

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

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In the Matter of the Arbitration Between:

Edward E. Skinner, Claimant v. McDonald Investments Inc., Respondent

Case Number: 05-01955

Hearing Site: Seattle, Washington

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Nature of the Dispute: Customer v. Member

**REPRESENTATION OF PARTIES**

For Claimant Edward E. Skinner:

Rosalind M. Robertson, Esq.  
Simmons Cooper LLC  
East Alton, Illinois

For Respondent McDonald Investments Inc.:

Anne M. Klepach, Esq.  
Ulmer & Berne, LLP  
Cleveland, Ohio

**CASE INFORMATION**

Statement of Claim filed: April 13, 2005

Claimant Edward E. Skinner's Uniform Submission Agreement signed: April 1, 2005

Statement of Answer filed by Respondent McDonald Investments Inc.: August 5, 2005

Respondent McDonald Investments Inc.'s Uniform Submission Agreement signed: May 3, 2005

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty, breach of contract, violation of the Securities Exchange Act of 1934 and Rule 10(b)(5) promulgated thereunder, negligence, violation of the Washington Securities Act, and violation of the Washington Consumer Protection Act. Claimant's allegations involved Respondent's alleged failure to act in accordance with Claimant's stated investment objectives and over-concentration of Claimant's accounts in equities.

Unless specifically admitted in its Answer, Respondent denied the allegations of wrongdoing set forth in Claimant's Statement of Claim and asserted various affirmative defenses.

**RELIEF REQUESTED**

Claimant requested \$153,000.00 in compensatory damages, unspecified punitive damages, treble damages, and costs, including attorney's fees.

Respondent requested dismissal of Claimant's Statement of Claim in its entirety, costs, and assessment of all forum fees to Claimant.

**OTHER ISSUES CONSIDERED AND DECIDED**

On March 24, 2006, Respondent filed a Motion to Dismiss Claimant's claims on statutes of limitations grounds, on grounds that Claimant is not a "purchaser" of securities held in his deceased wife's IRA account and thus lacks standing to bring claims relating to that account, and on the theory that an investment advisor had complete decision making authority over Claimant's accounts and thus Respondent has no liability to Claimant because it merely executed trades that were ordered by the investment advisor. On April 7, 2006, Claimant filed a Response to Respondent's Motion to Dismiss. On April 13, 2006, Respondent filed a Reply Brief in Support of its Motion to Dismiss. On April 18, 2006, the parties and the Panel participated in a telephonic pre-hearing conference during which the Panel heard oral argument regarding Respondent's motion. After due deliberation, the Panel granted Respondent's motion and dismissed all of Claimant's claims with prejudice.

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, Respondent's Motion to Dismiss, Claimant's Response, Respondent's Reply, and the parties' oral arguments at the April 18, 2006 pre-hearing conference, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimant's claims are dismissed with prejudice.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) Any and all relief not specifically addressed herein, including punitive and treble damages, is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$ 300.00
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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, the member firm McDonald Investments Inc. is a party, and the following fees are assessed:

Member Surcharge	= \$1,700.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$2,750.00
<b>Total Member Fees</b>	<b>= \$5,200.00</b>

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

The Panel assessed forum fees for each session conducted or each decision rendered on a discovery-related dispute on the papers. 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) decision on a discovery-related dispute on the papers with (1) one arbitrator @ \$200.00	= \$200.00
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Claimant submitted a subpoena for the Chair's consideration, and Respondent submitted an objection to Claimant's proposed subpoena. After considering both parties' positions, the Chair signed Claimant's subpoena.

Two (2) pre-hearing conference sessions with the Panel @ \$1,125.00/session	= \$2,250.00
Pre-hearing conferences:     August 16, 2005                     1 session	
April 18, 2006                     1 session	
<b>Total Forum Fees</b>	<b>= \$2,450.00</b>

The Panel assessed \$2,450.00 of the forum fees to Claimant.

**Fee Summary**

1. Claimant Edward E. Skinner is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 2,450.00
Total Fees	= \$ 2,750.00
Less payments	= \$(1,575.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 1,175.00</b>

2. Respondent McDonald Investments Inc. is charged with the following fees and costs:

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

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

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**ARBITRATION PANEL**

**H. Yancey Reser**  
**John E. Edison**  
**Bonny Kathleen Riggs**

**Public Arbitrator, Presiding Chair**  
**Public Arbitrator**  
**Non-Public Arbitrator**

**Concurring Arbitrators' Signatures**

H. Yancey Reser  
H. Yancey Reser  
Chair, Public Arbitrator

4/19/2006  
Signature Date

John E. Edison  
John E. Edison  
Public Arbitrator

Signature Date

Bonny Kathleen Riggs  
Bonny Kathleen Riggs  
Non-Public Arbitrator

Signature Date

4/19/06  
Date of Service

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Chair, Public Arbitrator

Signature Date

*John E. Edison*  
John E. Edison  
Public Arbitrator

4 19 06  
Signature Date

Bonny Kathleen Riggs  
Non-Public Arbitrator

Signature Date

4/19/06  
Date of Service

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Signature Date

  
Bonny Kathleen Riggs  
Non-Public Arbitrator

04-18-2006  
Signature Date

4/19/06  
Date of Service