

NASD DISPUTE RESOLUTION AWARD
NASD DISPUTE RESOLUTION

CASE: 06-02903

Edward D. Jones & Co., L.P., (Claimant) vs. James A. Valis, (Respondent)

ATTORNEYS:

For Claimant appeared Christopher A. Pickett, Esq., of the firm Goldberg Wehrle, LLC, St. Louis, MO.

Respondent appeared *pro se*, Worcester, MA.

NATURE OF DISPUTE: Member v. Associated Person

DATE FILED: June 15, 2006

CASE SUMMARY: Claimant alleged that Respondent breached an employment contract by failing to repay monies owed pursuant to the terms of an Investment Representative Employment Agreement. Claimant maintained that due to Respondent's actions, the firm suffered a financial loss.

ARBITRATOR'S REPORT: See attached Exhibit A.

Claim Data

Claim: \$9,375.00
Interest: Unspecified
Attorney Fees: Unspecified
Filing Fees: Unspecified
Other: Unspecified

Award Data

Award: \$.00
Interest: \$.00
Attorney Fees: \$.00
Filing Fees: \$.00
Other: \$.00

AWARD: The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) The claims of the Claimant are dismissed in their entirety. 2) All requests for attorney fees are denied. 3) All requests for interest are denied. 4) All other relief requests are denied. 5) NASD Dispute Resolution shall retain the \$750.00 filing fee that the Claimant deposited previously.

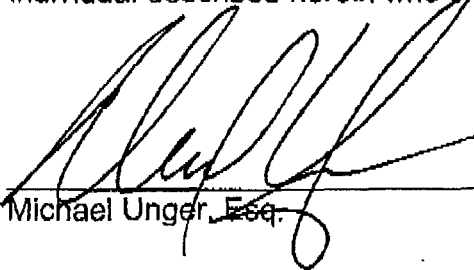
OTHER FEES: Pursuant to Rule 10333 of the Code, Claimant has paid to NASD Dispute Resolution the \$325.00 Member Surcharge previously invoiced.

Michael Unger, Esq.

Sole Non-Public Arbitrator

AFFIRMATION

I, Michael Unger, Esq., do hereby affirm, upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.



Michael Unger, Esq.

1/9/07
(Signature Date)

January 9, 2007

Date of Service (For NASD-DR office use only)

Exhibit A

As noted in the Initial Pre-Hearing Conference Scheduling Order, at the pre-hearing telephone conference held on October 16, 2006, the parties agreed to submit the case on the pleadings. Accordingly, the substantive record in the case consists of the Statement of Claim of Edward D. Jones, the Statement of Answer of James A. Valis and Claimant's pre-hearing brief. Accordingly, I note the following:

1. Claimant alleges that Respondent was employed in its office located in Worcester, Massachusetts on or about August 27, 2002. In his Statement of Answer, the Respondent says that he was employed and living in the State of Connecticut until the fall of 2005 when he relocated to Worcester, Massachusetts. Respondent further states that he operated out of his home in Worcester, Massachusetts.
2. Claimant alleges that Respondent did not have any prior experience in the securities industry and that Respondent participated in Edward Jones' training program.
3. Claimant further alleges that it expended significant sums of money to hire Respondent and provide him with training.
4. Respondent, in his Statement of Answer, says that he did not receive any formal training and was not provided with extensive securities and investment training by the Claimant.
5. The parties were given opportunities to file pre-hearing briefs.
6. Only the Claimant filed a pre-hearing brief.
7. Claimant's pre-hearing brief provides extensive argument with respect to the enforceability of a liquidated damages provision in the Investment Representative Employment Agreement it had with the Respondent.
8. As alleged by Claimant, Section 18 of that agreement does provide that the Respondent agreed "to reimburse (emphasis added) Edward Jones the reasonable cost of the training Edward Jones has provided to you, including, but not limited to, the cost of the selection and screening process, all costs incurred by Edward Jones in training you, as well as living and travel expenses paid or reimbursed by Edward Jones during your training period and salary received by you during your training."
9. In its Statement of Claim and pre-hearing brief, the Claimant has presented no documentation with respect to any sums it expended in connection with the Respondent's employment.
10. Claimant's pre-hearing brief argues that the applicable law in Missouri and Massachusetts permits an award pursuant to a liquidated damage provision in a contract.
11. The Claimant has not refuted or challenged the Respondent's Statement of Answer whereby he says he received no formal training from the Claimant.
12. The employment agreement provides damages will be paid by an employee as reimbursement for training costs and certain other expenses incurred by the Claimant. However,

other than general statements in the complaint and the pre-hearing brief, the Claimant has not set forth any facts to show that it, in fact, incurred any such expenses for which it would be entitled to reimbursement. Conversely, the Respondent, in his Statement of Answer, has specifically denied receiving any formal training. The Claimant, in its pre-hearing brief, had an opportunity to provide such additional information and to address the Respondent's Statement of Answer. Claimant did not do so.

13. The courts of Missouri and Massachusetts, as noted by the Claimant in its pre-hearing brief, apply a reasonableness standard in order to support a claim for liquidated damages. In Massachusetts and Missouri, a liquidated damages provision in a contract is enforceable as long as the amount bears some relationship to the actual loss. Claimant has not met its burden in this regard.

14. Based on the record in this case, I find in favor of the Respondent and dismiss the claim of the Claimant.



12/20/06