

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

George R. Hammer

94-01336

Name of Respondents

Edward D. Jones & Co.
Brian T. Duffy

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on April 8, 1994, Claimant George R. Hammer, who appeared Pro Se, alleged that Respondents Edward D. Jones & Co. and Brian Duffy overcharged him for the commission on a purchase of securities. Claimant further alleged that he met with Respondent Duffy on three different occasions between September 1, 1992 and September 16, 1992 to discuss investing his money and when he asked Respondent Duffy how much his services cost, he was told "the cost of my services are \$200 per \$10,000 invested". Claimant contended that when he inquired about how liquid his money would be he was informed "you can have all your money back the next day less \$200 per \$10,000 which is the cost of my services" and Respondent Duffy also told him he could expect a return in the 7% range. Claimant further contended that he then gave Respondents \$70,000.00 to invest and Respondent Duffy said that he would select about five different funds. Claimant alleged that when he received the sales confirmation in the mail he was shocked to see that the sales fee was way above what Respondent Duffy had quoted to him and when he brought this to Respondent Duffy's attention, he replied, "I know the fees are higher than what I told you, but I did that to get you a 9% return". Claimant further alleged that Respondents would not refund the sales fee despite his request. As a result of the above, Claimant contended he has suffered damages for which the Respondent should be held liable.

Respondents Edward D. Jones & Co. and Brian Duffy, through their representative Cynthia A. Doria, Esq., maintained that after visiting Respondent Duffy on three occasions, Claimant purchased \$10,000.00 of Putnam Utilities Growth & Income Fund, \$20,000.00 of Putnam U.S. Government Income Trust, \$10,000.00 of Putnam Fund for Growth & Income, \$20,000.00 of Putnam Income Fund, Inc. and \$10,000.00 of Putnam Diversified Income Trust. Respondents

further maintained that Claimant received confirmation slips for each of his purchases and a prospectus for each of the funds. Respondents contended that Claimant was never told that he would be charged 2% on the purchase of mutual funds, but rather was told that there would be a 2% sales charge on the purchase of corporate bonds and that Respondent Duffy did not tell Claimant that the 2% commission for bonds was also the same charge for the purchase of mutual funds. Respondents further contended that it was explained to Claimant that the sales charge for the purchase of mutual funds would be higher and that part of the necessity in holding mutual funds for an extended period of time was to recoup some of those sales charges. Respondents maintained that Claimant was mistakenly not given a "break point commission" on the \$70,000.00 purchase he made but an adjustment was made in July 1993 and calculated to backdate it to the date of his initial purchase such that he received additional shares of each of the funds to compensate for his break point in the amount of \$475.88. As a result of the above, Respondents contended that they should not be held liable in this matter.

RELIEF REQUESTED

Claimant George R. Hammer requested \$1,990.15 in actual damages.

Respondents Edward D. Jones & Co. and Brian Duffy requested that the claims of the Claimant be dismissed.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Elwood C. Avery, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on April 1, 1994, by Respondent Edward D. Jones & Co. on June 23, 1994 but not signed by Respondent Brian Duffy as required by Sections 12 & 13 of the NASD Code of Arbitration Procedure.

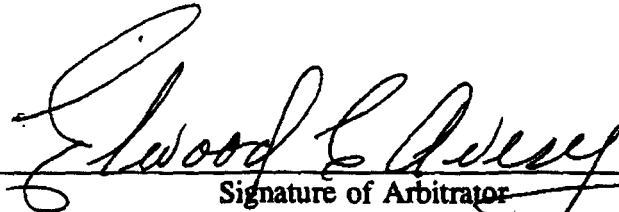
And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent Edward D. Jones & Co. is liable and shall pay to Claimant George R. Hammer \$189.42 in actual damages.
2. The claims of the Claimant George R. Hammer against Respondent Brian Duffy are dismissed in their entirety.
3. The parties shall bear their respective costs.

4. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. Respondent Edward D. Jones & Co. is liable and shall pay to Claimant \$50.00 as reimbursement of the filing fee.

AFFIRMATION

I, **ELWOOD C. AVERY**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: April 11, 1995