

**Award**  
**FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Names of the Claimants

Frank L. Flautt, Jr., Revocable Trust  
Agreement dtd 12/5/02 Frank L. Flautt TTEE  
Frank L. Flautt, Jr. Rollover IRA  
Flautt Family Foundation  
Brenda C. Flautt

Case Number: 08-02589

Name of the Respondent

Morgan Keegan & Company Inc.

Hearing Site: Boca Raton, Florida

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

For Frank L. Flautt, Jr., Revocable Trust Agreement dtd 12/5/02 Frank L. Flautt TTEE, Frank L. Flautt, Jr. Rollover IRA, Flautt Family Foundation and Brenda C. Flautt, hereinafter collectively referred to as "Claimants": Andrew P. Campbell, Esq. and Caroline S. Gidiere, Esq., Leitman, Siegal, Payne & Campbell, P.C., Birmingham, Alabama.

For Morgan Keegan & Company Inc., hereinafter referred to as "Respondent": John Golwen, Esq., Michael Brady, Esq. and Ricardo Gonzalez, Esq., Bass, Berry & Sims PLC, Memphis, Tennessee.

**CASE INFORMATION**

Statement of Claim filed on or about: July 25, 2008.

Claimants signed the Submission Agreement: July 17, 2008.

Statement of Answer filed by Respondent on or about: October 1, 2008.

Respondent signed the Submission Agreement: September 23, 2008.

Motion to Exclude Testimony and Bar the Presentation of Irrelevant Evidence Relating to Alleged Mismanagement of Funds filed by Respondent on or about: October 20, 2010.

Response to Motion to Exclude Testimony and Bar the Presentation of Irrelevant Evidence Relating to Alleged Mismanagement of Funds filed by Claimants on or about: October 26, 2010.

Motion for Fair Allocation of Time at the Hearing filed by Respondent on or about: October 25, 2010.

Response to Motion for Fair Allocation of Time at the Hearing filed by Claimant on or about: October 26, 2010.

### **CASE SUMMARY**

Claimants asserted the following causes of action: 1) misrepresentations and omissions, common law fraud; 2) breach of fiduciary duty; 3) unsuitable investments; 4) negligence; 5) failure to supervise; 6) breach of contract; 7); vicarious liability; and, 9) violation of FINRA rules. The causes of action relate to Respondent's alleged failure to disclose the nature and extent of the risk involved in investing in certain bond funds, including but not limited to, the Regions Morgan Keegan Select High Income Class-A Fund, the Regions Morgan Keegan Advantage Income Fund, the Regions Morgan Keegan Multi-Sector High Income Fund, the Regions Morgan Keegan Select High Income Class-C Fund and the Regions Morgan Keegan Select High Income Class-C Fund in Claimants' accounts.

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, Claimants requested compensatory damages in the amount of \$1,250,000.00, reservation of the right to seek punitive damages, interest, costs and such other and further relief as this Panel deemed just and proper.

In the Statement of Answer, Respondent requested that the Panel dismiss Claimants' claim, attorneys' fees, costs, expenses, expert witness fees, assessment of FINRA fees to Claimants and such other further and general relief to which it 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.

Respondent filed a Motion to Exclude Testimony and Bar the Presentation of Irrelevant Evidence Relating to Alleged Mismanagement of Funds in which Respondent asserted, among other things, that the allegations of fund mismanagement are misdirected as to Respondent, that claims of fund mismanagement are shareholder derivative claims and are not allowed in FINRA arbitrations and that its position on this issue was confirmed by an Alabama Supreme Court decision. In their response, Claimants asserted, among other things, that Respondent had a significant role in managing the funds at issue and that Claimants' cause of action is not a shareholder derivative suit. Additionally, Respondent filed a Motion for Fair Allocation of Time at the Hearing. Respondent requested, among other things, that each side be given two and one-half days to call their witnesses, submit their evidence and argue their case. Claimants alleged, among other things, that Respondent needlessly draws out cross-examination. At the commencement of the final hearing, the motions were denied, without prejudice, to address as needed during the final hearing.

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 misrepresentations and omissions (common law fraud), breach of fiduciary duty, unsuitable investments, negligence, failure to supervise, breach of contract and vicarious liability and shall pay to Claimants compensatory damages as follows:

To Claimant Frank L. Flautt, Jr., Revocable Trust Agreement dtd 12/5/02 Frank L. Flautt TTEE: \$1,509,594.00;

To Claimant Flautt Family Foundation: \$69,124.00; and,  
To Claimant Brenda C. Flautt: \$246,799.00

Respondent is found liable and shall pay to Claimants Frank L. Flautt, Jr., Revocable Trust Agreement dtd 12/5/02 Frank L. Flautt TTEE, Flautt Family Foundation and Brenda C. Flautt pre-judgment interest as follows:

Interest at the rate of 11% for the year 2008 commencing on 8/23/08;  
Interest at the rate of 8% for the year 2009; and,  
Interest at the rate of 6% for the year 2010.

Pre-judgment interest ceases to accrue on the date of payment of the Award.

Respondent is found liable and shall pay to Claimants 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.

The claims of Claimant Frank L. Flautt, Jr. Rollover IRA are denied, with prejudice.

Any and all claims for relief not specifically addressed herein, are 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, Respondent is a party and a member firm.

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

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

May 10 – 14, 2010, adjournment requested by Claimants

The Panel has waived the adjournment fee.

**Contested Motion for Issuance of a Subpoena Fees**

Fees apply for each decision on a contested motion for the issuance of a subpoena.

One (1) Decision on a contested motion for the issuance of a subpoena  
with (1) one arbitrator @ \$200.00 = \$200.00

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Total Contested Motion for Issuance of Subpoenas Fee = \$200.00

The Panel has assessed the total contested motion for issuance of subpoenas fee in the amount of \$200.00 to Respondent.

**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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with the Panel @ \$1,200.00/session = \$ 2,400.00  
Pre-hearing conferences: December 1, 2008 1 session  
February 26, 2010 1 session

Fourteen (14) Hearing sessions @ \$1,200.00/session = \$16,800.00  
Hearing Dates: November 8, 2010 2 sessions  
November 9, 2010 3 sessions  
November 10, 2010 2 sessions  
November 11, 2010 3 sessions  
November 12, 2010 2 sessions  
November 16, 2010 2 sessions

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Total Hearing Session Fees = \$19,200.00

The Panel has assessed the total hearing session fees in the amount of \$19,200.00 to Respondent.

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

**ARBITRATION PANEL**

*Richard W. Epstein* - *Public Arbitrator, Presiding Chairperson*  
*Martin P. Bergman* - *Public Arbitrator*  
*James E. Edwards* - *Non-Public Arbitrator*

**Concurring Arbitrators' Signatures**

      /s/        
Richard W. Epstein  
Public Arbitrator, Presiding Chairperson

11/19/10  
Signature Date

      /s/        
Martin P. Bergman  
Public Arbitrator

11/19/10  
Signature Date

      /s/        
James E. Edwards  
Non-Public Arbitrator

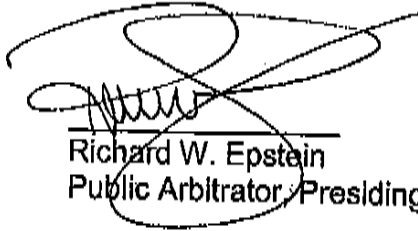
11/19/10  
Signature Date

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Date of Service (For FINRA Dispute Resolution use only)

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