

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimants
R. Harold White and Sue Ann White

Case Number: 05-04573

Name of the Respondent
Edward D. Jones & Co.

Hearing Site: Dallas, Texas

NATURE OF THE DISPUTE

Public Customers vs. Member Firm

REPRESENTATION OF PARTIES

Claimants R. Harold White and Sue Ann White, hereinafter collectively referred to as "Claimants": Richard A. Lewins, Esq. and Chris Claassen, Esq. of the firm of Burg Simpson Eldredge Hersh Jardine P. C., located in Dallas, Texas.

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

CASE INFORMATION

Statement of Claim filed: August 31, 2005.

Claimants signed the Uniform Submission Agreement: August 22, 2005.

Statement of Answer, or in the alternative, Motion to Strike and for More Definite

Statement filed by Respondent on: June 30, 2005.

Respondent's Representative signed the Uniform Submission Agreement: September 9, 2005.

Claimants' Response to Respondent's Motion to Strike and For More Definite

Statement filed on: January 31, 2006.

Claimants' First Amended Statement of Claim filed on: March 9, 2006.

Claimants' Election Not to Participate in the Putative Class Action filed on or about: March 10, 2006.

Respondent's Answer and Affirmative Defenses to the Statement of Claim and Motion for Summary Dismissal filed on: June 29, 2006.

Claimants' Response to Motion to Dismiss filed on: August 1, 2006.

CASE SUMMARY

Claimants asserted the following cause 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

Claimants requested:

Compensatory Damages

\$139,017.18 (\$159,748.13 minus
a \$17,730.95 offset for income

	the Claimants received from the funds)
Interest	Simple interest at the legal rate from the time purchased, as provided by statute
Attorneys' Fees	Pursuant to Texas statute
Other Costs	Pursuant to Texas statute
Other Monetary/Non-Monetary Relief if any:	As the Panel deemed appropriate under the circumstances of this case.

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

OTHER ISSUES CONSIDERED AND DECIDED

On March 1, 2006, the Panel heard argument regarding Respondent's Motion to Strike and For More Definite Statement. On or about March 6, 2006, the Panel granted Respondent's Motion to Strike and For More Definite Statement.

On August 2, 2006, the Panel heard argument regarding Respondent's Motion for Summary Dismissal. After consideration of the documents filed on the Parties behalf and the arguments of counsel, the Panel determined that the Motion would be granted.

AWARD

After considering the pleadings and attached exhibits, and the argument of counsel, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Pursuant to the Panel's decision on the Respondent's Motion for Summary Dismissal, the claims filed by the Claimants, R. Harold White and Sue Ann White, are dismissed with prejudice;
2. The parties shall each 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	= \$ 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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Edward D. Jones & Co. is a party and the following member fees are assessed:

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

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. 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:

Three (3) Pre-hearing session(s) with Panel @ \$1,125	= \$ 3,375.00
Pre-hearing conference:	
January 10, 2006	1 session
March 1, 2006	1 session
August 2, 2006	1 session
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Total Forum Fees	= \$ 3,375.00

The Panel has assessed \$1,687.50 of the forum fees jointly and severally to the Claimants, R. Harold White and Sue Ann White. The Panel has assessed the remaining \$1,687.50 of the forum fees to the Respondent, Edward D. Jones & Co.

FEE SUMMARY

Claimants R. Harold White and Sue Ann White are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 1,687.50
Total Fees	= \$ 1,987.50
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 562.50

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

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 1,687.50
Total Fees	= \$ 6,887.50
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 1,687.50

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

ARBITRATION PANEL

David A. Schuler - Public Arbitrator, Presiding Chairperson
William Ben Utley, III - Public Arbitrator
Jill M. Zacha - Non-Public Arbitrator

Concurring Arbitrators' Signatures

David A. Schuler
Public Arbitrator, Presiding Chairperson

Signature Date

Jill M. Zacha
Non-Public Arbitrator

Signature Date

Dissenting Arbitrator's Signature

William Ben Utley, III
Public Arbitrator

Signature Date

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

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William Ben Utley, III - Public Arbitrator
Jill M. Zacha - Non-Public Arbitrator

Concurring Arbitrators' Signatures

David Schuler

David A. Schuler
Public Arbitrator, Presiding Chairperson

8/10/08

Signature Date

Jill M. Zacha
Non-Public Arbitrator

Signature Date

Dissenting Arbitrator's Signature

William Ben Utley, III
Public Arbitrator

Signature Date

8/16/06 MLU

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David A. Schuler
Public Arbitrator, Presiding Chairperson

Signature Date



Jill M. Zacha
Non-Public Arbitrator

8/14/06

Signature Date

Dissenting Arbitrator's Signature

William Ben Utley, III
Public Arbitrator

Signature Date

8/15/06 *man*

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Public Arbitrator, Presiding Chairperson

Signature Date

Jill M. Zacha
Non-Public Arbitrator

Signature Date

Dissenting Arbitrator's Signature



William Ben Utley, III
Public Arbitrator

8-10-2006

Signature Date

8/16/06 mcr

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