

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Names of Claimants

Roy and Delores Zermeno

and

Case Number: 05-03212  
Hearing Site: Houston, Texas

Names of Respondents

Edward D. Jones & Co. and  
Willie J. Howard

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**NATURE OF DISPUTE**

Customers v. Member Firm and Associated Person

**REPRESENTATION OF PARTIES**

Roy and Delores Zermeno ("Claimants") were represented by Dawn R. Meade, Esq., Spencer & Associates, P.C., Houston, Texas.

Edward D. Jones & Co. ("Edward D. Jones") and Willie J. Howard ("Howard"), hereinafter collectively referred to as "Respondents," were represented by M. Jane Matoesian, Esq., Greensfelder, Kemker & Gale, P.C., St. Louis, Missouri.

**CASE INFORMATION**

The Statement of Claim was filed on or about June 23, 2005. The Submission Agreement of Claimants, Roy and Delores Zermeno, was signed on or about June 18, 2005. Claimants filed a Response to the Motion for a More Definite Statement on or about November 8, 2005. Claimants filed a Response to the Motion to Dismiss on or about November 8, 2005. On or about May 5, 2006, Claimants filed a Response to the Second Motion to Dismiss based on the Statutes of Limitation and for Failure to State a Claim for Relief. On or about May 5, 2006, Claimants filed a Motion for Leave to Amend the Statement of Claim. On or about May 19, 2006, Claimants filed a Sur-reply to Respondents' Reply to the Second Motion to Dismiss. Claimants' Amended Statement of Claim was filed on or about June 8, 2006.

The Statement of Answer and Motion to Dismiss was filed jointly by Respondents, Edward D. Jones & Co. and Willie J. Howard, on or about September 12, 2005. The Submission Agreement of Respondent, Edward D. Jones & Co., was signed on or about July 25, 2005.

The Submission Agreement of Respondent, Willie J. Howard, was signed on or about August 5, 2005. Respondents filed a Motion for a More Definite Statement on or about September 8, 2005. Respondents filed a Reply to the Motion for a More Definite Statement on or about November 14, 2005. Respondents filed a Reply to Claimants' Response to the Motion to Dismiss on or about November 28, 2005. On or about April 28, 2006, Respondents filed a Second Motion to Dismiss based on the Statutes of Limitation and for Failure to State a Claim for Relief. On or about May 12, 2006, Respondents filed a Reply to the Second Motion to Dismiss. On or about May 23, 2006, Respondents filed a Response to the Motion for Leave to Amend the Statement of Claim. On or about June 13, 2006, Respondents filed Motion to Dismiss the Amended Statement of Claim.

### **CASE SUMMARY**

Claimants asserted the following causes of action: breach of contract, breach of fiduciary duty, negligence, gross negligence, fraud, misrepresentations, omissions, violations of securities laws and violations of the Texas Deceptive Trade Practices Act ("DTPA"), the Texas Securities Act, the Securities Exchange Act of 1934, as amended, 27.01 of the Texas Business & Commercial Code, and violations of federal securities laws. The causes of action related to recommendation and purchase of Putnam Money Market stocks. Claimants alleged that Respondents made false statements of material facts and failed to inform Claimants of material facts necessary for them to make informed decisions. Claimant alleged that Respondent Howard purchased unsuitable investments and that their portfolio was concentrated in growth stocks, which was contrary to their investment objective of retirement. Claimant alleged that Edward D. Jones failed to exercise proper supervision over Howard and that its conduct constituted negligence and was the proximate cause of Claimants' damages.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim failed to state a claim upon which relief can be granted; Claimants' claims are barred by the doctrines of ratification, waiver, estoppel and laches; Claimants failed to mitigate their damages; Claimants' claims are barred in whole or in part by the applicable statutes of limitations; the damages Claimants allegedly suffered were caused, of at all, by unforeseeable market forces and conditions affecting the value of securities in Claimants' accounts for which Respondents are not liable or responsible; and Claimants failed to state a cause of action under the Texas Deceptive Trade Practices Act and under the Texas Securities Act.

### **RELIEF REQUESTED**

Claimants requested an award in the amount of:

Actual/Compensatory Damages	\$150,000.00
Punitive/Exemplary Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Claimants seek damages in the form of rescission of the purchases of Putnam funds into which they were advised to invest their money. In addition, Claimants seek rescission of any agreements that may purport to limit their rights, remedies and damages.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. Respondent, Willie Howard, requested that all references to this claim be expunged from his CRD record.

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#### **OTHER ISSUES CONSIDERED & DECIDED**

On or about November 22, 2005, the Panel denied Respondents' Motion for a More Definite Statement and Motion to Dismiss.

On or about May 29, 2006, the Panel denied Respondents' Second Motion to Dismiss based on the Statutes of Limitation and for Failure to State a Claim for Relief.

On or about June 8, 2006, the Panel granted Claimants' Motion for Leave to Amend the Statement of Claim.

At the final hearing Respondents made an oral Motion for Summary Judgment. The Panel denied both Respondents' Motion for Summary Judgment and Respondents' Motion to Dismiss the Amended Statement of Claim.

Also, at the final hearing, Claimants dismissed their federal claims, fraud claim and breach of contract claim.

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 original(s) 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.) Claimants' claims, each and all, are hereby dismissed with prejudice;
- 2.) Respondent, Willie Howard's, request to have this claim expunged from his CRD record is denied;
- 3.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 4.) Any relief not specifically enumerated, including punitive damages and attorneys' fees, is hereby 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 = \$ 300.00

#### **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. In this matter, the member firm is Edward D. Jones & Co.

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

#### **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 a single arbitrator x \$450.00 = \$ 450.00  
Pre-hearing conference: May 8, 2006 1 session

One (1) Pre-hearing session with Panel x \$1,125.00 = \$ 1,125.00  
Pre-hearing conference: November 14, 2005 1 session

Nine (9) Hearing sessions x \$1,125.00		= \$ 10,125.00
Hearing Dates:	June 27, 2006	2 sessions
	June 28, 2006	3 sessions
	June 29, 2006	3 sessions
	June 30, 2006	1 session
Total Forum Fees		= \$ 11,700.00

The Arbitration Panel has assessed \$5,850.00 of the forum fees to Roy and Delores Zermeno.

The Arbitration Panel has assessed \$5,850.00 of the forum fees jointly and severally to Edward D. Jones & Co. and Willie J. Howard.

### Fee Summary

Claimants, Roy and Delores Zermeno, are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 5,850.00
Total Fees	= \$ 6,150.00
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 4,725.00

Respondent, Edward D. Jones & Co., is liable for:

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

Respondents, Edward D. Jones & Co. and Willie J. Howard, are jointly and severally liable for:

Forum Fees	= \$ 5,850.00
Total Fees	= \$ 5,850.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 5,850.00

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

**ARBITRATION PANEL**

Patricia R. Lykos, Esq. - Public Arbitrator, Presiding Chair

David G. Beerbower, Esq. - Public Arbitrator

Jeffrey M. Aboloff - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Patricia R. Lykos, Esq.

Patricia R. Lykos, Esq.

Public Arbitrator, Presiding Chair

July 5, 2006

Signature Date

/s/ David G. Beerbower, Esq.

David G. Beerbower, Esq.

Public Arbitrator

July 6, 2006

Signature Date

/s/ Jeffrey M. Aboloff

Jeffrey M. Aboloff

Non-Public Arbitrator

July 5, 2006

Signature Date

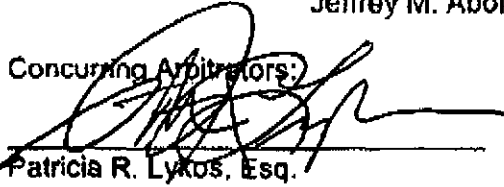
July 6, 2006

Date of Service (For NASD office use only)

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David G. Beerbower, Esq. - Public Arbitrator  
Jeffrey M. Aboloff - Non-Public Arbitrator

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Public Arbitrator

7-6-06  
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Signature Date

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7/5/06  
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