

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

In the Matter of the Arbitration Between:

Name of the Claimant  
HeritageBank of the South

Case Number: 04-02473

Names of the Respondents  
James Hendricks  
Morgan Keegan & Company, Inc.

Hearing Site: Atlanta, Georgia

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

**REPRESENTATION OF PARTIES**

For HeritageBank of the South ("Heritage"), hereinafter referred to as "Claimant":  
Kimberly A. Reid, Esq., Gardner, Willis, Sweat & Goldsmith, LLP, Albany, Georgia.

For James Hendricks ("Hendricks") and Morgan Keegan & Company, Inc. ("Morgan"),  
hereinafter collectively referred to as "Respondents": Shea O'Brien Hicks, Vice President,  
Associate Attorney, Morgan, Memphis, Tennessee.

**CASE INFORMATION**

Statement of Claim filed on or about: April 5, 2004.

Claimant signed the Uniform Submission Agreement: April 6, 2004.

Statement of Answer filed by Respondents on or about: June 22, 2004.

Respondent Morgan signed the Uniform Submission Agreement: June 22, 2004.

Respondent Hendricks signed the Uniform Submission Agreement: June 29, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty; negligent misrepresentation; negligence; breach of contract/promissory estoppel; and, failure to supervise. The causes of action relate to the sale of two Small Business Administration notes.

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 that the arbitration panel award compensatory damages in the amount of \$106,011.92, plus costs, expenses, attorneys' fees, and such other and further relief as the arbitration panel deemed just and proper.

Respondents requested that all claims be dismissed with prejudice and that they be awarded their attorneys' fees, expenses, costs and such other relief as the arbitration panel deemed just and equitable.

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

On or about January 19, 2005, the parties advised NASD Dispute Resolution that they had settled the matter. As part of the settlement, the parties agreed that neither party to this dispute committed any wrongdoing and the claims and counterclaims asserted herein are factually erroneous and legally unsupportable.

On or about February 1, 2005, Respondents filed with NASD Dispute Resolution a proposed Stipulated Award for execution by the arbitration panel which requested the expungement of this matter from Respondents' Central Registration Depository ("CRD") record.

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

### **AWARD**

After considering the pleadings, the proposed Stipulated Award and the record in this matter, the undersigned arbitrators (the "Panel") have decided in full and final resolution of the issues submitted for determination as follows:

All claims asserted by Claimant against Respondents shall be dismissed in their entirety;

All counterclaims asserted by Respondents shall be dismissed in their entirety;

Based on the representations made by the parties, the Panel specifically finds that the claims and counterclaims asserted in this matter are factually erroneous and legally unsupportable;

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

The parties shall bear their respective costs, including attorneys' fees, except as fees are specifically addressed below; and,

Any and all relief not specifically addressed herein, including relief for punitive damages, is denied in its entirety.

### **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 = \$300.00

**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. In this matter, the member firm is a party.

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 adjournment fees were incurred in this matter.

**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 incurred 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:

One (1) Pre-hearing session with the Panel @ \$1,125.00	= \$1,125.00
Pre-hearing conference: August 18, 2004 1 session	

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Total Forum Fees	= \$1,125.00
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The Panel has assessed \$562.50 of the forum fees to Claimant.

The Panel has assessed \$562.50 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 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	= \$562.50

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Total Fees	= \$862.50
Less payments	= \$862.50

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Balance Due NASD Dispute Resolution	= \$0.00
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Respondent Morgan is solely liable for:

Member Fees	= \$5,200.00
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Total Fees	= \$5,200.00
Less payments	= \$5,200.00

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Balance Due NASD Dispute Resolution	= \$0.00
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Respondents are jointly and severally liable for:

Forum Fees	= \$562.50
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Total Fees	= \$562.50
Less payments	= \$0.00

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Balance Due NASD Dispute Resolution	= \$562.50
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All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

#### ARBITRATION PANEL

Marion Smith, II, Esq.	-	Public Arbitrator, Presiding Chair
Lewis Vastine Stabler, Jr.	-	Public Arbitrator
David S. Saylor	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/S/\_\_\_\_\_  
Marion Smith, II, Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_/S/\_\_\_\_\_  
Lewis Vastine Stabler, Jr.  
Public Arbitrator

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

\_\_\_\_\_/S/\_\_\_\_\_  
David S. Saylor  
Non-Public Arbitrator

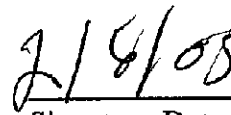
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Signature Date

February 15, 2005  
Date of Service (For NASD Dispute Resolution office use only)

**Concurring Arbitrators' Signatures**



Marion Smith, II, Esq.  
Public Arbitrator, Presiding Chair



Signature Date

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Lewis Vastine Stabler, Jr.  
Public Arbitrator

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Signature Date

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David S. Saylor  
Non-Public Arbitrator

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Signature Date

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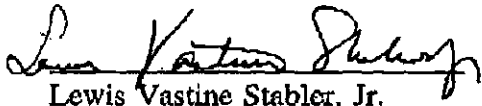
Concurring Arbitrators' Signatures

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Marion Smith, II, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

  
Lewis Vastine Stabler, Jr.  
Public Arbitrator

Feb 7 2005  
Signature Date

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David S. Saylor  
Non-Public Arbitrator

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Signature Date

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**Concurring Arbitrators' Signatures**

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Marion Smith, II, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

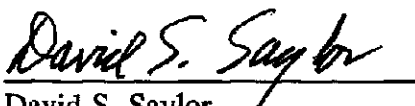
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Lewis Vastine Stabler, Jr.  
Public Arbitrator

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Signature Date

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David S. Saylor  
Non-Public Arbitrator

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Signature Date

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