

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Names of the Claimants

Barbara Karp  
Edwin Rosenberger  
Thomas Johnson

Case Number: 05-03983

Names of the Respondents

Edward Jones & Co. L.P. d/b/a Edward Jones  
Thomas Frank Belvin

Hearing Site: Norfolk, Virginia

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

**REPRESENTATION OF PARTIES**

For Barbara Karp, Edwin Rosenberger, and Thomas Johnson, hereinafter collectively referred to as "Claimants": Robert A. Kantas, Esq., Shepherd, Smith & Edwards, LLP, Houston, TX.

For Edward Jones & Co. L.P. d/b/a Edward Jones ("Jones") and Thomas Frank Belvin ("Belvin"), hereinafter collectively referred to as "Respondents": Wendy S. Menghini, Esq., Greensfelder, Hemker & Gale, P.C., St. Louis, MO.

**CASE INFORMATION**

Statement of Claim filed on or about: August 2, 2005.

Claimant Karp signed the Uniform Submission Agreement: June 22, 2005.

Claimant Rosenberger signed the Uniform Submission Agreement: July 19, 2005.

Claimant Johnson signed the Uniform Submission Agreement: July 19, 2005.

Statement of Answer and Motion to Dismiss filed by Respondents on or about: October 10, 2005.

Respondent Jones signed the Uniform Submission Agreement: August 10, 2005.

Respondent Belvin did not file an executed Uniform Submission Agreement.

Claimants' Response to Respondents' Motion to Dismiss filed on or about: January 6, 2006.

Respondents' Reply Brief in Support of the Motion to Dismiss filed on or about: February 27, 2006.

Claimants' Response to Respondents' Reply Brief in Support of the Motion to Dismiss filed on or about: March 7, 2006.

Respondents' Sur-Reply Brief in Support of the Motion to Dismiss filed on or about: March 14, 2006.

Respondents' Motion to Sever Claimants' Claims ("Motion to Sever") filed on or about: October 10, 2005.

Claimants' Response Opposing Respondents' Motion to Sever filed on or about: November 18, 2005.

Respondents' Motion to Strike and for Summary Dismissal of Claimants' Claims Regarding Revenue Sharing ("Motion to Strike") filed on or about: September 15, 2006. Claimants' response to Respondents' Motion to Strike filed on or about: October 5, 2006.

Respondents' reply in support of the Motion to Strike filed on or about: October 10, 2006.

Respondents' Motion for Leave to File Amended Answer ("Motion to Amend Answer") filed on or about: October 24, 2006.

Claimants' response to Respondents' Motion to Amend Answer filed on or about: November 1, 2006.

### **CASE SUMMARY**

Claimants asserted the following causes of action: breach of contract and warranties; promissory estoppel; violation of the Virginia State Securities Act; intentional and negligent misrepresentations of material fact; unjust enrichment; breach of fiduciary duty; breach of the covenant of good faith and fair dealing; and, negligent supervision. The causes of action relate to the purchase of Class A mutual funds, a Putnam Capital Manager Annuity, and other unspecified securities in Claimants' accounts.

Unless specifically admitted in their Answer, the Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested compensatory damages between \$100,000.00 and \$500,000.00, statutory and/or punitive damages, interest, costs, rescission, attorneys' fees, and all other relief available to Claimants, in law or equity or otherwise, which may be granted to them by the undersigned arbitrators (the "Panel").

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

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

On or about March 17, 2006, the Panel issued an Order which denied Respondents' Motion to Dismiss and Motion to Sever.

On or about November 1, 2006, the Panel issued an order which denied Respondents' Motion to Strike.

During the evidentiary hearing, Respondents made an ore tenus motion to strike Claimants' negligent supervision claim. Claimants objected to the motion. Following argument of counsel, the Panel granted Respondents' motion.

During the evidentiary hearing, Respondents made an ore tenus motion to dismiss Claimants' claims based on statutes of limitation. Claimants objected to the motion. Following argument of counsel, the Panel denied Respondents' motion.

During the evidentiary hearing, the Panel granted Respondents' Motion to Amend Answer.

Respondent Belvin did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

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.

### **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:

Respondents are liable, jointly and severally, for negligent misrepresentation of material fact and shall pay to Claimant Barbara Karp compensatory damages in the sum of \$165,000.00, pre-judgment interest specifically excluded.

Respondents are liable, jointly and severally, and shall pay to Claimant Barbara Karp attorneys' fees in the sum of \$49,500.00, pursuant to the contract between the parties.

Respondents are liable, jointly and severally, and shall pay to Claimant Barbara Karp costs in the sum of \$10,700.00, pursuant to the contract between the parties.

Respondents are liable, jointly and severally, for negligent misrepresentation of material fact and shall pay to Claimant Edwin Rosenberger compensatory damages in the sum of \$100,000.00, pre-judgment interest specifically excluded.

Respondents are liable, jointly and severally, and shall pay to Claimant Edwin Rosenberger attorneys' fees in the sum of \$30,000.00, pursuant to the contract between the parties.

Respondents are liable, jointly and severally, and shall pay to Claimant Edwin Rosenberger costs in the sum of \$8,700.00, pursuant to the contract between the parties.

Respondents are liable, jointly and severally, for negligent misrepresentation of material fact and shall pay to Claimant Thomas Johnson compensatory damages in the sum of \$75,000.00, pre-judgment interest specifically excluded.

Respondents are liable, jointly and severally, and shall pay to Claimant Thomas Johnson attorneys' fees in the sum of \$22,500.00, pursuant to the contract between the parties.

Respondents are liable, jointly and severally, and shall pay to Claimant Thomas

Johnson costs in the sum of \$8,700.00, pursuant to the contract between the parties.

Any and all claims relief not specifically addressed herein, including Claimants' request for statutory and/or punitive damages, are 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	= \$300.00
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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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent Jones is a party and member firm.

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

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were assessed during these proceedings.

#### **Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No three-day cancellation fees were assessed during these proceedings.

#### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction.

These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

No injunctive relief fees were assessed during these proceedings.

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

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion 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:

Six (6) Decisions on discovery-related motions on the papers  
with one (1) arbitrator @ \$200.00/motion = \$1,200.00  
Claimants submitted five (5) discovery-related motions  
Respondents submitted one (1) discovery-related motion

Three (3) Pre-hearing sessions with the Panel @ \$1,125.00/session = \$3,375.00  
Pre-hearing conferences: January 17, 2006 1 session  
March 17, 2006 1 session  
November 1, 2006 1 session

Eleven (11) Hearing sessions @ \$1,125/session = \$12,375.00  
Hearing Dates: November 13, 2006 2 sessions  
November 14, 2006 2 sessions  
November 15, 2006 2 sessions  
November 16, 2006 2 sessions  
November 17, 2006 2 sessions  
November 18, 2006 1 session

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Total Forum Fees = \$16,950.00

1. The Panel has assessed \$8,475.00 of the forum fees jointly and severally to Claimants.
2. The Panel has assessed \$8,475.00 of the forum fees jointly and severally to Respondents.

### **Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during these proceedings.

### **Fee Summary**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$8,475.00
Total Fees	= \$8,775.00
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$7,350.00

Respondent Jones is solely 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 are jointly and severally liable for:

Forum Fees	= \$8,475.00
Total Fees	= \$8,475.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$8,475.00

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

**ARBITRATION PANEL**

Donald B. Vaden, Esq.	-	Public Arbitrator, Presiding Chairperson
Lisa M. Kafer	-	Public Arbitrator
John M. Mathews	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
Donald B. Vaden, Esq.  
Public Arbitrator, Presiding Chairperson

                      
Signature Date

/s/  
Lisa M. Kafer  
Public Arbitrator

                      
Signature Date

/s/  
John M. Mathews  
Non-Public Arbitrator

                      
Signature Date

November 21, 2006  
Date of Service (For NASD Dispute Resolution use only)

NASD Dispute Resolution  
Arbitration No. 05-03983  
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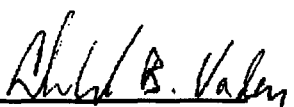
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Public Arbitrator, Presiding Chairperson

Nov. 21, 2006  
Signature Date

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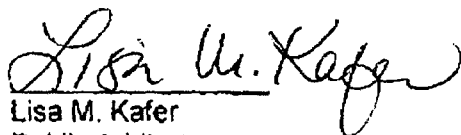
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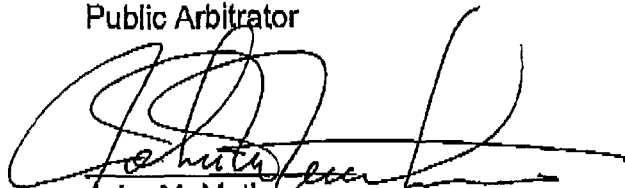
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