

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant

Phillip B. Murphy

and

Case Number: 04-05509  
Hearing Site: Louisville, Kentucky

Names of Respondents

Morgan Keegan & Company, Inc.,  
and John Sheldon Cotton

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**NATURE OF DISPUTE**

Customer v. Member and Associated Person

**REPRESENTATION OF PARTIES**

Phillip B. Murphy ("Murphy" or Claimant") was represented by James A. Shuffett, Esq., Lexington, Kentucky.

Morgan Keegan & Company, Inc. ("Morgan Keegan") was represented by Niel Prosser, Esq., Morgan Keegan & Company, Inc., Memphis, Tennessee.

John Sheldon Cotton ("Cotton") did not make an appearance at the hearing.

**CASE INFORMATION**

The Statement of Claim was filed on or about August 3, 2004. The Submission Agreement of Claimant was signed on or about August 2, 2004.

The Statement of Answer was filed by Morgan Keegan on or about October 11, 2004. The Submission Agreement of Morgan Keegan was signed on or about October 8, 2004.

The Statement of Answer was filed by Cotton on or about October 15, 2004. The Submission Agreement of Cotton was signed on or about October 19, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: unauthorized trading; breach of fiduciary duty; violation of Rule 2330 of the NASD Rules; theft; conversion; intentional

misrepresentation; deceit; concealment; and failure to supervise. Claimant alleged that Respondents executed multiple sales and purchases of securities and options that were never authorized which led to substantial losses in his account.

Unless specifically admitted in its Answer, Respondent Morgan Keegan denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant's Statement of Claim failed to state a claim upon which relief can be granted; Claimant's claims are barred by the doctrines of unclean hands and illegality; Claimant's claims are barred and/or limited by the doctrines of contributory/comparative negligence and claimants' claims are barred, in whole or part, by the applicable statutes of limitations.

Respondent Cotton, adopted, Morgan Keegan's Answer and affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$346,892.76 in compensatory damages, \$1,040,678.37 in punitive damages, interest, costs, \$400,000.00 in attorneys' fees, and such other relief the panel deemed just and proper.

Respondent Morgan Keegan requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

Respondent Cotton requested that the claims asserted against him be denied in their entirety and that he be awarded his costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

After the closing of Claimant's case, Morgan Keegan orally moved for a directed verdict. The panel denied the motion.

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondent Cotton has been properly served with the Statement of Claim pursuant to Rule 10302 and Rule 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondent Cotton had received due notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent, John Sheldon Cotton, is liable for and shall pay to Claimant, Phillip B. Murphy, the sum of \$2,114.00 in compensatory damages;
- 2) Claimant, Phillip B. Murphy, is liable for and shall pay to Respondent, Morgan Keegan & Company, Inc., the sum of \$12,000.00 in costs for expert witness expenses;
- 3) Claimant's claim, each and all, against Respondent, Morgan Keegan & Company, Inc., are dismissed in their entirety with prejudice; and
- 4) Any relief not specifically enumerated, including punitive damages and attorneys' fees, is hereby denied with prejudice.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee = \$500.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firm is Morgan Keegan & Company, Inc.

Member surcharge = \$2,800.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$5,000.00

### **Forum Fees and Assessments**

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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:

One (1) Pre-hearing session with Panel x \$1,200.00			= \$1,200.00
Pre-hearing conference:	January 3, 2005	1 session	
Five (5) Hearing sessions x \$1,200.00			= \$6,000.00
Hearing Dates:	September 13, 2005	2 sessions	
	September 14, 2005	2 sessions	
	September 15, 2005	1 session	
Total Forum Fees			= \$7,200.00

The Arbitration Panel has assessed \$7,200.00 of the forum fees to Phillip B. Murphy.

### **Fee Summary**

Claimant, Phillip B. Murphy, is liable for:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$7,200.00
Total Fees	= \$7,700.00
Less payments	= \$1,700.00
Balance Due NASD Dispute Resolution	= \$6,000.00

Respondent, Morgan Keegan & Company, Inc., is liable for:

Member Fees	= \$8,550.00
Total Fees	= \$8,550.00
Less payments	= \$9,050.00
Refund due to Morgan Keegan	= \$ 500.00

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

**ARBITRATION PANEL**

Bill Swinford, Jr., Esq. - Public, Presiding Chair  
Daniel Thomas Burns, Esq. - Public Arbitrator  
Coleman Robert Perry, Jr., CFP - Non-Public Arbitrator

**Concurring Arbitrators:**

/s/ Bill Swinford, Jr., Esq.  
Bill Swinford, Jr., Esq.  
Public Arbitrator, Presiding Chair

09/19/05  
Signature Date

/s/ Daniel Thomas Burns, Esq.  
Daniel Thomas Burns, Esq.  
Public Arbitrator

09/19/05  
Signature Date

/s/ Coleman Robert Perry, Jr., CFP  
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Non-Public Arbitrator

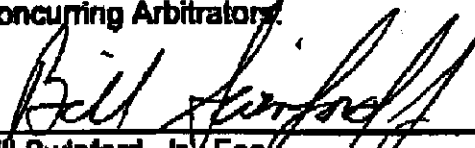
09/19/05  
Signature Date

09/20/05  
Date of Service (For NASD office use only)

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