

PUBLIC

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Robert J. Bakus

92-01377

Name of Respondents

Morgan Keegan & Company, Inc.
Michael Poust

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on April 22, 1992, Claimant Robert J. Bakus, who appeared Pro Se, alleged that Respondent Michael Poust, while at the Respondent firm Morgan Keegan & Company, Inc. misled him into purchasing Elsinore stock by opening a margin account and by misrepresenting to him that this would be a safe way to make a profit in order to roll it over into a single-premium life insurance policy. The Claimant contended that as the stock dropped in value, shares were sold to cover the debit and that he eventually sold the stock at a loss for which the Respondents should be held liable.

Respondents Morgan Keegan & Company, Inc. and Michael Poust, through their in-house counsel, David M. Minnick, Esq., maintained that the Claimant fully understood and willingly accepted the risk involved in trading on margin, and that the loss sustained in his account occurred solely because of unprecedented & unanticipated market conditions over which they had no control, such as the stock market crash of 1987. The Respondents contended that the Claimant was aware of the risks of profit and loss associated with investing in securities in a margin account and voluntarily assumed these risks, and contended further that they are not liable in this matter.

RELIEF REQUESTED

Claimant Robert J. Bakus requested \$9,609.46 in actual damages.

Respondents Morgan Keegan & Company, Inc. and Michael Poust requested that the claims of the Claimant be dismissed.

AWARD


Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Gary M. Landau, 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 April 13, 1992, by the Respondent Morgan Keegan & Company, Inc. on June 8, 1992 and by the Respondent Michael Poust on May 7, 1993.

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 the Claimant Robert J. Bakus against Respondents Morgan Keegan & Company, Inc. and Michael Poust are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. Respondent Morgan Keegan & Company, Inc. is liable and shall pay \$75.00 to the Claimant as reimbursement of one-half of the filing fee.

AFFIRMATION

I, GARY M. LANDAU, ESQ., do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION:

June 15, 1993

REPORT OF ARBITRATOR

I am dismissing this claim because it is time barred.

I find that this claim falls within the framework of Ch. 517 of the Florida statutes. Chapter 517.301 (1) (a) prohibits anyone, in connection with the offer, sale or purchase of any investment or security to defraud or deceive a buyer. Florida statute Ch. 95.114(e) mandates a two year statute of limitations for violations of ch. 517 "with the period running from the time the facts giving rise to the cause of actions were discovered or should have been discovered with the exercise of due diligence, but not more than 5 years from the date the violation occurred."

In this instance the claimant purchased the stock on margin on August 28, 1987. By November 1987, after receiving his monthly statement from respondent Morgan Keegan and after receiving a phone call by respondent Poust advising him to come up with more money to cover the margin call claimant was clearly and admittedly aware that there were serious problems with this investment and possibly with Poust's advice. Thus, this action should have been filed at the very latest by November 1989. Yet it was not filed until April 1992. As such the claim is time barred.

Even assuming arguendo that common law causes of action apply and not Ch. 517 (which I do not find) this action is still time barred. Statutes of limitations:

Negligence cause of action- 4 years, (Ch. 95.11 (3) a.) Fraud- 4 years (Ch. 95.11 (j) and Ch. 95.031 (2)) with the period running from the time the facts giving rise to the cause of action were discovered or should have been discovered with the exercise of due diligence but in any event not more than 12 years from the date of the alleged fraud.- Again, claimant was aware of the facts giving rise to the cause of action in November 1987- he had 4 years from that time to file his claim under this statute.



Gary M. Landau