

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Jo Ann Ray,
Claimant,

Case Number: 04-07806
Hearing Site: St. Louis, Missouri

v.

Merrill Lynch, Pierce, Fenner & Smith, Inc.,
A.G. Edwards & Sons, Inc., Edward D. Jones & Co., Polly S. Jones,
James D. Maher and Jeff G. Pratl,
Respondents.

Nature of the Dispute: Customer vs. Members and Associated Persons

REPRESENTATION OF PARTIES

Jo Ann Ray ("Ray"), hereinafter referred to as "Claimant": Albert S. Watkins, Esq. of Kodner, Watkins, Muchnick, Dunne & Weigley, located in St. Louis, Missouri.

Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), James D. Maher ("Maher") and Jeff G. Pratl ("Pratl"), hereinafter collectively referred to as "Respondents": David B. Helms, Esq. of Lewis, Rice & Fingersh, LC, located in St. Louis, Missouri.

A.G. Edwards & Sons, Inc. ("AGE") and Polly S. Jones ("Jones"), hereinafter collectively referred to as "Respondents": Matthew Salamon, Esq. of A.G. Edwards & Sons, Inc., located in St. Louis, Missouri.

Edward D. Jones & Co. ("EDJ"), hereinafter referred to as "Respondent": Lisa Nielsen, Esq. of Greensfelder, Hemker & Gale, P.C., located in St. Louis, Missouri.

CASE INFORMATION

Statement of Claim filed on or about: November 10, 2004

Ray signed the Uniform Submission Agreement: October 22, 2004

Claimant's Denial of Affirmative Defenses of Respondents Merrill Lynch, Maher and Pratl: April 25, 2005

Claimant's Denial of Affirmative Defenses of Respondents AGE and Jones: April 25, 2005

Claimant's Denial of Affirmative Defenses of Respondent EDJ: March 11, 2005

Statement of Answer and Affirmative Defenses filed by Respondents, Merrill Lynch, Maher and Pratl, on or about: March 25, 2005

Merrill Lynch signed the Uniform Submission Agreement: March 24, 2005

Maher signed the Uniform Submission Agreement: March 22, 2005

Pratl signed the Uniform Submission Agreement: March 22, 2005

Statement of Answer and Affirmative Defenses filed by Respondents, AGE and Jones, on or about: December 29, 2004

AGE signed the Uniform Submission Agreement: November 19, 2004

Jones signed the Uniform Submission Agreement: November 20, 2004

Statement of Answer and Affirmative Defenses filed by Respondent EDJ on or about: March 4, 2005

Edward Jones signed the Uniform Submission Agreement: April 15, 2005

CASE SUMMARY

Claimant asserted the following causes of action: negligence, breach of fiduciary duty, failure to supervise, unauthorized trading and suitability. The causes of action relate to unspecified securities, which were invested in aggressive vehicles, and unsuitable to Claimant's investment needs and objectives.

Unless specifically admitted in their Answer, Respondents, Merrill Lynch, Maher and Pratl, denied the allegations made in the Statement of Claim and asserted various affirmative defenses:

1. Claimant's Statement of Claim fails to state a claim upon which relief can be granted.
2. Claimant's claims are barred by the doctrines of account stated, estoppel, waiver, ratification and laches.
3. Damages for which Claimant seeks to hold these Respondents liable resulted in whole or in part from the acts or omissions of Claimant or others, and such claims are barred by the doctrines of contributory or comparative fault.
4. The damages for which Claimant seeks to hold these Respondents liable were proximately caused by Claimant's own failure to use reasonable means to mitigate her damages. Claimant further aggravated and worsened her losses by prematurely disposing of the securities in her portfolio in a down market so as to unnecessarily increase her losses. Claimant is barred from recovering any damages based on her own contributory negligence and/or comparative fault.
5. Claimant's claims are time-barred by virtue of the expiration of the applicable federal and state statutes of limitations.
6. Claimant fully understood all risks and knowingly, willingly and voluntarily assumed the risks of investing.
7. Claimant failed to use the requisite due diligence in monitoring, managing and handling her accounts and investments.
8. Claimant was sent written confirmation statements of every transaction in her accounts and monthly statements that summarized all activity in her accounts, and other periodic reports analyzing and illustrating Claimant's investment portfolio, its content, and its risk profiles. Claimant knew at all times of the transactions and holdings in her accounts with these Respondents and of the profits and losses they were incurring.
9. Claimant is barred from recovering from these Respondents under her Client Agreement with both Merrill Lynch and EDJ because Claimant failed to object or notify these Respondents within 10 days of the acts and omissions of which she now complains.
10. Any award of punitive or exemplary damages would be improper, unjustified and unconstitutional.
11. These Respondents reserve the right to assert additional defenses.

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

1. Claimant failed to mitigate any alleged damages after Claimant knew or should have known of the alleged facts and circumstances of which Claimant complains.
2. Claimant is barred from recovering from Respondents under the doctrines of account stated, estoppel, waiver and laches.
3. Claimant ratified the alleged conduct about which she now complains.
4. Claimant failed to exercise that degree of care over her investments which an ordinarily prudent investor would exercise, and Claimant therefore caused or contributed to cause the alleged damage of which Claimant complains herein, and should be barred from recovering any alleged damages based on her own contributory negligence or comparative fault.
5. Claimant cannot be entitled to recover for any alleged damages resulting from the disclosed and known risks which Claimant voluntarily assumed.
6. Damages or losses alleged by Claimant were caused, if at all, by unforeseeable market factors and conditions affective the value of securities in Claimant's accounts for which Respondents are not liable or responsible.
7. The Statement of Claim and all allegations set forth in same fail to state a claim against Respondents upon which relief can be granted.
8. Claimant failed to act promptly and with due diligence to mitigate any alleged damages or losses or omissions of which Claimant now complains. As a result of Claimant's failure to object or notify Respondents of the acts or omissions within ten (10) days of the receipt of written confirmations, Claimant is barred from recovering from Respondents.

Unless specifically admitted in its Answer, Respondent EDJ denied the allegations made in the Statement of Claim and asserted various affirmative defenses:

1. Claimant ratified all transactions that took place in the accounts with EDJ and therefore, Claimant is barred from recovering any alleged loss resulting from such transactions.
2. To the extent that Claimant has suffered any damages, they are the product of the negligent conduct of Claimant or others such that some, or all, of Claimant's recovery is barred by those contributory or comparative negligent acts.
3. Claimant failed to mitigate her alleged damages and therefore, is barred from recovering any damages to the extent that such damages could have been prevented had Claimant fulfilled her duty to mitigate.
4. The Statement of Claim is barred by the doctrine of waiver.
5. The Statement of Claim is barred by the doctrine of estoppel.
6. Claimant's failure to supervise claim should be dismissed because EDJ had adequate supervisory mechanisms and safeguards in place and, at all time relevant herein, EDJ acted in accordance with these procedures.
7. To the extent a fiduciary relationship exists, which Respondent denies, it is extremely limited and does not extend beyond the execution of a particular transaction. Thus, any claims based on a continuing fiduciary duty should be dismissed.

RELIEF REQUESTED

Claimant requested \$307,043.62 in compensatory damages, punitive damages, plus pre and post judgment interest, attorney's fees, costs and such relief as is deemed just, fair, proper and/or

necessary, inclusive of disciplinary referral.

Respondent, Merrill Lynch, Maher and Pratl, requested that Claimant's claims be dismissed in their entirety, that these Respondents be awarded their costs and expenses including attorney's fees, costs and forum fees, ad for such other and further relief as is deemed just and proper.

Respondent AGE and Jones requested that the Statement of Claim be dismissed with prejudice, for costs, for a recommendation that this claim and references to this proceeding be expunged from Respondent Jones' professional record as maintained by the Central Registration Depository of the NASD, and for any other and further relief deemed appropriate.

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

OTHER ISSUES CONSIDERED AND DECIDED

On March 29, 2006, Claimant notified NASD that Respondents James D. Maher and Jeff G. Pratl were erroneously named as Respondents in this arbitration, and that all claims against Maher and Pratl were dismissed with prejudice.

On or about May 8, 2006, Claimant notified NASD and the Panel that all claims against Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Edward d. Jones & Co. had been dismissed with prejudice.

AWARD

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

1. Respondents A.G. Edwards & Sons, Inc. and Polly S. Jones are jointly and severally liable for and shall pay to Claimant, Jo Ann Ray, the sum of \$25,000.00 as compensatory damages.
2. All claims against Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc., Edward D. Jones & Co., James D. Maher and Jeff G. Pratl are hereby dismissed with prejudice.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondents James D. Maher's and Jeff G. Pratl's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-16, Respondents Maher ad Pratl must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130, the arbitration panel has made the following affirmative findings of fact:

- a. the claim, allegation, or information is factually impossible or clearly erroneous; and
 - b. the claim, allegation, or information is false.
4. Except as otherwise specified herein, parties shall bear their own costs, including attorneys' fees.
 5. Any and all relief not specifically addressed herein, including punitive damages, are 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 = \$ 300.00

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 persons at the time of the events giving rise to the dispute. Accordingly, Merrill Lynch, Pierce, Fenner & Smith, Inc., A.G. Edwards & Sons, Inc. and Edward D. Jones are parties to this proceeding and are each assessed the following:

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Four (4) Hearing sessions @ \$1,125.00	= \$4,500.00
Hearing Dates: May 9, 2006 2 sessions	
May 10, 2006 2 sessions	
<hr/> Total Forum Fees	<hr/> = \$4,500.00

1. The Panel has assessed 100% of the total forum fees in the amount of \$4,500.00 solely to Respondent A.G. Edwards & Sons, Inc.

Fee Summary

1. Claimant, Jo Ann Ray, is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Less payments</u>	<u>= \$1,425.00</u>
Refund Due from NASD Dispute Resolution	= \$1,125.00
2. Respondent, Merrill Lynch, Pierce, Fenner & Smith, Inc. is solely liable for:

Member Fees	= \$5,200.00
<u>Less payments</u>	<u>= \$5,200.00</u>

Balance Due NASD Dispute Resolution = \$ 0.00

3. Respondent, A.G. Edwards & Sons, Inc. is solely liable for:

Member Fees	= \$5,200.00
<u>Forum Fees</u>	<u>= \$ 4,500.00</u>
Total Fees	= \$9,700.00
<u>Less payments</u>	<u>= \$5,200.00</u>
Balance Due NASD Dispute Resolution	= \$4,500.00

4. Respondent, Edward D. Jones, is solely liable for:

Member Fees	= \$5,200.00
<u>Less payments</u>	<u>= \$5,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

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

ARBITRATION PANEL

David B. Lacks, Esq.	-	Public Arbitrator, Presiding Chairperson
Lawrence M. Raskin, CPA	-	Public Arbitrator
David W. Sanders	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/ David B. Lacks, Esq.
David B. Lacks, Esq.
Public Arbitrator, Presiding Chairperson

5/16/06
Signature Date

/s/ Lawrence M. Raskin, CPA
Lawrence M. Raskin, CPA
Public Arbitrator

5/16/06
Signature Date

/s/ David W. Sanders
David W. Sanders
Non-Public Arbitrator

5/17/06
Signature Date

5/17/06
Date of Service (For NASD Dispute Resolution use only)

NASD Dispute Resolution
 Arbitration No. 04-07806
Award Page 6 of 6


Balance Due NASD Dispute Resolution	= \$ 0.00
3. Respondent, A.G. Edwards & Sons, Inc. is solely liable for:	
Member Fees	= \$5,200.00
Forum Fees	= \$4,500.00
Total Fees	= \$9,700.00
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$4,500.00
4. Respondent, Edward D. Jones, is solely liable for:	
Member Fees	= \$5,200.00
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

ARBITRATION PANEL

David B. Lacks, Esq.	-	Public Arbitrator, Presiding Chairperson
Lawrence M. Raskin, CPA	-	Public Arbitrator
David W. Sanders	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


 David B. Lacks, Esq.
 Public Arbitrator, Presiding Chairperson

5/16/06
 Signature Date

Lawrence M. Raskin, CPA
 Public Arbitrator

Signature Date

David W. Sanders
 Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution use only)

NASD Dispute Resolution

Arbitration No. 04-07806

Award Page 6 of 6

Balance Due NASD Dispute Resolution	= \$ 0.00
3. Respondent, A.G. Edwards & Sons, Inc. is solely liable for:	
Member Fees	= \$5,200.00
Forum Fees	= \$4,500.00
Total Fees	= \$9,700.00
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$4,500.00
4. Respondent, Edward D. Jones, is solely liable for:	
Member Fees	= \$5,200.00
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

ARBITRATION PANEL

David B. Lacks, Esq.	-	Public Arbitrator, Presiding Chairperson
Lawrence M. Raskin, CPA	-	Public Arbitrator
David W. Sanders	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

David B. Lacks, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date


Lawrence M. Raskin, CPA
Public Arbitrator

5/16/06
Signature Date

David W. Sanders
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution use only)

NASD Dispute Resolution
 Arbitration No. 01-07806
 Award Page 6 of 6

Balance Due NASD Dispute Resolution = \$ 0.00

3. Respondent, A.G. Edwards & Sons, Inc. is solely liable for:

Member Fees	= \$5,200.00
Forum Fees	= \$4,500.00
Total Fees	= \$9,700.00
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$4,500.00

4. Respondent, Edward D. Jones, is solely liable for:

Member Fees	= \$5,200.00
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

ARBITRATION PANEL

David B. Lacks, Esq.	-	Public Arbitrator, Presiding Chairperson
Lawrence M. Raskin, CPA	-	Public Arbitrator
David W. Sanders	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

 David B. Lacks, Esq.
 Public Arbitrator, Presiding Chairperson

 Signature Date

 Lawrence M. Raskin, CPA
 Public Arbitrator

 Signature Date

David W. Sanders
 David W. Sanders
 Non-Public Arbitrator

5-17-06
 Signature Date

 Date of Service (For NASD Dispute Resolution use only)