

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of Claimants

Johnny E. and Bernice A. Crowden

vs.

Case Number: 05-5068

Hearing Site: St. Louis, Missouri

Names of Respondents

Edward D. Jones & Co., L.P. and Kim D. Charles

NATURE OF THE DISPUTE

Customers vs. Member and Associated Person

REPRESENTATION OF PARTIES

Johnny E. and Bernice A. Crowden ("Crowdens" or "Claimants") were represented by Richard B. Fosher, Esq., Oakes & Fosher, LLC, St. Louis, Missouri.

Edward D. Jones & Co., LP ("EDJ") and Kim D. Charles ("Charles"), hereinafter collectively referred to as "Respondents," were represented by Trae D. Meyer, Esq. and Lisa A. Nielsen, Esq., Greensfelder, Hemker & Gale, PC, St. Louis, Missouri. Respondents were later represented by David Simmons, Esq. and Jane Matoesian, Esq., Greensfelder, Hemker & Gale, PC, St. Louis, Missouri.

CASE INFORMATION

The Statement of Claim was filed on or about September 28, 2005. The Submission Agreement of Claimants, the Crowdens, was jointly signed and undated.

The Statement of Answer was filed jointly by Respondents, EDJ and Charles, on or about February 15, 2006. The Submission Agreement of Respondent EDJ was signed on or about December 12, 2005. The Submission Agreement of Respondent Charles was signed on February 17, 2006.

CASE SUMMARY

Claimants asserted the following causes of action: suitability; failure to supervise; breach of fiduciary duty; misrepresentations; omissions; and common law fraud. The causes of action related to technology stocks and mutual funds such as: Cisco Systems; Dell

Computer; WorldCom; EMC; Medtronic; Intel Semiconductors; Putnam Capital Appreciation Fund; Putnam Growth Opportunities Fund; Putnam New Opportunities Fund; Putnam Health Sciences Trust; Putnam Classic Equity Fund; Putnam International Equity Fund; Putnam International New Opportunities Fund; and Putnam Voyager Fund. Claimants asserted that these investments were unsuitable and speculative in nature, and did not meet Claimants' financial needs and objectives for retirement preservation.

Unless specifically admitted in their Answer, Respondents, EDJ and Charles, denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the claims asserted in the Statement of Claim are barred in whole or in part by applicable statutes of limitations; Claimants authorized and instructed Respondents to enter into all of the transactions that Claimants allege were unsuitable and therefore, claims based on such transactions should be dismissed; the claims asserted are barred by the doctrines of laches, waiver, and release; Claimants ratified all transactions that took place in the account and therefore, are barred from recovering any alleged losses resulting from such transactions; Claimants were on notice of, understood, and assumed the risks associated with the investments at issue and therefore, are barred from recovering any alleged losses resulting from such transactions; to the extent that Claimants have suffered any damages, they are the product of the negligent conduct of Claimants such that some or all of their recovery is barred by those contributory or comparative negligent acts; Claimants failed to mitigate their alleged damages and therefore, are barred from recovery any damages to the extent that such damages could have been prevented had Claimants fulfilled their duty to mitigate; the Statement of Claim failed to state a claim for fraud or negligent misrepresentation because Claimants have failed to allege or identify any misrepresentation made on behalf of Respondents in connection with an investment transaction; Claimants' breach of fiduciary duty claim should be dismissed because Claimants held a non-discretionary account at EDJ and, based on the parties' relationship, Claimants cannot establish that a fiduciary relationship existed between the parties; to the extent Claimants base their claims on the NASD 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; and despite Claimants' allegations to the contrary, at all times relevant herein, EDJ had adequate supervisory mechanisms and safeguards in place and, at all times relevant herein, EDJ acted in accordance with these procedures.

RELIEF REQUESTED

Claimants requested an award in the amount of:

| | |
|-----------------------------|--------------|
| Actual/Compensatory Damages | \$180,000.00 |
| Exemplary/Punitive Damages | Unspecified |
| Interest | Unspecified |
| Attorneys' Fees | Unspecified |
| Other Costs | Unspecified |
| Other Monetary Relief | Unspecified |

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

During the final hearing, Respondents, EDJ and Charles, requested an expungement of all references of this arbitration from Kim D. Charles' records maintained by the NASD Central Registration Depository ("CRD").

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 the evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Respondents, Edward D. Jones & Co., LP and Kim D. Charles, are jointly and severally liable for and shall pay to Claimants, Johnny E. and Bernice A. Crowden, the sum of \$35,000.00 in compensatory damages;
- 2.) Respondents, Edward D. Jones & Co., LP and Kim D. Charles, are jointly and severally liable for and shall pay to Claimants, Johnny E. and Bernice A. Crowden, interest on the above-stated sum at the rate of 6.0% per annum from and including the date the Award is served through and including the date the Award is paid in full;
- 3.) Respondents, Edward D. Jones & Co., LP's and Kim D. Charles', request for expungement is denied;
- 4.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 5.) 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., LP

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 hearing session conducted or each decision rendered on a discovery-related motion on the papers. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, which 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: December 12, 2006 1 session

One (1) Pre-hearing session with Panel x \$1,125.00 = \$ 1,125.00

Pre-hearing conference: April 20, 2006 1 session

Four (4) Hearing sessions x \$1,125.00 = \$ 4,500.00

Hearing Dates: January 10, 2007 2 sessions

January 11, 2007 2 sessions

Total Forum Fees = \$ 6,075.00

The Panel has assessed \$6,075.00 of the forum fees jointly and severally to Edward D. Jones & Co., L.P. and Kim D. Charles.

FEE SUMMARY

Claimants, Johnny E. and Bernice A. Crowden, are jointly liable for:

| | |
|-----------------------------|---------------|
| <u>Initial Filing Fee</u> | = \$ 300.00 |
| <u>Total Fees</u> | = \$ 300.00 |
| <u>Less payments</u> | = \$ 1,425.00 |
| <u>Refund Due Claimants</u> | = \$ 1,125.00 |

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

| | |
|--|---------------|
| <u>Member Fees</u> | = \$ 5,200.00 |
| <u>Total Fees</u> | = \$ 5,200.00 |
| <u>Less payments</u> | = \$ 5,200.00 |
| <u>Balance Due NASD Dispute Resolution</u> | = \$ 0.00 |

Respondents, Edward D. Jones & Co., LP and Kim D. Charles, are jointly and severally liable for:

| | |
|--|---------------|
| <u>Forum Fees</u> | = \$ 6,075.00 |
| <u>Total Fees</u> | = \$ 6,075.00 |
| <u>Less payments</u> | = \$ 0.00 |
| <u>Balance Due NASD Dispute Resolution</u> | = \$ 6,075.00 |

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

ARBITRATION PANEL

James M. Stern, Esq. - Public Arbitrator, Presiding Chair
Robert W. Dempsey - Public Arbitrator
John E. Sundeen - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

/s/ James M. Stern, Esq.
James M. Stern, Esq.
Public Arbitrator, Presiding Chair

1-18-07
Signature Date

/s/ Robert W. Dempsey
Robert W. Dempsey
Public Arbitrator

1-18-07
Signature Date

/s/ John E. Sundeen
John E. Sundeen
Non-Public Arbitrator

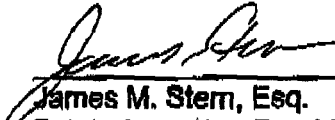
1/18/07
Signature Date

1-19-07
Date of Service (For NASD office use only)

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Public Arbitrator, Presiding Chair

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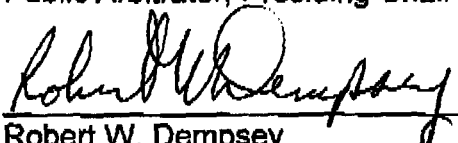
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1-18-07

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