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

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In the Matter of the Arbitration Between:

**Benjamin Cooper,**  
Claimant

Vs.

**Morgan Keegan & Company, Inc.,**  
**William H. Borders, II, and**  
**Chad L. Conner,**  
Respondents.

Case Number: 01-01263

Hearing Site: Louisville, Kentucky

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**REPRESENTATION OF PARTIES**

David T. Sparks, Esquire, of Mike Breen Attorneys at Law, P.S.C., Bowling Green, Kentucky, represented Claimant Benjamin Cooper ("Cooper"), hereinafter referred to as "Claimant".

Respondents Morgan Keegan & Company, Inc. ("Morgan Keegan"), and William H. Borders, II ("Borders"), were represented by Thomas M. Buchanan, Esquire, of Winston & Strawn, Washington, DC.

Respondent Chad L. Conner ("Conner") was represented by John Tim McCall, Esquire, of Louisville, Kentucky.

**CASE INFORMATION**

The Statement of Claim was filed on or about March 14, 2001.

Claimant signed the Uniform Submission Agreement on February 12, 2001.

Morgan Keegan and Borders filed their joint Answer on or about May 16, 2001.

Thomas M. Buchanan, Esquire, signed the Uniform Submission Agreement on behalf of Morgan Keegan and Borders on May 14, 2001.

Conner adopted the Answer filed by Morgan Keegan and Borders on or about October 15, 2001.

Conner did not sign the Uniform Submission Agreement.

### **CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty, violations of Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934, breach of duty to supervise, aiding and abetting securities fraud, violations of NASD rules, violation of 15 U. S. C., §§77q and 78i(a)(4), violations of Kentucky statutes, fraud, negligence, negligent supervision, respondeat superior liability and RICO Act violations.

Unless specifically admitted in their joint Statement of Answer, which was adopted by Conner, Morgan Keegan and Borders denied all allegations set forth in the Statement of Claim and asserted the following affirmative defenses: failure to state facts sufficient to constitute a cause of action, waiver, estoppel, in pari delicto, laches, failure to mitigate and violations of applicable statutes of limitations.

### **RELIEF REQUESTED**

Claimant requested the following relief:

Compensatory and Punitive Damages	\$15,000,000.00
Treble Damages under the RICO Act	\$30,000,000.00
Costs	not specified
Attorney's Fees	not specified

Respondents requested that the Statement of Claim be dismissed in its entirety and that they be awarded costs and fees.

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

On or about May 16, 2001, Morgan Keegan and Borders filed a motion to dismiss. On or about October 1, 2001, Claimant filed a response to the motion. On or about October 5, 2001, Claimant filed a supplemental response to the motion. On or about October 11, 2001, Morgan Keegan and Borders filed a reply in support of the motion. On or about October 16, 2001, Morgan Keegan and Borders filed a supplemental reply in support of the motion. On or about October 23, 2001, the undersigned Panel denied the motion.

On February 1, 2002, the undersigned Panel heard oral argument on numerous motions, including the following dispositive motions: Claimant's motion for summary judgment against Morgan Keegan and Borders, with response thereto; Claimant's motion for summary judgment against Conner, with response thereto; and the joint motion of Morgan Keegan and Borders for summary judgment, with response thereto. The undersigned Panel denied each motion for summary judgment.

Respondent Chad L. Conner did not file with NASD Dispute Resolution, Inc., a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, the undersigned Panel finds in full and final resolution of the issues submitted for determination as follows:

1. All claims filed by Claimant Benjamin Cooper against Respondents Morgan Keegan & Company, Inc., William H. Borders, II, and Chad L. Conner are dismissed in their entirety, with prejudice.
2. Except as otherwise specified herein, each party shall bear its own costs and expenses.
3. Any and all relief not specifically addressed herein, including punitive and treble damages, is denied.

### **FEES**

Pursuant to 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 = \$ 600.00

#### **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. In this matter, the member firm is a party.

Member Surcharge = \$3,600.00  
Pre-hearing Process Fee = \$ 600.00  
Hearing Process Fee = \$5,000.00

#### **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 arbitrator(s), including a pre-hearing conference with the Panel that lasts four (4) hours or less. Fees associated with these proceedings are:

Four (4) Pre-hearing sessions with Panel x \$1,200 = \$ 4,800.00  
Pre-hearing conferences: September 28, 2001 1 session  
October 17, 2001 1 session  
November 20, 2001 1 session  
February 1, 2002 1 session

Eight (8) Hearing sessions x \$1,200 = \$ 9,600.00

Hearing Dates:	February 5, 2002	2 sessions
	February 6, 2002	2 sessions
	February 7, 2002	2 sessions
	February 15, 2002	2 sessions

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Total Forum Fees = \$14,400.00

The Panel has assessed the forum fees as follows: one half (\$7,200.00) solely to Claimant Benjamin Cooper, and one half (\$7,200.00) jointly and severally to Respondents Morgan Keegan & Company, Inc., William H. Borders, II, and Chad L. Conner.

### FEE SUMMARY

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 600.00
<u>Forum Fees</u>	= \$ 7,200.00
Total Fees	= \$ 7,800.00
<u>Less payments</u>	= \$ 1,800.00
Balance Due to NASD Dispute Resolution, Inc.	= \$ 6,000.00

2. Respondent Morgan Keegan & Company, Inc., is solely liable for:

<u>Member Fees</u>	= \$ 9,200.00
Total Fees	= \$ 9,200.00
<u>Less payments</u>	= \$ 9,200.00
Balance Due to NASD Dispute Resolution, Inc.	= \$ 0.00

3. Respondents Morgan Keegan & Company, Inc., William H. Borders, II, and Chad L. Conner are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 7,200.00
Total Fees	= \$ 7,200.00
<u>Less payments</u>	= \$ 0.00
Balance Due to NASD Dispute Resolution, Inc.	= \$ 7,200.00


All balances are due to NASD Dispute Resolution, Inc.

### ARBITRATION PANEL

<i>Rudy Vincenti</i>	-	<i>Non-Public Arbitrator, Presiding Chair</i>
<i>Hugh C. Durbin</i>	-	<i>Public Arbitrator</i>
<i>Franklin S. Yudkin, Esq.</i>	-	<i>Public Arbitrator</i>

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Concurring arbitrators' signatures

  
Rudy Vincenti  
Chairperson

3/25/02  
Signature Date

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Hugh C. Durbin  
Public Arbitrator

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Signature Date


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Franklin S. Yulkin, Esq.  
Public Arbitrator

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Date of Service

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Franklin S. Yudkin, Esq.  
Public Arbitrator

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Date of Service

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NASD REGULATION

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Public Arbitrator

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3-16-02  
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Date of Service