

**Award  
FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant

Louis Duane Velez

Case Number: 08-00491

Name of the Respondent

Morgan Keegan & Company, Inc.

Hearing Site: Little Rock, Arkansas

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

For Louis Duane Velez, hereinafter referred to as "Claimant": Jeffrey Sonn, Esq., Sonn & Erez, PLC, Fort Lauderdale, Florida.

For Morgan Keegan & Company, Inc., hereinafter referred to as "Respondent": Carl Burkhalter, Esq. and Bonnie Monroe, Esq., Maynard, Cooper & Gale, P.C., Birmingham, Alabama.

**CASE INFORMATION**

Statement of Claim filed by Claimant on or about: February 21, 2008.

Claimant signed the Submission Agreement: February 19, 2008.

Amended Statement of Claim filed by Claimant on or about: April 7, 2008.

Second Amended Statement of Claim filed by Claimant on or about: April 17, 2008.

Respondent signed the Submission Agreement: April 9, 2008.

Response to Statement of Claim filed by Respondent on or about: May 15, 2008.

Motion to Amend the Amended Statement of Claim filed by Claimant on or about: June 24, 2008.

Motion to Exclude Testimony and Bar Evidence Relating to Fund Management Issues filed by Respondent on or about May 1, 2009.

**CASE SUMMARY**

Claimant asserted the following causes of action: 1) breach of fiduciary duty; 2) negligence; 3) negligent supervision; 4) fraud; 5) breach of contract; 6) violation of the Arkansas Securities Act; 7) violation of Section 11 of the Securities Act of 1933; and, 8) violation of Section 12(a)(2) of the Securities Act of 1933. The causes of action relate to Claimant's investments in, including but not limited to, RMK Advantage Income Fund, RMK Multi-Sector High Income Fund, RMK Strategic Income Fund and RMK High Income Fund.

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

### **RELIEF REQUESTED**

In the Statement of Claim, as amended, Claimant requested: 1) compensatory damages in an amount between \$100,000.00 and \$500,000.00; 2) interest; 3) costs; 4) attorneys' fees; and 5) other relief deemed just.

At the close of the hearing, Claimant requested the total relief amount of \$533,900.00, inclusive of compensatory damages, interest and costs.

Respondent requested: 1) dismissal of the Statement of Claim, as amended; 2) attorneys' fees; 3) costs; and 4) forum fees.

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

On or about June 24, 2008, Claimant filed a motion for leave to amend the Amended Statement of Claim pursuant to Rule 12309(b) of the FINRA Code of Arbitration Procedure (the "Code"). Respondent did not file an opposition to the motion. On or about July 15, 2008, the Panel issued an order granting the motion.

On or about May 1, 2009, Respondent submitted a Motion to Exclude Testimony and Bar Evidence Relating to Fund Management. On or about May 5, 2009, the Panel declined to make a determination on the motion filed within 20 days of the evidentiary hearing, pursuant to Rule 12503(a) (3) of the Code.

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 negligence and shall pay to Claimant \$75,000.00 in compensatory damages, pre-judgment interest denied.

Each party shall bear its own costs and attorneys' fees.

Any and all relief not specifically addressed herein, is 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 = \$1,425.00

\*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 member firm.

Member surcharge = \$1,700.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$2,750.00

#### 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 last four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00/session = \$ 900.00

Pre-hearing conferences: March 18, 2009 1 session  
April 6, 2009 1 session

Two (2) Pre-hearing sessions with Panel @ \$1,125.00/session = \$ 2,250.00

Pre-hearing conferences: June 17, 2008 1 session  
April 29, 2009 1 session

Nine (9) Hearing sessions @ \$1,125.00/session = \$10,125.00

Hearing Dates: May 11, 2009 2 sessions  
May 12, 2009 2 sessions  
May 13, 2009 2 sessions  
May 14, 2009 1 session  
May 15, 2009 2 sessions

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Total Hearing Session Fees = \$13,275.00

The Panel has assessed \$6,637.50 of the hearing session fees to Claimant.

The Panel has assessed \$6,637.50 of the hearing session fees to Respondent.

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



ARBITRATION PANEL

Michael Rohde

Elton Chartrand

David Coates

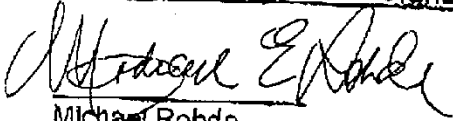
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Public Arbitrator, Presiding Chairperson

Public Arbitrator

Non-Public Arbitrator

Concurring Arbitrators' Signatures



Michael Rohde

Public Arbitrator, Presiding Chairperson

5/19/09

Signature Date

Elton Chartrand

Public Arbitrator

Signature Date

David Coates

Non-Public Arbitrator

Signature Date

\_\_\_\_\_  
Date of Service (For FINRA Dispute Resolution use only)

**ARBITRATION PANEL**

Michael Rohde	-	Public Arbitrator, Presiding Chairperson
Elton Chartrand	-	Public Arbitrator
David Coates	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Michael Rohde  
Public Arbitrator, Presiding Chairperson

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Signature Date

  
Elton Chartrand  
Public Arbitrator

5-19-09  
Signature Date

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David Coates  
Non-Public Arbitrator

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Signature Date

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May. 19. 2009 9:52AM  
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**ARBITRATION PANEL**

Michael Rohde	-	Public Arbitrator, Presiding Chairperson
Elton Chartrand	-	Public Arbitrator
David Coates	-	Non-Public Arbitrator


**Concurring Arbitrators' Signatures**

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Michael Rohde  
Public Arbitrator, Presiding Chairperson

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Signature Date

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Elton Chartrand  
Public Arbitrator

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Signature Date

  
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David Coates  
Non-Public Arbitrator

5/20/09  
Signature Date

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