

**Award
FINRA Dispute Resolution**

In the Matter of the Arbitration Between:

Claimants

Antietam Industries, Inc.
William Warfel
Janice Warfel

Case Number: 11-00726

vs.

Respondent

Morgan Keegan & Company, Inc.

Hearing Site: Orlando, Florida

Nature of the Dispute: Customers vs. Member

The case proceeded under the Optional All Public Panel Rule/ All Public Panel

REPRESENTATION OF PARTIES

For Claimants Antietam Industries, Inc., William Warfel and Janice Warfel: Jeffrey Erez, Esq., Sonn & Erez, PLC, Fort Lauderdale, Florida.

For Respondent Morgan Keegan & Company, Inc.: Jennifer Tomsen, Esq. and George D. Sullivan, Esq., Greenberg Traurig, P.A., Tampa, Florida.

CASE INFORMATION

Statement of Claim filed on or about: February 17, 2011.

Amended Statement of Claim filed on or about: May 30, 2012.

Antietam Industries, Inc. signed the Submission Agreement: February 10, 2011.

Janice Warfel signed the Submission Agreement: February 10, 2011.

William Warfel signed the Submission Agreement: February 10, 2011.

Statement of Answer filed by Respondent on or about: May 11, 2011.

Statement of Answer to Amended Statement of Claim filed by Respondent on or about: July 9, 2012.

Morgan Keegan & Company, Inc. signed the Submission Agreement: February 9, 2011.

Claimants' Motion for Leave to Amend the Statement of Claim filed on or about: April 17, 2012.

Response to Claimants' Motion for Leave to Amend filed by Respondent on or about: April 26, 2012.

Respondent's Motion to Exclude Evidence of Improper Derivative and Related Misrepresentation Claims filed on or about: May 17, 2012.

Claimants' Opposition to Respondent's Motion to Exclude Evidence of Improper

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 is liable for breach of fiduciary duty, negligence, negligent supervision, fraud, and breach of contract and shall pay to Claimants compensatory damages in the sum of \$100,000.00 plus interest at the Florida legal rate accruing from August 1, 2007 until the date of payment of the Award.

Respondent is liable and shall pay to Claimants punitive damages in the sum of \$100,000.00 pursuant to Florida Statutes §768.737. The Panel finds that the Claimants established by clear and convincing evidence that Respondent was guilty of intentional misconduct or gross negligence in its communication to its broker and the Claimants of the true nature of the RMK investments, the risks associated therewith and its failure to supervise the Claimants' accounts.

Respondent is liable and shall pay to Claimants attorneys' fees in an amount to be determined by a court of competent jurisdiction pursuant to Florida Statutes §57.105.

Respondent is liable and shall pay to Claimants costs in the sum of \$32,735.00.

Respondent is liable and shall pay to Claimants the sum of \$300.00 representing reimbursement of the non-refundable portion of the claim filing fee previously paid by Claimants to FINRA Dispute Resolution.

Any and all claims for relief not specifically addressed herein, including Respondent's request for attorneys' fees, are denied.

FEES

Pursuant to the Code of Arbitration Procedure, 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:

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.

One (1) Decision on a contested motion for the issuance of a subpoena
with one (1) arbitrator @ \$200.00 (maximum of \$600) = \$ 200.00

Total Contested Motion for Issuance of a Subpoena Fees = \$ 200.00

The Panel has assessed the total contested motion for issuance of a subpoena fees of \$200.00 jointly and severally to Claimants.

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:

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00/session = \$ 900.00
Pre-hearing conferences: March 9, 2012 1 session
May 29, 2012 1 session

Three (3) Pre-hearing sessions with the Panel @ \$1,125.00/session = \$ 3,375.00
Pre-hearing conferences: August 26, 2011 1 session
June 28, 2012 1 session
July 13, 2012 1 session

Fifteen (15) Hearing sessions @ \$1,125.00/session = \$16,875.00
Hearing Dates: July 16, 2012 3 sessions
July 17, 2012 3 sessions
July 18, 2012 3 sessions
July 19, 2012 3 sessions
July 20, 2012 3 sessions

Total Hearing Session Fees = \$21,150.00

The Panel has assessed the total hearing session fees of \$21,150.00 to Respondent.

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

Derivative and Related Misrepresentation Claims filed on or about: May 28, 2012.
Respondent's Reply in Support of its Motion to Exclude Evidence of Improper Derivative and Related Misrepresentation Claims filed on or about: June 8, 2012.

Respondent's Motion to Exclude Evidence of Regulatory Actions and Regulatory Settlements filed on or about: June 25, 2012.

Claimants' Opposition to Respondent's Motion to Exclude Evidence of Regulatory Actions and Regulatory Settlements filed on or about: July 3, 2012.

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary duty; negligence; negligent supervision; fraud; and, breach of contract. The causes of action relate to Claimants' investments in the RMK High Income Fund, RMK Strategic Income Fund, RMK Advantage Income Fund, and RMK Multi-Sector High Income Fund.

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

RELIEF REQUESTED

In the Statement of Claim, Claimants requested compensatory damages of between \$100,000.00 and \$500,000.00, punitive damages, interest, costs, attorneys' fees pursuant to Florida Statutes §57.105, and such other and further relief the undersigned arbitrators (Panel) deemed just and proper.

At the close of the hearing, Claimants requested benefit of the bargain damages of \$188,237.00, costs of \$32,735.00, punitive damages, and attorneys' fees.

Respondent requested that the Panel reject Claimants' Statement of Claim in its entirety, order that all of Respondent's attorneys' fees and costs be paid by Claimants, and order that forum fees be borne by Claimants.

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 May 30, 2012, the Panel entered an order which granted Claimants' Motion for Leave to Amend the Statement of Claim.

In the Motion to Exclude Evidence of Regulatory Actions and Regulatory Settlements Respondent asserted, among other things, the following: the regulatory settlements do not alleviate Claimants' burden to prove their allegations, nor do they take away Respondent's right to a fair hearing and to defend itself; mere allegations of wrongdoing are inadmissible and do not assist the trier of fact; the regulatory actions and regulatory settlements are irrelevant and should be excluded under concepts of fairness and the rules of evidence; Claimants are held to a higher standard of proof than the regulators and may not use the regulatory matters as an excuse that the bar should be lowered;

and, introduction of the regulatory matters will unfairly prejudice Respondent and will confuse the issues and unnecessarily extend the proceedings. In their Opposition, Claimants asserted, among other things, the following: the SEC, FINRA and state regulators' findings of fact clearly "relate to the case" because they focus on the same fraud and other illicit conduct at issue; Respondent's motion to exclude evidence violates FINRA's longstanding policy supporting the "liberal introduction of evidence"; Florida law is clear that in all cases involving fraud, the "widest latitude" is allowed in the admission of evidence; even if the Federal Rules of Evidence did apply in this case, which they do not, the regulators' findings and consent orders are unquestionably admissible; and, Respondent's motion to exclude evidence relies on inapplicable, outdated and non-controlling case law that has no precedential value in this arbitration.

On or about July 14, 2012, the Panel entered an order which denied Respondent's Motion to Exclude Evidence of Regulatory Actions and Regulatory Settlements. The order stated, in pertinent part, the following: "1. This Ruling does not affect Respondent's right to make any good faith oral objection to any evidence offered into evidence at the time of its offering; 2. Claimants are precluded from including references to regulatory actions and regulatory settlements in any opening statement should it choose to make one."

In its Motion to Exclude Evidence of Improper Derivative and Related Misrepresentation Claims Respondent asserted, among other things, the following: a federal district court recently vacated an arbitration award involving the RMK funds because the claims are derivative; the Alabama Supreme Court has repeatedly held that claims involving the RMK funds are derivative; and, separately and independently, Claimants have no claim based on the RMK funds' offering and other disclosure materials. In their Opposition, Claimants asserted, among other things, the following: Respondent's motion to exclude violates FINRA's longstanding policy supporting the "liberal introduction of evidence"; Florida law is clear that in all cases involving fraud, parties are afforded wide latitude in the introduction of evidence; Respondent's motion to exclude evidence is vague, overly broad and premature; Respondent fails to provide any authority for the draconian relief it seeks; Claimants' claims are neither "derivative" nor "fund mismanagement" claims; Claimants' claims arise out of duties that Respondent owed to the Claimants regardless of whether they were shareholders of the RMK funds or not; and, Respondent's motion to exclude evidence relies on inapplicable and non-controlling decisions that have no relevance or precedential value in this proceeding. In its Reply in Support of its Motion to Exclude Evidence of Improper Derivative and Related Misrepresentation Claims Respondent asserted, among other things, the following: contrary to Claimants' arguments, their claims are derivative in nature; FINRA rules regarding the introduction of evidence do not apply if the claims cannot even be heard by FINRA; and, the authority cited by Respondent relates to these same funds and claims.

During the evidentiary hearing, the Panel denied Respondent's Motion to Exclude Evidence of Improper Derivative and Related Misrepresentation Claims subject to objections if the evidence were offered.

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.

ARBITRATION PANEL

Robert E. Thompson	-	Public Arbitrator, Presiding Chairperson
Robert L. Chisolm	-	Public Arbitrator
Christopher L. Mass	-	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

/s/

Robert E. Thompson
Public Arbitrator, Presiding Chairperson

Signature Date

/s/

Robert L. Chisolm
Public Arbitrator

Signature Date

/s/

Christopher L. Mass
Public Arbitrator

Signature Date

August 2, 2012
Date of Service (For FINRA Dispute Resolution office use only)


FINRA Dispute Resolution
Arbitration No. 11-00726
Award Page 6 of 6

ARBITRATION PANEL

Robert E. Thompson	-	Public Arbitrator, Presiding Chairperson
Robert L. Chisolm	-	Public Arbitrator
Christopher L. Mass	-	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



 Robert E. Thompson
 Public Arbitrator, Presiding Chairperson

8/2/2012

 Signature Date

 Robert L. Chisolm
 Public Arbitrator

 Signature Date

 Christopher L. Mass
 Public Arbitrator

 Signature Date

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

FINRA Dispute Resolution
Arbitration No. 11-00728
Award Page 5 of 9

ARBITRATION PANEL

Robert E. Thompson	-	Public Arbitrator, Presiding Chairperson
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Christopher L. Mass	-	Public Arbitrator

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Robert E. Thompson
Public Arbitrator, Presiding Chairperson

Signature Date



Robert L. Chisolm
Public Arbitrator

8-2-2012
Signature Date

Christopher L. Mass
Public Arbitrator

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FINRA Dispute Resolution
Arbitration No. 11-00726
Award Page 6 of 6

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Robert E. Thompson
Public Arbitrator, Presiding Chairperson

Signature Date

Robert L. Chisolm
Public Arbitrator

Signature Date



Christopher L. Mass
Public Arbitrator

8/2/12

Signature Date

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

**FINRA Dispute Resolution
Southeast Processing Center
Boca Center Tower 1
5200 Town Center Circle
Boca Raton, FL 33486
Email: FL-Main@finra.org
Phone: 561-416-0277
Fax: 301-527-4868**



Number of Pages including the Cover Sheet: _____

Date: 08/02/2012

Case Number: 11-00726

Case Name: William Warfel, Janice Warfel and Antietam Industries, Inc. vs. Morgan Keegan & Company, Inc.

To: Jeffrey Erez

Phone: 954-763-4700 Fax: 954-763-1866

From: William Cassidy
Senior Case Administrator

Message:

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VIA FACSIMILE AND MAIL

August 2, 2012

Jeffrey Erez, Esq.
Sonn & Erez, PLC
500 E. Broward Blvd.
Suite 1700
Fort Lauderdale, FL 33394.

Subject: FINRA Dispute Resolution Arbitration Number 11-00726
William Warfel, Janice Warfel and Antletam Industries, Inc. vs. Morgan Keegan &
Company, Inc.

Dear Mr. Erez:

Enclosed please find the decision reached by the arbitrator(s) in the above-referenced matter.

Responsibility to Pay Monetary Award

FINRA rules provide that all monetary awards shall be paid within 30 days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. An award shall bear interest from the date of the award:

- If not paid within 30 days of receipt;
- If the award is the subject of a motion to vacate which is denied; or
- As specified by the panel in the award.

Interest shall be assessed at the legal rate, if any, then prevailing in the state where the award was rendered, or at a rate set by the arbitrator(s).

Expedited Suspension Proceedings for Non-Payment of Awards

Article VI, Section 3 of the FINRA By-Laws and FINRA Rule 9554 permit FINRA to suspend or cancel the registration of any firm or associated person that fails to comply with a FINRA arbitration award.

Firms are required to notify FINRA in writing within 30 days of receipt of an award that they or their associated persons have paid or otherwise complied with the award, or to identify a valid basis for non-payment. We also request that prevailing claimants notify us in writing when their awards have not been paid within 30 days of receipt of the award.

Written notification concerning award compliance or lack thereof should be directed to:

Investor protection. Market Integrity.

Dispute Resolution
Southeast Regional Office

Boca Center Tower 1
5200 Town Center Circle
Suite 200
Boca Raton, FL
33486-1015

t 561 416 0277
f 301 527 4868
www.finra.org

David Carey
FINRA Dispute Resolution
One Liberty Plaza, 165 Broadway, 52nd Floor
New York, NY 10006
212-858-4333 (tel) | 301-527-4706 (fax) | david.carey@finra.org (email)

Right to File Motion to Vacate Award

FINRA rules provide that, unless the applicable law directs otherwise, all awards rendered are final and are not subject to review or appeal. Accordingly, FINRA has no authority to vacate this award. Any party wishing to challenge the award must make a motion to vacate the award in a federal or state court of appropriate jurisdiction pursuant to the Federal Arbitration Act, 9 U.S.C. § 10, or applicable state statute. There are limited grounds for vacating an arbitration award, and a party must bring a motion to vacate within the time period specified by the applicable statute. If you are not represented by counsel and wish to challenge the award, we urge you to seek legal advice regarding any rights or remedies available to you.

Forum Fees

You will receive under separate cover an invoice that reflects the fees assessed and any outstanding balance or refund due. Fees are due and payable to FINRA Dispute Resolution upon receipt of the invoice and should be sent to the address specified on the invoice. Any applicable refunds will also be sent under separate cover approximately 45 days after the case closes. All questions regarding payment of fees and refunds should be directed to FINRA Finance at (240) 388-5910.

Arbitrator Evaluation

FINRA encourages parties to complete Arbitrator Evaluation Forms at the conclusion of every case. We will utilize your comments in our ongoing efforts to evaluate and improve the services our forum provides. You can complete the Arbitrator Evaluation Form on our website at www.finra.org/arbevaluation.

Party Submissions to Arbitrators After a Case Closes

FINRA rules provide that parties may not submit documents to arbitrators in cases that have been closed except under the following limited circumstances: 1) as ordered by a court; 2) at the request of any party within 10 days of service of an award, for typographical or computational errors, or mistakes in the description of any person or property referred to in the award; or 3) if all parties agree and submit documents within 10 days of service of an award. Any documents, if submitted, must be sent through FINRA.

Questions Concerning Award

Should you have any questions, please contact me at the phone number or email address provided below. Parties should not directly contact arbitrators under any circumstances.

Very truly yours,

William J. Cassidy/es

William J. Cassidy
Senior Case Administrator
Phone: 561-416-0277
Fax: 301-527-4868
FL-Main@finra.org

WJC:es3:LC09A
idr: 09/14/2011

RECIPIENTS:

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