

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Joyce H. Smith,

Claimant,

v.

No. 95-03617

Morgan Keegan & Company, Inc.,
John Martin & Marcus S. Childers,

Respondents.

REPRESENTATION OF PARTIES

Claimant Joyce H. Smith ("Claimant") was represented by James Rebarchak of Miller, Hamilton, Snider & Odom located in Mobile, Alabama.

Respondents Morgan Keegan & Company, Inc. ("Morgan Keegan"), John Martin ("Martin") and Marcus S. Childers ("Childers") (collectively referred to as "Respondents") were represented by David M. Minnick, Esq. and Michael K. Henry of Morgan Keegan located in Memphis, Tennessee.

CASE INFORMATION

The Statement of Claim was filed on or about July 27, 1995.

Claimant's Submission Agreement was signed on July 21, 1995.

The Joint Statement of Answer was filed on or about September 20, 1995.

The Joint Amended Statement of Answer was filed on or about February 14, 1996.

The Joint Second Amended Statement of Answer was filed on or about January 28, 1998.

Respondent Morgan Keegan's Submission Agreement was signed on September 19, 1995.

Respondent Martin's Submission Agreement was signed on September 19, 1995 by his attorney David M. Minnick.

Respondent Childers' Submission Agreement was signed on September 19, 1995 by his attorney David M. Minnick.

Respondents' Post-Hearing Brief was filed on or about February 20, 1998.

Claimant's Post-Hearing Brief was filed on or about February 23, 1998.

HEARING INFORMATION

The telephonic pre-hearing conferences were held on February 15, 1996 for one (1) session and February 21, 1996 for one (1) session.

The hearing was held on February 11, 1998 for two (2) sessions in New Orleans, Louisiana.

CASE SUMMARY

In the Statement of Claim, Claimant alleged that she was persuaded by Respondents to open a securities account with Morgan Keegan. Claimant contended that she informed Respondents that her number one priority in her investment objectives was safety of principal due to the fact that she was investing and entrusting them with her life savings. Claimant asserted that Respondents told her that if she purchased Federal National Mortgage Association REMIC 1993 Trust 44 Class J bonds (the "bonds") her money would be as safe as a CD and would not be affected by interest rates. Claimant maintained that, based on these representations, she invested approximately \$30,000 in the bonds. Claimant alleged that the bonds were not as safe as CD's and that she lost a substantial amount of money because of this purchase. Claimant further alleged that Respondents made unauthorized trades involving Mobile Telecomm stock. Claimant also contended that Respondents failed to execute an order to purchase Proffitts stock. Claimant alleged causes of action against Respondents including: breach of contract; breach of fiduciary

duty; suitability; negligence; wantonness; and omissions of material fact.

Respondents denied all liability to Claimant in the Joint Statement of Answer. Respondents alleged that Claimant told Childers that she had previous experience with stocks and mutual funds and listed her investment objectives as including safety of principal, growth, income, speculation, and tax advantaged. Respondents contended that Claimant purchased the bonds after discussing with Childers potential price fluctuations resulting from interest rate changes as well as general discussions about the manner in which bonds such as these function in the marketplace. Respondents asserted that the Mobile Telecom investment was the one equity investment, out of seven total, in which Claimant did not realize a profit. Respondents maintained that this loss was recouped by a new trading strategy. Respondents specifically denied that any instructions were ever given by Claimant to Childers to purchase Proffitts stock.

RELIEF REQUESTED

Claimant requested an award of compensatory damages in the amount of \$21,973.50, plus interest, punitive damages, and attorney fees.

Respondents requested that the Statement of Claim be dismissed in its entirety with prejudice, plus their costs, expenses and attorney fees. Respondents also requested that this matter be expunged from the Central Registration Depository of the National Association of Securities Dealers, Inc. for the records of Respondents Martin and Childers.

OTHER ISSUES CONSIDERED & DECIDED

Respondents' Motion to Dismiss was denied.

Respondents Martin and Childers did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but are required to submit to arbitration pursuant to §10301 of the NASD Code of Arbitration Procedure (the "Code"), and having answered the claim, appeared and testified at the hearing, are bound by the determination of the arbitration panel on all issues submitted.

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(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, as well as the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- (1) That Respondent Morgan Keegan & Company, Inc. is liable for and shall pay to Claimant Joyce H. Smith the amount of \$4,500 for general damages, plus legal interest on this amount dating from January 1, 1994;
- (2) That Respondent Morgan Keegan & Company, Inc. is liable for and shall pay to James Rebarchak and Miller, Hamilton, Snider & Odom their attorney fees in the amount of \$8,000;
- (3) That the claim for punitive damages is dismissed with prejudice;
- (4) That all claims against Respondents John Martin and Marcus S. Childers are dismissed in their entirety with prejudice;
- (5) That, due to the unique nature of the parties, including the social relationship between the customer and the broker, this matter is ordered expunged from the Central Registration Depository of the National Association of Securities Dealers, Inc. for the records of Respondents John Martin and Marcus S. Childers; and
- (6) That any relief not specifically enumerated is hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each pre-hearing conference, if any. There were two (2) hearing sessions x \$800 = \$400 in forum fees. There were two (2) pre-hearing sessions x \$300 = \$600 in forum fees. Total forum fees = \$1,400. Pursuant to §10332(b) of the Code, a hearing session is any meeting between the parties and the

arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10332(c) of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$100 and shall refund the hearing session deposit in the amount of \$300 previously deposited by the Claimant.

Pursuant to §10332(c) of the Code, Respondent Morgan Keegan is liable for all forum fees in the amount of \$1,400.

Pursuant to §10333 of the Code, NASD Regulation, Inc. Office of Dispute Resolution shall retain Respondent Morgan Keegan's member surcharge in the amount of \$200.

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Concurring Arbitrators' Signatures:

/s/ Larry M. Roedel, Esq.

Larry M. Roedel, Esq.
Chairperson
Public Arbitrator

March 13, 1998

Dated:

/s/ Herman Brasseaux

Herman Brasseaux
Panelist
Public Arbitrator

March 15, 1998

Dated:

/s/ Lawrence J. Sisung, Jr.

Lawrence J. Sisung, Jr.
Panelist
Industry Arbitrator

March 13, 1998

Dated:

For NASD Regulation use only:

Date award served on parties:

March 13, 1998