



VIA FACSIMILE AND U.S. MAIL

November 11, 2009

Jan Douglas Atlas  
Adorno & Yoss  
350 East Las Olas Boulevard  
Suite 1700  
Fort Lauderdale, FL 33301

Subject: FINRA Dispute Resolution Arbitration Number 08-01423  
William Hamilton Smythe, III, Individually, et al v. v. Morgan Keegan & Company, Inc.

Dear Mr. Atlas:

In accordance with the Code of Arbitration Procedure I enclose the decision rendered by the arbitrators in the above-referenced matter.

**Responsibility to Pay Monetary Award**

Pursuant to the Code of Arbitration Procedure<sup>1</sup> the responsible party must pay any monetary awards within 30 days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. If an award is not paid within 30 days, the responsible party must pay post-judgment interest at the legal rate or as provided in the award by the arbitrators.

**Tracking Payment of Award**

FINRA Dispute Resolution has implemented a system of monitoring and tracking compliance with arbitration awards by members and associated persons. We request prevailing claimants to notify us in writing when their awards have not been paid within 30 days of receipt of the award, and require member firms to certify in writing that they have complied with awards against them or their associated persons.

Written notification concerning award compliance or lack thereof must be directed to:

Avichai Badash  
FINRA Dispute Resolution  
One Liberty Plaza  
165 Broadway, 52nd Floor  
New York, NY 10006

<sup>1</sup>Customer Code Rule 12904  
Industry Code Rule 13904  
Old Code Rule 10330(h)

954-766-7800

212-858-4325 (tel) 301-527-4739 (fax)

Expedited Suspension Proceedings for Non-Payment of Awards

Members and associated persons who do not comply with an award in a timely manner are subject to expedited suspension proceedings as set forth in Rule 9554.

Right to File Motion to Vacate Award

All awards are **final** and are not subject to review or appeal by the arbitration panel or by FINRA Dispute Resolution. Any party wishing to challenge the award must make a motion to vacate the award in a **federal or state court** of appropriate jurisdiction pursuant to the Federal Arbitration Act, 9 U.S.C. § 10, or applicable state statute. There are limited grounds for vacating an arbitration award, and a party must bring a motion to vacate within the time period specified by the applicable statute. Parties and counsel should consult federal and state statutes and case law to determine the appropriate court, standards, and time limitations in their individual circumstances. FINRA Dispute Resolution is not authorized to provide legal advice concerning a motion to vacate.

A motion to vacate, confirm, or modify an arbitration award is a matter only between the parties to the arbitration. FINRA Dispute Resolution is not a proper party to post-award motions and should not be named as a party to any post-award motion. However, for cases filed on or after April 12, 2004, if the award contains expungement relief, or if a party seeks expungement relief in court, there may be a duty to name FINRA as a party as provided in Rule 2080.

Questions Concerning Award

Please direct any questions regarding this award to me. **The parties must not contact the arbitrators directly.**

Forum Fees

You will receive under separate cover an invoice that reflects the fees assessed and any outstanding balance or refund due. **Fees are due and payable to FINRA Dispute Resolution upon receipt of the invoice and remitted to the address specified on the invoice.**

Any applicable refunds will also be sent under separate cover approximately 45 days after the case closes. Pursuant to the Code of Arbitration Procedure, "Any refunds of fees or costs incurred under the Code will be paid directly to the named parties, even if a non-party made payment on behalf of the named parties."<sup>2</sup>

All questions regarding payment of fees and refunds should be directed to FINRA Finance at (240) 386-5910.

Arbitration Evaluation

As a service organization, the primary goals of FINRA Dispute Resolution are the integrity of its process and the satisfaction of its clients. To ensure that we are meeting your needs and satisfying our commitment to you, **we need to hear from you.** If you have not already done so,

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<sup>2</sup> Customer Code Rule 12902(e)  
Industry Code Rule 13902(e)

please take the time to complete an evaluation of our services, the process, and the arbitrators assigned to your case. For your convenience, we have now made it possible for you to evaluate our services using the Internet. Please direct your Web browser to <http://www.finra.org/arbevaluation>.

If you do not have Internet access, or have difficulty completing the evaluation form online, we will send a hard copy evaluation form to you. The completed evaluation form should be mailed in to the address indicated below. If you need a hard copy of the evaluation form, please contact the undersigned. Whenever possible, however, we encourage you to use the new online version, as it will help us to review your feedback in a more expeditious manner. Your feedback is a valuable and necessary component in our efforts to serve you better.

Very truly yours,

/S/

Joan M Pendergast  
Case Administrator  
Phone: 561-416-0277  
Fax: 301-527-4868  
FL-Main@finra.org

JMP:grc:LC09A  
idr: 08/25/2009

**RECIPIENTS:**

Jan Douglas Atlas, Smythe Children's Trust #2 FBO Katherine  
Adorno & Yoss, 350 East Las Olas Boulevard, Suite 1700, Fort Lauderdale, FL 33301

Jan Douglas Atlas, William H. Smythe, IV Trust DTD 12/29/87  
Adorno & Yoss, 350 East Las Olas Boulevard, Suite 1700, Fort Lauderdale, FL 33301

Jan Douglas Atlas, William Hamilton Smythe, III  
Adorno & Yoss, 350 East Las Olas Boulevard, Suite 1700, Fort Lauderdale, FL 33301

John S. Golwen, Esq., Morgan Keegan & Company Inc  
Bass, Berry & Sims, PLC, The Tower at Peabody Place, 100 Peabody Place, Suite 900,  
Memphis, TN 38103

**Award  
FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Names of the Claimants

Case Number: 08-01423

William Hamilton Smythe, III, Individually;  
William H. Smythe, IV Trust U/A DTD 12/29/87,  
William H. Smythe III, Trustee; and  
Smythe Children's Trust  
#2 FBO Katherine S. Thinnis U/A  
DTD 12/29/87, William H. Smythe, III, Trustee

Name of the Respondent

Hearing Site: Memphis, Tennessee

Morgan Keegan & Company, Inc.

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

For William Hamilton Smythe, III, Individually; William H. Smythe, IV Trust U/A DTD 12/29/87, William H. Smythe III, Trustee; and Smythe Children's Trust #2 FBO Katherine S. Thinnis U/A DTD 12/29/87, William H. Smythe, III, Trustee, hereinafter collectively referred to as "Claimants": Jan Douglas Atlas, Esq., Adorno & Yoss, LLP, Fort Lauderdale, Florida and Dale Ledbetter, Esq., Ledbetter & Associates, PA, Fort Lauderdale, Florida.

For Morgan Keegan & Company, Inc., hereinafter referred to as "Respondent": John S. Golwen, Esq. and David Esquivel, Esq., Bass Berry & Sims, PLC, Memphis, Tennessee.

**CASE INFORMATION**

Statement of Claim filed on or about: April 30, 2008.

Claimants signed the Submission Agreement: April 23, 2008.

Statement of Answer filed by Respondent on or about: August 6, 2008.

Respondent signed the Submission Agreement: June 30, 2008.

**CASE SUMMARY**

Claimants asserted the following causes of action: 1) breach of fiduciary duty; 2) negligence; 3) failure to supervise; 4) breach of contract; 5) suitability; 6) misrepresentations and omissions; and 7) violation of FINRA Rules. The causes of action relate to Claimants' investment in, including but not limited to, RMK Select

Intermediate Bond Fund, RMK Advantage Income Fund, RMK Strategic Income Fund and RMK Multi-Sector High Income Fund.

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: 1) compensatory damages in excess of \$950,000.00; 2) interest; 3) costs; 4) punitive damages; and 5) other relief deemed just.

In its Answer to the Statement of Claim, Respondent requested: 1) dismissal of the Statement of Claim; 2) FINRA fees; 3) preparation costs; 4) attorneys' fees; 5) witness fees; and 6) other relief deemed just.

At the close of the hearing, Claimants requested 1) compensatory damages in the amount of \$754,000.00; 2) witness fees in the amount of \$20,000.00; and 3) attorneys' fees.

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

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

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 and shall pay to Claimants, jointly and severally:

- \$697,000.00 in compensatory damages;
- Pre-judgment interest at the rate of 6 percent per annum from October 19, 2007 until November 6, 2009;
- \$20,000.00 for witness fees; and
- \$195,160.00 for attorneys' fees pursuant to Tennessee Code Annotated Section 48-2-121 and any other applicable statutes.

Any and all relief not specifically addressed herein, including punitive 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 = \$1,575.00

\*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, as a party Respondent is assessed the following:

Member surcharge = \$2,250.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$4,000.00

#### Discovery-Related Motion Fees

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

One (1) Decision on a discovery-related motion on the papers  
with (1) one arbitrator @ \$200.00 = \$200.00  
Claimants submitted (1) one discovery-related motion

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Total Discovery-Related Motion Fees = \$200.00

The Panel has assessed \$200.00 of the discovery-related motion fees 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 arbitrator(s), including a pre-hearing conference with the arbitrator(s) that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel @ \$1,200.00/session = \$ 2,400.00  
Pre-hearing conferences: October 2, 2008 1 session  
October 29, 2008 1 session

Twelve (12) Hearing sessions @ \$1,200.00/session = \$14,400.00  
Hearing Dates: November 2, 2009 2 sessions  
November 3, 2009 2 sessions  
November 4, 2009 2 sessions  
November 5, 2009 3 sessions



November 6, 2009 3 sessions

Total Hearing Session Fees = \$16,800.00

The Panel has assessed \$8,400.00 of the hearing session fees to Claimants, jointly and severally.


The Panel has assessed \$8,400.00 of the hearing session fees to Respondent.

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

**ARBITRATION PANEL**

Michael Hill - Public Arbitrator, Presiding Chairperson  
Eric Buchanan - Public Arbitrator  
Eugene Katz - Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Michael Hill  
Public Arbitrator, Presiding Chairperson

11-10-09  
Signature Date

Eric Buchanan  
Public Arbitrator

Signature Date

Eugene Katz  
Non-Public Arbitrator

Signature Date

Date of Service (For FINRA Dispute Resolution use only)



November 6, 2009 3 sessions

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- Michael Hill - Public Arbitrator, Presiding Chairperson
- Eric Buchanan - Public Arbitrator
- Eugene Katz - Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Michael Hill  
Public Arbitrator, Presiding Chairperson

Signature Date

Eric Buchanan  
Eric Buchanan  
Public Arbitrator

16 Nov 09  
Signature Date

Eugene Katz  
Non-Public Arbitrator

Signature Date

Date of Service (For FINRA Dispute Resolution use only)

November 6, 2009 3 sessions

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**ARBITRATION PANEL**

- Michael Hill - Public Arbitrator, Presiding Chairperson
- Eric Buchanan - Public Arbitrator
- Eugene Katz - Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Michael Hill  
Public Arbitrator, Presiding Chairperson

Signature Date

Eric Buchanan  
Public Arbitrator

Signature Date

  
Eugene Katz  
Non-Public Arbitrator

11/10/09  
Signature Date

Date of Service (For FINRA Dispute Resolution use only)

TRANSACTION REPORT

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