

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of Claimant

John W. Hartsell

vs.

Case Number: 05-06306  
Hearing Site: Troy, Michigan

Name of Respondent

Edward D. Jones & Co.

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**NATURE OF THE DISPUTE**

Customer vs. Member

**REPRESENTATION OF PARTIES**

John W. Hartsell ("Claimant") was represented by Samuel B. Edwards, Esq., Shepherd Smith & Edwards, L.L.P. Houston, Texas.

Edward D. Jones & Co. ("Respondent") was represented by Dennis K. Egan, Butzel Long, Bloomfield Hills, Michigan.

**CASE INFORMATION**

The Statement of Claim was filed on or about December 9, 2005. Claimant's First Amended Statement of Claim was filed on or about June 12, 2006. The Submission Agreement of Claimant was signed on or about November 3, 2005.

The Statement of Answer and Motion to Sever was filed by Respondent on or about February 28, 2006. The Submission Agreement of Respondent was signed on or about March 24, 2006.

The Response to the Motion to Sever was filed on or about April 17, 2006. Respondent's Reply to the Response to its Motion to Sever was filed on or about April 20, 2006.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract and warranties, promissory estoppel, violation of state securities statutes, intentional and negligent misrepresentation, and breach of fiduciary duty. The causes of action related to Claimant's allegations that Respondent, through its representative, recommended and sold growth and aggressive mutual funds to Claimant from the Putnam, Van Kampen, and Goldman Sachs families. Claimant alleged that these funds were not suitable for Claimant's more conservative investment needs.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted defenses including the following: Respondent did not breach the terms and conditions of any agreements with Claimant; Respondent's recommendations to Claimant were suitable and made with a reasonable basis; and Respondent did not make any warranties to Claimant.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$ 500,000.00
Exemplary/Punitive Damages	\$ Unspecified
Interest	\$ Unspecified
Attorneys' Fees	\$ Unspecified
Other Costs	\$ Unspecified
Other Monetary Relief	\$ Unspecified

Respondent requested that the claims asserted against it be dismissed in their entirety.

### **OTHER ISSUES CONSIDERED & DECIDED**

The Statement of Claim in this matter was submitted jointly by John W. Hartsell, Gerald T. Pionk, Thomas P. Dunlop, Charles C. Oesterling, John E. Zibell, Michael T. McCarthy, and Terry M. and Cheryl J. Turk. The Panel granted Respondent's Motion to Sever in its Order entered on or about May 4, 2006. Pursuant to Panel's Order, the Panel retained jurisdiction over the claims of John W. Hartsell. The claims of all other Claimants were severed from this matter.

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.) Respondent, Edward D. Jones & Co., is solely liable for and shall pay to Claimant, John W. Hartsell, the sum of \$300,000.00 in compensatory damages;
- 2.) Respondent, Edward D. Jones & Co., is liable for and shall pay to Claimant, John W. Hartsell, the sum of \$120,000.00 in attorneys' fees pursuant to Michigan statute and common law;

- 3.) Respondent, Edward D. Jones & Co., is liable for and shall pay to Claimant, John W. Hartsell, the sum of \$15,000.00 in interest;
- 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, 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 & Co.

Member surcharge = \$ 2,800.00  
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 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 sessions with a single arbitrator x \$450.00 = \$ 1,350.00  
Pre-hearing conferences: August 11, 2006 1 session  
September 7, 2006 1 session  
September 20, 2006 1 session  
  
Three (3) Pre-hearing sessions with Panel x \$1,200.00 = \$ 3,600.00  
Pre-hearing conferences: April 10, 2006 1 session  
April 27, 2006 1 session  
May 4, 2006 1 session

One (1) Pre-hearing session with Panel x \$1,125.00	= \$ 1,125.00
Pre-hearing conference: November 3, 2006	1 session
Six (6) Hearing sessions x \$1,125.00	= \$ 6,750.00
Hearing Dates: November 6, 2006	2 sessions
November 7, 2006	2 sessions
November 8, 2006	2 sessions
Total Forum Fees	= \$11,700.00

The Panel has assessed \$4,612.50 of the forum fees to John W. Hartsell.

The Panel has assessed \$1,800.00 of the forum fees jointly and severally to John W. Hartsell, Charles C. Oesterling, John E. Zibell, Michael T. McCarthy, Terry M. and Cheryl J. Turk.

The Panel has assessed \$6,412.50 of the forum fees to Edward D. Jones & Co.

#### **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 are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters and security.

John W. Hartsell, Charles C. Oesterling, John E. Zibell, Michael T. McCarthy, Terry M. and Cheryl J. Turk, requested copying services = \$ 17.25

#### **FEE SUMMARY**

Claimant, John W. Hartsell, is solely liable for:

Forum Fees	= \$ 4,612.50
Total Fees	= \$ 4,612.50
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 4,612.50

Claimant, John W. Hartsell, and Charles C. Oesterling, John E. Zibell, Michael T. McCarthy, Terry M. and Cheryl J. Turk, are jointly and severally liable for:

Filing Fee	= \$ 500.00
Forum Fees	= \$ 1,800.00
Costs	= \$ 17.25
Total Fees	= \$ 2,317.25
Less payments	= \$ 1,700.00
Balance Due NASD Dispute Resolution	= \$ 617.25

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

Member Fees	= \$ 6,300.00
Forum Fees	= \$ 6,412.50
Total Fees	= \$12,712.50
Less payments	= \$10,350.00
Balance Due NASD Dispute Resolution	= \$ 2,362.50

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

**ARBITRATION PANEL**

Peter P. Cobbs, Esq. - Public Arbitrator, Presiding Chair  
Christopher R. Gullen, Esq. - Public Arbitrator  
Dana R. Dawe - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

/s/ Peter P. Cobbs, Esq.  
Peter P. Cobbs, Esq.  
Public Arbitrator, Presiding Chair

11/21/06  
Signature Date

/s/ Christopher R. Gullen, Esq.  
Christopher R. Gullen, Esq.  
Public Arbitrator

11/21/06  
Signature Date

/s/ Dana R. Dawe  
Dana R. Dawe  
Non-Public Arbitrator

11/21/06  
Signature Date

11/21/2006  
Date of Service (For NASD office use only)

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Christopher R. Gullen, Esq. - Public Arbitrator  
Dana R. Dawe - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

Peter P. Cobbs  
Peter P. Cobbs, Esq.  
Public Arbitrator, Presiding Chair

November 21, 2006  
Signature Date

Christopher R. Gullen, Esq.  
Christopher R. Gullen, Esq.  
Public Arbitrator

Signature Date

Dana R. Dawe  
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Concurring Arbitrators' Signatures:

Peter P. Cobbs, Esq.  
Public Arbitrator, Presiding Chair

*Chris Gullen*

Christopher R. Gullen, Esq.  
Public Arbitrator

Signature Date

*11-21-06*

Signature Date

Dana R. Dawe  
Non-Public Arbitrator

Signature Date

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