

**Award**  
**FINRA Office of Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimants

Estate of Robert Houston  
George W. Porter, Jr., IRA  
Kate Houston  
George W Porter, Jr.  
Porter Living Trust

Case Number: 17-02221

vs.

Respondent

Morgan Keegan & Company, LLC

Hearing Site: Birmingham, Alabama

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Nature of the Dispute: Customers vs. Member

This case was decided by an all-public panel.

**REPRESENTATION OF PARTIES**

For Claimants Estate of Robert Houston, George W. Porter, Jr., IRA, Kate Houston, George W Porter, Jr., and Porter Living Trust: J. Timothy Francis, Esq., Francis Law, LLC and Stephen D. Wadsworth, Esq., Campbell Guin LLC, Birmingham, Alabama.

Hereinafter, George W. Porter, Jr., IRA, George W Porter, Jr., and Porter Living Trust, are collectively referred to as "Claimants."

For Respondent Morgan Keegan & Company, LLC ("Respondent"): Peter S. Fruin, Esq., Kathryn Roe Eldridge, Esq., and Jennifer M. Moore, Esq., Maynard Cooper & Gale, PC, Birmingham, Alabama.

**CASE INFORMATION**

Statement of Claim filed on or about: August 17, 2017.

Amendment to Statement of Claim filed on or about: October 25, 2017.

Claimants, Estate of Robert Houston, and Kate Houston signed the Submission Agreement: August 22, 2017.

Statement of Answer filed by Respondent on or about: November 17, 2017.

Respondent signed the Submission Agreement: December 15, 2017.

**CASE SUMMARY**

Claimants, Estate of Robert Houston, and Kate Houston asserted the following causes of action: misrepresentation and omissions; breach of fiduciary duty; unsuitable investments; violation of Section 11 of the Securities Act; violation of Section 12(a)(2) of the Securities Act; liability under Section 15 of the Securities of 1933; breach of Securities Act of 1934, breach of the Tennessee Securities Act; fraud; negligence; failure to supervise; breach of contract; vicarious liability; and violation of FINRA Rules. The causes of action relate to various RMK funds, including RMK Advantage Income Fund, Inc.; RMK Strategic Income Fund, Inc.; RMK High Income Fund, Inc.; RMK Select Intermediate Fund; RMK Multi-Sector High Income Fund; RMK Select High Income Fund; and RMK Select Short Term Bond Fund.

In the Amendment to Statement of Claim, Claimants, Estate of Robert Houston, and Kate Houston dismissed, without prejudice, (1) all claims of the Estate of Robert Houston, and Kate Houston; and (2) all claims regarding "open end" funds.

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

### **RELIEF REQUESTED**

In the Statement of Claim, Claimants, the Estate of Robert Houston, and Kate Hudson requested:

1. Compensatory damages;
2. Punitive damages;
3. Attorneys' fees;
4. Interest; and
5. Reasonable costs.

In the Statement of Answer, Respondent requested:

1. The Panel reject the Statement of Claim in its entirety;
2. Respondent's attorneys' fees and costs be paid by Claimants; and
3. Forum fees be borne by Claimant.

At the close of the hearing, Claimants requested the same relief as requested in the Statement of Claim but specified the following amounts:

1. Compensatory damages in the amount of \$711,647.00; and
2. Attorneys' fees in the amount of \$96,000.00.

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

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

On October 23, 2018, Respondent filed a motion for discovery sanctions. On November 2, 2018, Claimants filed an opposition to the motion. On November 7, 2018, Respondent filed a reply in support of the motion. By order dated November 8, 2018, the Panel dismissed the motion without prejudice.

At the evidentiary hearing, after Claimants' case in chief, Respondent orally moved to dismiss the claims on the basis that Claimants did not prove their claims. Claimants objected but partially conceded and withdrew their breach of fiduciary duty and violation of FINRA Rules causes of action. At the evidentiary hearing, the Panel denied Respondent's motion to dismiss.

The parties present at the hearing 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:

1. Respondent is liable for and shall pay to Claimants the sum of \$172,520.49 in compensatory damages.
2. Respondent is liable for and shall pay to Claimants interest on the above-stated sum at the rate of 6% per annum from January 1, 2007 through and including November 16, 2018.
3. Respondent is liable for and shall pay to Claimants the sum of \$49,142.80 in attorneys' fees pursuant to Alabama Securities Act, Section 8-6-19.
4. Any and all claims for relief not specifically addressed herein, including punitive damages and Respondent's request for attorneys' fees, are denied.

### **FEES**

Pursuant to the Code of Arbitration Procedure, the following fees are assessed:

#### **Filing Fees**

FINRA Office of Dispute Resolution assessed a filing fee\* for each claim:

Initial Claim Filing Fee	= \$ 1,575.00
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*\*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	= \$ 1,900.00
Member Process Fee	= \$ 3,750.00

**Discovery-Related Motion Fee**

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

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

Respondent submitted 1 discovery-related motions

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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.

**Contested Motion for Issuance of Subpoena Fee**

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 one arbitrator @ \$250.00 = \$250.00

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Total Contested Motion for Issuance of Subpoena Fee = \$250.00

The Panel has assessed \$250.00 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:

Two (2) pre-hearing sessions with the Panel @ \$1,125.00/session = \$2,250.00  
Pre-hearing conferences: January 23, 2018 1 session  
October 3, 2018 1 session

Nine (9) hearing sessions @ \$1,125.00/session = \$10,125.00  
Hearing Dates: November 12, 2018 2 sessions  
November 13, 2018 2 sessions  
November 14, 2018 2 sessions  
November 15, 2018 2 sessions  
November 16, 2018 1 session

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Total Hearing Session Fees = \$12,375.00

The Panel has assessed \$6,187.50 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$6,187.50 of the hearing session fees to Respondent.

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

**ARBITRATION PANEL**

Mark L. Williams	-	Public Arbitrator, Presiding Chairperson
Mary Elizabeth Skelnik	-	Public Arbitrator
Joseph Neal Richardson	-	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**



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Mark L. Williams  
Public Arbitrator, Presiding Chairperson

12-18-18

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Signature Date

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Mary Elizabeth Skelnik  
Public Arbitrator

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

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Joseph Neal Richardson  
Public Arbitrator

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

December 18, 2018  
Date of Service (For FINRA Office of Dispute Resolution office use only)

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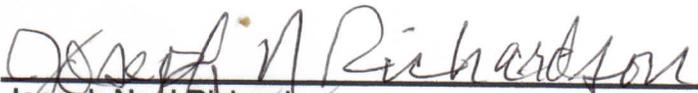
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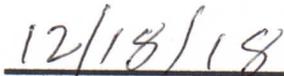
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