

**Award  
FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant  
East Tennessee Neurology, P.C.  
Profit Sharing Plan

Case Number: 08-04070

Name of the Respondent  
Morgan Keegan & Company, Inc.

Hearing Site: Birmingham, Alabama

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

For East Tennessee Neurology, P.C. Profit Sharing Plan, hereinafter referred to as "Claimant": Brian N. Smiley, Esq., Smiley Bishop & Porter, LLP, Atlanta, Georgia.

For Morgan Keegan & Company, Inc., hereinafter referred to as "Respondent": John Bolus, Esq., Maynard Cooper & Gale, P.C., Birmingham, Alabama.

**CASE INFORMATION**

Statement of Claim filed on or about: November 3, 2008.

Claimant signed the Submission Agreement: October 27, 2008.

Statement of Answer filed by Respondent on or about: January 16, 2009.

Respondent signed the Submission Agreement: January 8, 2009.

Motion to Exclude Irrelevant and Inadmissible Regulatory Materials filed by Respondent on or about: May 19, 2010.

Brief in Opposition to Respondent's Motion in Limine filed by Claimant on or about: June 3, 2010.

**CASE SUMMARY**

Claimant asserted the following causes of action: 1) breach of fiduciary duty; 2) violation of NASD and NYSE Rules; 3) breach of contract; 4) negligence; 5) fraud; 6) violation of Tennessee Consumer Protection Act of 1977; and, 7) failure to supervise. The causes of action relate to Claimant's investments in, including but not limited to, RMK Multi-Sector Funds and RMK Advantage Funds.

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

### RELIEF REQUESTED

In the Statement of Claim, Claimant requested: 1) compensatory damages in the amount of \$601,195.00; 2) interest; 3) costs and fees; 4) attorneys' fees; 5) punitive damages; 6) treble damages under TCA Section 47-18-109 (a)(3)(4); and, 7) other relief deemed just.

In the Answer to the Statement of Claim, Respondent requested: 1) dismissal of the Statement of Claim; 2) costs; and, 3) forum fees.

### OTHER ISSUES CONSIDERED AND DECIDED

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

On or about May 19, 2010, Respondent filed its Motion to Exclude Irrelevant and Inadmissible Regulatory Materials asserting, *inter alia*, that unproven charges are legally and factually irrelevant to this arbitration and evidence of regulatory actions are inappropriate in FINRA arbitrations because they apply different procedures and lesser standards of pleading and proof. On or about June 3, 2010, Claimant filed a Brief in Opposition to Respondent's Motion in Limine asserting, *inter alia*, that Respondent is incorrect on the law and the facts. The Panel deferred ruling until the evidentiary hearing. Respondent reasserted this motion during the evidentiary hearing, Claimant opposed the motion and the Panel granted the motion.

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 is found liable for breach of fiduciary duty, fraud and violation of Tennessee Consumer Protection Act of 1977.

Respondent shall pay to Claimant compensatory damages in the amount of \$301,195.00, plus interest in the amount of \$15,060.00.

Respondent shall pay to Claimant attorneys' fees in the amount of \$115,689.00, inclusive of discovery related sanctions, pursuant to TCA Section 47-18-109.

Respondent shall pay to Claimant costs and expenses in the amount of \$52,413.00.

Any and all relief not specifically addressed herein, including punitive and treble

damages, is denied.

### FEES

Pursuant to the Code of Arbitration Procedure (the "Code"), 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 party and a member firm, Respondent 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) that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with one arbitrator @ \$450.00/session = \$ 450.00  
Pre-hearing conference: June 24, 2010 1 session

Four (4) Pre-hearing sessions with Panel @ \$1,200.00/session = \$4,800.00  
Pre-hearing conferences: April 28, 2009 1 session  
March 24, 2010 1 session  
May 21, 2010 1 session  
June 1, 2010 1 session

Twenty One (21) Hearing sessions @ \$1,200.00/session = \$25,200.00  
Hearing Dates: June 7, 2010 3 sessions  
June 8, 2010 2 sessions  
June 9, 2010 3 sessions  
June 10, 2010 3 sessions  
June 11, 2010 3 sessions  
July 25, 2010 3 sessions  
July 26, 2010 4 sessions

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Total Hearing Session Fees = \$30,450.00

The Panel has assessed the total hearing session fees in the amount of \$30,450.00 to Respondent.

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

**ARBITRATION PANEL**

Elton Chartrand - Public Arbitrator, Presiding Chairperson  
Kenneth Jackson - Public Arbitrator  
Joshua Wallach - Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
Elton Chartrand  
Public Arbitrator, Presiding Chairperson

August 5, 2010  
Signature Date

/s/  
Kenneth Jackson  
Public Arbitrator

August 4, 2010  
Signature Date

/s/  
Joshua Wallach  
Non-Public Arbitrator

August 5, 2010  
Signature Date

August 6, 2010  
Date of Service (For FINRA Dispute Resolution use only)

Arbitration No. 08-04070  
Award Page 4 of 4


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Kenneth Jackson	-	Public Arbitrator
Joshua Wallach	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
 Elton Chartrand  
 Public Arbitrator, Presiding Chairperson

8-5-10  
 Signature Date

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 Kenneth Jackson  
 Public Arbitrator

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

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 Joshua Wallach  
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August 4, 2010  
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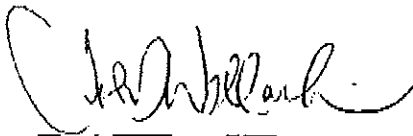
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 Public Arbitrator, Presiding Chairperson

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Signature Date

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 Public Arbitrator

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



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 Joshua Wallach  
 Non-Public Arbitrator

8/5/10  
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