

**Award**  
**NASD Regulation, Inc.**

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In the Matter of the Arbitration Between:  
Margene W. Lyon, Claimant vs. Morgan Keegan & Company, Inc., and David E. McDonald, Respondents.

Case Number: 99-02834

Hearing Site: Nashville, Tennessee

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All Claims disposed of after a Telephonic Hearing.

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**REPRESENTATION OF PARTIES**

Claimant, Margene W. Lyon, hereinafter referred to as "Claimant", was represented by Michael A. S. Guth, Esq., of Oak Ridge, Tennessee. Respondents, Morgan Keegan & Company, Inc., "Morgan Keegan", and David E. McDonald, "McDonald", hereinafter collectively referred to as "Respondents", were represented by Niel Prosser, Esq., of Memphis, Tennessee.

**CASE INFORMATION**

Statement of Claim filed on or about: June 22, 1999  
Claimant signed the Uniform Submission Agreement: June 17, 1999  
Statement of Answer filed by Respondents, Morgan Keegan & Co., Inc., and David E. McDonald, on or about: August 26, 1999  
Niel Prosser, Esq., for Respondents, Morgan Keegan & Co., Inc., and David E. McDonald, signed the Uniform Submission Agreement: August 25, 1999

**CASE SUMMARY**

Claimant asserted the following causes of action: fraud; misrepresentation; negligence; and breach of fiduciary duty. The causes of action relate to transactions in FNMA REMIC securities.

Unless specifically admitted in their Joint Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: violation of applicable statutes of limitations; assumption of the risk; account stated; estoppel; waiver; laches; ratification; and failure to state a cause of action for which relief can be granted.

**RELIEF REQUESTED**

Claimant requested:

Compensatory Damages  
Attorneys' Fees

\$199,000  
\$unspecified

Other Monetary/Non-Monetary Relief if any: In the alternative to the above, that the annuities in question be liquidated.

Respondents requested that the Claims be dismissed in their entirety.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondents moved to Dismiss the Claims against them. The Panel heard telephonic oral argument on May 15, 2000.

### **AWARD**

After considering the pleadings and the arguments presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

The Motion to Dismiss is granted and the Complaint against Respondents Morgan Keegan & Co., Inc., and David E. McDonald is dismissed with prejudice for reason that the applicable three year statute of limitations had run prior to the filing of the Claim.

Any and all relief not specifically addressed herein, including punitive [treble] damages, is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$300

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the event(s) giving rise to the dispute. In this matter, the member firm is Morgan Keegan & Co., Inc.

Member surcharge	= \$1,500
Pre-hearing process fee	= \$ 600
Hearing process fee	= \$2,500

#### **Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-

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hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$1,125		= \$1,125
Pre-hearing conference: January 20, 2000	1 session	
One (1) Hearing session x \$1,125		= \$1,125
Hearing Date: May 15, 2000	1 session	
Total Forum Fees		= \$2,250

The Panel has assessed all \$2,250 of the forum fees to Claimant, Margene W. Lyon.

### Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 300
Forum Fees	= \$2,250
Total Fees	= \$2,550
Less payments	= \$1,425
Balance Due NASD Regulation, Inc.	= \$1,125

2. Respondent, Morgan Keegan & Co., Inc., be and hereby is solely liable for:

Member Fee	= \$1,500
Pre-Hearing Processing Fees	= \$ 800
Hearing Processing Fees	= \$2,500
Total Fees	= \$4,800
Less payments	= \$4,800
Balance Due NASD Regulation, Inc.	= \$ 0

All balances are due to NASD Regulation, Inc.

### Concurring Arbitrators' Signature(s)

Robert J. Warner, Jr., LLB  
Public Arbitrator, Presiding Chair

Signature Date

F. Wesley Bowers, JD  
Public Arbitrator

Signature Date

C. Taron Malott  
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

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Less payments	= \$1,425
Balance Due NASD Regulation, Inc.	= \$1,125

2. Respondent, Morgan Keegan & Co., Inc., be and hereby is solely liable for:

Member Fees	= \$1,500
Pre-Hearing Processing Fees	= \$ 600
Hearing Processing Fees	= \$2,500
Total Fees	= \$4,600
Less payments	= \$4,600
Balance Due NASD Regulation, Inc.	= \$ 0

All balances are due to NASD Regulation, Inc.

Concurring Arbitrators' Signature(s)

  
Robert J. Warner, Jr., LLB  
Public Arbitrator, Presiding Chair

6/1/00  
Signature Date

\_\_\_\_\_  
F. Wesley Bowers, JD  
Public Arbitrator

\_\_\_\_\_  
Signature Date

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C. Taxon Malott  
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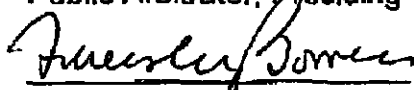
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Less payments	= \$4,600
Balance Due NASD Regulation, Inc.	= \$ 0

All balances are due to NASD Regulation, Inc.

Concurring Arbitrators' Signature(s)

Robert J. Warner, Jr., LLB  
Public Arbitrator, Presiding Chair

  
F. Wesley Bowers, JD  
Public Arbitrator

Signature Date

5/31/2000  
Signature Date

C. Taxon Malott  
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)