
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Jerry P. Sellers, Jr.

Susan Sellers

Jerry P. Sellers

Case Number: 03-06246

Names of the Respondents

Morgan Keegan & Company, Inc.

Jamie Montz

Hearing Site: New Orleans, LA

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

REPRESENTATION OF PARTIES

For Jerry P. Sellers, Jr., Susan Sellers, and Jerry P. Sellers, hereinafter collectively referred to as "Claimants": James Rebarchak, Esq., Miller, Hamilton, Snider & Odom, L.L.C., Mobile, AL.

For Morgan Keegan & Company, Inc. ("MKC") and Jamie Montz ("Montz"), hereinafter collectively referred to as "Respondents": Michelle Fowler, Esq., Staff Attorney, MKC, Memphis, TN.

CASE INFORMATION

Statement of Claim filed on or about: August 28, 2003.

Claimants Jerry P. Sellers, Jr. and Susan Sellers signed the Uniform Submission Agreement: September 17, 2003.

Claimant Jerry P. Sellers signed the Uniform Submission Agreement: December 16, 2004.

Statement of Answer filed by Respondents on or about: December 19, 2003.

Respondent MKC signed the Uniform Submission Agreement: December 19, 2003.

Respondent Montz signed but did not date the Uniform Submission Agreement.

Respondents' Motion to Dismiss filed on or about: July 29, 2004.

Claimants' Opposition to Respondents' Motion to Dismiss filed on or about: September 1, 2004.

CASE SUMMARY

Claimants asserted the following causes of action: breach of contract; common law fraud; constructive fraud; false and fraudulent representations; breach of fiduciary duty; violations of Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934; violations of self-regulatory organization conduct rules; violations of Alabama Blue Sky laws; and, negligent/wanton supervision. The causes of action relate to the purchase of shares of Metricom, Inc. and WorldCom stock in Claimants' account.

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 and punitive damages of \$100,000.00, disgorgement and restitution of all earnings, profits, compensation and benefits received by Respondents, interest, attorneys' fees, costs, and such other and further relief as the undersigned arbitrator (the "Arbitrator") deemed just and proper.

Respondents requested dismissal of the Statement of Claim, fees, and expenses.

OTHER ISSUES CONSIDERED AND DECIDED

On or about December 23, 2003, the parties agreed that this matter would be decided by a single arbitrator.

On or about September 7, 2004, the Arbitrator issued an order which denied Respondents' Motion to Dismiss.

During the evidentiary hearing, Claimants made an ore tenus Motion to add Jerry P. Sellers as a Claimant. The Arbitrator granted the Motion.

AWARD

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

Respondents are liable, jointly and severally, and shall pay to Claimants compensatory damages in the sum of \$17,437.50.

Respondents are liable, jointly and severally, and shall pay to Claimants attorneys' fees in the sum of \$12,250.00 pursuant to Rule 10215 of the NASD Code of Arbitration Procedure (the "Code") and Ala. Code §8-6-19.

Respondents are liable, jointly and severally, and shall pay to Claimants expert witness fees in the sum of \$750.00.

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

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

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 MKC is a member firm and a party.

Member surcharge	= \$1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,700.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

September 21 and 22, 2004, adjournment requested by Claimants. The Arbitrator waived the adjournment fee.

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:

No three-day cancellation fees were 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.

No injunctive relief fees were assessed during these proceedings.

Forum Fees and Assessments

The Arbitrator 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:

Three (3) Pre-hearing sessions with a single arbitrator @ \$450.00	= \$1,350.00
Pre-hearing conferences:	
March 16, 2004	1 session
June 3, 2004	1 session
September 1, 2004	1 session
Two (2) Hearing sessions @ \$450.00	= \$ 900.00
Hearing Dates:	
December 8, 2004	2 sessions
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Total Forum Fees	= \$2,250.00

The Arbitrator has assessed \$1,125.00 of the forum fees jointly and severally to Claimants.
The Arbitrator has assessed \$1,125.00 of the forum fees 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:

Initial Filing Fee	= \$ 225.00
<u>Forum Fees</u>	<u>= \$ 1,125.00</u>
Total Fees	= \$ 1,350.00
<u>Less payments</u>	<u>= \$ 675.00</u>
Balance Due NASD Dispute Resolution	= \$ 675.00

Respondent MKC is solely liable for:

<u>Member Fees</u>	<u>= \$ 3,550.00</u>
Total Fees	= \$ 3,550.00
<u>Less payments</u>	<u>= \$ 3,550.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$ 1,125.00</u>
Total Fees	= \$ 1,125.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 1,125.00

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

ARBITRATOR

Esmond Phelps Gay, J.D.

- Public Arbitrator

Arbitrator's Signature

/s/

Esmond Phelps Gay, J.D.
Public Arbitrator

Signature Date

December 17, 2004

Date of Service (For NASD Dispute Resolution use only)

DEC. 17. 2004 1:39PM NASD REGULATIONS

NO. 090 P. 5/5

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<u>Total Fees</u>	= \$ 3,550.00
<u>Less payments</u>	= \$ 3,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

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Balance Due NASD Dispute Resolution	= \$ 1,125.00

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

ARBITRATOR

Esmond Phelps Gay, J.D.

- Public Arbitrator

Arbitrator's Signature

Esmond Phelps Gay, J.D.
Public Arbitrator

12/17/04
Signature Date

Date of Service (For NASD Dispute Resolution use only)