

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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Willa Connally

Case Number: 05-03621

Name of the Respondent  
Edward D. Jones & Co., L.P.

Hearing Site: Dallas, Texas

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**NATURE OF THE DISPUTE**

Public Customer v. Member Firm

**REPRESENTATION OF PARTIES**

Claimant Willa Connally, hereinafter referred to as "Claimant": Richard A. Lewins, Esq., of the firm of Burg Simpson Eldredge Hersh Jardine P.C., located in Dallas, Texas.

Respondent Edward D. Jones & Co., L.P. hereinafter referred to as "Respondent": Sandra B. Gallini, Esq. and Jane Metoesian, Esq., of the firm of Greensfelder, Hemker & Gale, P.C., located in St. Louis, Missouri.

**CASE INFORMATION**

Statement of Claim filed: July 14, 2005.

Claimant signed the Uniform Submission Agreement: June 8, 2005.

Respondent's Motion to Strike and for More Definite Statement filed on: September 7, 2005.

Respondent's Representative signed the Uniform Submission Agreement: July 21, 2005.

Claimant's Response to Respondent's Motion to Strike and for More Definite Statement filed on: December 30, 2005.

Respondent's Reply Brief in Support of Motion to Strike and for More Definite Statement filed on: January 20, 2006.

Claimant's First Amended Statement of Claim filed on: March 10, 2006.

Claimant's Election Not to Participate in the Putative Class Action filed on: March 22, 2006.

Claimant's Brief on Choice of Law filed on: May 19, 2006.

Respondent's Memorandum in Support of the Enforceability of the Parties' Choice of Law Agreement filed on: May 19, 2006.

Statement of Answer, Affirmative Defenses and Motion for Summary Dismissal filed by Respondent on: May 19, 2006.

Respondent's Letter in Further Support of the Motion for Summary Dismissal filed on: July 12, 2006.

Claimant's Response to Respondent's Motion to Dismiss filed on: July 14, 2006.

Respondent's Motion to Strike Claimant's Pre-Hearing Exchange filed on: July 17, 2006.

Claimant's Response to Respondent's Motion to Strike Claimant's Pre-Hearing Exchange filed on: July 17, 2006.

### **CASE SUMMARY**

Claimant asserted the following causes of action: violation of the Texas Securities Act, Section 33A(2) for making a material misrepresentation or omission during the course of a sale. This cause of action arose as a result of the Respondent's alleged misrepresentations and omissions in connection with the sale of mutual funds, including that certain funds in the "Preferred" fund program were selected for the program because the fund family would rebate back to the firm a portion of the revenue generated by the sale to Respondent's clients.

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

1. Claimants ratified all transactions that took place in the account and therefore, Claimants are barred from recovering any alleged loss resulting from such transactions;
2. To the extent that Claimants have suffered any damages, they are the product of the negligent conduct of Claimants or others such that some or all of Claimants' recovery is barred by those contributory or comparative negligent acts;
3. Claimants failed to mitigate their alleged damages and therefore, are barred from recovering any damages to the extent that such damages could have been prevented had Claimants fulfilled their duty to mitigate;
4. The Statement of Claim is barred, in whole or in part, by the doctrines of waiver and estoppel and by the applicable statute of limitations;
5. To the extent Claimants base their claims on the NASD and/or NYSE rules, such rules do not provide for a private cause of action in favor of Claimants and therefore, such claims should be dismissed;
6. To the extent Claimants allege that a fiduciary relationship exists, it is extremely limited and does not extend beyond the execution of a particular transaction. Further, any fiduciary duty at variance with federal

- securities law is preempted by federal law;
7. Claimants agreed in their account agreement that all claims between the parties would be subject to Missouri law and, therefore, Claimants' claims under Texas law must be dismissed;
  8. Claimants failed to state a cause of action under the federal securities laws or state fiduciary duty law.

### **RELIEF REQUESTED**

Claimant initially requested compensatory damages of \$29,705.37. Upon the filing of the Amended Statement of Claim, Claimant requested the following:

Compensatory Damages	\$13,648.07 (\$16,589.91 minus the \$2,941.84 Claimant received as income from the funds)
Interest	Simple interest at the legal rate on the consideration paid for the funds from the time purchased, as provided by statute (7%)
Attorneys' Fees	Reasonable fees as provided by statute
Other Costs	As provided by statute
Other Monetary/Non-Monetary Relief if any:	As the Panel deemed appropriate.

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

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

On February 24, 2006, a telephonic hearing was held on Respondent's Motion to Strike and for More Definite Statement. After consideration of the pleading and argument, the Arbitrator determined that:

1. Based upon the agreement of Claimant, it was ordered that Claimant file an amended Statement of Claim no later than March 10, 2006;
2. It was ordered that no later than March 10, 2006, Claimant shall file a stipulation, executed by Claimant, Willa Connally, stating in the affirmative that Claimant is opting out as a member of the class and as a participant in the class action lawsuit styled "Spahn v. Edward Jones & Co., L.P. et al, Case No. 4:04-CV-00086, United States District Court Eastern District of Missouri."; and,
3. The Motion to Strike was taken under advisement.

On March 23, 2006, the Arbitrator issued his order on Respondent's Motion to Strike, determining that:

1. All references to the NASD Acceptance, Waiver and Consent Order ("NASD Order"); the SEC Cease and Desist Order ("SEC Order"); and Respondent's website shall be stricken from Claimant's Statement of Claim; and,
2. The admissibility of any statements, references or findings contained in the NASD Order or the SEC Order will be determined at the time of the final arbitration hearing on this matter.

In addition, the Arbitrator set a briefing schedule for a "choice of law" issue raised at the pre-hearing.

On July 18, 2006, a telephonic hearing was held on Respondent's Motion for Summary Dismissal and Respondent's Motion to Strike Claimant's Pre-Hearing Exchange. On July 19, 2006, the Arbitrator entered an determining that:

1. Respondent's Motion for Summary Dismissal was denied;
2. Denied Respondent's Objection to Claimant's Amended Statement of Claim because it lacked specificity;
3. Pursuant to the parties agreement, limited exhibits and witnesses in response to Respondent's Motion to Strike Claimant's Pre-Hearing Exchange.

### **AWARD**

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

1. The claims asserted in Claimant's Statement of Claim are denied in their entirety;
2. The parties shall bear their own costs of arbitration, including any attorneys' fees, except for those sums specifically enumerated in this decision; and,
3. Any and all relief not specifically addressed herein is 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 = \$ 150.00

### **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, Edward D. Jones & Co., L.P. is a party and the following member fees were assessed:

Member surcharge	= \$ 600.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 1,000.00

### **Forum Fees and Assessments**

The Arbitrator has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

Four (4) Pre-hearing sessions with a single arbitrator @ \$450	= \$ 1,800.00
Pre-hearing conferences:	
November 16, 2005                      1 session	
February 24, 2006                     1 session	
April 13, 2006                        1 session	
July 18, 2006                         1 session	
Two (2) Hearing sessions @ \$450	= \$ 900.00
Hearing Date:	
July 27, 2006                         2 sessions	
Total Forum Fees	= \$ 2,700.00

The Arbitrator has assessed \$1,350.00 of the forum fees to the Claimant, Willa Connally, and the remaining \$1,350.00 to the Respondent, Edward D. Jones & Co., L.P.

### **FEE SUMMARY**

Claimant Willa Connally is solely liable for:

Initial Filing Fee	= \$ 150.00
Forum Fees	= \$ 1,350.00
Total Fees	= \$ 1,500.00
Less payments	= \$ 975.00
Balance Due NASD Dispute Resolution	= \$ 525.00

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

Member Fees	= \$ 2,350.00
Forum Fees	= \$ 1,350.00
Total Fees	= \$ 3,700.00

Less payments	= \$ 2,350.00
Balance Due NASD Dispute Resolution	= \$ 1,350.00

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

**ARBITRATION PANEL**

Michael P. Geary – Sole Public Arbitrator

**Arbitrator's Signature**

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Michael P. Geary  
Sole Public Arbitrator

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Signature Date

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Date of Service (For NASD Dispute Resolution office use only)

Received at: 12:00PM, 8/11/2006

08/11/2006 11:00 FAX

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Less payments = \$ 2,350.00  
Balance Due NASD Dispute Resolution = \$ 1,350.00

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

ARBITRATION PANEL

Michael P. Geary – Sole Public Arbitrator

  
Arbitrator's Signature

Michael P. Geary  
Sole Public Arbitrator

August 11, 2006  
Signature Date

8/11/06 MGM  
Date of Service (For NASD Dispute Resolution office use only)