

**Award**  
**NASD Dispute Resolution, Inc.**

In the Matter of the Arbitration Between

Name of Claimant

Joseph W. Schaeffer

Case No. 99-05324

Names of Respondents

Morgan Keegan & Company, Inc.  
George Arras, Jr.  
Earl Bailey  
Jock Whisnaut

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**REPRESENTATION OF PARTIES**

For Joseph W. Schaeffer, hereinafter referred to as "Claimant": James A. Johnson, Esq., Mobile, AL.

For Morgan Keegan & Company, Inc. ("MKC"), George Arras, Jr. ("Arras"), Earl Bailey ("Bailey"), and Jock Whisnaut ("Whisnaut"), hereinafter collectively referred to as "Respondents": Carl S. Burkhalter, Esq. and R. Allen Kilgore, Jr., Esq. of Maynard, Cooper & Gale, P.C., Birmingham, AL.

**CASE INFORMATION**

Statement of Claim filed on or about: November 26, 1999.  
First Amended Statement of Claim filed on or about: February 1, 2000.  
Claimant signed the Uniform Submission Agreement: October 25, 1999.  
Respondents' Answer filed on or about: April 4, 2000.  
Respondents MKC and Bailey signed the Uniform Submission Agreement: April 16, 2001.  
Respondent Arras signed the Uniform Submission Agreement: March 29, 2000.  
Respondent Whisnaut did not file an executed Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract; fraudulent inducement; fraudulent suppression; fraudulent misrepresentation; negligence; wantonness; and, deceit. The causes of action relate to Respondent MKC's breach of the employment agreement it entered into with Claimant and Respondents Arras, Bailey, and Whisnaut's participation therein.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim, denied the existence of an employment agreement between Respondent MKC and Claimant, and asserted various defenses including waiver, ratification, acquiescence, and contributory negligence.

### **RELIEF REQUESTED**

Claimant requested compensatory damages of approximately \$179,400.00, punitive damages of \$750,000.00, interest, costs, and any other amount to be determined by the Panel.

Respondents requested dismissal of the Statement of Claim and reimbursement of attorneys' fees.

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

On or about February 20, 2001, Respondents filed a motion to dismiss. Claimant filed a response to the motion on or about February 26, 2001. On or about March 8, 2001, the Panel issued an order which denied Respondents' motion to dismiss.

Respondent Whisnaut did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim and appeared at the hearing, is bound by the determination of the 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.

### **AWARD**

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

Respondent MKC is liable and shall pay to Claimant compensatory damages in the sum of \$15,000.00 plus interest at the federal judicial rate accruing from October 25, 1999, the date of Claimant's arbitration demand, until the date of payment of the Award.

Claimant's claims against Respondents Arras, Bailey, and Whisnaut are dismissed, with prejudice.

Claimant's request for punitive damages is denied.

All other relief requests not specifically addressed herein are denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each

Claimant:

Initial claim filing fee = \$375.00

### Member Fees

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

Member surcharge = \$2,000.00  
Pre-hearing process fee = \$ 600.00  
Hearing process fee = \$3,500.00

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

Two (2) Pre-hearing sessions with Panel x \$1,200.00 = \$2,400.00  
Pre-hearing conferences: August 10, 2000 1 session  
March 7, 2001 1 session

Three (3) Hearing sessions x \$1,200.00 = \$3,600.00  
Hearing Dates: March 12, 2001 2 sessions  
March 13, 2001 1 session

Total Forum Fees = \$6,000.00

The Panel has assessed \$3,000.00 of the forum fees to Claimant.

The Panel has assessed \$3,000.00 of the forum fees to Respondent MKC.

### Fee Summary

Claimant be and hereby is solely liable for:

Initial Filing Fee = \$ 375.00  
Forum Fees = \$3,000.00  
Total Fees = \$3,375.00  
Less payments = \$1,575.00  
Balance Due NASD Dispute Resolution, Inc. = \$1,800.00

Respondent MKC be and hereby is solely liable for:

Member Fees = \$6,100.00  
Forum Fees = \$3,000.00  
Total Fees = \$9,100.00  
Less payments = \$6,700.00  
Balance Due NASD Dispute Resolution, Inc. = \$2,400.00

All balances are payable to NASD Dispute Resolution, Inc. and are due immediately upon receipt of the Award by the parties.

**Concurring Arbitrators' Signatures**

/s/

Frank E. Massengale, Jr., Esq.  
Industry Arbitrator, Presiding Chair

Signature Date

/s/

William B. Miller  
Industry Arbitrator

Signature Date

/s/

Charles A. Schildhauer  
Industry Arbitrator


Signature Date

April 20, 2001

Date of Service (For NASD-DR office use only)

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