

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

Name of Claimant

Joe Billy Fain

Case No. 00-04518

Names of Respondents

Morgan Keegan & Company, Inc.  
Dean Morgan Paugh

Hearing Site: Atlanta, Georgia

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**REPRESENTATION OF PARTIES**

For Joe Billy Fain, hereinafter referred to as "Claimant": Rhon E. Jones, Esq., Beasley, Allen, Crow, Methvin, Portis & Miles, P.C., Montgomery, Alabama, and Elizabeth C. Smithart, Esq., Union Springs, Alabama.

For Morgan Keegan & Company, Inc. ("Morgan Keegan") and Dean Morgan Paugh ("Paugh"), hereinafter collectively referred to as "Respondents": Neil Prosser, Deputy General Counsel, Respondent Morgan Keegan, Memphis, Tennessee.

**CASE INFORMATION**

Statement of Claim filed on or about: October 10, 2000.

Claimant signed the Uniform Submission Agreement on: October 9, 2000.

Statement of Answer and "Counterclaim" filed by Respondents on or about: January 3, 2001.

Respondent Morgan Keegan signed the Uniform Submission Agreement on: January 17, 2001.

Respondent Paugh signed the Uniform Submission Agreement on: January 16, 2001.

Partial Motion to Dismiss filed by Respondents on or about: August 24, 2001.

Response to Partial Motion to Dismiss filed by Claimant on or about: September 13, 2001.

Reply in Support of Partial Motion to Dismiss filed by Respondents on or about: September 19, 2001.

### **CASE SUMMARY**

Claimant asserted the following causes of action: 1) breach of contract; 2) failure to supervise; 3) fraud; 4) negligent misrepresentation; 5) breach of fiduciary duty; 6) violations of state securities laws; 7) violations of the rules of the NASD; and 8) violations of the rules of the NYSE. The causes of action relate to investments in corporate bonds in JumboSports, Inc., GlobalStar LP, Stuart Entertainment, Brunos, Inc., National Energy GRP, Brazos Sportswear, Inc., and Coho Energy, Inc.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: 1) Claimant's claims are barred in whole or in part by the applicable statutes of limitation; 2) Claimant was fully aware from the outset of the risks of loss and potential consequences in the securities at issue, and is therefore barred by the doctrine of assumption of risk; 3) Claimant is barred from recovery by the doctrines of account stated, estoppel, ratification, waiver and/or laches due to his failure to promptly notify Respondent Morgan Keegan of the alleged acts and omissions of which he now complains; 4) Claimant ratified the alleged conduct which he now complains and his claims are therefore barred; 5) Claimant failed to mitigate his damages; 6) Claimant failed to state a claim upon which relief may be granted; and 7) by failing to exercise the degree of care over his affairs and investments which an ordinary prudent investor would exercise, Claimant caused or contributed to his alleged damages and thus, his claims are barred by his own contributory negligence or comparative negligence.

### **RELIEF REQUESTED**

Claimant requested: 1) compensatory damages in an amount of at least \$325,000.00; 2) reimbursement of commissions; 3) rescission; 4) punitive damages; 5) interest; 6) costs; 7) attorneys' fees; and 8) such other relief the undersigned arbitrators (the "Panel") deemed just and proper.

Respondents requested: 1) dismissal of the Statement of Claim; 2) costs; and 3) attorneys' fees.

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

On September 24, 2001, the Panel conducted a telephonic pre-hearing conference with the parties on Respondents' Partial Motion to Dismiss. After hearing arguments of counsel and upon careful review of the written submissions, the Panel denied Respondents' Partial Motion to Dismiss.

The parties at the evidentiary 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 the evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are denied in their entirety.
2. Claimant's request for punitive damages and attorneys' fees are denied.
3. Respondent Morgan Keegan shall pay to NASD Dispute Resolution \$300.00 which represents the initial claim filing fee assessed under Rule 10332(a) of the NASD Code of Arbitration Procedure.
4. Any and all relief not specifically addressed herein is denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$300.00
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The Panel has ordered a refund to Claimant of the initial claim filing fee previously paid by Claimant to NASD Dispute Resolution.

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

#### **Adjournment Fees**

Adjournments requested during these proceedings:

There were no adjournments requested during these proceedings.

#### **Forum Fees and Assessments**

The Panel has the authority to assess forum fees for each hearing session conducted. A

hearing 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:

Two (2) Pre-hearing sessions with Panel x \$1,125.00	= \$2,250.00
Pre-hearing conferences: May 9, 2001	1 session
September 24, 2001	1 session

Four (4) Hearing sessions x \$1,125.00	= \$4,500.00
Hearing Dates: October 15, 2001	2 sessions
October 16, 2001	2 sessions

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Total Forum Fees	= \$6,750.00
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The Panel has assessed the total forum fees of \$6,750.00 to Respondent Morgan Keegan.

#### Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

#### FEE SUMMARY

Respondent Morgan Keegan be and hereby is solely liable for:

Initial Filing Fee	= \$ 300.00
Member Fees	= \$ 4,600.00
Forum Fees	= \$ 6,750.00

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Total Fees	= \$11,650.00
Less payments	= \$ 4,600.00

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Balance Due NASD Dispute Resolution, Inc.	= \$7,050.00
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All balances are due and payable to NASD Dispute Resolution, Inc. immediately upon receipt of the Award by the parties pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

James H. McGuone, Esq.	-	Public Arbitrator, Presiding Chair
Howard S. Levine	-	Non-Public Arbitrator
James H. McAvoy, Sr.	-	Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
James H. McGuone, Esq.  
Public Arbitrator, Presiding Chair

**Signature Date**

/s/  
Howard S. Levine  
Non-Public Arbitrator

Signature Date

/s/  
James McAvoy, Sr.  
Public Arbitrator

**Signature Date**

November 6, 2001  
Date of Service

ARBITRATION PANEL

James H. McGuone, Esq.

Howard S. Levine

James H. McAvoy, Sr.

Public Arbitrator, Presiding Chair

Non-Public Arbitrator

Public Arbitrator

Concurring Arbitrators' Signatures



James H. McGuone, Esq.

Public Arbitrator, Presiding Chair

10/29/01  
Signature Date

Howard S. Levine

Non-Public Arbitrator

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Signature Date

James McAvoy, Sr.

Public Arbitrator

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Signature Date

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James H. McGuone, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

  
Howard S. Levine  
Non-Public Arbitrator

11/20/01  
\_\_\_\_\_  
Signature Date

James McAvoy, Sr.  
Public Arbitrator

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

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Date of Service

ARBITRATION PANEL

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Public Arbitrator, Presiding Chair

Signature Date

Howard S. Levine  
Non-Public Arbitrator

Signature Date

James McAvoy, Sr.  
Public Arbitrator

Signature Date

10/15/01 — 10/16/01  
Date of Service