

**Award  
FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant  
Michael S. Muhlbauer

Case Number: 08-00375

Name of the Respondent  
Morgan Keegan & Co., Inc.

Hearing Site: Memphis, Tennessee

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*Nature of the Dispute: Customer vs. Member.*

**REPRESENTATION OF PARTIES**

For Michael S. Muhlbauer, hereinafter referred to as "Claimant": Nail Falls, Esq., Falls & Veach, Nashville, Tennessee.

For Morgan Keegan & Co., Inc., hereinafter referred to as "Respondent": Michael A. Brady, Esq., Bass, Berry & Sims, PLC, Memphis, Tennessee.

**CASE INFORMATION**

Statement of Claim filed on or about: February 11, 2008.

Claimant signed the Uniform Submission Agreement: January 14, 2008.

Statement of Answer filed by Respondent on or about: May 16, 2008.

Respondent signed the Uniform Submission Agreement: May 16, 2008.

**CASE SUMMARY**

Claimant asserted the following causes of action: 1) common law negligence; 2) suitability; 3) breach of fiduciary duty; 4) breach of loyalty; 5) breach of contract; 6) common law fraud; 7) misrepresentation; 8) violation of the Tennessee Blue Sky laws; and 9) violation of the Tennessee Consumer Protection Act. The causes of action relate to Claimant's investment in, including but not limited to, the Strategic Income Fund (RFS), Advantage Income Fund (RMA) and the Multi-Sector High income Fund (RHY).

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 an amount

no less than \$448,000.00; 2) pre-judgment interest; 3) post-judgment interest; 4) attorneys' fees; 5) costs; 6) punitive damages; 7) treble damages in the amount of \$896,000.00; 8) rescission; 9) disgorgement; and, 10) other relief deemed just.

Respondent requested: 1) dismissal of the Statement of Claim; 2) attorneys' fees; 3) costs and expenses; and 4) other relief deemed just.

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

During the evidentiary hearing, Claimant made an *ore tenus* motion to permit emails from another arbitration. The Panel granted the motion subject to objections as to relevancy at the time of introduction.

During the evidentiary hearing, Respondent made an *ore tenus* motion to exclude testimony of claimants from other arbitrations. The Panel denied the motion.

During the evidentiary hearing, Respondent made an *ore tenus* motion to exclude testimony related to management of the mutual funds at issue. The Panel denied the motion.

On or about March 5, 2009, the Panel granted the parties' request to submit legal briefs for attorneys' fees by March 9, 2009.

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

Respondent is liable under the causes of action of suitability, misrepresentation and common law negligence and shall pay to Claimant compensatory damages in the amount of \$125,000.00.

Each party shall bear its own attorneys' fees.

Any and all claims for relief not specifically addressed herein, including punitive damages 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, 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

Total Member Fees = \$8,550.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournment fees assessed during these proceedings.

**Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

There were no three-day cancellation fees assessed during these proceedings.

**Discovery-Related Motion Fees**

Fees apply for each decision rendered on a discovery-related motion.

Five (5) Decisions on discovery-related motions on the papers  
with (1) one arbitrator @ \$200.00 = \$1,000.00

Claimant submitted (3) discovery-related motions

Respondent submitted (2) discovery-related motions

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Total Discovery-Related Motion Fees = \$1,000.00

The Panel has assessed \$500.00 of the discovery-related motion fees to Claimant.

The Panel has assessed \$500.00 of the discovery-related motion fees to Respondent.

**Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction.

These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

There were no injunctive relief fees assessed during these proceedings.

**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 the Panel @ \$1,200.00/session	= \$ 3,600.00
Pre-hearing conferences: June 11, 2008	1 session
July 17, 2008	1 session
August 4, 2008	1 session

Seven (7) Hearing Sessions @ \$1,200.00/session	= \$8,400.00
Hearing Dates: March 2, 2009	2 sessions
March 3, 2009	2 sessions
March 4, 2009	2 sessions
March 5, 2009	1 session

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Total Hearing Session Fees	= \$12,000.00
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The Panel has assessed \$6,000.00 of the hearing session fees to Claimant.  
The Panel has assessed \$6,000.00 of the hearing session fees to Respondent.

**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.

There were no administrative costs assessed during these proceedings.

**ARBITRATION PANEL**

Jay Robinson	-	Public Arbitrator, Presiding Chairperson
Gerald Cohen	-	Public Arbitrator
Wilburn Layman	-	Non-Public Arbitrator



Concurring Arbitrators' Signatures



Jay Robinson  
Public Arbitrator, Presiding Chairperson

3-11-09  
Signature Date

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Gerald Cohen  
Public Arbitrator

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

\_\_\_\_\_  
Wilburn Layman  
Non-Public Arbitrator

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

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Date of Service (For FINRA Dispute Resolution use only)

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