

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimant

Larry L. Jensen

v.

05-01238

Minneapolis, Minnesota

Respondent

Woodbury Financial Services, Inc.

NATURE OF DISPUTE

Customer v. Member Firm

REPRESENTATION OF PARTIES

Larry L. Jensen ("**Claimant**") was represented by Christopher Claassen, Esq., and Richard A. Lewins, Esq., of Burg Simpson Eldredge & Jardine, P.C., Dallas, Texas.

Woodbury Financial Services, Inc. ("**Respondent**") was represented by Julie H. Firestone, Esq., of Briggs & Morgan, P.A., Minneapolis, Minnesota.

CASE INFORMATION

The Statement of Claim was filed on or about March 9, 2005. The Submission Agreement of Claimant was signed on or about March 3, 2005.

The Statement of Answer was filed by Respondent on or about May 31, 2005. The Submission Agreement of Respondent was signed on or about June 16, 2005.

CASE SUMMARY

Claimant asserted causes of action including the following: failure to supervise, negligence, breach of industry standards and breach of contract. Claimant alleged that Respondent, through the assurances of one of its registered representatives, invested his retirement income into a variable annuity. Claimant alleged that Respondent failed to disclose the risks associated with the variable annuity. Claimant further asserted that the annuity was unsuitable given his stated investment objective of preservation of capital and his risk tolerance.

Respondent denied the allegations set forth in the Statement of Claim and asserted affirmative defenses including the following: Claimant failed to state a claim upon which relief can be granted; any damages or injuries alleged to be suffered by Claimant were not the result of any act or omission on the part of Respondent; Respondent did not act with any intent to defraud or with any willful disregard for Claimant's rights; Claimant's claims are barred, in whole or in part, by the applicable statute of limitations; Claimant's claims are barred, in whole or in part, by the equitable doctrines of estoppel, waiver, laches and/or unclean hands; Claimant is barred from any recovery by virtue of his contributory negligence and constructive notice; and any injuries or damages alleged to have been suffered by Claimant were the proximate result of the actions of persons over whom and for whom Respondent had no responsibility, control or liability.

RELIEF REQUESTED

Claimant requested an award of \$146,015.78 in actual damages, plus attorneys' fees, interest, costs and any other relief the panel deemed just and proper.

Respondent requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees. In addition, Respondent requested an expungement of all references to the above-captioned arbitration from Douglas W. Gallway's registration records maintained by the NASD Central Registration Depository ("CRD").

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the originals remain on file with NASD Dispute Resolution ("NASD").

AWARD

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

1. Respondent, Woodbury Financial Services, Inc., is liable for and shall pay to Claimant, Larry L. Jensen, the sum of One Hundred Twenty Two Thousand Dollars and No Cents (\$122,000.00) in compensatory damages;
2. Respondent, Woodbury Financial Services, Inc., is liable for and shall pay to Claimant, Larry L. Jensen, the sum of Three Hundred Dollars and No Cents (\$300.00) for the reimbursement of filing fees in this matter;

3. The testimony of Claimant's expert witness, was not only distorting and misleading to the panel, but was almost a detriment to the Claimant's case. Therefore the request for expert witness fees are explicitly denied;
4. The Panel recommends the expungement of all reference to the above captioned arbitration from Douglas W. Gallway's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Douglas W. Gallway, 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:

- *The allegations of fraud were clearly erroneous; and*
5. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, including attorney fees, are denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee	= \$ 300
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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. In this matter, the member firm is Woodbury Financial Services, Inc.

Member surcharge	= \$ 1,700
Pre-hearing process fee	= \$ 750

Hearing process fee = \$ 2,750

Adjournment Fees

Adjournments granted during these proceedings:

April 25-28, 2006 - Adjournment requested by Woodbury Financial Services, Inc.
(Fee Assessed by the Panel) = \$ 1,125

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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:

One (1) Pre-hearing session with Panel x \$ 1,125 = \$ 1,125

Pre-hearing conference: August 4, 2005 1 session

(8) Hearing sessions with Panel x \$ 1,125 = \$ 9,000

Hearing Dates:	July 10, 2006	2 sessions
	July 11, 2006	2 sessions
	July 12, 2006	2 sessions
	July 13, 2006	2 sessions

Total Forum Fees = \$ 10,125

The Arbitration Panel has assessed \$ 10,125 of the forum fees to Woodbury Financial Services, Inc.

FEE SUMMARY

Claimant, Larry L. Jensen, is liable for:

Initial Filing Fee	= \$ 300
Total Fees	= \$ 300
Less payments	= \$ 1,425
Balance Refunded By NASD Dispute Resolution	= \$ 1,125

Respondent, Woodbury Financial Services, Inc., is liable for:

Member Fees	= \$ 5,200
Adjournment Fee	= \$ 1,125
Forum Fees	= \$ 10,125
Total Fees	= \$ 16,450
Less payments	= \$ 5,200
Balance Due NASD Dispute Resolution	= \$ 11,250

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

ARBITRATION PANEL

Thomas J. Gmeinder, Esq. - Public Arbitrator, Presiding Chair
Arthur Richard Tow, Esq. - Public Arbitrator
Kenneth O. Fossey - Non-Public Arbitrator

Concurring Arbitrators:

Thomas J. Gmeinder, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Arthur Richard Tow, Esq.
Public Arbitrator

Signature Date

Kenneth O. Fossey
Non-Public Arbitrator

Signature Date

2/2/06

Date of Service (NASD use only)

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Member Fees	= \$ 5,200
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