

**Award
FINRA Dispute Resolution**

In the Matter of the Arbitration Between:

Claimants

Scott Stephens, as Trustee of the Wilbert Joseph Stephens, Jr. Testamentary Trust # 1
Scott Stephens, as Trustee of the Wilbert Joseph Stephens, Jr. Testamentary Trust # 2
Scott Stephens, as Next Friend of Conner Stephens
Scott Stephens
Tanya Stephens

Case Number: 11-04247

vs.

Respondent

Morgan Keegan & Company, Inc.

Hearing Site: New Orleans, Louisiana

Nature of the Dispute: Customers vs. Member

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimants Scott Stephens, as Trustee of the Wilbert Joseph Stephens, Jr. Testamentary Trust # 1, Scott Stephens, as Trustee of the Wilbert Joseph Stephens, Jr. Testamentary Trust # 2, Scott Stephens, as Next Friend of Conner Stephens, Scott Stephens, and Tanya Stephens: Jeffrey Erez, Esq. and Adam Nativ, Esq., Sonn & Erez, PLC, Miami, Florida.

For Respondent Morgan Keegan & Company, Inc. ("Morgan Keegan"): Stephen H. Kupperman, Esq. and Jamie L. Berger, Esq., Barrasso, Usdin, Kupperman, Freeman & Sarver, L.L.C., New Orleans, Louisiana.

CASE INFORMATION

Statement of Claim filed by Claimants on or about: November 8, 2011.

Scott Stephens, as Trustee of the Wilbert Joseph Stephens, Jr. Testamentary Trust # 1 signed the Submission Agreement: November 4, 2011.

Scott Stephens, as Trustee of the Wilbert Joseph Stephens, Jr. Testamentary Trust # 2 signed the Submission Agreement: November 4, 2011.

Scott Stephens, as Next Friend of Conner Stephens signed the Submission Agreement: November 4, 2011.

Scott Stephens signed the Submission Agreement: November 4, 2011.

Tanya Stephens signed the Submission Agreement: November 4, 2011.

Statement of Answer filed by Respondent on or about: January 13, 2012.

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Respondent Morgan Keegan signed the Submission Agreement: November 29, 2011.

Motion in Limine to Exclude Evidence of or Reference to Regulatory Complaints and Settlements filed by Respondent on or about: October 30, 2013.

Response to Respondent's Motion in Limine to Exclude Evidence of or Reference to Regulatory Complaints and Settlements filed by Claimants on or about: November 4, 2013.

Motion in Limine to Exclude Evidence Relating to the Intermediate Bond Fund filed by Respondent on or about: October 30, 2013.

Response to Respondent's Motion in Limine to Exclude Evidence of or Reference to the Intermediate Bond Fund filed by Claimants on or about: November 4, 2013.

Motion in Limine to Exclude Regulatory Evidence of or Reference to Fund Management Issues filed by Respondent on or about: October 30, 2013.

Response to Respondent's Motion in Limine to Exclude Evidence of or Reference to Fund Management Issues filed by Claimants on or about: November 4, 2013.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: 1) breach of fiduciary duty; 2) negligence; 3) negligent supervision; 4) fraud; and 5) breach of contract. The causes of action relate to the purchase and recommendations of the RMK High Income Fund, RMK Strategic Income Fund and the RMK Advantage Income Fund in Claimants' accounts.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimants requested: 1) compensatory damages of an amount between \$100,000.00 to \$500,000.00, plus interest; 2) punitive damages; 3) costs; and 4) such other and further relief the Panel deemed just and proper.

At the close of the hearing, Claimants requested: compensatory damages in the amount of \$291,203.00, treble damages in the amount of \$873,609.00 and an unspecified amount of attorneys' fees. Claimants did not assert damages in connection with the account maintained with Respondent on behalf of Conner Stephens.

In the Statement of Answer, Respondent requested: 1) denial of Claimants' claims in their entirety; 2) costs; 3) attorneys' fees; and 4) such other relief to which Respondent Morgan Keegan is entitled.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

On or about April 15, 2013, Claimants voluntarily opted out of any and all class actions regarding the Morgan Keegan proprietary income funds that have been filed or may be filed against Respondent.

On or about October 30, 2013, Respondent filed a Motion in Limine to Exclude Evidence of or Reference to Regulatory Complaints and Settlements in which it asserted, among other things, that the regulatory charges against Respondent were inadmissible as evidence as they are non-adjudicated allegations of wrongdoing, and are not "proof" of any wrongdoing. Respondent further alleged that the regulatory settlements were also inadmissible as Respondent never admitted any of the material findings. In response, Claimants asserted, among other things, that the regulatory complaints and settlements are admissible under FINRA's rules and the Federal Rules of Evidence.

On or about October 30, 2013, Respondent filed a Motion in Limine to Exclude Evidence Relating to the Intermediate Bond Fund in which it asserted, among other things, that Claimants had not based their investment decisions at issue on the prospectus for the Intermediate Bond Fund. Respondent further alleged that the Intermediate Bond Fund had different investment objectives and employed different strategies than the securities at issue in this case, and that the Intermediate Bond Fund was not exchange-traded. In response, Claimants asserted, among other things, that all of the RMK bond funds were virtually identical and that Louisiana law provided that Claimants may establish fraud through circumstantial evidence.

On or about October 30, 2013, Respondent filed a Motion in Limine to Exclude Evidence of or Reference to Fund Management Issues in which it asserted that Claimants' claims of fund mismanagement were derivative in nature and outside the scope the parties granted to FINRA when they agreed to arbitrate this dispute. In response, Claimants asserted, among other things, that their claims were not derivative in nature and that arbitration as a legal forum supports the liberal introduction of evidence.

On November 16, 2013, the Panel heard the parties' oral arguments on all of Respondent's Motions in Limine and subsequently issued an Order denying them.

The Panel deemed Claimants' claims against Respondent on behalf of Conner Stephens withdrawn, without prejudice as Claimants did not assert damages in connection with the account.

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, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent shall pay to Claimants compensatory damages in the total amount of

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\$290,999.00, as follows:

- a. To the Wilbert J. Stephens, Jr. Testamentary Trust (Morgan Keegan Account No. ending 4283), the amount of \$95,796.00.
- b. To the Wilbert J. Stephens, Jr. Testamentary Trust (Morgan Keegan Account No. ending 1637), the amount of \$145,182.00.
- c. To the Scott A. and Tanya C. Stephens Joint Account (Morgan Keegan Account No. ending 1501), the amount of \$50,021.00.

- 2. Pre-judgment interest is granted and shall accrue on the amounts set forth in paragraph one (1) at the rate of 2.00% from the date of the filing of the Statement of Claim to the date of entry of the Award.
- 3. Post-judgment interest is granted and shall accrue on the amounts set forth in paragraph one (1) at the rate of 4.00% from the date of entry of the Award until the Award is paid in full.
- 4. Any and all relief not specifically addressed herein, including Claimants' requests for punitive and treble damages and the parties' respective requests for attorneys' fees, is denied.

FEES

Pursuant to the Code of Arbitration Procedure (the "Code"), the following fees are assessed:

Filing Fees

FINRA Dispute Resolution assessed a filing fee* for each claim:

Initial Claim Filing Fee =\$ 1,425.00

*The filing fee is made up of a non-refundable and a refundable portion.

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. Accordingly, as a party, Respondent is assessed the following:

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| Member Surcharge | =\$ 1,700.00 |
| Pre-Hearing Processing Fee | =\$ 750.00 |
| Hearing Processing Fee | =\$ 2,750.00 |

Contested Motion for Issuance of a Subpoena Fees

Fees apply for each decision on a contested motion for the issuance of a subpoena.

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| One (1) Decision on a contested motion for the issuance of a subpoena | =\$ 200.00 |
| (1) <u>one</u> arbitrator @ \$200.00 | =\$ 200.00 |
| Total Contested Motion for Issuance of Subpoena Fee | =\$ 200.00 |

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The Panel has assessed the total \$200.00 contested motion for issuance of a subpoena fees to Respondent.

Hearing Session Fees and Assessments

The Panel has assessed hearing session fees for each session conducted. A 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:

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| Three (3) Pre-hearing sessions with a single arbitrator @ \$450.00/session | = \$ 1,350.00 |
| Pre-hearing conferences: May 16, 2013 | 1 session |
| June 13, 2013 | 1 session |
| August 21, 2013 | 1 session |

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| Four (4) Pre-hearing sessions with the Panel @ \$1,125.00/session | = \$ 4,500.00 |
| Pre-hearing conferences: April 26, 2012 | 1 session |
| September 30, 2013 | 1 session |
| November 14, 2013 | 1 session |
| November 16, 2013 | 1 session |

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| Sixteen (16) Hearing sessions @ \$1,125.00/session | = \$18,000.00 |
| Hearing Dates: November 18, 2013 | 2 sessions |
| November 19, 2013 | 3 sessions |
| November 20, 2013 | 3 sessions |
| November 21, 2013 | 3 sessions |
| November 22, 2013 | 2 sessions |
| December 16, 2013 | 3 sessions |

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| Total Hearing Session Fees | = \$23,850.00 |
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The Panel waived the \$1,125.00 hearing session fee for the November 14, 2013, pre-hearing conference.

The Panel has assessed hearing session fees of \$22,725.00 to Respondent.

All balances are payable to FINRA Dispute Resolution and are due upon receipt.

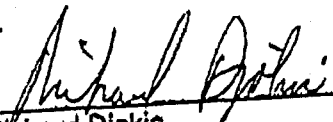
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ARBITRATION PANEL

| | | |
|------------------|---|--|
| Richard Djokic | - | Public Arbitrator, Presiding Chairperson |
| Philip P. Rummel | - | Public Arbitrator |
| Walter J. Wylie | - | Public Arbitrator |

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument which is my award.

Concurring Arbitrators' Signatures



 Richard Djokic
 Public Arbitrator, Presiding Chairperson

1/8/14

 Signature Date

 Philip P. Rummel
 Public Arbitrator

 Signature Date

 Walter J. Wylie
 Public Arbitrator

 Signature Date

JANUARY 10, 2014

 Date of Service (For FINRA Dispute Resolution office use only)

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| Phillip P. Rummel | - | Public Arbitrator |
| Walter J. Wylie | - | Public Arbitrator |

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Concurring Arbitrators' Signatures

Richard Djokic
Public Arbitrator, Presiding Chairperson

Signature Date

Phillip P. Rummel
Phillip P. Rummel
Public Arbitrator

January 8, 2014
Signature Date

Walter J. Wylie
Public Arbitrator

Signature Date

JANUARY 10, 2014
Date of Service (For FINRA Dispute Resolution office use only)

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ARBITRATION PANEL

Richard Djokic
Philip P. Rummel
Walter J. Wylie

-
-
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Public Arbitrator, Presiding Chairperson
Public Arbitrator
Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument which is my award.


Concurring Arbitrators' Signatures

Richard Djokic
Public Arbitrator, Presiding Chairperson

Signature Date

Philip P. Rummel
Public Arbitrator

Signature Date


Walter J. Wylie
Public Arbitrator

7 January 2014
Signature Date

JANUARY 10, 2014
Date of Service (For FINRA Dispute Resolution office use only)