

---

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

---

In the Matter of the Arbitration Between:

Name of the Claimant  
Philip D. Kaltenbacher

Case Number: 03-01957

Names of the Respondents  
Morgan Keegan & Company, Inc.  
Richard Angelotti  
Edward Rosenberg

Hearing Site: Tampa, Florida

---

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

**REPRESENTATION OF PARTIES**

For Philip D. Kaltenbacher, hereinafter referred to as "Claimant": Steven D. Hutton, Esq., Law Offices of Steven D. Hutton, Sarasota, Florida.

For Respondent Morgan Keegan & Company, Inc. ("MK"): Michael A. Brady, Esq., Tate, Lazarini & Beall, PLC, Memphis, Tennessee.

For Respondents Richard Angelotti ("Angelotti") and Edward Rosenberg ("Rosenberg"): Charles J. Bartlett, Esq., Icard, Merrill, Cullis, Timm, Furrenn & Ginsberg, Sarasota, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: March 19, 2003.

Claimant signed the Uniform Submission Agreement: March 11, 2003.

Answer and "Counterclaim" filed by Respondents MK, Angelotti and Rosenberg on or about: June 9, 2003.

Motion to Dismiss filed by Respondents MK, Angelotti and Rosenberg on or about: June 9, 2006.

Respondent MK signed the Uniform Submission Agreement: July 7, 2003.

Respondent Angelotti signed the Uniform Submission Agreement: July 10, 2003.

Respondent Rosenberg signed the Uniform Submission Agreement: July 10, 2003.

Answer and Affirmative Defenses to "Counterclaim" of Respondents filed by Claimant on or about: July 11, 2003.

Response to the Motion to Dismiss filed by Claimant on or about: July 21, 2003.

Reply to Claimant's Response to Motion to Dismiss filed by Respondents MK, Angelotti and Rosenberg on or about: November 7, 2003.

### **CASE SUMMARY**

Claimant asserted the following causes of action: 1) breach of contract; 2) breach of fiduciary duty; 3) constructive fraud; 4) fraud; 5) violation of Florida Statutes, Chapter 517; 6) violation of Florida Statutes § 772.11; and 7) violation of Federal Securities Laws. The causes of action relate to Claimant's investments, including but not limited to, Consortio stock.

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

### **RELIEF REQUESTED**

Claimant requested: 1) rescission of the Consortio stock purchases and a return of the \$1,750,000.00 consideration and the \$100,000.00 consideration, or an award of damages against Respondents MK, Angellotti and Rosenberg in the amount of \$1,850,000.00; 2) pre-judgment interest; 3) attorneys' fees; 4) costs and expenses; 5) treble damages; and 6) punitive damages.

Respondents MK, Angellotti and Rosenberg requested: 1) the denial of all claims; 2) costs; 3) attorneys' fees; 4) preparation costs; 5) travel expenses; 6) expert witness fees; 7) expungement of the NASD Central Registration Depository ("CRD") records of Respondents MK, Angellotti and Rosenberg; and 8) such other further and general relief to which the undersigned arbitrators (the "Panel") deemed appropriate.

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

On or about November 10, 2003, the Panel entered an order denying Respondents MK, Angellotti and Rosenberg's Motion to Dismiss.

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

- 1) Pursuant to Claimant's breach of fiduciary duty claim, the Claimant is awarded compensatory damages in the amount of \$157,500.00 for which Respondent Angellotti is personally liable. Of this total sum of \$157,500.00, Respondent Rosenberg is jointly and severally liable for \$52,500.00.
- 2) All other claims of any kind or nature brought by any party in the proceeding are denied and dismissed.
- 3) All parties asked that the Panel note any basis for an award of attorney fees. The Panel believes and finds there is no basis for an award of attorneys' fees to or for any party.

- 4) This award resolves any and all claims made by the parties in this arbitration proceeding.

### **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	= \$ 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. Accordingly, Respondent MK is a party and a member firm.

Member surcharge	= \$3,350.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$5,500.00</u>
Total Member Fees	= \$9,600.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

July 12 – 15, 2004, Adjournment fee assessed 100% to Claimant = \$1,200.00

December 5 – 9, 2005, Adjournment fee assessed jointly and severally to Respondents Angellotti and Rosenberg = \$1,200.00

#### **Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

There were no three-day cancellation fees assessed during these proceedings.

#### **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.

There were no injunctive relief fees 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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) Pre-hearing sessions with a single arbitrator @ \$450.00/session = \$ 1,350.00

Pre-hearing conferences:	June 15, 2004	1 session
	November 30, 2004	1 session
	March 16, 2005	1 session

Four (4) Pre-hearing sessions with the Panel @ \$1,200.00/session = \$ 4,800.00

Pre-hearing conferences:	October 8, 2003	1 session
	November 10, 2003	1 session
	December 5, 2005	1 session
	July 15, 2004	1 session

Five (5) Hearing sessions with the Panel @ \$1,200.00/session = \$ 6,000.00

Hearing Dates:	September 19, 2006	2 sessions
	September 20, 2006	2 sessions
	September 21, 2006	1 session

---

Total Forum Fees	= \$12,150.00
------------------	---------------

The Panel has assessed forum fees in the amount of \$4,050.00 solely to Claimant.

The Panel has assessed forum fees in the amount of \$4,050.00 solely to Respondent MK.

The Panel has assessed forum fees in the amount of \$4,050.00 to Respondents Angellotti and Rosenberg, jointly and severally.

**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.

There were no administrative costs incurred during these proceedings.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 600.00
Adjournment Fee	= \$ 1,200.00
Forum Fees	= \$ 4,050.00
Total Fees	= \$ 5,850.00
Less payments	= \$ 3,000.00
Balance Due NASD Dispute Resolution	= \$ 2,850.00

Respondent MK is solely liable for:

Forum Fees	= \$ 4,050.00
<u>Member Fees</u>	<u>= \$ 9,600.00</u>
Total Fees	= \$13,650.00
<u>Less payments</u>	<u>= \$ 9,600.00</u>
Balance Due NASD Dispute Resolution	= \$ 4,050.00

Respondents Angellotti and Rosenberg are jointly and severally liable for:

Adjournment Fee	= \$ 1,200.00
Forum Fees	= \$ 4,050.00
Total Fees	= \$ 5,250.00
<u>Less payments</u>	<u>= \$ 1,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 4,050.00

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

**ARBITRATION PANEL**

<i>Burton W. Wiand, Esq.</i>	-	<i>Non- Public Arbitrator, Presiding Chairperson</i>
<i>Gayle B. Carlson, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Karen Mary Ellen Morinelli, Esq.</i>	-	<i>Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Burton W. Wiand, Esq.  
Non-Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
/s  
Gayle B. Carlson, Esq.  
Public Arbitrator

September 26, 2006  
Signature Date

\_\_\_\_\_  
/s  
Karen Mary Ellen Morinelli, Esq.  
Public Arbitrator

September 26, 2006  
Signature Date

September 26, 2006

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

Respondent MK is solely liable for:

Forum Fees	= \$ 4,050.00
Member Fees	= \$ 9,600.00
Total Fees	= \$13,650.00
Less payments	= \$ 9,600.00
Balance Due NASD Dispute Resolution	= \$ 4,050.00

Respondents Angellotti and Rosenberg are jointly and severally liable for:

Adjournment Fee	= \$ 1,200.00
Forum Fees	= \$ 4,050.00
Total Fees	= \$ 5,250.00
Less payments	= \$ 1,200.00
Balance Due NASD Dispute Resolution	= \$ 4,050.00

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

ARBITRATION PANEL

Burton W. Wiand, Esq.	-	Non- Public Arbitrator, Presiding Chairperson
Gayle B. Carlson, Esq.	-	Public Arbitrator
Karen Mary Ellen Morinelli, Esq.	-	Public Arbitrator

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Burton W. Wiand, Esq.  
Non-Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
*Gayle B. Carlson*  
Gayle B. Carlson, Esq.  
Public Arbitrator

\_\_\_\_\_  
*9/26/06*  
Signature Date

\_\_\_\_\_  
Karen Mary Ellen Morinelli, Esq.  
Public Arbitrator

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

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

Respondent MK is solely liable for:

Forum Fees	= \$ 4,050.00
Member Fees	= \$ 9,600.00
Total Fees	= \$13,650.00
Less payments	= \$ 9,600.00
Balance Due NASD Dispute Resolution	= \$ 4,050.00

Respondents Angellotti and Rosenberg are jointly and severally liable for:

Adjournment Fee	= \$ 1,200.00
Forum Fees	= \$ 4,050.00
Total Fees	= \$ 5,250.00
Less payments	= \$ 1,200.00
Balance Due NASD Dispute Resolution	= \$ 4,050.00

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

**ARBITRATION PANEL**

Burton W. Wiand, Esq.	-	Non- Public Arbitrator, Presiding Chairperson
Gayle B. Carlson, Esq.	-	Public Arbitrator
Karen Mary Ellen Morinelli, Esq.	-	Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Burton W. Wiand, Esq.  
Non-Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Gayle B. Carlson, Esq.  
Public Arbitrator

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

  
\_\_\_\_\_  
Karen Mary Ellen Morinelli, Esq.  
Public Arbitrator

9/24/2006  
\_\_\_\_\_  
Signature Date

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