

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of Claimant

The Estate of Florence Faiman

vs.

Case Number: 05-05447

Hearing Site: Minneapolis, Minnesota

Name of Respondent

Edward D. Jones & Company

NATURE OF THE DISPUTE

Customer vs. Member

REPRESENTATION OF PARTIES

The Estate of Florence Faiman ("Claimant") was represented by Marc G. Kurzman, Esq., Kurzman, Grant & Ojala, Minneapolis, Minnesota.

Edward D. Jones & Company ("Respondent") was represented by Lisa Nielsen, Esq., Greensfelder, Hemker & Gale, PC, St. Louis, Missouri.

CASE INFORMATION

The Statement of Claim was filed on or about October 17, 2005. The Submission Agreement of Claimant, The Estate of Florence Faiman, was signed on or about November 3, 2005, by Cindy Hogle, Personal Representative of the Estate of Florence Faiman.

The Statement of Answer was filed by Respondent, Edward D. Jones & Company, on or about January 9, 2006. The Submission Agreement of Respondent, Edward D. Jones & Company, was signed on or about November 23, 2006.

Respondent filed a Motion to Dismiss on or about November 7, 2006. Claimant filed a Response in Opposition to Respondent's Motion to Dismiss on or about November 14, 2006. Respondent filed a Reply in Support of its Motion to Dismiss on or about November 20, 2006.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty; negligence; failure to supervise; suitability; and misrepresentations. Claimant alleged that Respondent utilized an investment strategy that was inappropriate and unsuitable for an individual of Ms. Faiman's age and physical health. Claimant further alleged that Respondent failed to make reasonable efforts to obtain and access information concerning Claimant's financial status, tax status, and investment objectives before implementing the investment strategy. In addition, Claimant stated that neither Respondent nor any of its employees ever sat with Ms. Faiman and explained to her the Transfer on Death Agreement ("TOD") and the provisions contained therein and that at the time the TOD was executed, Ms. Faiman lacked the capacity to enter a contract that was purportedly signed by her.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant failed to mitigate its damages and is barred from recovering damages to the extent such damages would not have been incurred had it fulfilled its duty to mitigate; to the extent that Claimant suffered any damages, such damages are the product of Claimant's own negligence such that some or all recovery is barred by those contributory or comparative negligent acts; Claimant and/or Ms. Faiman ratified all transactions that took place in the account and therefore, is barred from recovering any alleged loss resulting from such transactions; Claimant's claims are barred by the doctrines of waiver and estoppel; and Ms. Faiman was on notice of, understood, and assumed the risks associated with the investment transactions she entered into and therefore Claimant is barred from recovering any alleged losses from such transactions.

RELIEF REQUESTED

Claimant requested an award in the amount of:

| | |
|-----------------------------|-----------------|
| Actual/Compensatory Damages | \$ 1,000,000.00 |
| Exemplary/Punitive Damages | \$ 2,000,000.00 |
| Interest | Unspecified |
| Attorneys' Fees | Unspecified |
| Costs | Unspecified |
| Other Monetary Relief | Unspecified |

Respondent requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

On or about November 22, 2006, the Panel denied Respondent's Motion to Dismiss.

After Claimant presented its case-in-chief, Respondent made an oral Motion for a Directed Verdict. After the parties orally briefed their respective positions and after deliberation, the panel granted Respondent's Motion for a Directed Verdict and dismissed all of Claimant's claims with prejudice.

After considering the pleadings, the testimony, and the evidence presented at the hearing, the Panel made the following Findings of Fact:

- Respondent, Edward D. Jones & Company, exercised an appropriate duty of care;
- The Transfer On Death Agreement was valid;
- The checks were valid; and
- Respondent, Edward D. Jones & Company's, duty of care did not rise above the duty owed to non-discretionary account customers.

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.) Claimant's claims, each and all, are hereby denied and dismissed with prejudice;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 3.) 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 = \$ 500.00

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 & Company.

Member surcharge = \$ 2,800.00
Pre-hearing process fee = \$ 750.00
Hearing process fee = \$ 5,000.00

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 arbitrator, that last four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with a single arbitrator x \$ 450.00 = \$ 900.00
Pre-hearing conferences: August 24, 2006 1 session
August 30, 2006 1 session

Two (2) Pre-hearing sessions with Panel x \$1,200.00 = \$ 2,400.00
Pre-hearing conferences: June 13, 2006 1 session
November 21, 2006 1 session

Four (4) Hearing sessions x \$ 1,200.00 = \$ 4,800.00
Hearing Dates: December 5, 2006 2 sessions
December 6, 2006 2 sessions

Total Forum Fees = \$ 8,100.00

The Panel has assessed \$ 8,100.00 of the forum fees to The Estate of Florence Faiman.

FEE SUMMARY

Claimant, The Estate of Florence Faiman, is liable for:

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|-------------------------------------|----------------------|
| Initial Filing Fee | = \$ 500.00 |
| <u>Forum Fees</u> | <u>= \$ 8,100.00</u> |
| Total Fees | = \$ 8,600.00 |
| <u>Less payments</u> | <u>= \$ 1,700.00</u> |
| Balance Due NASD Dispute Resolution | = \$ 6,900.00 |

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

| | |
|--|---------------|
| <u>Member Fees</u> | = \$ 8,550.00 |
| <u>Total Fees</u> | = \$ 8,550.00 |
| <u>Less payments</u> | = \$ 8,550.00 |
| <u>Balance Due NASD Dispute Resolution</u> | = \$ 0.00 |

ARBITRATION PANEL

Kathy A. Tatone, J.D. - Public Arbitrator, Presiding Chair
Andrew R. Dick, Esq. - Public Arbitrator
Jerry M. Helfand, Esq. - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

Kathy A. Tatone, J.D.
Public Arbitrator, Presiding Chair

Signature Date

Andrew R. Dick, Esq.
Public Arbitrator

Signature Date

Jerry M. Helfand, Esq.
Non-Public Arbitrator

Signature Date

12/14/06
Date of Service (For NASD office use only)

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

| | |
|-------------------------------------|---------------|
| Member Fees | = \$ 8,550.00 |
| Total Fees | = \$ 8,550.00 |
| Less payments | = \$ 8,550.00 |
| Balance Due NASD Dispute Resolution | = \$ 0.00 |

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Public Arbitrator, Presiding Chair

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12.13.06
Signature Date

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