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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Name of Claimant

Lola M. Wall, individually and as Attorney-In-Fact
for Lola Crawford Meriwether

No. 93-02675

Name of Respondents

Morgan Keegan & Company, Inc.;
Tommy Thompson

REPRESENTATION OF PARTIES

For Claimant: Lola M. Wall ("Wall"), individually and as attorney-in-fact for Lola Crawford Meriwether ("Meriwether"), was represented by Dan A. Smetherman, Esq., located in New Orleans, Louisiana.

For Respondents: Morgan Keegan & Company, Inc. ("Morgan Keegan") and Tommy Thompson ("Thompson") were represented by David M. Minnick, Esq. of Morgan Keegan & Company, Inc., Memphis, Tennessee.

CASE INFORMATION

Statement of Claim filed on: July 8, 1993.

Claimants' Submission Agreement signed on: May 15, 1993 by Lola M. Wall, individually and as attorney-in-fact for Lola Crawford Meriwether.

Statement of Answer filed by Respondents Morgan Keegan and Thompson on: October 14, 1993.

Respondent Morgan Keegan's Submission Agreement signed on: October 14, 1993 by David M. Minnick, General Counsel, Morgan Keegan & Company, Inc.

Respondent Thompson's Submission Agreement signed on: September 17, 1993.

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HEARING INFORMATION

Pre-Hearing Dates: None Held.

Hearing dates/Sessions: June 15, 1994 for Two (2) sessions;
June 16, 1994 for Two (2) sessions; and
June 17, 1994 for Two (2) sessions.

Hearing Location: New Orleans, Louisiana.

CASE SUMMARY

Claimants alleged that Respondent Thompson, while employed by or acting as an agent for Respondent Morgan Keegan, executed transactions in Claimants' accounts which were unsuitable for Claimants' age and investment experience. The Claimants specifically alleged that:

1. Claimant Meriwether was 98 years old at the filing of the Statement of Claim. Claimant Wall was 72 years old who suffered from cancer and took medication which affected her ability to make intelligent and informed decisions. Respondents were aware of the Claimant's condition;
2. Claimants were unsophisticated in and lack knowledge of business matters, the handling of money and stock market investing.
3. Beginning in August 1990, and continuing until February 1993, Respondents made representations and solicited Claimants to open an account with Respondents for purchase and selling of securities. The securities originally placed in the account were low risk instruments such as government securities;
4. Eventually, Respondents began regularly executing transactions in securities of a high risk nature including options and other securities unsuitable for the Claimants. In addition, Respondents maintained a margin account and frequently traded under such circumstances;
5. The transactions executed by Respondents in Claimants' accounts were excessive in size and frequency, and were transacted solely for Respondents' benefit and in disregard of Claimants' interests. For the thirty-one month period from August 1990 through February 1993, they engaged in 729 transactions in Claimant Wall's account, totaling purchases and sales of \$7,621,340.34. The equity value in the account ranged from a high of \$516,150.00 to a low of \$311,187.50, with commissions paid to Respondents in excess of \$150,000.00;

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6. In addition, from September 1990 to February 1993, Respondents engaged in 420 transactions in Claimant Meriwether's account totaling purchases and sales in the sum of \$6,805,031.13. The equity value of the account ranged from a high of \$707,456.18 to a low value of \$245,940.59. Meriwether paid over \$136,000.00 in commissions to Respondents.

Claimants asserted that as a proximate result of the above acts and conduct of Respondents, they suffered the loss of interest and dividend income, suffered diminution in the value of their investment portfolio, and have incurred and been subjected to excessive transfer fees and capital gains taxes.

Respondents denied the material allegations of the Statement of Claim, alleging that:

1. Meriwether, during all communications with Respondent, demonstrated the ability and capacity to make intelligent and informed decisions relating to her account. In addition, she specifically authorized Wall to act as her attorney-in-fact by virtue of the power of attorney and advised Respondents to follow the instructions of Wall in all respects concerning her accounts;
2. Wall's initial meeting with Respondents occurred because she was displeased with the treatment she received at another brokerage firm and was seeking a higher return on the invested funds of the Claimants. Wall sought to liquidate her municipal securities and engage in a growth and trading strategy which she believed would yield a higher return for the accounts;
3. While Thompson eventually concluded that Wall was not well, at no time did she indicate by her conduct that she was unable to make intelligent and informed decisions relating to her accounts;
4. Wall was an experienced investor with a strong will and had previous business experience involving one or more family businesses. Wall stated that she was familiar with the securities markets, had speculated successfully in take-over situations, and expressed knowledge of "M&A" activities. Wall desired to trade actively and sought market information from many sources. Wall proved to have sophisticated knowledge of the market, as well as options and futures trading strategies. Wall possessed significant prior investments experience, a relatively high degree tolerance for risk and a desire to maximize return in a short period of time;
5. Claimants opened their accounts with Morgan Keegan after careful consideration of other brokerage firms. Claimants rejected many of recommendations make by Respondents. Many of the ideas for the transactions

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made emanated with Wall, whose lack of patience contributed to Claimants' desire to actively trade the accounts;

6. Claimants' investment objectives were clearly for growth and occasionally speculation. Wall rejected a more conservative strategy and utilized the stock market as a vehicle to attempt to obtain above-market performance significantly better than the relatively fixed return available through municipal securities. Claimants engaged in trading options after being fully advised of the risks. Claimants were suitable for this active trading and the utilization of margin, and while Respondents suggested a more conservative strategy, Claimants were free to make their own decisions and chose a more aggressive strategy;

7. While the accounts were active, Claimants controlled the accounts at all times and made their decisions after disclosure of all relevant facts and circumstances. Claimants' withdrawal of funds, and the timing of the withdrawals, had an effect on the performance of the accounts and restricted the ability to achieve greater profit. The trading strategy insisted on by Wall generated the high level of commissions;

8. The trading in the accounts was not unsuitable in light of the representations made to Respondents. All of Respondents' recommendations were made with the intent to reduce Claimants' risk and attempt to maximize profits based upon Claimants' strategy.

In addition, Respondents asserted several affirmative defenses, including the following:

1. The Statement of Claim failed to state a claim upon which relief can be granted;
2. Claimants are barred from recovery by their own contributory negligence;
3. The Claimants are barred from recovery under the doctrines of ratification, account stated, estoppel, waiver and laches;
4. Claimants failed to act promptly and with due diligence to mitigate their damages after Claimants knew or should have known of the alleged acts and omissions complained of by Claimants;
5. Claimants knowingly and voluntarily assumed the risks associated with investing in securities, which was the sole and proximate cause of their damages, and cannot transfer that risk to Respondents; and

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6. Claimant's claims were barred because the damages alleged were the result of unforeseeable market conditions for which Respondents were neither liable nor responsible.

RELIEF REQUESTED

Claimant requested that an award be rendered in favor of Lola M. Wall against Respondents in the amount of \$216,012.00 as actual damages with interest; that an award be rendered in favor of Lola C. Meriwether against Respondents in the amount of \$169,530.00 as actual damages, together with interest; judgement against Respondents in accordance with law for such amount as the arbitrators determine as punitive damages; costs and expenses of this proceeding; reasonable attorneys' fees pursuant to law; and such other and further relief deemed appropriate.

Respondents requested that the matter be dismissed, and that costs of the proceeding be assessed against Claimant.

OTHER ISSUES CONSIDERED & DECIDED

At the conclusion of Claimant's case, Respondents presented a Motion for Directed Verdict. After deliberation, the Panel determined that the Motion would be denied.

The parties have agreed that the Award in this matter may be executed by 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 originals remain on file with the 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. The Statement of Claim is hereby dismissed with prejudice and denied in its entirety, the Claimant having failed to prove any wrongdoing by either Respondent Tommy Thompson or Respondent Morgan Keegan & Company, Inc. in the handling of the accounts;
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
3. Any relief request not specifically granted is hereby denied.

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FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed: Six (6) hearing sessions x \$750.00 per session = \$4500.00.

The National Association of Securities Dealers, Inc. shall retain the \$200.00 claim filing fee and the \$750.00 hearing session deposit previously deposited by the Claimant, Lola M. Wall, individually and as attorney-in-fact for Lola C. Meriwether. Claimant Lola M. Wall, individually and as attorney-in-fact for Lola C. Meriwether is liable for and shall pay the NASD additional forum fees in the sum of \$3,750.00.

Fees are payable to the National Association of Securities Dealers, Inc.

By The Arbitration Panel:

Name

Dated

/s/ William D. Hawkland, Jr., Esq.
William D. Hawkland, Jr., Esq.
Public Arbitrator
Chairperson

September 6, 1994

/s/ Herman Brasseaux
Herman Brasseaux
Public Arbitrator

September 7, 1994

/s/ Charles E. Melancon, Jr.
Charles E. Melancon, Jr.
Industry Arbitrator

September 6, 1994

For NASD Use Only
Date Award Served By The NASD: 09-07-94