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**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Names of the Claimants  
Russell and Sandra Aucoin

Case Number: 06-00067

Names of the Respondents  
Edward Jones & Co.  
Peter Gauthier

Hearing Site: New Orleans, Louisiana

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

**REPRESENTATION OF PARTIES**

Russell and Sandra Aucoin appeared Pro Se.

Edward Jones & Co. ("Jones") and Peter Gauthier ("Gauthier"), hereinafter collectively referred to as "Respondents": Lizbeth M. Conran, Esq., Greensfelder, Hemker & Gale, P.C., St. Louis, Missouri.

**CASE INFORMATION**

Statement of Claim filed on or about: January 4, 2006.

Claimants signed the Uniform Submission Agreement on December 4, 2005.

Respondent Jones signed the Uniform Submission Agreement on February 7, 2005.

Respondent Gauthier did not submit an executed Uniform Submission Agreement.

Respondents' Motion to Dismiss the Statement of Claim filed on or about: March 22, 2006.

Claimants' Response to Respondents' Motion to Dismiss the Statement of Claim filed on or about: March 25, 2006.

Respondents' Supplemental Exhibit to Their Motion to Dismiss the Statement of Claim filed on or about: March 30, 2006.

Claimants' Response to Respondents' Supplemental Exhibit to Their Motion to Dismiss the Statement of Claim filed on or about April 5, 2006.

Respondents' Reply Memorandum in Further Support of Their Motion to Dismiss the Statement of Claim filed on or about: June 15, 2006.

Claimants' Response in Opposition to Respondents' Motion to Dismiss and in the Alternative, Motion for Continuation of Arbitration filed on or about: June 22, 2006.

**CASE SUMMARY**

Claimants asserted the following causes of action: 1) fraudulent misrepresentation; 2) omissions; and, 3) negligence. The causes of action relate to investments in, including but not limited to, Colonial Utilities Fund, Hartford Annuities and Putnam Capital.

Unless specifically admitted in its Motion to Dismiss, Respondents denied the allegations made in the Statement of Claim and asserted various defenses and grounds for dismissal.

### **RELIEF REQUESTED**

Claimants requested: compensatory damages in the amount of \$150,000.00; punitive damages in the amount of \$100,000.00; attorneys' fees; costs and other case-related costs.

Respondents requested dismissal, with prejudice, of Claimants' claims.

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

Respondent Gauthier 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 appeared, is bound by the determination of the Panel on all issues submitted.

On or about July 7, 2006, the Panel granted Respondents' Motion to Dismiss the Statement of Claim.

The parties have agreed that the Award in this matter may be executed in counterpart copies.

### **AWARD**

After considering the pleadings and oral argument of the parties on the Motion to Dismiss heard on June 28, 2006, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondents' Motion to Dismiss the Statement of Claim is granted. All claims in the Statement of Claim are dismissed, with prejudice.

Any and all claims for relief are dismissed, with prejudice, including claims for attorneys' fees and punitive damages.

### **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:

The Panel waived the initial claim filing fees in the amount of \$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 event(s) giving rise to the dispute. Accordingly, Respondent Jones is a member firm and a party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$2,750.00</u>
Total Member Fees	= \$5,200.00

### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournment fees assessed during the 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:

There were no three-day cancellation fees assessed during the 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.

There were no injunctive relief fees assessed during these proceedings.

### **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:

Two (2) Pre-hearing sessions with the Panel @ \$1,125.00/session	= \$2,250.00
Hearing Dates: May 22, 2006	1 session
June 28, 2006	1 session

One (1) Decision on discovery-related motion on the papers	
with (1) one arbitrator @ \$200.00	= \$200.00
Claimant submitted 1 discovery-related motion	

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Total Forum Fees	= \$2,450.00
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The Panel has assessed \$2,450.00 of the forum fees to the Respondents, jointly and severally.

### **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.

There were no administrative costs incurred during these proceedings.

**Fee Summary**

Respondent Jones is solely 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 are jointly and severally liable for:

<u>Forum Fees</u>	= \$2,450.00
<u>Total Fees</u>	= \$2,450.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$2,450.00

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

**ARBITRATION PANEL**

Mark A. Myers, Esq.	-	Public Arbitrator, Presiding Chairperson
James Francis Donovan	-	Public Arbitrator
John J. Meyer		Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
Mark A. Myers, Esq.  
Public Arbitrator, Presiding Chairperson

July 12, 2006  
Signature Date

/s/  
James Francis Donovan  
Public Arbitrator

July 11, 2006  
Signature Date

/s/  
John J. Meyer  
Non-Public Arbitrator

July 10, 2006  
Signature Date

July 12, 2006  
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution

Arbitration No. 06-00067

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\_\_\_\_\_  
Mark A. Myers, Esq.  
Public Arbitrator, Presiding Chairperson

7-12-06  
Signature Date

\_\_\_\_\_  
James Francis Donovan  
Public Arbitrator

\_\_\_\_\_  
Signature Date

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John J. Meyer  
Non-Public Arbitrator

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Public Arbitrator, Presiding Chairperson

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Signature Date

\_\_\_\_\_  
*James Francis Donovan*  
James Francis Donovan  
Public Arbitrator

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*11 July 06*  
Signature Date

\_\_\_\_\_  
John J. Meyer  
Non-Public Arbitrator

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Signature Date

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Signature Date

  
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7/10/06  
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Signature Date

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