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

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In the Matter of the Arbitration Between:

Names of the Claimants

Donald E. Keifer  
Sandra K. Keifer

Case Number: 03-00012

Names of the Respondents

Cooper Malone McClain, Inc.  
Larry Ade

Hearing Site: Little Rock, Arkansas

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

**REPRESENTATION OF PARTIES**

For Donald E. Keifer and Sandra K. Keifer, hereinafter collectively referred to as "Claimants":  
John M. Scott, Esq., Keisling, Pieper & Scott, PLC, Fayetteville, AR.

For Respondents Cooper Malone McClain, Inc. ("CMM") and Larry Ade ("Ade"), hereinafter collectively referred to as "Respondents": Scott D. Hofer, Esq. and William F. Logan, Esq.,  
Foland, Wickens, Eisfelder, Roper & Hofer, P.C., Kansas, MO.

**CASE INFORMATION**

Statement of Claim filed on or about: January 2, 2003.

Amended Statement of Claim filed on or about: May 7, 2003.

Claimants signed the Uniform Submission Agreement: December 11, 2002.

Statement of Answer filed by Respondents on or about: March 6, 2003.

Statement of Answer to Amended Statement of Claim filed by Respondents on or about: June 6, 2003.

Respondent CMM signed the Uniform Submission Agreement: March 4, 2003.

Respondent Ade signed the Uniform Submission Agreement: February 20, 2003.

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of contract; negligence; failure to supervise; and, failure to execute. The causes of action relate to Respondents' alleged failure to execute Claimants' sell order.

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

**RELIEF REQUESTED**

Claimants requested compensatory damages of between \$50,000.00 and \$100,000.00, pre- and post-judgment interest, punitive damages, attorneys' fees, costs, expenses, and all other relief to which they prove themselves entitled.

Respondents requested dismissal of the Statement of Claim, and that attorneys' fees and costs be assessed in favor of the Respondents.

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

The parties 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, 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:

Respondents CMM and Ade are liable, jointly and severally, and shall pay to Claimants compensatory damages in the sum of \$37,119.97 plus interest at the rate of 10% per annum accruing from February 3, 2004 until the date of payment of the Award.

Respondents CMM and Ade are liable, jointly and severally, and shall pay to Claimants attorneys' fees in the sum of \$7,500.00 pursuant to Ark. Code Ann. section 16-22-308.

Respondents CMM and Ade are liable, jointly and severally, and shall pay to Claimants the sum of \$225.00 representing reimbursement of the claim filing fee previously paid by Claimants to NASD Dispute Resolution.

Any and all claims for relief not specifically addressed herein, including Claimants' request for punitive damages, are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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
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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. Accordingly, Respondent CMM is a member firm and a party.

Member surcharge	= \$ 1,100.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$ 1,700.00</u>
Total Member Fees	= \$ 3,550.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No requests for adjournments were granted during these proceedings for which fees were assessed.

**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 assessed during these proceedings.

**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:

One (1) Pre-hearing session with the Panel @ \$750.00	= \$	750.00
Pre-hearing conference:      October 24, 2003      1 session		
Two (2) Hearing sessions @ \$750.00	= \$	1,500.00
Hearing Date:      February 3, 2004      2 sessions		
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Total Forum Fees	= \$	2,250.00

The Panel has assessed the total forum fees of \$2,250.00 jointly and severally to Respondents.

**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 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 during this proceeding.

**Fee Summary**

Claimants are jointly and severally liable for:

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

Respondent CMM is solely liable for:

<u>Member Fees</u>	= \$	3,550.00
Total Fees	= \$	3,550.00
<u>Less payments</u>	= \$	3,325.00
Balance Due NASD Dispute Resolution	= \$	225.00

Respondents CMM and Ade are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 2,250.00
<u>Total Fees</u>	= \$ 2,250.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 2,250.00

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

**ARBITRATION PANEL**

Gary P. Barket, Esq.	-	Public Arbitrator, Presiding Chairperson
Frances S. Fendler, J.D.	-	Public Arbitrator
James N. Kennedy, Jr.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
Gary P. Barket, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

/s/  
Frances S. Fendler, J.D.  
Public Arbitrator

Signature Date

/s/  
James N. Kennedy, Jr.  
Non-Public Arbitrator

Signature Date

February 20, 2004  
Date of Service (For NASD Dispute Resolution office use only)

FEB. 19. 2004 2:40PM NASD BOCA RATON

NO. 064 P. 5

NASD Dispute Resolution

Arbitration No. 03-00012

Award Page 4 of 4

Respondents CMM and Ade are jointly and severally liable for:

Forum Fees	= \$ 2,250.00
Total Fees	= \$ 2,250.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 2,250.00

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Gary P. Basket, Esq.	-	Public Arbitrator, Presiding Chairperson
Frances S. Fendler, J.D.	-	Public Arbitrator
James N. Kennedy, Jr.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Gary P. Basket, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

Frances S. Fendler, J.D.  
Public Arbitrator

Signature Date

James N. Kennedy, Jr.  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

FEB. 19. 2004 2:41PM NASD BOCA RATON

NO. 064 P. 5

NASD Dispute Resolution  
Arbitration No. 03-00012  
Award Page 4 of 4

Respondents CMM and Ade are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 2,250.00
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Concurring Arbitrators' Signatures

Gary P. Barket, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

Frances S. Fendler  
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Public Arbitrator

2/19/04  
Signature Date

James N. Kennedy, Jr.  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

Respondents CMM and Ade are jointly and severally liable for:

Forum Fees	= \$ 2,250.00
Total Fees	= \$ 2,250.00
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Frances S. Fendler, J.D.	-	Public Arbitrator
James N. Kennedy, Jr.	-	Non-Public Arbitrator


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Public Arbitrator, Presiding Chairperson

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Signature Date

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Frances S. Fendler, J.D.  
Public Arbitrator

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Signature Date

  
James N. Kennedy, Jr.  
Non-Public Arbitrator

  
Signature Date