

**Amended Award  
NASD Dispute Resolution**

---

In the Matter of the Arbitration Between:

Names of the Claimants

Walter E. MacDonald and  
Wanita B. MacDonald, individually and  
on behalf of their respective  
Roth IRA Accounts and  
Individual Retirement Accounts

Case Number: 05-05184

Name of the Respondent

Morgan Keegan & Company, Inc.

Hearing Site: Tampa, Florida

---

Nature of the Dispute: Customer v. Member.

**REPRESENTATION OF PARTIES**

For Walter E. MacDonald and Wanita B. MacDonald, individually and on behalf of their respective Roth IRA Accounts and Individual Retirement Accounts, hereinafter collectively referred to as "Claimants": W. Andrew Clayton, Jr., Esq., Johnson, Browning & Clayton, P.A., Sarasota, Florida.

For Morgan Keegan & Company, Inc. ("MK"), hereinafter referred to as "Respondent": Shea O'Brien Hicks, Esq., Morgan Keegan & Company, Inc., Memphis, Tennessee.

**CASE INFORMATION**

Statement of Claim filed on or about: October 5, 2005.

Claimants signed the Uniform Submission Agreement on: October 3, 2005.

Answer and Counter-claim filed by Respondent on or about: December 9, 2005.

Respondent signed the Uniform Submission Agreement on: December 9, 2005.

Reply to Respondent's Counter-claim filed by Claimants on or about: January 9, 2006.

**CASE SUMMARY**

Claimants asserted the following causes of action: 1) violation of Florida Securities Act, Chapter 517; 2) equitable rescission; 3) breach of fiduciary duty; 4) negligence; 5) breach of contract; 6) fraud; and 7) negligent misrepresentation. The causes of action relate to the Claimants' investments in, including but not limited to, unspecified shares of technology and telecommunications stock.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses. Respondent asserted the following causes of action in its Counter-claim: 1) fraud; 2) misrepresentation; 3) abuse

of process; 4) malicious prosecution; and 5) attorneys' fees pursuant to § 517.211 (6) of the Florida Code.

Unless specifically admitted in its Reply to Respondent's Counter-claim, Claimants denied the allegations made in the Counter-claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested: 1) compensatory damages in the amount of \$224,255.00; 2) unspecified statutory damages; 3) attorneys' fees; 4) expectation losses; 5) costs; and 6) such further relief as the undersigned arbitrators (the "Panel") deemed appropriate.

In its Counter-claim Respondent requested: 1) unspecified compensatory damages; 2) a dismissal of the Statement of Claim with prejudice; 3) attorneys' fees; 4) costs; and 5) such other and further relief as the Panel deemed just and equitable.

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

On or about October 10, 2006, Respondent made an ore tenus Motion for a Protective Order concerning documents produced by Respondent during discovery. On or about October 10, 2006, the Panel denied the Motion for a Protective Order.

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.

### **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. All of Claimants' claims and Respondent's counter-claims are denied, with prejudice.
2. Any and all claims for relief not specifically addressed herein, including Claimants' request for attorneys' fees pursuant to Florida Statute § 517.211 (6) and Respondent's requests for attorneys' fees, 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	= \$ 300.00
Counter-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. Accordingly, Respondent is a party and a member firm.

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00
Total Member Fees	= \$ 5,200.00

### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments requested during these proceedings for which fees were assessed.

### **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 or each decision rendered on a discovery-related motion on the papers. 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:

One (1) Decision on a discovery-related motion on the papers with One (1) arbitrator @ \$200.00 per motion	= \$ 200.00
Respondent submitted one (1) discovery-related motion	

One (1) Pre-hearing session with a single arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conference: July 24, 2006 1 session	

One (1) Pre-hearing session with Panel @ \$1,125.00/session	= \$ 1,125.00
Pre-hearing conference: February 3, 2006 1 session	

Eight (8) Hearing sessions @ \$1,125.00/session	= \$ 9,000.00
---	---------------

Hearing Dates:	October 10, 2006	2 sessions
	October 11, 2006	2 sessions
	October 12, 2006	2 sessions
	October 13, 2006	2 sessions

---

Total Forum Fees	= \$10,775.00
------------------	---------------

The Panel has assessed \$5,387.50 of the forum fees jointly and severally to Claimants, jointly and severally.

The Panel has assessed \$5,387.50 of the forum fees to the Respondent.

**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.

There were no administrative costs incurred during these proceedings.

**Fee Summary**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 5,387.50
Total Fees	= \$ 5,687.50
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 4,262.50

Respondent is solely liable for:

Counter Claim Filing Fee	= \$ 500.00
Member Fees	= \$ 5,200.00
Forum Fees	= \$ 5,387.50
Total Fees	= \$11,087.50
Less payments	= \$ 6,700.00
Balance Due NASD Dispute Resolution	= \$ 4,387.50

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

**ARBITRATION PANEL**

<i>Richard J. Fuller, CPA</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Robert S. Anderson</i>	-	<i>Public Arbitrator</i>
<i>Ken Ziesenheim, JD</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Richard J. Fuller, CPA.  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Robert S. Anderson  
Public Arbitrator

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

\_\_\_\_\_  
Ken Ziesenheim, JD  
Non-Public Arbitrator

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

10/18/06  
Date of Service (For NASD Dispute Resolution office use only)

Oct. 19. 2006 4:45PM

No. 3410 P. 6/6

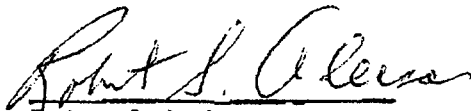
-NASD Dispute Resolution

Arbitration No. 05-05184

Amended Award Page 5 of 5

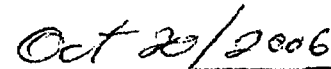
**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Richard J. Fuller, CPA.  
Public Arbitrator, Presiding Chairperson



Robert S. Anderson  
Public Arbitrator

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



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

\_\_\_\_\_  
Ken Ziesenheim, JD  
Non-Public Arbitrator

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

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

**Concurring Arbitrators' Signatures**



Richard J. Fuller, CPA.  
Public Arbitrator, Presiding Chairperson

10/19/06  
Signature Date

Robert S. Anderson  
Public Arbitrator

Signature Date

Ken Ziesenheim, JD  
Non-Public Arbitrator

Signature Date

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

Oct 19 2006 8:43PM

p.2

Oct. 19. 2006 4:42PM

No. 3408 P. 6

NASD Dispute Resolution

Arbitration No. 05-05184

Amended Award Page 5 of 5

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Richard J. Fuller, CPA.  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Robert S. Anderson  
Public Arbitrator

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

  
\_\_\_\_\_  
Ken Ziesenheim, JD  
Non-Public Arbitrator

10/19/06  
\_\_\_\_\_  
Signature Date

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