

**Award  
FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

**Name of the Claimants**

Harold Sweet and Georgia Sweet

**Case Number:** 08-00432

**Name of the Respondent**

Morgan Keegan & Company, Inc.

**Hearing Site:** Little Rock, Arkansas

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

Harold Sweet and Georgia Sweet, hereinafter collectively referred to as "Claimants":  
Andrew Stoltmann, Esq., Stoltmann Law Offices, P.C., Chicago, Ill.

Morgan Keegan & Company, Inc., hereinafter referred to as "Respondent": S.  
Lawrence Polk, Esq., Sutherland Asbill & Brennan, LLP, Atlanta, Georgia.

**CASE INFORMATION**

Statement of Claim filed on or about: February 15, 2008.

Claimants signed the Uniform Submission Agreement: February 11, 2008.

Statement of Answer filed by Respondent on or about: May 9, 2008.

Respondent signed the Uniform Submission Agreement: March 5, 2008.

**CASE SUMMARY**

Claimants asserted the following causes of action: 1) suitability; 2) misrepresentation; 3) omissions; 4) violation of the Arkansas Securities Act; 5) breach of fiduciary duty; 6) violations of NASD conduct rules; 7) negligence; 8) failure to supervise; 9) breach of contract; 10) fraudulent misrepresentations; and 11) vicarious liability. The causes of action relate to the Claimants' investments in, including but not limited to, Regions Morgan Keegan High Income Fund, Regions Morgan Keegan Advantage Income Fund; Regions Morgan Keegan Multi-Sector High Income Fund; and Regions Morgan Keegan Strategic Income Fund all of which had allocations in collateralized obligations in bonds, loans and mortgages.

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

### **RELIEF REQUESTED**

Claimants requested: 1) compensatory damages in the amount of \$135,000.00; 2) punitive damages in the amount of \$135,000.00; 3) interest on the foregoing amount; 4) attorneys' fees pursuant to Arkansas Code Section 23-42-105; 5) costs; and 6) other relief deemed just.

Respondent requested: 1) dismissal of the Statement of Claim in its entirety; 2) attorneys' fees; 3) costs; and 4) fees.

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

During the evidentiary hearing, Respondent made an *ore tenus* motion to strike and a motion *in limine* regarding evidence. Three elements of those motions were excluded by agreement of the parties and the fourth element was determined at the time of its introduction into evidence. The Panel denied the motions.

During the evidentiary hearing, Respondent made an *ore tenus* motion for a directed verdict at the end of Claimants' proof. The Panel denied the motion.

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:

Respondent is found liable under the cause of action of breach of fiduciary duty and shall pay to Claimants, jointly and severally, \$85,000.00 in compensatory damages.

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

### **FEES**

Pursuant to the Code of Arbitration Procedures (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, Respondent is a party and a member firm.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournment fees assessed during these proceedings.

**Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

There were no Three-Day cancellation fees assessed during these proceedings.

**Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

There were no injunctive relief fees assessed during these proceedings.

**Hearing Session Fees and Assessments**

The Panel has assessed hearing session fees for each session conducted or each decision rendered on either a discovery-related motion on the papers or a contested motion for the issuance of a subpoena. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), which lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Decision on discovery-related motion on the papers with one (1) arbitrator @ \$200.00/decision Respondent submitted one (1) discovery-related motion	= \$ 200.00
One (1) Decision on a contested motion for the issuance of a subpoena with one (1) arbitrator @ \$200.00	= \$ 200.00

One (1) Pre-hearing session with a single arbitrator @ \$450.00/session = \$ 450.00  
Pre-hearing conference: September 5, 2008 1 session

One (1) Pre-hearing session with Panel @ \$1,125.00/session = \$1,125.00  
Pre-hearing conference: June 16, 2008 1 session

Seven (7) Hearing sessions @ \$1,125.00/session = \$7,875.00  
Hearing Dates: November 11, 2008 2 sessions  
November 12, 2008 2 sessions  
November 13, 2008 2 sessions  
November 14, 2008 1 session

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Total Hearing Session Fees = \$9,850.00

The Panel has assessed \$ 4,925.00 of the hearing session fees to Claimant.  
The Panel has assessed \$ 4,925.00 of the hearing session fees to Respondent.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs assessed during these proceedings.

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

**ARBITRATION PANEL**

Jay Robinson - Public Arbitrator, Presiding Chairperson  
John Davis - Public Arbitrator  
David Coates - Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

      /s/        
Jay Robinson  
Public Arbitrator, Presiding Chairperson

November 18, 2008  
Signature Date

      /s/        
John Davis  
Public Arbitrator

November 21, 2008  
Signature Date

      /s/        
David Coates  
Non-Public Arbitrator

November 19, 2008  
Signature Date

November 24, 2008  
Date of Service (For FINRA Dispute Resolution use only)

**Concurring Arbitrators' Signatures**

/s/  
Joyce F. Glucksman  
Public Arbitrator, Presiding Chairperson

November 3, 2008  
Signature Date

/s/  
Robert A. Dean  
Public Arbitrator

November 3, 2008  
Signature Date

/s/  
Perry Lee Taylor, Jr.  
Non-Public Arbitrator

November 3, 2008  
Signature Date

November 4, 2008  
Date of Service (For FINRA Dispute Resolution office use only)