

**Award  
FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimant  
Christian Brothers University  
Endowment Fund

Case Number: 09-02550

Respondent  
Morgan Keegan & Company, Inc.

Hearing Site: Memphis, TN

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

For Christian Brothers University Endowment Fund, hereinafter referred to as "Claimant": Dale Ledbetter, Esq. and Adam Nativ, Esq., Ledbetter & Associates, P.A., Ft. Lauderdale, FL.

For Morgan Keegan & Company, Inc. (Morgan Keegan), hereinafter referred to as "Respondent": Shepherd D. Tate, Esq. and Samuel L. Felker, Esq., Bass, Berry & Sims PLC, Memphis, TN.

**CASE INFORMATION**

Statement of Claim filed on or about: April 30, 2009.  
Claimant signed the Submission Agreement: April 21, 2009.  
Respondent's Answer filed on or about: July 30, 2009.  
Respondent signed the Submission Agreement: May 18, 2009.

Morgan Keegan's Motion in Limine to Exclude Evidence Relating to Time-Barred and Extinguished Claims (First Motion in Limine) filed on or about: May 17, 2011.  
Morgan Keegan's Motion in Limine to Exclude Evidence Relating to Claims of Fund Mismanagement (Second Motion in Limine) filed on or about: May 17, 2011.  
Claimant's Opposition to Respondent's First and Second Motions in Limine filed on or about: May 26, 2011.  
Morgan Keegan's Reply in Support of Respondent's First and Second Motions in Limine filed on or about: May 27, 2011.

Morgan Keegan's Motion for Fair Order of Proof at the Hearing (Motion for Fair Order of Proof) filed on or about: May 17, 2011.  
Claimant's Opposition to Respondent's Motion for Fair Order of Proof filed on or about: May 31, 2011.

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Morgan Keegan's Emergency Motion to Exclude Irrelevant and Inadmissible Regulatory Materials and to Strike References From Claimant's Brief (Motion to Exclude) filed on or about: May 31, 2011.  
Claimant's Opposition to Respondent's Motion to Exclude filed on or about: June 1, 2011.

Morgan Keegan's Emergency Motion for Reconsideration of Claimant's Proposed Order of Witnesses (Respondent's Motion for Reconsideration) filed on or about: June 2, 2011.  
Claimant's Opposition to Respondent's Motion for Reconsideration filed on or about: June 2, 2011.

Claimant's Motion for Reconsideration of Panel's Order Refusing to Admit Regulatory Rulings (Claimant's Motion for Reconsideration) filed on or about: July 1, 2011.  
Respondent's Response in Opposition to Claimant's Motion for Reconsideration filed on or about: July 22, 2011.  
Claimant's Reply to Respondent's Response in Opposition to Claimant's Motion for Reconsideration filed on or about: August 4, 2011.  
Respondent's Amended Sur-reply in Further Opposition to Claimant's Motion for Reconsideration filed on or about: August 17, 2011.

#### CASE SUMMARY

Claimant asserted the following causes of action: misrepresentations and omissions; breach of fiduciary duty; unsuitable investments; negligence; failure of supervision; breach of contract; violation of FINRA rules; and, violation of Tennessee statutes. The causes of action relate to the purchase of shares of RMK Select High Income Fund in Claimant's account.

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

#### RELIEF REQUESTED

Claimant requested compensatory damages in excess of \$1,000,000.00, interest, costs, punitive damages, and such other and further relief as the undersigned arbitrators (Panel) deemed just and proper.

Respondent requested that Claimant be awarded nothing on its claims, that all costs be borne by Claimant, and that Respondent be awarded its costs, attorneys' fees, expert witness fees, and such other further and general relief to which it may be entitled.

#### OTHER ISSUES CONSIDERED AND DECIDED

The undersigned arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

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During the evidentiary hearing the Panel denied Respondent's First and Second Motions in Limine.

On or about June 1, 2011, the Panel issued an order in response to Respondent's Motion for Fair Order of Proof which stated the following: "The panel approves the order of witnesses proposed by Claimant."

On or about June 2, 2011, the Panel issued an order granting Respondent's Motion to Exclude. In the order, the Panel stated "The panel grants Respondent's Motion. This does not preclude Claimant from offering into evidence Regulatory Materials at the hearing."

On or about June 3, 2011, the Panel issued an order which denied Respondent's Motion for Reconsideration.

On or about June 24, 2011, the Panel issued an order in further response to Respondent's Motion to Exclude which stated, in pertinent part, the following: "The panel has decided to read the regulatory filings contained in the Claimant's pre-hearing brief, exhibits 1, 2, & 3 and assign them their due weight. However, no newer regulatory filings, settlements or rulings are to be submitted to the panel."

On or about August 18, 2011, the Panel issued an order concerning Claimant's Motion for Reconsideration which stated, in pertinent part, the following: "The panel has decided to read the regulatory rulings (FINRA, SEC and State of Alabama) which pre-date the panel's June 24, 2011 order (which is still in force) bearing in mind they are negotiated resolutions and assign them their due weight. This does not preclude the parties from arguing for or against such exhibits in closing argument. All of the panel's June 24, 2011 order remains in effect."

During the evidentiary hearing, on August 23, 2011, Respondent moved for adjournment in order to produce additional witnesses. Claimant opposed the motion. The Panel denied Respondent's motion for adjournment.

During the evidentiary hearing, on August 23, 2011, Respondent moved for recusal of the full panel. Claimant opposed the motion. The Panel members individually denied the motions to recuse directed to each of them.

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, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

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Respondent is liable and shall pay to Claimant compensatory damages in the sum of \$432,061.00 plus interest at the Tennessee legal rate accruing from April 30, 2009 until the date of payment of the Award.

Respondent is liable and shall pay to Claimant the sum of \$375.00 representing reimbursement of the non-refundable portion of the claim filing fee previously paid by Claimant to FINRA Dispute Resolution.

The parties are responsible for their own attorneys' fees and costs.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages, 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 = \$1,575.00

\*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 party and a member firm, Respondent is assessed the following:

Member surcharge = \$2,250.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$4,000.00

#### 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) that lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) Pre-hearing sessions with a single arbitrator @ \$450.00/session = \$1,350.00

Pre-hearing conferences: April 15, 2011 1 session

May 11, 2011 1 session

June 1, 2011 1 session

Five (5) Pre-hearing sessions with the Panel @ \$1,200.00/session = \$6,000.00

Pre-hearing conferences: August 24, 2009 1 session

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June 1, 2011	1 session
June 2, 2011	1 session
June 3, 2011	1 session
June 24, 2011	1 session

Twenty (20) Hearing sessions @ \$1,200.00/session = \$24,000.00

Hearing Dates:	June 6, 2011	2 sessions
	June 7, 2011	3 sessions
	June 8, 2011	2 sessions
	June 9, 2011	3 sessions
	June 10, 2011	2 sessions
	August 23, 2011	3 sessions
	August 24, 2011	3 sessions
	August 25, 2011	2 sessions

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Total Hearing Session Fees = \$31,350.00

The Panel assessed \$15,675.00 of the hearing session fees to Claimant.

The Panel assessed \$15,675.00 of the hearing session fees to Respondent.

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

