

**Award  
FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Names of the Claimants

Palmer S. Albertine

Kathy M. Albertine

Jon D. Albright

Sam Davis

Suzan Davis

William D. Irvine

Amy R. Irvine

Peter Tashie

Kendall S. Tashie

Case Number: 09-01327

Names of the Respondents

Morgan Keegan & Company, Inc.

Regions Financial Corporation

Hearing Site: Memphis, Tennessee

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Nature of the Dispute: Customer vs. Member and Non-Member.

**REPRESENTATION OF PARTIES**

For Palmer S. Albertine, Kathy M. Albertine, Jon D. Albright, Sam Davis, Suzan Davis, William D. Irvine, Amy R. Irvine, Peter Tashie, and Kendall S. Tashie, hereinafter collectively referred to as "Claimants": Dale Ledbetter, Esq. and G. Robert DeLoach, Esq., Ledbetter & Associates, P.A., Fort Lauderdale, Florida.

For Respondents Morgan Keegan & Company, Inc. ("Morgan Keegan") and Regions Financial Corporation ("Regions"): Terry R. Weiss, Esq., Greenberg Traurig, L.L.P., Atlanta, Georgia and Jennifer Tomsen, Esq., Greenberg Traurig, L.L.P., Houston, Texas.

**CASE INFORMATION**

Statement of Claim filed on or about: March 6, 2009.  
Claimant Palmer S. Albertine signed the Submission Agreement: February 19, 2009.  
Claimant Kathy M. Albertine signed the Submission Agreement: February 19, 2009.  
Claimant Jon D. Albright signed the Submission Agreement: February 25, 2009.  
Claimant Sam Davis signed the Submission Agreement: March 3, 2009.  
Claimant Suzan Davis signed the Submission Agreement: March 3, 2009.  
Claimant William D. Irvine signed the Submission Agreement: February 16, 2009.  
Claimant Amy R. Irvine signed the Submission Agreement: February 16, 2009.  
Claimant Peter Tashie signed the Submission Agreement: March 2, 2009.  
Claimant Kendall S. Tashie signed the Submission Agreement: March 2, 2009.  
Answer of Respondent Morgan Keegan to the Claims of Palmer S. Albertine and Kathy M. Albertine filed on or about: July 6, 2009.

Answer of Respondent Morgan Keegan to the Claims of Jon D. Albright filed on or about: July 6, 2009.  
Answer of Respondent Morgan Keegan to the Claims of Sam Davis and Suzan Davis filed on or about: July 6, 2009.  
Answer of Respondent Morgan Keegan to the Claims of William D. Irvine and Amy R. Irvine filed on or about: July 6, 2009.  
Answer of Respondent Morgan Keegan to the Claims of Peter Tashie and Kendall S. Tashie filed on or about: July 6, 2009.  
Respondent Morgan Keegan signed the Submission Agreement: July 9, 2009.  
Respondent Regions did not file an executed Submission Agreement or Statement of Answer.  
Motion to Sever Claims filed by Respondent Morgan Keegan on or about: July 6, 2009.  
Response to Respondent Morgan Keegan's Motion to Sever Claims filed by Claimants on or about: July 13, 2009.  
Reply in Further Support of Respondent Morgan Keegan's Motion to Sever Claims filed by Respondent Morgan Keegan on or about: August 25, 2009.  
Motion to Strike filed by Respondent Morgan Keegan on or about: January 18, 2011.  
Opposition to Respondent Morgan Keegan's Motion to Strike filed by Claimants on or about: January 26, 2011.  
Reply in Support of its Motion to Strike filed by Respondent Morgan Keegan on or about: January 31, 2011.  
Motion for Leave to Amend the Statement of Claim filed by Claimants on or about: January 20, 2011.  
Response to Claimants' Motion for Leave to Amend Statement of Claim filed by Respondent Morgan Keegan on or about: January 31, 2011.  
Reply to Respondent Morgan Keegan's Response to Claimants' Motion for Leave to Amend Statement of Claim filed by Claimants on or about: February 7, 2011.  
Motion in Limine to Exclude Improper Derivative Claims filed by Respondent Morgan Keegan on or about: January 26, 2011.  
Opposition to Respondent Morgan Keegan's Motion in Limine to Exclude Improper Derivative Claims filed by Claimants on or about: February 2, 2011.  
Motion in Limine to Exclude Irrelevant and Inadmissible Regulatory Materials filed by Respondent Morgan Keegan on or about: January 26, 2011.  
Opposition to Respondent Morgan Keegan's Motion in Limine to Exclude Irrelevant and Inadmissible Regulatory Materials filed by Claimants on or about: February 3, 2011.

### **CASE SUMMARY**

Claimants asserted the following causes of action: (1) misrepresentations and omissions; (2) breach of fiduciary duty; (3) unsuitable investments; (4) negligence; (5) failure to supervise; (6) breach of contract; (7) vicarious liability; (8) violation of FINRA rules; and, (9) violation of the Securities and Exchange Act. The causes of action relate to the purchase in Claimants' accounts of the following funds: RMK Multi-Sector High Income; RMK Strategic Income Fund; RMK High Income Fund; RMK Advantage Income Fund; and, RMK Select Intermediate Bond Fund – I.

Unless specifically admitted in its Answers, Respondent Morgan Keegan denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested: (1) compensatory damages in an amount in excess of \$1,600,000.00; (2) interest on the foregoing amount; (3) any and all costs of this action; and, (4) such other and further relief as the undersigned arbitrators (the "Panel") deemed just and proper.

During the evidentiary hearing, Claimants requested attorneys' fees.

In its Statements of Answer, Respondent Morgan Keegan requested that the Panel: (1) dismiss this action; (2) direct that all costs and assessments by FINRA be borne by Claimants; (3) award Respondent Morgan Keegan its preparation costs, travel expenses, attorneys' fees, expert witness fees; and, (4) award such other further and general relief to which Respondent Morgan Keegan may be entitled.

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

The Panel acknowledges that they have each read the pleadings and other materials filed by the parties.

On or about October 27, 2009, the Panel entered an order which denied Respondent Morgan Keegan's Motion to Sever and memorialized Claimants' agreement to be sequestered during other Claimants' testimony.

In its Motion to Strike, Respondent Morgan Keegan asserted, among other things, that: (1) unproven regulatory allegations are legally and factually irrelevant to this arbitration; (2) introduction of regulatory allegations will confuse the issues, delay the proceedings and unfairly prejudice Respondent Morgan Keegan; and, (3) evidence of regulatory actions are inappropriate in FINRA arbitration because they apply different procedures and lesser standards of pleading and proof. In response, Claimants asserted, among other things, that: (1) documents provided to regulators are not confidential; (2) transcripts of testimony are not confidential; and, (3) Respondent Morgan Keegan's Motion to Strike is an improper motion in FINRA arbitration. During the evidentiary hearing, the Panel granted the Motion to Strike.

On February 11, 2011, during a pre-hearing conference, Claimants informed the Panel that they withdrew their Motion for Leave to Amend the Statement of Claim.

In its Motion in Limine to Exclude Improper Derivative Claims, Respondent Morgan Keegan asserted, among other things, that: (1) the Alabama Supreme Court has determined that these claims are derivative; and, (2) under Maryland law, Claimants' claims are also derivative. In response, Claimants asserted, among other things, that: (1) Respondent Morgan Keegan's motion is improper in FINRA arbitration and should be denied; (2) Respondent Morgan Keegan's motion is a backhanded attempt to escape their legal and regulatory obligations; (3) Claimants did not plead nor did they present any shareholder derivative claims; (4) Respondent Morgan Keegan's argument is an effort to confuse the simple facts of this case; and, (5) Respondent Morgan Keegan's request for the Panel to exclude evidence opens any arbitration award to a

motion to vacate. On or about February 11, 2011, the Panel entered an order which denied Respondent Morgan Keegan's Motion in Limine to Exclude Improper Derivative Claims.

In its Motion in Limine to Exclude Irrelevant and Inadmissible Regulatory Materials, Respondent Morgan Keegan asserted, among other things, that: (1) unproven regulatory allegations are legally and factually irrelevant; and, (2) evidence of regulatory actions are inappropriate in FINRA arbitrations because they apply different procedures and lesser standards of pleading and proof. In response, Claimants asserted, among other things, that Respondent Morgan Keegan's motion is an improper motion in FINRA arbitration. On or about February 11, 2011, the Panel entered an order which denied Respondent Morgan Keegan's Motion in Limine to Exclude Irrelevant and Inadmissible Regulatory Materials.

On or about March 24, 2011, Claimants William D. Irvine and Amy R. Irvine withdrew their claims against Respondents Morgan Keegan and Regions, with prejudice.

On or about April 15, 2011, Claimants Palmer S. Albertine, Kathy M. Albertine, Jon D. Albright, Sam Davis, Suzan Davis, Peter Tashie, and Kendall S. Tashie withdrew their claims against Respondent Regions, without prejudice.

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 evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondent Morgan Keegan is liable on the claims of misrepresentations and omissions, unsuitable investments, negligence, failure of supervision, breach of contract, vicarious liability, violation of FINRA rules, and violation of the Securities and Exchange Act.

Respondent Morgan Keegan shall pay to Claimants Palmer S. Albertine and Kathy M. Albertine compensatory damages in the sum of \$33,382.00, prejudgment interest specifically denied.

Respondent Morgan Keegan shall pay to Claimant Jon D. Albright compensatory damages in the sum of \$105,844.00, prejudgment interest specifically denied.

Respondent Morgan Keegan shall pay to Claimants Sam Davis and Suzan Davis compensatory damages in the sum of \$254,642.00, prejudgment interest specifically denied.

Respondent Morgan Keegan shall pay to Claimants Peter Tashie and Kendall S. Tashie compensatory damages in the sum of \$458,625.00, prejudgment interest specifically denied.

Respondent Morgan Keegan shall pay to Claimants Palmer S. Albertine, Kathy M. Albertine, Jon D. Albright, Sam Davis, Suzan Davis, Peter Tashie, and Kendall S. Tashie expert witness fees for Dr. McCann in the sum of \$28,500.00.

Respondent Morgan Keegan shall pay to Claimants Palmer S. Albertine, Kathy M. Albertine, Jon D. Albright, Sam Davis, Suzan Davis, Peter Tashie, and Kendall S. Tashie the sum of \$600.00 representing reimbursement of the non-refundable portion of the claim filing fee previously paid by Claimants to FINRA Dispute Resolution.

Any and all claims for relief not specifically addressed herein, including Claimants' and Respondent Morgan Keegan's respective requests for attorneys' fees, are denied.

### FEES

Pursuant to the Code of Arbitration Procedure, the following fees are assessed:

#### Filing Fees

FINRA Dispute Resolution assessed a filing fee\* for each claim:

Initial claim filing fee = \$ 1,800.00

*\*The filing fee is made up of a non-refundable and a refundable portion.*

#### Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a member firm and party, Respondent Morgan Keegan is assessed the following:

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

#### Hearing Session Fees and Assessments

The Panel has assessed hearing session 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), which lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$450.00/session = \$ 450.00  
Pre-hearing conference: February 3, 2011 1 session

Three (3) Pre-hearing sessions with the Panel @ \$1,200.00/session = \$ 3,600.00  
Pre-hearing conferences: September 21, 2009 1 session  
October 22, 2009 1 session  
February 11, 2011 1 session

Nineteen (19) Hearing sessions @ \$1,200.00/session = \$22,800.00  
Hearing Dates: February 15, 2011 2 sessions  
February 16, 2011 2 sessions

February 17, 2011	2 sessions
February 18, 2011	2 sessions
March 15, 2011	2 sessions
March 16, 2011	3 sessions
March 17, 2011	2 sessions
March 18, 2011	2 sessions
March 23, 2011	2 sessions

Total Hearing Session Fees = \$26,850.00

The Panel has assessed the total hearing session fees of \$26,850.00 to Respondent Morgan Keegan.

**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.

Respondent Morgan Keegan, express delivery of documents to Respondent Morgan Keegan = \$ 10.06

Respondent Morgan Keegan, express delivery of documents to the Panel = \$ 20.09

Claimants, express delivery of documents to the Panel = \$ 43.79

Claimants, express delivery of documents to the Panel = \$ 82.22

Claimants, express delivery of documents to the Panel = \$ 70.84

All balances are payable to FINRA Dispute Resolution and are due upon receipt.

**ARBITRATION PANEL**

Monica I. Salis	-	Public Arbitrator, Presiding Chairperson
Mary P. Bass	-	Public Arbitrator
Teresa A. Dunn	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
\_\_\_\_\_  
Monica I. Salis  
Public Arbitrator, Presiding Chairperson

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

/s/          
Mary P. Bass  
Public Arbitrator

                                  
Signature Date

        /s/          
Teresa A. Dunn  
Non-Public Arbitrator

                                  
Signature Date

April 20, 2011  
Date of Service (For FINRA Dispute Resolution Office use only)

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February 17, 2011	2 sessions
February 18, 2011	2 sessions
March 15, 2011	2 sessions
March 16, 2011	3 sessions
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March 18, 2011	2 sessions
March 23, 2011	2 sessions

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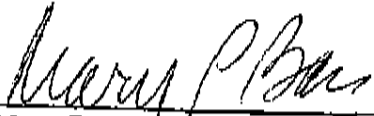
**Concurring Arbitrators' Signatures**

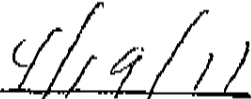
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Monica I. Salis  
Public Arbitrator, Presiding Chairperson

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4/20/11  
Signature Date



FINRA Dispute Resolution  
Arbitration No. 09-01327  
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Mary P. Bass  
Public Arbitrator

  
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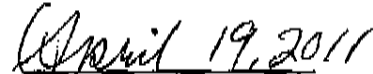
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Public Arbitrator, Presiding Chairperson

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