

**AWARD**  
**FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Names of Claimants

Pelican Holdings, Ltd. and  
Fleming Endowment

vs.

Case Number: 09-02552  
Hearing Site: Houston, Texas

Name of Respondent

Morgan Keegan & Company, Inc.

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**NATURE OF THE DISPUTE**

Customers vs. Member

**REPRESENTATION OF PARTIES**

Pelican Holdings, Ltd. ("Pelican") and Fleming Endowment ("Fleming"), hereinafter collectively referred to as "Claimants," were represented by Dale Ledbetter, Esq. and Adam Nativ, Esq., Ledbetter & Associates, P.A., Fort Lauderdale, Florida.

Morgan Keegan & Company, Inc. ("Respondent") was represented by Samuel L. Felker, Esq., Bass, Berry, & Sims, PLC, Nashville, Tennessee, and Peter S. Fruin, Esq., Maynard, Cooper & Gale, P.C., Birmingham, Alabama.

**CASE INFORMATION**

The Statement of Claim was filed jointly by Claimants on or about April 30, 2009. The Submission Agreement of Pelican was signed on or about February 23, 2009, by George Fleming. The Submission Agreement of Fleming was signed on or about February 23, 2009, by George Fleming.

The Statement of Answer was filed by Respondent on or about August 31, 2009. The Submission Agreement of Respondent was signed on or about May 27, 2009.

**CASE SUMMARY**

Claimants asserted the following causes of action: misrepresentations and omissions; breach of fiduciary duty; unsuitable investments; negligence; failure of supervision; breach of contract; vicarious liability; violation of FINRA rules; and violation of the Texas Securities Act. The causes of action related to the purchase and sale of proprietary RMK funds.

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

Respondent filed a Motion to Sever on or about August 31, 2009. Claimants filed a Response to Respondent's Motion on or about September 10, 2009.

Respondent filed a Motion to Dismiss the Claims of Pelican on or about July 11, 2011. Pelican filed a Response to Respondent's Motion on or about July 25, 2011. Respondent filed a Reply to Pelican's Response to its Motion on or about July 29, 2011. Respondent filed a Supplemental Brief in Support of its Motion to Dismiss on or about August 5, 2011. Pelican filed a Response to Respondent's Supplemental Brief in Support of its Motion to Dismiss on or about August 10, 2011. Pelican filed a Reply to Respondent's Sur-Reply in Support of its Motion to Dismiss on or about August 16, 2011. Respondent filed a Reply to Pelican's Reply to Respondent's Sur-Reply in Support of its Motion to Dismiss on or about August 19, 2011.

Respondent filed a Motion to Dismiss the Claims of Fleming on or about July 11, 2011. Fleming filed a Response to Respondent's Motion on or about July 25, 2011. Respondent filed a Reply to Fleming's Response to its Motion on or about July 29, 2011.

### **RELIEF REQUESTED**

Claimants requested an award in the amount of:

Actual/Compensatory Damages	\$3,132,883.00
Exemplary/Punitive Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondent requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

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

The Panel denied Respondent's Motion to Sever in its Order dated September 28, 2009.

The Panel denied Respondent's Motions to Dismiss without Prejudice in its Order dated on or about August 24, 2011.

Claimants filed a Motion to Compel on or about August 8, 2011. Claimants filed a Supplement to their Motion to Compel on or about August 25, 2011. Respondent filed an Opposition to Claimants' Motion to Compel on or about August 30, 2011. Claimants filed a Reply to Respondent's Opposition on or about September 2, 2011. The Panel granted Claimants' Motion to Compel on the record at the hearing.

Respondent filed a Motion to Compel on or about August 8, 2011. Claimants filed a Response to Respondent's Motion on or about August 23, 2011. The Panel deferred decision on Respondent's Motion to Compel at the hearing and the Motion was not pursued.

Respondent filed a Motion in Limine to Exclude Regulatory Evidence on or about August 26, 2011. Claimants filed an Opposition to Respondent's Motion on or about September 6, 2011. The Panel denied Respondent's Motion in Limine to Exclude Regulatory Evidence on the record at the hearing.

Respondent filed a Motion in Limine to Exclude Evidence Relating to Claims of Funds Mismanagement on or about August 26, 2011. Respondent filed a Motion in Limine to Exclude Evidence Relating to Time-Barred and Extinguished Claims on or about August 26, 2011. Claimants filed an Opposition to Respondent's Motion in Limine to Exclude Evidence Relating to Claims of Fund Mismanagement and Respondent's Motion to Bar Time-Barred and Extinguished Claims on or about September 6, 2011. The Panel deferred ruling on Respondent's Motion in Limine to Exclude Evidence Relating to Claims of Funds Mismanagement and Motion in Limine to Exclude Evidence Relating to Time-Barred and Extinguished Claims on the record at the beginning of the hearing and the Motions were not pursued.

Respondent filed a Motion for Subpoenas to Testify and Duces Tecum on or about August 26, 2011. The Panel granted Respondent's Motion for Subpoenas on the record at the hearing.

Respondent filed a Motion to Compel Attendance of Lee Giovanetti, Joe Meals, and George Fleming on or about August 26, 2011. The parties resolved Respondent's Motion to Compel at the hearing.

Respondent filed a Pre-Hearing Brief on or about August 29, 2011. Claimants filed a Pre-Hearing Brief on or about August 29, 2011.

Claimants filed a Motion for Panel to Issue Orders of Appearance on or about August 26, 2011. Respondent filed an Objection to Portions of Claimants' Motion for Panel to Issue

Orders of Appearance on or about September 6, 2011. The parties resolved the Motion at the hearing.

On or about September 2, 2011, the parties requested that the panel hold pre-hearing conferences on September 7, to resolve the discovery motions filed by both parties and Respondent's objections to certain witnesses, and on September 8, for the Motions in Limine. In its Order entered on or about September 6, 2011, the Panel denied the parties' request for pre-hearing conferences.

Claimants requested reconsideration of the Panel's Order denying their request for pre-hearing conferences to consider recently filed motions on or about September 6, 2011.

Claimants filed an Emergency Motion for Panel to Rule on Respondent's Motions in Limine Prior to the Final Hearing on or about September 7, 2011. Respondent filed a Response on or about September 7, 2011.

Claimants filed an Emergency Motion for Fair Order of Witnesses on or about September 7, 2011. Respondent filed a Response to Claimants' Motion on or about September 8, 2011. The parties resolved the Motion at the hearing.

In its Order entered on or about September 8, 2011, the Panel denied Claimants' Request for Reconsideration and advised that the underlying Motions would be addressed at the evidentiary hearing.

Claimants filed an Emergency Motion to Postpone the Final Hearing on or about September 8, 2011. Respondent filed an Opposition to Claimants' Motion on or about September 9, 2011. Claimants submitted a Letter in Further Support of their Emergency Motion on or about September 9, 2011.

The Panel held a pre-hearing conference on September 9, 2011. In its Order entered after the conclusion of the conference, the Panel denied Claimants' request for reconsideration and advised that all pending motions would be considered at the hearing.

Claimants filed a Motion for the Director of Arbitration to Remove Arbitrator Jerry C. Prestridge/Request for Arbitrator to Recuse Himself on or about September 9, 2011. Respondent filed an Objection to Claimants' Motion on or about September 9, 2011. Claimants withdrew their Motion on the record at the hearing.

At the hearing, Respondents moved to exclude evidence of the Securities Exchange Commission's Settlement Cases attached as an exhibit to Claimants' pleadings. The Panel ruled that the cases could not be referred to in opening statements. The Panel otherwise deferred ruling on the Motion.

At the hearing, Respondent objected to Claimants' Witness, Russell Stein. The Panel allowed Russell Stein to be called as a rebuttal witness only.

At the hearing, Respondent moved to quash the subpoena issued to Fred Hodges. The parties agreed that Mr. Hodges would not be called as a witness. The Panel referred the parties to pursue any remedies with Hodges' attorney.

At the hearing, Respondent moved to exclude James F. Gatewood as Claimants' expert witness. The Panel denied the Motion on the record.

After the close of the hearing Claimants moved to submit additional briefs. The Panel denied Claimants' Motion on the record.

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

- 1.) Pelican Holdings, Ltd.'s claims, each and all, are hereby denied and dismissed with prejudice;
- 2.) Respondent Morgan Keegan & Company, Inc. is liable for and shall pay to Fleming Endowment the sum of \$889,340.00 in compensatory damages;
- 3.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 4.) Any relief not specifically enumerated, including punitive damages and attorneys' fees, is hereby denied with prejudice.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

FINRA Dispute Resolution will retain the non-refundable 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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Morgan Keegan & Company, Inc. 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 hearing 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:

Three (3) Pre-hearing sessions with Panel x \$1,200.00	= \$ 3,600.00
Pre-hearing conferences:	
September 14, 2009	1 session
August 17, 2011	1 session
September 9, 2011	1 session
Thirteen (13) Hearing sessions x \$1,200.00	= \$ 15,600.00
Hearing Dates:	
September 12, 2011	3 sessions
September 13, 2011	2 sessions
September 14, 2011	3 sessions
September 15, 2011	3 sessions
September 16, 2011	2 sessions
<b>Total Hearing Session Fees</b>	<b>= \$ 19,200.00</b>

The Panel has assessed \$6,000.00 of the hearing session fees to Pelican Holdings, Ltd.

The Panel has assessed \$6,000.00 of the hearing session fees to Fleming Endowment.

The Panel has assessed \$7,200.00 of the hearing session fees to Morgan Keegan & Company, Inc.

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

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**ARBITRATION PANEL**

Jerry C. Prestridge - Public Arbitrator, Presiding Chair  
Alan M. Holzberg - Public Arbitrator  
Karen Settle Newton - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

/s/ Jerry C. Prestridge  
Jerry C. Prestridge  
Public Arbitrator, Presiding Chair

11/11/11  
Signature Date

/s/ Alan M. Holzberg  
Alan M. Holzberg  
Public Arbitrator

11/11/11  
Signature Date

/s/ Karen Settle Newton  
Karen Settle Newton  
Non-Public Arbitrator

11/14/11  
Signature Date

11/14/11  
Date of Service (For FINRA office use only)


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Jerry C. Prestridge  
Public Arbitrator, Presiding Chair

November 11, 2011  
Signature Date

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Alan M. Holzberg  
Public Arbitrator

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

\_\_\_\_\_  
Karen Settle Newton  
Non-Public Arbitrator

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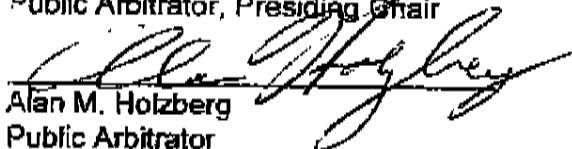
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Public Arbitrator

11/11/2011  
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