

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant  
David T. Barker

Case Number: 02-05396

Names of the Respondents  
Morgan Keegan  
Jim Hamilton  
Regions Investment Company  
Joseph J. Palladino

Hearing Site: Atlanta, Georgia

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**REPRESENTATION OF PARTIES**

For David T. Barker, hereinafter referred to as "Claimant": Nick A. Dodys, Esq., Crowley, Appel, Starkey & Holbrook, LLC, Atlanta, Georgia.

For Morgan Keegan ("Morgan"), Jim Hamilton ("Hamilton"), Regions Investment Company ("Regions") and Joseph J. Palladino ("Palladino"), hereinafter collectively referred to as "Respondents": G. Wayne Hillis, Jr., Esq. and Julie A. Wood, Esq., Parker, Hudson, Rainer & Dobbs LLP, Atlanta, Georgia.

**CASE INFORMATION**

Statement of Claim filed on or about: September 10, 2002.

Claimants' Response and Answer to Respondents' Motion to Dismiss Claims Against Jim Hamilton filed on or about: January 13, 2003.

Claimant signed the Uniform Submission Agreement: August 30, 2002.

Answer and Defenses of Respondents and Motion to Dismiss Claims Against Jim Hamilton filed on or about: December 30, 2002.

Respondent Morgan signed the Uniform Submission Agreement: January 14, 2003.

Respondent Hamilton signed the Uniform Submission Agreement: January 13, 2003.

Respondent Palladino signed the Uniform Submission Agreement: January 9, 2003.

Respondent Regions did not file an executed Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: failure to supervise; negligence; common law fraud; failure to deal in good faith; breach of contract; violation of NASD Rule 2310, Failure to Deal in Good Faith with Customers; intentional infliction of emotional distress; violation of the Georgia Unfair Business Practices Act; unjust enrichment by the theft of services and conversion of assets; failure to supervise, violation of NASD Rule 3010; and, breach of fiduciary duties. The causes of action relate to the purchase of John Hancock Mutual Funds in Claimant's account.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In addition, Respondents asserted Respondent Hamilton should be dismissed from this action as at the time of Claimant's purchase of the mutual funds at issue and during the time John Hancock made many of its administrative errors relating to Claimant's mutual funds, Respondent Hamilton was not Respondent Palladino's supervisor.

In response, Claimant asserted Respondent Hamilton was Respondent Palladino's manager and supervisor.

### **RELIEF REQUESTED**

Claimant requested the full amount lost be replaced in excess of \$200,000.00; all applicable interest that would have been earned on this amount had the requests, needs and goals of the client been met plus proper interest paid to the account; all fair and adequate attorneys' fees and costs of this litigation; and, all necessary costs for attorneys and accountants in dealing with additional problems caused by Respondents.

Respondents requested that the Panel deny Claimant's claims in their entirety and award to Respondents the following relief: (a) compensate Respondents for the damage Claimant's allegations have caused; (b) an order expunging Claimant's claims from Respondents' regulatory records; (c) attorneys' fees and costs incurred by Respondents in defending this arbitration; and, (d) such other relief as the Panel deems appropriate.

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

Respondent Regions did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and having answered the claim is bound by the determination of the Panel on all issues submitted.

At the conclusion of Claimant's case, Respondents asserted a motion to dismiss Claimant's claims, a motion to dismiss Claimant's suitability claim and a motion to dismiss Respondent Hamilton from this case. The Panel granted the motion to dismiss Claimant's suitability claim only and denied the remaining motions.

The parties have agreed that the Award in this matter may be executed in counterpart copies.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the undersigned arbitrators (the "Panel") have decided in full and final resolution of the issues submitted for determination as follows:

The Panel finds for Respondents.

Each party shall bear their respective costs and attorneys' fees.

Respondents' request in subsection (a) of their Conclusion contained in their Statement of Answer is denied.

Any and all claims for relief not specifically addressed herein are denied.

The Panel recommends the expungement of all references to the above captioned arbitration from Respondents Palladino and Hamilton's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondents Palladino and Hamilton must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

### **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	= \$300.00
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#### **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, Respondent Regions merged with Respondent Morgan prior to the filing of the Statement of Claim. As such, Respondent Morgan only is assessed the member fees.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$750.00
Hearing process fee	= \$2,750.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No requests for adjournments for which fees were assessed were granted in this matter.

#### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were incurred in this matter.

**Forum Fees and Assessments**

The Panel has assessed forum 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 Pre-hearing sessions with the Panel @ \$1,125.00	= \$2,250.00
Pre-hearing conferences:	
April 10, 2003	1 session
July 17, 2003	1 session
Four Hearing sessions @ \$1,125.00	= \$4,500.00
Hearing Dates:	
August 11, 2003	2 sessions
August 12, 2003	2 sessions
Total Forum Fees	= \$6,750.00

The Panel has assessed \$3,375.00 of the forum fees to Claimant.

The Panel has assessed \$3,375.00 of the forum fees to Respondent Morgan.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred in this matter.

**FEE SUMMARY**

Claimant is solely liable for:

Initial Filing Fee	= \$300.00
Forum Fees	= \$3,375.00
Total Fees	= \$3,675.00
Less payments	= \$1,450.00
Balance Due NASD Dispute Resolution	= \$2,225.00

Respondent Morgan is solely liable for:

Member Fees	= \$5,200.00
Forum Fees	= \$3,375.00
Total Fees	= \$8,575.00

Less payments = \$5,200.00

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Balance Due NASD Dispute Resolution = \$3,375.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

James J. Dalton, II, Esq.	-	Public Arbitrator, Presiding Chair
Emily Bourne Grigsby, Esq.	-	Public Arbitrator
Hunter W. Clawson	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/S/\_\_\_\_\_  
James J. Dalton, II  
Public Arbitrator, Presiding Chair

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Signature Date

\_\_\_\_\_/S/\_\_\_\_\_  
Emily Bourne Grigsby, Esq.  
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Signature Date

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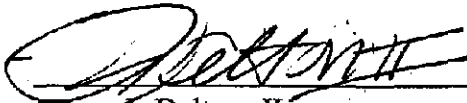
September 9, 2003  
Date of Service (For NASD Dispute Resolution office use only)

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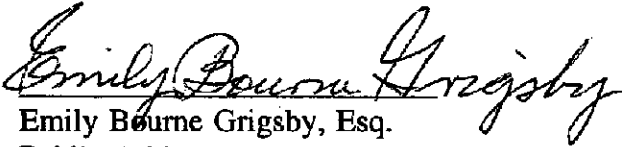
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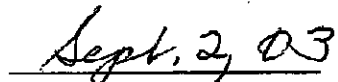
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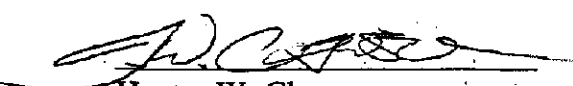
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Emily Bourne Grigsby, Esq.  
Public Arbitrator

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Signature Date

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Hunter W. Clawson  
Non-Public Arbitrator

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9/2/03  
Signature Date

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