

## NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

-----  
In the Matter of Arbitration Between :

W. Howard Goggans :

Claimant :

CASE #91-03100  
AWARD

vs. :

Morgan Keegan &amp; Company, Inc. :

A. Daniel Barnett :

Respondents :  
-----CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on October 3, 1991, Claimant, W. Howard Goggans, who appeared Pro Se, alleged that on June 16, 1989 Respondents Morgan Keegan & Company, Inc. and their registered representative, A. Daniel Barnett solicited him to purchase 200 shares of First Executive Corp. 11.5% Sinking Fund Preferred stock at \$26 net by making material misrepresentations and omissions about the risks of the security. Claimant further alleged that Respondents failed to provide him with a Standard & Poor's report or any other independent research data about the investment, despite Claimant's specific request for such information. Claimant contended that Respondents breached their implied fiduciary responsibility by inducing Claimant into purchasing this Security which was unsuitable for his conservative investment needs. Claimant further contended that he continued to hold the security on Respondents advice and belief that First Executive would still call the stock pursuant to the mandatory sinking fund redemption requirements. Claimant asserted that on December 5, 1990 the Wall Street Journal reported that First Executive had suspended dividends, at which time, Claimant tried to find a buyer and finally sold the stock on December 24, 1990 at a net price of \$1.01 per share, thus, creating losses to him. Claimant further asserted that his repeated good faith efforts to discuss a confidential settlement of this dispute, prior to the commencement of this proceeding, were summarily rejected by Respondents.

Respondents, Morgan Keegan & Company, Inc. and A. Daniel Barnett by and through their counsel David M. Minnick, Esq., maintained that Claimant, W. Howard Goggans initiated interest in First Executive Corporation Sinking Fund Preferred Shares ("FEXCO") and requested information concerning the company, in addition to, informing Respondents that he liked the yield plus

Page two  
AWARD  
#91-03100

the Standard & Poor's rating and sought Respondents opinion to validate his own. Respondents further maintained that based on Claimant's initiation of interest in FEXCO, the information which he received concerning the shares and his statements to Respondents, they perceived the Claimant to be knowledgeable of the risk of loss in FEXCO. Respondents contended that on June 16, 1989 Claimant instructed them to purchase 200 shares of First Executive Corp. 11.5% Sinking Fund Preferred Stock at a net of \$26.00 per share. Respondents further contended that Claimant had the ability to sell the shares at any time and in fact, Respondents suggested several times that Claimant sell his shares prior to a significant decline in price, at which, time, Claimant chose not to do so, thereby, accepting further risk of loss. Respondents asserted that the only fiduciary obligation or duty owed to Claimant was that of fair dealing, good faith and honesty, with which the Respondents complied at all times and Claimant's claim is purely based upon the desire to transfer the risk of loss to Respondents.

#### RELIEF REQUESTED

Claimant, W. Howard Goggans requested \$2,140.80 in actual damages.

Respondents, Morgan Keegan & Company, Inc. and A. Daniel Barnett requested the claim be denied and their costs be assessed against Claimant.

#### AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Judy P. McNeil, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on September 26, 1991, by the Respondent Morgan Keegan & Company, Inc. on December 20, 1991 and by the Respondent, A. Daniel Barnett on January 6, 1992.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of Claimant, W. Howard Goggans against Respondents, Morgan Keegan & Company, Inc. and A. Daniel Barnett are dismissed.

Page three  
AWARD  
#91-03100

2. The parties shall bear their respective costs.
3. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant W. Howard Goggans shall be retained by the NASD, Inc.

AFFIRMATION

I, Judy P. McNeil, Esq., do hereby affirm upon my oath as arbitrator that I am the individual described herein and who execute this instrument, which is my oath and award.

  
\_\_\_\_\_  
Signature of Arbitrator

DATE OF DECISION: June 24, 1992