

NASD Regulation, Inc. AWARD

NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant(s)

Donald A. Berman, M.D.

96-01066

Name of Respondent(s)

Morgan Keegan & Company Inc  
Francis Maus

**REPRESENTATION**

Claimant Donald A. Berman ("Berman") appeared pro se.

For Respondents Morgan Keegan & Company, Inc. ("MKC") and Francis Maus ("Maus"):  
David M. Minnick, Esq., in-house counsel at MKC, Memphis, Tennessee.

**CASE INFORMATION**

Statement of Claim filed: March 11, 1996. Claimant's Submission Agreement signed on: March 7, 1996.

Joint Statement of Answer filed by Respondents on: May 13, 1996. Respondent MKC's Submission Agreement signed on: May 9, 1996 by David M. Minnick on behalf of MKC. Respondent Maus' Submission Agreement signed on: April 2, 1996.

**HEARING INFORMATION**

On February 26, 1997 a hearing lasting two sessions was conducted in Ft. Lauderdale, Florida.

**CASE SUMMARY**

Claimant alleged that Respondents were liable for breach of contract; common law fraud; breach of fiduciary duty; negligence; and unjust enrichment. Claimant alleged that Respondent Maus recommended and arranged for Southern Capital Advisors, Inc. ("SCA") to manage Claimant's IRA account and that many of the transactions involved stocks that were held for a short period of time. Claimant maintained that his investment goals were conservative and that the trading

was speculative, inappropriate and excessive in light of Claimant's goals. Claimant next maintained that Respondents failed to comply with the NASD's "Know Your Customer" rule and failed to disclose their self-dealing regarding the relationship between MKC and SCA.

Respondents denied all allegations of wrongdoing and alleged that Claimant sustained no damages and obtained substantial profits in the account while it was managed by SCA. Respondents next maintained that Claimant chose SCA as a professional money manager and sought more regular trading activity in stocks than he had previously experienced with a prior money manager. Respondents further alleged that all fees and commissions charged were reasonable and fully disclosed and that the claims were unsupported by either the facts or the law.

Respondents filed a counterclaim wherein they requested an award of expenses, costs and attorney's fees incurred by them in defending this action.

Claimant did not file a Statement of Answer to the counterclaim.

### **RELIEF REQUESTED**

Claimant requested damages in the amount of \$25,317.72. Claimant requested dismissal of the counterclaim at the hearing.

Respondents requested dismissal of the claim and requested costs, expenses and attorney's fees in their counterclaim.

### **OTHER ISSUES CONSIDERED & DECIDED**

1. At the close of the Claimant's case-in-chief the Respondents moved to dismiss the claims based on their contention that the Claimant had failed to prove his claims. The Chairman deferred ruling on the Motion to Dismiss until the presentation of Respondents' evidence. The arbitrator's decision on this motion is set forth under Paragraph No. 1 below.
2. 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 originals remain on file with NASD Regulation, Inc.

### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing and post-hearing submissions (if any) the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents' Motion to Dismiss is hereby granted and the claims are therefore dismissed with prejudice.
2. Claimant is found not liable to Respondents and, therefore, the counterclaim is hereby dismissed.

3. The arbitrator hereby orders that all references to this arbitration proceeding be expunged from the CRD record of Respondent Maus.

### **OTHER COSTS**

Other than the forum fees noted below the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

### **FORUM FEES**

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the arbitrator has assessed forum fees in the amount of \$600.00 (2 sessions x \$300.00 per session).

1. Claimant is hereby assessed \$300.00 for which NASD Regulation, Inc. shall retain the \$300.00 previously deposited by Claimant in full satisfaction thereof.
2. Respondent MKC is hereby assessed \$300.00 for which NASD Regulation, Inc. shall retain \$300.00 of the \$600.00 previously deposited by MKC in full satisfaction thereof.
3. NASD Regulation, Inc. shall retain the \$200.00 member surcharge paid by MKC pursuant to Rule 10333 of the Code.
4. NASD Regulation, Inc. shall retain the \$100.00 non-refundable filing fee previously paid by Claimant.

Arbitrator's Signature  
Name

Public/Industry

\_\_\_\_\_/s/\_\_\_\_\_  
John B. Kelley, Esq.

Public/Chairman

Date of Decision: March 26, 1997