

**Award
FINRA Dispute Resolution**

In the Matter of the Arbitration Between:

Claimants

W. Kyle Rote, Jr. a/k/a William K. Rote, Jr.
Mary Lynne Rote
E.W. Jamison Living Trust dtd 3/28/92 c/o
Kyle Rote, Jr. Trustee

Case Number: 09-03437

Respondent

Morgan Keegan & Company Inc.

Hearing Site: Memphis, Tennessee

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For W. Kyle Rote, Jr. a/k/a William K. Rote, Jr., Mary Lynne Rote and E.W. Jamison Living Trust dtd 3/28/92 c/o Kyle Rote, Jr. Trustee, hereinafter collectively referred to as "Claimants": Peter J. Mougey, Esq., Levin, Papantonio, Thomas, Mitchell, Rafferty & Proctor, P.A., Pensacola, Florida and Page Poerschke, Esq., Haskell Slaughter Young and Rediker, Birmingham, Alabama.

For Morgan Keegan & Company Inc., hereinafter referred to as "Respondent": Kathryn S. Gostinger, Esq. and George D. Sullivan, Esq., Greenberg Traurig, LLP, Atlanta, Georgia.

CASE INFORMATION

Statement of Claim filed on or about: June 5, 2009.

Claimants signed but did not date the Submission Agreement.

Statement of Answer filed by Respondent on or about: March 8, 2010.

Respondent signed the Submission Agreement: July 16, 2009.

Motion in Limine to Exclude Regulatory Evidence filed by Respondent on or about: August 23, 2011.

Opposition to Motion in Limine to Exclude Regulatory Evidence filed by Claimants on or about: September 6, 2011.

Motion in Limine to Exclude Evidence of Improper Derivative Claims filed by Respondent on or about: August 23, 2011.

Opposition to Motion in Limine to Exclude Evidence of Improper Derivative Claims filed by Claimant on or about: September 6, 2011.

CASE SUMMARY

Claimants asserted the following causes of action: 1) breach of fiduciary duty ; 2) violation of FINRA and NYSE Rules, breach of contract and negligence; 3) fraud; and, 4) violation of the Tennessee Securities Act of 1980 and the Tennessee Consumer

Protection Act of 1977. 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 Intermediate Bond Fund and the Regions Morgan Keegan High Income 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 \$954,000.00, damages pursuant to T.C.A. § 47-18-109(a), interest, costs, attorneys' fees, punitive damages, and such other relief as this Panel deemed just and equitable.

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

At the close of the hearing, Respondent requested that this matter be expunged from the Central Registration Depository (the "CRD") record of non-party broker Donald Howdeshell ("Howdeshell").

OTHER ISSUES CONSIDERED AND DECIDED

The Panel acknowledges that they have each read the pleadings and other materials filed by the parties.

On or about August 25, 2011, Respondent filed a Motion in Limine to Exclude Regulatory Evidence asserting, among other things, that Claimants should be precluded from presenting irrelevant evidence at the final hearing related to certain regulatory matters. On or about September 6, 2011, Claimants filed their response in Opposition to Respondent's Motion in Limine to Exclude Regulatory Evidence and asserted, among other things, that the documents in question are presumptively discoverable publicly available documents. On or about September 12, 2011, the Panel issued an Order that denied Respondent's Motion in Limine to Exclude Regulatory Evidence.

On or about August 25, 2011, Respondent filed a Motion in Limine to Exclude Evidence of Improper Derivative Claims asserting, among other things, that Claimants' fund mismanagement allegations constitute shareholder derivative claims and any evidence related to such claims should be barred from this proceeding under FINRA Rule 12205. On or about September 6, 2011, Claimants filed their Opposition to Respondent's Motion in Limine to Exclude Evidence of Improper Derivative Claims asserting, among other things, that Respondent's legal argument is premised on a false characterization of the claim in this case. The Panel requested additional briefing on the motion from the parties and deferred ruling on the motion. Subsequently, at the conclusion of the hearings, the Panel denied Respondent's Motion in Limine to Exclude Evidence of Improper Derivative Claims.

In connection with Respondent's request that this matter be expunged from the CRD record of non-party broker Howdeshell, the parties agreed that non-party broker Howdeshell was not involved in the alleged investment related sales practice violation.

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

Respondent is found liable and shall pay to Claimants compensatory damages in the amount of \$400,000.00, pre-judgment interest specifically excluded.

Each party is responsible for their respective attorneys' fees.

The Panel recommends the expungement of all references to the above captioned arbitration from non-party Howdeshell's registration records maintained by the CRD, with the understanding that pursuant to Notice to Members 04-16, non-party Howdeshell must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 12805 of the Code of Arbitration Procedure (the "Code"), the arbitration panel has made the following Rule 2080 affirmative finding of fact:

The registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation or conversion of funds.

The arbitration panel has made the above Rule 2080 finding based on the following reasons:

After hearing all of the testimony and evidence presented by the parties at the final hearing, the Panel finds that there was no evidence presented by Claimants that non-party broker Howdeshell was involved in any alleged investment-related sales practice violation. Claimants made the decision to purchase the securities in question on their own and merely placed the order with Mr. Howdeshell. Therefore, the Panel is in agreement that expungement is appropriate in this case.

Any and all claims for relief not specifically addressed herein, including Claimants' requests for punitive damages and damages pursuant to T.C.A. § 47-18-109(a), are denied.

FEES

Pursuant to the Code, 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, Respondent is a party and a member firm.

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

One (1) Pre-hearing session with the Panel @ \$1,200.00/session = \$ 1,200.00
Pre-hearing conference: March 9, 2010 1 session

Eighteen (18) Hearing sessions @ \$1,200.00/session = \$21,600.00
Hearing Dates: September 12, 2011 2 sessions
September 13, 2011 3 sessions
September 14, 2011 2 sessions
September 15, 2011 2 sessions
January 17, 2012 2 sessions
January 18, 2012 2 sessions
January 19, 2012 2 sessions
February 12, 2012 3 sessions

Total Hearing Session Fees = \$22,800.00

The Panel has assessed \$11,400.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$11,400.00 of the hearing session fees to Respondent.

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


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ARBITRATION PANEL

Joel P. Mellis	-	Public Arbitrator, Presiding Chairperson
Ronald F. Rosner	-	Public Arbitrator
Randolph Guggenheimer, Jr.	-	Non-Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument which is my award.

Concurring Arbitrators' Signatures



 Joel P. Mellis
 Public Arbitrator, Presiding Chairperson

2/17/12

 Signature Date

 Ronald F. Rosner
 Public Arbitrator

 Signature Date

 Randolph Guggenheimer, Jr.
 Non-Public Arbitrator

 Signature Date

 Date of Service (For FINRA Dispute Resolution use only)

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