

**Award  
NASD Dispute Resolution**

---

In the Matter of the Arbitration Between:

Name of the Claimant  
Donald M. Sherk

Case Number: 04-08342

Names of the Respondents  
Edward D. Jones & Co., L.P.  
Robert William Lowrie

Hearing Site: Philadelphia, PA

---

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

**REPRESENTATION OF PARTIES**

Claimant, Donald M. Sherk, hereinafter referred to as "Claimant", was represented by Joseph C. Korsak, Esq., Attorney at Law, York, Pennsylvania.

Respondents, Edward D. Jones & Co., L.P. ("Edward Jones") and Robert William Lowrie ("Lowrie"), hereinafter collectively referred to as "Respondents", were represented by Dennis K. Egan, Esq., Butzel Long, Bloomfield Hills, Michigan.

**CASE INFORMATION**

*Statement of Claim filed on December 8, 2004.*

Claimant signed the Uniform Submission Agreement on November 19, 2004.

*Statement of Answer filed by Respondents on February 2, 2005.*

*A representative of Respondent Edward Jones executed the Uniform Submission Agreement on December 20, 2004.*

Respondent Lowrie signed the Uniform Submission Agreement on February 28, 2005.

*Motion to Dismiss or for Sanctions filed by Respondents on October 18, 2005 and renewed by Respondents at the hearing on the merits.*

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted the following causes of action, among others: violation of Section 10(b) of the Securities Exchange Act of 1934, violation of Section 20 of the Securities Exchange Act of 1934, violation of the securities laws of the Commonwealth of Pennsylvania, *respondeat superior*, fraud, negligence, violation of the Pennsylvania Unfair Trade Practices Act, and breach of fiduciary duty. The causes of action relate to the purchase and sale of Putnam Allstate Advisor, Putnam Capital Manager and PHCM VI ILA variable annuities.

Unless specifically admitted in their Statement of Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: Respondents

do not owe Claimant fiduciary duties, Respondents did not breach any duties owed to Claimant, Respondents did not violate the Pennsylvania Unfair Trade Practices and Consumer Protection Law, Respondents did not violate state or federal securities laws, and Claimant's losses were caused by market movement and his own decisions.

### **RELIEF REQUESTED**

Claimant in the Statement of Claim requested:

Compensatory Damages	\$ 77,000.00
Punitive Damages	\$ 155,000.00
Attorneys' Fees	amount unspecified
Interest	amount unspecified
Other Costs	amount unspecified

Respondents in their Statement of Answer requested that Claimant's claims be dismissed, that forum fees be assessed against Claimant, and that the Arbitration Panel (the "Panel") order the expungement of all reference to this matter from Respondent Lowrie's Central Registration Depository ("CRD") record.

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

At the hearing on the merits, Respondents made an oral motion for sanctions and motion to dismiss Claimant's claims. The Panel denied both motions.

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, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are denied in their entirety;
2. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and
3. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

### **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 person at the time of the events giving rise to the dispute. Accordingly, Respondent Edward Jones is a party.

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. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$450.00  
Pre-hearing conference: October 21, 2005 1 session = \$ 450.00

One (1) Pre-hearing session with Panel @ \$ 1,125.00 = \$ 1,125.00  
Pre-hearing conference: May 20, 2005 1 session

Six (6) Hearing sessions @ \$ 1,125.00 = \$ 6,750.00  
Hearing Dates: October 25, 2005 2 sessions  
October 26, 2005 2 sessions  
October 27, 2005 2 sessions

---

Total Forum Fees = \$ 8,325.00

1. The Panel has assessed \$ 4,162.50 of the forum fees to Claimant.
2. The Panel has assessed \$ 4,162.50 of the forum fees jointly and severally to Respondents.

**Fee Summary**

1. Claimant is assessed and shall pay:

Initial Filing Fee = \$ 300.00

Forum Fees = \$ 4,162.50

Total Fees = \$ 4,462.50

Less payments = \$ 1,575.00

Balance Due NASD Dispute Resolution = \$ 2,887.50

2. Respondent Edward Jones is assessed and shall pay:

Member Fees = \$ 5,200.00

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

3. Respondents are jointly and severally assessed and shall pay:

Forum Fees	= \$	4,162.50
Total Fees	= \$	4,162.50
Less payments	= \$	0.00
Balance Due NASD Dispute Resolution	= \$	4,162.50

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

**ARBITRATION PANEL**

Robert F. Sanville	-	Public Arbitrator, Presiding Chairperson
David B. Harwi, Esq.	-	Public Arbitrator, Panelist
Howard B. Scherer	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures

Robert F. Sanville

Robert F. Sanville  
Public Arbitrator, Presiding Chairperson

11/10/2005  
Signature Date

David B. Harwi, Esq.  
Public Arbitrator, Panelist

Signature Date

Howard B. Scherer  
Non-Public Arbitrator, Panelist

Signature Date

November 11, 2005  
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Robert F. Sanville  
Public Arbitrator, Presiding Chairperson

Signature Date

David B. Harwi  
David B. Harwi, Esq.  
Public Arbitrator, Panelist

11/10/05  
Signature Date

Howard B. Scherer  
Non-Public Arbitrator, Panelist

Signature Date

November 11, 2005  
Date of Service (For NASD Dispute Resolution office use only)


**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Robert F. Sanville  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
David B. Harwi, Esq.  
Public Arbitrator, Panelist

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

  
Howard B. Scherer  
Non-Public Arbitrator, Panelist

11/10/05  
Signature Date

November 11, 2005  
Date of Service (For NASD Dispute Resolution office use only)