

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Mitchell Spearman

95-01376

Name of Respondents

Morgan Keegan & Company Inc.
Charles N. Barth

REPRESENTATION

For Claimant, Mitchell Spearman ("Spearman"): Roy B. Dalton, Jr., Esq. of Martinez Dalton Dellecker & Wilson, Orlando, Florida.

For Respondent, Morgan Keegan & Company, Inc. ("Morgan Keegan"): Alex J. Sabo, Esq. of Morgan, Lewis & Bockius, Miami, Florida.

Respondent Charles N. Barth ("Barth") was pro se.

CASE INFORMATION

Statement of Claim filed: March 15, 1995.

Claimant's Submission Agreement signed on March 9, 1995.

Respondent Morgan Keegan's Statement of Answer filed: May 22, 1995.

Respondent Morgan Keegan's Submission Agreement signed on April 11, 1995 by David M. Minnick on behalf of Morgan Keegan.

Respondent Barth's Statement of Answer filed: August 10, 1995.

Respondent Barth's Submission Agreement signed on July 31, 1995.

HEARING INFORMATION

On March 29, 1996, a pre-hearing conference lasting 1 session was conducted via telephone conference call with the Chairman.

On May 29 and 30, 1996, in Tampa, Florida, hearings lasting 4 sessions were conducted.

CASE SUMMARY

Claimant Spearman alleged that Respondent Barth committed civil theft and that he knowingly and willfully deprived Claimant of his monies by selling him shares in a fictitious account called Apex Trading. Claimant Spearman further alleged that Barth knew that no such account existed and converted \$22,144.00 of Claimant's money to his own use.

Claimant Spearman also alleged that Barth's supervisors at Morgan Keegan had actual knowledge of the Apex Trading account and therefore Morgan Keegan is also guilty of civil theft. In the alternative, Claimant alleged that if Morgan Keegan did not have actual knowledge of Barth's activities, then Morgan Keegan is guilty of negligent supervision for not following their own internal procedures.

Respondent Morgan Keegan denied all allegations of wrongdoing and alleged that Claimant Spearman sued Morgan Keegan because Claimant wrote a check to a third party, unconnected with Morgan Keegan, to purchase an interest in a commodities pool. Respondent Morgan Keegan further alleged that this transaction was a private transaction and was never brought to Morgan Keegan's attention until several months after the check was written. In addition, Morgan Keegan has alleged that Claimant Spearman is an experienced investor and knew that the transaction at issue was done away from Morgan Keegan and Morgan Keegan was not involved in this transaction in any respect.

Moreover, Respondent Morgan Keegan alleged that Claimant breached the terms and conditions of the written agreements relating to his payment of investments by tendering money directly to a third person rather than to the firm through which the investments were made. Respondent Morgan Keegan also alleged that Claimant knew or should have known that the transaction was not done through Morgan Keegan because he had not received any confirmations or monthly statements from Morgan Keegan relating to this transaction, as he previously had.

Respondent Barth denied all allegations of wrongdoing contained in the Statement of Claim.

RELIEF REQUESTED

Claimant requested: \$22,144.00 in actual damages plus appropriate costs and interest, and treble damages and attorney's fees pursuant to F.S. 722.11. The total relief sought is \$66,432.00 plus costs and attorney's fees.

Respondent Morgan Keegan requested: that this claim be denied in its entirety plus such other

relief to which it may be entitled.

Respondent Barth requested: that this claim be denied plus reasonable attorney's fees and costs incurred in defending this claim.

OTHER ISSUES CONSIDERED & DECIDED

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 remains on file with the NASD.

Respondent Barth did not appear in person but filed an affidavit alleging that Morgan Keegan had actual knowledge. Respondent Morgan Keegan denied Barth's allegations.

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 Barth is found liable and shall pay to the Claimant the amount of \$66,432.00, plus interest at 10% in the amount of \$6,600, for a total due to the Claimant of \$73,032.00.
2. Respondent Barth is also found liable and shall pay to the Claimant the further amount of \$15,000.00 for attorney's fees.
3. Respondent Barth is also found liable and shall pay to the Claimant the further amount of \$1,500.00 for costs.
4. Respondent Morgan Keegan is found not liable and, therefore, all claims against it are hereby dismissed.

OTHER COSTS

The Panel has assessed all fees and costs of the hearing against Respondent Barth.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$2,300.00 (1 pre-hearing conference x \$300.00 plus 4 sessions x \$500.00).

1. Respondent Barth is hereby assessed \$2,300.00, \$500.00 of which shall be paid directly to the Claimant, and \$1,800.00 of which shall be paid to the National Association of Securities Dealers, Inc.

2. Respondent Barth shall reimburse the Claimant \$150.00 for the non-refundable filing fee.
3. The NASD shall retain the non-refundable filing fee of \$150.00 paid by the Claimant.
4. The NASD shall retain the session deposit of \$500.00 paid by Claimant.

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

Concurring Arbitrators' Signatures
Name

/S/

Leo H. Kerns, Esq.

/S/

Joseph I. Amonette

/S/

Alfred R. Priest

Public/Chairperson

Industry

Public

July 12, 1996

Date of Decision: _____