonald and Edward D. Jones & Co., L.P. ("Edward Jones"): September 27, 2004

Respondents' Arbitration Brief filed: June 6, 2005

Respondent Martin R. McDonald's Uniform Submission Agreement signed: August 13, 2004

Respondent Edward Jones' Uniform Submission Agreement signed: August 9, 2004

### **CASE SUMMARY**

Claimants alleged that this case involves an elderly couple who invested their life savings with Respondents. Claimants further alleged that the acts and omissions at issue involve Respondents' mishandling of the Claimants' accounts including making inappropriate investments, failing to prepare and/or follow any suitability analysis and generating sales on the account for Respondents' own financial benefit and gain and contrary to their duties and obligations to the Claimants. Claimants also alleged the following claims with respect to investments in various securities: 1) Elder Abuse (McDonald and Edward Jones); 2) Breach of Fiduciary Duty (McDonald and Edward Jones); 3) Fraud (McDonald and Edward Jones); 4) Negligent Misrepresentation (McDonald and Edward Jones); 5) Professional Negligence (McDonald and Edward Jones); 6) Negligent Retention/Training/Supervision (Edward Jones); and 7) Breach of Contract (McDonald and Edward Jones). Claimants' Claim did not specify the securities at issue in this matter.

Respondents denied Claimants' allegations of wrongdoing and denied any liability to Claimants.

### **RELIEF REQUESTED**

Claimants requested:

1. Special damages according to proof;
2. Consequential damages of approximately \$650,000.00 or according to proof;
3. Exemplary/punitive damages in excess of \$1,000,000.00;
4. Reasonable attorney's fees;
5. Interest as allowed by law; and
6. Such other and further relief as the Panel may deem proper.

Respondents requested:

1. That Claimants take nothing by their claims;
2. That Respondents be awarded their costs; and
3. That the claims against Mr. McDonald be found without factual basis so that he may expunge his regulatory record.

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

On November 20, 2004, Claimants and Claimants' Counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100 the waiver of the Claimants shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

At the outset of the hearing, the Panel reviewed and considered the positions of the parties relative to Respondents' Motion to Exclude Improper Expert Witness Testimony. The panel denied the motion.

At the outset of the hearing, the Panel reviewed and considered the positions of the parties relative to Respondents' Motion to Dismiss Claims. The Panel denied the Motion to Dismiss Claims, except for the claims relating to fraud and negligent misrepresentation for which the Panel requested and reviewed briefs and rebuttal arguments submitted by respective counsel. The Panel granted the Motion to Dismiss with respect to the claim for fraud during the hearing, but did not grant the Motion to Dismiss with respect to the claim for negligent misrepresentation.

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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) All claims by Claimants, including the claims for exemplary and punitive damages, are dismissed.
- 2) Respondent Martin R. McDonald's request for expungement is denied. The Panel found that McDonald was/is either not aware of, or not consistently following, Edward Jones policies, procedures and industry regulations. Therefore, the Panel orders that McDonald receive training on current Edward Jones policies, procedures and industry regulations for its registered representatives. This training is to be held in the Edward Jones headquarters in St. Louis for a minimum of three (3) full business days. In addition, the Panel orders that McDonald work under the direct supervision of a seasoned Edward Jones broker for the next 12 months. This more experienced broker is to review McDonald's compliance with the aforesaid policies, procedures and regulations at least quarterly and provide Edward Jones and McDonald with a written review and recommendations, if any. While the Panel did not find Edward Jones culpable in this case, the Panel concluded that Edward Jones may not be adequately communicating its policies, procedures and industry regulations to its registered representatives. Accordingly, the Panel orders that Edward Jones conduct an immediate review of its practices relating to the communication of its policies, procedures and industry regulations to its registered representatives. Once the review is completed by Edward Jones,

Edward Jones should consider adopting more effective training and communication in those areas requiring improvement and, as necessary, changing its practices.

- 3) Respondent Martin R. McDonald is solely liable to and shall pay Claimants the sum of \$500.00 as reimbursement for Claimants' filing fee.
- 4) As noted below, the Panel assessed the \$11,250.00 in forum fees to Respondent Martin R. McDonald.
- 5) Except as mentioned above, each party shall bear its own costs, including attorney's fees.
- 6) All other relief not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD-DR received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$500.00
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#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, Edward Jones is a party and the following fees are assessed:

Member Surcharge	= \$2,800.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$5,000.00</u>
Total Member Fees	= \$8,550.00

#### **Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

(1) Pre-hearing conference session with a single arbitrator @ \$450.00/session	=	\$450.00
Pre-hearing conference: April 27, 2005	1 session	
(1) Pre-hearing conference session with the Panel @ \$1,200.00/session	=	\$1,200.00
Pre-hearing conference: February 22, 2005	1 session	

(8) Hearing sessions @ \$1,200.00/session		=	\$9,600.00
Hearings:	June 27, 2005	2 sessions	
	June 28, 2005	2 sessions	
	June 30, 2005	2 sessions	
	July 1, 2005	2 sessions	
<b>Total Forum Fees</b>			<b>= \$11,250.00</b>

The Panel assessed the \$11,250.00 in forum fees to Respondent Martin R. McDonald.

**Fee Summary**

1. Claimants are charged with the following fees and costs:

Initial Filing Fee	= \$ 500.00
<u>Less Payments</u>	= \$( 1,700.00)
Refund Due Claimants	= \$( 1,200.00)
  
2. Respondent Edward Jones is charged with the following fees and costs:

Member Fees	= \$ 8,550.00
<u>Less Payments</u>	= \$( 8,550.00)
Balance Due NASD-DR	= \$ 0.00
  
3. Respondent Martin R. McDonald is charged with the following fees and costs:

Forum Fees	= \$ 11,250.00
<u>Less Payments</u>	= \$( 0.00)
Balance Due NASD-DR	= \$ 11,250.00

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

**ARBITRATION PANEL**

Gary S. DeWeese	-	Public Arbitrator, Presiding Chair
Herbert Liberman	-	Public Arbitrator
Timothy P. Bogan, CPA	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
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Gary S. DeWeese  
Chair, Public Arbitrator

7/15/05  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Herbert Liberman  
Public Arbitrator

\_\_\_\_\_  
Signature Date

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Timothy P. Bogan, CPA  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

7/15/05  
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Date of Service

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Chair, Public Arbitrator



Herbert Liberman  
Public Arbitrator

Signature Date

7/15/05

Signature Date

Timothy P. Bogan, CPA  
Non-Public Arbitrator

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