

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimants

Carl E. Velte and Mary E. Velte

and

02-04820
Oklahoma City, Oklahoma

Name of Respondents

Regions Investment Co., Inc. n/k/a Morgan Keegan & Company Inc.
Sean W. Wright

Nature of the Dispute: Customer vs. Member and Associated Person

REPRESENTATION OF PARTIES

Carl E. Velte and Mary E. Velte ("**Claimants**") were represented by Jason Browning, Esq., Warner, Smith & Harris, PLC, Fort Smith, Arkansas.

Regions Investment Co., Inc. n/k/a Morgan Keegan & Company Inc. ("**Morgan Keegan**") was represented by Michele L. Fowler, Esq., Morgan Keegan & Company Inc., Memphis, Tennessee.

Sean W. Wright ("**Wright**") was not served with process so he did not appear as a party. However, he did appear as a witness.

CASE INFORMATION

The Statement of Claim was filed on or about August 13, 2002. The Submission Agreement of Claimant Carl E. Velte and Mary E. Velte was signed on or about July 30, 2002.

The Statement of Answer was filed by Respondent Regions Investment Co., Inc. n/k/a Morgan Keegan & Company Inc. on or about January 21, 2003. The Submission Agreement of Respondent Regions Investment Co., Inc. n/k/a Morgan Keegan & Company Inc. was signed on or about April 8, 2003.

CASE SUMMARY

Claimants asserted the following causes of action: fraud; failure to supervise; and breach of fiduciary duty. Claimants asserted that Respondent Sean Wright made unauthorized withdrawals from their variable annuity accounts for personal use.

Claimants specifically stated the following:

On or about August and September 2000, Sean Wright engaged in fraudulent transactions involving the Claimants' accounts, without their knowledge or consent. Sean Wright converted funds from Claimants' individual accounts, and deposited the proceeds into Wright's personal bank account at Regions for his own use and benefit. Sean Wright converted funds from the Claimants' variable annuity accounts by making unauthorized withdrawals from the variable annuity accounts and purchasing cashiers' checks, the proceeds of which were used to purchase a Lexus automobile and a deposit of monies into Wright's personal bank account.

Unless specifically admitted in its Answer, Respondent Regions Investment Co., Inc. n/k/a Morgan Keegan & Company Inc. denied the allegations made in the Statement of Claim and asserted the following defenses: The Claimants' claims are barred by the doctrines of ratification, waiver, estoppel, contributory/comparative negligence, laches and assumption of the risk; Claimants cannot establish "scienter" on the part of Morgan Keegan, which is a requirement for a fraud claim; Any injury or loss or damage to Claimants was the result of superseding or intervening causes beyond Morgan Keegan's control; Claimants' cannot establish that Morgan Keegan had either actual or constructive notice of the alleged unauthorized transactions; Claimants failed to mitigate damages, which Claimants could have done had they exercised ordinary care; Claimants' claims are barred by the statutes of limitations applicable thereto and/or by the doctrine of laches; and Claimants have failed to state a factual basis supporting their claims for relief, and the Statement of Claim fails to state a claim upon which relief may be granted.

RELIEF REQUESTED

Claimant requested an award in the amount of \$75,000.00, plus attorneys' fees and costs incurred for the filing of this claim and arbitration proceeding.

Respondent Regions Investment Co., Inc. n/k/a Morgan Keegan and Company Inc. requested that all claims be dismissed with prejudice. Morgan Keegan also requested that they be awarded all of its fees, expenses, costs and any other further relief as the Panel deems just.

OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondent Sean W. Wright was not properly served with the Statement of Claim pursuant to Rule 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondent Wright has not received

due notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed against all other Respondents named pursuant to Rule 10318 of the Code.

AWARD

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

1. Respondent Regions Investment Co., Inc. n/k/a Morgan Keegan and Co., Inc. is liable for and shall pay to Claimants Carl E. Velte and Mary E. Velte the sum of \$58,984.10. as compensatory damages.
2. Respondent Regions Investment Co., Inc. n/k/a Morgan Keegan and Co., Inc. is liable for and shall pay to Claimants Carl E. Velte and Mary E. Velte pre-award interest as of September 1, 2000 at the rate of 6% per annum pursuant to Arkansas law.
3. Any and all claims asserted against Respondent Wright were not considered by this Panel in light of its determination that Wright was not properly served pursuant to Rule 10314 of the Code.
4. The Panel has determined that Claimants Carl E. Velte and Mary E. Velte, are liable for and shall pay to the NASD, jointly and severally, the sum of \$225.00 for the claim filing fee pursuant to Rule 10205(c) of the Code.
5. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
6. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

| | |
|---|------------|
| Initial claim filing fee | = \$225.00 |
| (preliminary determination to waive granted by NASD Director) | |

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 Regions Investment Co., Inc. n/k/a Morgan Keegan & Company Inc.

| | | |
|-------------------------|----|----------|
| Member surcharge | \$ | 1,100.00 |
| Pre-hearing process fee | \$ | 750.00 |
| Hearing process fee | \$ | 1,700.00 |
| Total Member Fees | \$ | 3,550.00 |

Forum Fees and Assessments

The Arbitration Panel assesses 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:

| | | | | |
|----------------------------------|------------|--------|----|----------|
| 1 Pre-hearing session with Panel | x | 750.00 | \$ | 750.00 |
| June 11, 2003 | 1 session | | | |
| 4 Hearing sessions | x | 750.00 | \$ | 3,000.00 |
| October 28, 2003 | 2 sessions | | | |
| October 29, 2003 | 2 sessions | | | |
| Total Forum Fees | | | \$ | 3,750.00 |

The Arbitration Panel has assessed \$3,750.00 of the forum fees to Regions Investment Co., Inc. n/k/a Morgan Keegan & Company Inc.

Fee Summary

Claimants, Carl E. Velte and Mary E. Velte, jointly and severally, shall be and hereby are liable for:

| | | |
|-------------------------------------|------|--------|
| Initial Filing Fee | = \$ | 225.00 |
| Total Fees | = \$ | 225.00 |
| <u>Less payments</u> | = \$ | -0.00 |
| Balance Due NASD Dispute Resolution | = \$ | 225.00 |

Respondent, Regions Investment Co., Inc. n/k/a Morgan Keegan & Company Inc. shall be and hereby is liable for:

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| | | |
|-------------------------------------|------|-----------|
| Member Fees | = \$ | 3,550.00 |
| <u>Forum Fees</u> | = \$ | 3,750.00 |
| Total Fees | = \$ | 7,300.00 |
| <u>Less payments</u> | = \$ | -3,550.00 |
| Balance Due NASD Dispute Resolution | = \$ | 3,750.00 |

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Dennis S. Boxeur, Esq. - Public Arbitrator, Presiding Chair
Gary W. Swimley, Esq. - Public Arbitrator
Thomas J. Cotrone, FA - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Dennis S. Boxeur, Esq.
Dennis S. Boxeur, Esq.
Public Arbitrator, Presiding Chair

11/26/03
Signature Date

/s/ Gary W. Swimley, Esq.
Gary W. Swimley, Esq.
Public Arbitrator

11/26/03
Signature Date

/s/ Thomas J. Cotrone, FA
Thomas J. Cotrone, FA
Non-Public Arbitrator

12/01/03
Signature Date

| | |
|------|-----------|
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Gary W. Swimley, Esq. - Public Arbitrator
Thomas J. Cotrone, FA - Non-Public Arbitrator

Concurring Arbitrators:

Dennis S. Boxeur
Dennis S. Boxeur, Esq.
Public Arbitrator, Presiding Chair

Nov. 26, 2003
Signature Date

Gary W. Swimley, Esq.
Public Arbitrator

Signature Date

Thomas J. Cotrone, FA
Non-Public Arbitrator

Signature Date

NASD Dispute Resolution, Inc.
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Gary W. Swinley, Esq. - Public Arbitrator
Thomas J. Cotrone, FA - Non-Public Arbitrator

Concurring Arbitrators:

Dennis S. Boxeur, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Gary W. Swinley
Gary W. Swinley, Esq.
Public Arbitrator

November 20, 2003
Signature Date

Thomas J. Cotrone, FA
Non-Public Arbitrator

Signature Date

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Gary W. Swimley, Esq. - Public Arbitrator
Thomas J. Cotrone, FA - Non-Public Arbitrator

Concurring Arbitrators:

Dennis S. Boxeur, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Gary W. Swimley, Esq.
Public Arbitrator

Signature Date



Thomas J. Cotrone, FA
Non-Public Arbitrator

12-1-03

Signature Date