

**Award  
FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Names of the Claimants

Henry Klosky  
Patricia Klosky

Case Number: 08-00179

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 Henry Klosky and Patricia Klosky, hereinafter collectively referred to as "Claimants":  
H. Naill Falls, Jr., Esq., Falls & Veach, Nashville, Tennessee.

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

**CASE INFORMATION**

Statement of Claim filed on or about: January 22, 2008.

Claimants signed the Submission Agreement: January 15, 2008.

Statement of Answer filed by Respondent on or about: March 27, 2008.

Respondent signed the Submission Agreement: March 25, 2008.

Respondent's Expedited Motion To Exclude Evidence Relating To Losses Incurred After  
Claimants Filed Their Statement Of Claim ("First Motion to Exclude") filed on or about:  
May 20, 2009.

Claimants' Opposition to the First Motion to Exclude filed on or about: May 21, 2009.

Respondent's Expedited Motion To Exclude Irrelevant Evidence Relating To Funds Not  
At Issue In This Proceeding ("Second Motion to Exclude") filed on or about: May 20,  
2009.

Claimants' Opposition to the Second Motion to Exclude filed on or about: May 21, 2009.

Respondent's Expedited Motion To Exclude The Transcript Testimony Of John Stokes,  
Jr., And John Wilfong ("Third Motion to Exclude") filed on or about: May 20, 2009.

**CASE SUMMARY**

Claimants asserted the following causes of action: 1) violation of the Tennessee  
Consumer Protection Act; 2) violations of Tennessee Blue Sky laws; 3) common law  
fraud; 4) misrepresentation; 5) common law negligence; 6) breach of fiduciary duty; and,  
7) breach of contract. The causes of action relate to Claimants' investment in Morgan  
Keegan Select Intermediate Bond 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 an amount no less than \$88,000.00; 2) interest; 3) attorneys' fees; 4) costs; 5) punitive damages; 6) treble compensatory damages in accordance with the Tennessee Consumer Protection Act in the amount of \$176,000.00; 7) rescission; 8) disgorgement; and, 9) such other and further relief the undersigned arbitrators (the "Panel") deemed just.

At the close of the hearing, Claimants requested total compensatory damages, interest, attorneys' fees, and costs of \$241,000.00.

Respondent requested dismissal of the Statement of Claim and that all costs be assessed against Claimants.

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

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

During the evidentiary hearing, the Panel denied Respondent's First and Second Motions to Exclude.

Prior to the evidentiary hearing, Respondent withdrew its Third Motion to Exclude.

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 liable and shall pay to Claimants compensatory damages in the sum of \$134,000.00, pre-judgment interest specifically excluded.

Each party shall pay their own hearing expenses.

Any and all claims for relief not specifically addressed herein, including Claimants' request for punitive damages, are 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 = \$1,425.00

*\*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 party and a member firm.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$2,750.00</u>
Total Member fees	= \$5,200.00

**Contested Motion for Issuance of a Subpoena Fees**

Fees apply for each decision on a contested motion for the issuance of a subpoena.

One (1) Decision on a contested motion for the issuance of a subpoena with (1) one arbitrator @ \$200.00 (maximum of \$600) = \$200.00

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Total Contested Motion for Issuance of Subpoenas Fees = \$200.00

The Panel has assessed \$100.00 of the contested motion for issuance of subpoenas fees jointly and severally to Claimants.

The Panel has assessed \$100.00 of the contested motion for issuance of subpoenas 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:

One (1) Pre-hearing session with the Panel @ \$1,125.00/session = \$1,125.00  
Pre-hearing conference: September 8, 2008 1 session

Six (6) Hearing sessions @ \$1,125.00/session = \$6,750.00  
Hearing Dates: May 26, 2009 2 sessions  
May 27, 2009 2 sessions  
May 28, 2009 2 sessions

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Total Hearing Session Fees = \$7,875.00

The Panel has assessed \$3,937.50 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$3,937.50 of the hearing session fees to Respondent.

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

**ARBITRATION PANEL**

Irwin S. Sugerman - Public Arbitrator, Presiding Chairperson  
Jay R. Robinson, J.D. - Public Arbitrator  
Norman E. Heyman - Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
Irwin S. Sugerman  
Public Arbitrator, Presiding Chairperson

June 5, 2009  
Signature Date

/s/  
Jay R. Robinson, J.D.  
Public Arbitrator

June 4, 2009  
Signature Date

/s/  
Norman E. Heyman  
Non-Public Arbitrator

June 5, 2009  
Signature Date

June 11, 2009  
Date of Service (For FINRA Dispute Resolution use only)

The Panel has assessed \$3,937.50 of the hearing session fees to Respondent.


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

**ARBITRATION PANEL**

Irwin S. Sugarman - Public Arbitrator, Presiding Chairperson  
Jay R. Robinson, J.D. - Public Arbitrator  
Norman E. Heyman - Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Irwin S. Sugarman  
Public Arbitrator, Presiding Chairperson

  
Signature Date 6.5.09

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Jay R. Robinson, J.D.  
Public Arbitrator

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

\_\_\_\_\_  
Norman E. Heyman  
Non-Public Arbitrator

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

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

The Panel has assessed \$3,937.50 of the hearing session fees to Respondent.

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


**ARBITRATION PANEL**

Irwin S. Sugerman - Public Arbitrator, Presiding Chairperson  
Jay R. Robinson, J.D. - Public Arbitrator  
Norman E. Heyman - Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Irwin S. Sugerman  
Public Arbitrator, Presiding Chairperson

Signature Date

  
Jay R. Robinson, J.D.  
Public Arbitrator

6-4-09  
Signature Date

Norman E. Heyman  
Non-Public Arbitrator

Signature Date

Date of Service (For FINRA Dispute Resolution use only)

The Panel has assessed \$3,937.50 of the hearing session fees to Respondent  
All balances are payable to FINRA Dispute Resolution and are due upon receipt.

**ARBITRATION PANEL**

Irwin S. Sugerman - Public Arbitrator, Presiding Chairperson  
Jay R. Robinson, J.D. - Public Arbitrator  
Norman E. Heyman - Non-Public Arbitrator

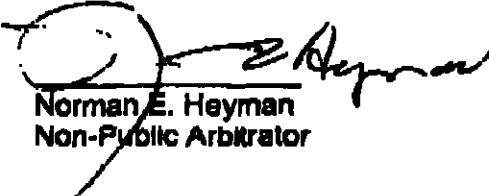
**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Irwin S. Sugerman  
Public Arbitrator, Presiding Chairperson

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Signature Date

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Jay R. Robinson, J.D.  
Public Arbitrator

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

  
\_\_\_\_\_  
Norman E. Heyman  
Non-Public Arbitrator

06-05-09  
Signature Date

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