

FINRA

Financial Industry Regulatory Authority

VIA REGULAR MAIL/VIA FACSIMILE

PAGE(S): 13

205-930-9054

September 16, 2009

Richard S. Frankowski, Esq.
 Burke, Harvey & Frankowski LLC
 2151 Highland Avenue
 Suite 120
 Birmingham, AL 35205

Subject: FINRA Dispute Resolution Arbitration Number 08-01677
 Marnita M. Crow, Jan C. Scruggs, Wayne Higgins, executor of Lorraine Higgins
 Estate, et. al. vs. Morgan Keegan and Co. Inc.

Dear Mr. Frankowski:

In accordance with the Code of Arbitration Procedure I enclose the decision reached by the arbitrator(s) in the above-referenced matter.

Responsibility to Pay Monetary Award

Pursuant to the Code of Arbitration Procedure¹ the responsible party must pay any monetary awards within 30 days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. If an award is not paid within 30 days, the responsible party must pay post-judgment interest at the legal rate or as provided in the award by the arbitrator(s).

Tracking Payment of Award

FINRA Dispute Resolution has implemented a system of monitoring and tracking compliance with arbitration awards by members and associated persons. We request prevailing claimants to notify us in writing when their awards have not been paid within 30 days of receipt of the award, and require member firms to certify in writing that they have complied with awards against them or their associated persons.

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

Avichai Badash
 FINRA Dispute Resolution

¹Customer Code Rule 12904
 Industry Code Rule 13904
 Old Code Rule 10330(h)

One Liberty Plaza
165 Broadway, 52nd Floor
New York, NY 10006
212-858-4325 (tel) 301-527-4739 (fax)

Expedited Suspension Proceedings for Non-Payment of Awards

Members and associated persons who do not comply with an award in a timely manner are subject to expedited suspension proceedings as set forth in Rule 9554.

Right to File Motion to Vacate Award

All awards are **final** and are not subject to review or appeal by the arbitration panel or by FINRA Dispute Resolution. 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. Parties and counsel should consult federal and state statutes and case law to determine the appropriate court, standards, and time limitations in their individual circumstances. FINRA Dispute Resolution is not authorized to provide legal advice concerning a motion to vacate.

A motion to vacate, confirm, or modify an arbitration award is a matter only between the parties to the arbitration. FINRA Dispute Resolution is not a proper party to post-award motions and should not be named as a party to any post-award motion. However, for cases filed on or after April 12, 2004, if the award contains expungement relief, or if a party seeks expungement relief in court, there may be a duty to name FINRA as a party as provided in Rule 2080.

Questions Concerning Award

Please direct any questions regarding this award to me. **The parties must not contact the arbitrators directly.**

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 remitted to the address specified on the invoice.**

Any applicable refunds will also be sent under separate cover approximately 45 days after the case closes. Pursuant to the Code of Arbitration Procedure, "Any refunds of fees or costs incurred under the Code will be paid directly to the named parties, even if a non-party made payment on behalf of the named parties."²

All questions regarding payment of fees and refunds should be directed to FINRA Finance at (240) 386-5910.

Arbitration Evaluation

² Customer Code Rule 12902(e)
Industry Code Rule 13902(e)

As a service organization, the primary goals of FINRA Dispute Resolution are the integrity of its process and the satisfaction of its clients. To ensure that we are meeting your needs and satisfying our commitment to you, **we need to hear from you**. If you have not already done so, please take the time to complete an evaluation of our services, the process, and the arbitrator(s) assigned to your case. For your convenience, we have now made it possible for you to evaluate our services using the Internet. Please direct your Web browser to <http://www.finra.org/arbevaluation>.

If you do not have Internet access, or have difficulty completing the evaluation form online, we will send a hard copy evaluation form to you. The completed evaluation form should be mailed in to the address indicated below. If you need a hard copy of the evaluation form, please contact the undersigned. Whenever possible, however, we encourage you to use the new online version, as it will help us to review your feedback in a more expeditious manner. Your feedback is a valuable and necessary component in our efforts to serve you better.

Very truly yours,

/S/

Nene E. Ndem
Case Administrator
Phone: 561-416-0277
Fax: 301-527-4868
SEProcessingCenter@finra.org

NEN:kr1:LC09A
idr: 08/25/2009

RECIPIENTS:

Richard S. Frankowski, Esq., Paul and Shirley Vanderburg
Burke, Harvey & Frankowski LLC, 2151 Highland Avenue, Suite 120, Birmingham, AL
35205

Richard S. Frankowski, Esq., Janice C. Ware
Burke, Harvey & Frankowski LLC, 2151 Highland Avenue, Suite 120, Birmingham, AL
35205

Richard S. Frankowski, Esq., Lorraine Higgins Estate
Burke, Harvey & Frankowski LLC, 2151 Highland Avenue, Suite 120, Birmingham, AL
35205

Richard S. Frankowski, Esq., Ronald B. and Katharine H. Killary
Burke, Harvey & Frankowski LLC, 2151 Highland Avenue, Suite 120, Birmingham, AL
35205

Richard S. Frankowski, Esq., Marnita M. Crow and Jan C. Scruggs
Burke, Harvey & Frankowski LLC, 2151 Highland Avenue, Suite 120, Birmingham, AL
35205

Richard S. Frankowski, Esq., Shirley Diane Jones
Burke, Harvey & Frankowski LLC, 2151 Highland Avenue, Suite 120, Birmingham, AL
35205

Richard S. Frankowski, Esq., Louis M. Kelley
Burke, Harvey & Frankowski LLC, 2151 Highland Avenue, Suite 120, Birmingham, AL
35205

Joshua D. Jones, Esq., Morgan Keegan & Company Inc
Maynard Cooper & Gale, PC, 2400 Regions/Harbert Plaza, 1901 Sixth Ave., North,
Birmingham, AL 35203

**Award
FINRA Dispute Resolution**

In the Matter of the Arbitration Between:

Names of the Claimants

Marnita M. Crow and Jan C. Scruggs
Wayne Higgins, Executor of the Estate of Lorraine Higgins
Shirley Diane Jones
Louis M. Kelley
Ronald B. and Katherine H. Killary
Paul and Shirley Vanderburg
Janice C. Ware

Case Number: 08-01677

Name of the Respondent

Morgan Keegan & Company, Inc.

Hearing Site: Birmingham, Alabama

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Marnita M. Crow ("Crow") and Jan C. Scruggs ("Scruggs"), Wayne Higgins, Executor of the Estate of Lorraine Higgins ("Higgins"), Shirley Diane Jones ("Jones"), Louis M. Kelley ("Kelley"), Ronald B. and Katherine H. Killary (collectively "Killary"), Paul and Shirley Vanderburg (collectively "Vanderburg") and Janice C. Ware ("Ware"), hereinafter collectively referred to as "Claimants": Richard S. Frankowski, Esq., Burke, Harvey & Frankowski, LLC, Birmingham, Alabama.

For Morgan Keegan & Company, Inc. ("Morgan Keegan"), hereinafter referred to as "Respondent": Peter Fruin, Esq., John N. Bolus, Esq. and Donald F. Winningham, III, Esq., Maynard Cooper & Gale, P.C., Birmingham, Alabama.

CASE INFORMATION

Statement of Claim filed on or about: May 20, 2008.
Claimant Crow signed the Submission Agreement: February 5, 2008.
Claimant Scruggs signed the Submission Agreement: March 3, 2008.
Claimant Higgins signed the Submission Agreement: April 28, 2008.
Claimant Jones signed the Submission Agreement: February 4, 2008.
Claimant Kelley signed the Submission Agreement: February 5, 2008.
Claimant Killary signed the Submission Agreement: March 9, 2008.
Claimant Vanderburg signed the Submission Agreement: February 20, 2008.
Claimant Ware signed the Submission Agreement: February 14, 2008.
Respondent's Answer to the Statement of Claim filed by Marnita M. Crow and Jan C. Scruggs filed by Respondent on or about: August 7, 2008.
Respondent's Answer to the Statement of Claim filed by Ronald and Katherine Killary on or about: August 7, 2008.
Respondent's Answer to the Statement of Claim filed by Lorraine Higgins on or about:

August 7, 2008.

Respondent's Answer to the Statement of Claim filed by Paul and Shirley Vanderburg on or about: August 7, 2008.

Respondent's Answer to the Statement of Claim filed by Louise Kelley on or about: August 7, 2008.

Respondent's Answer to the Statement of Claim filed by Janice Ware on or about: August 7, 2008.

Respondent's Answer to the Statement of Claim filed by Shirley Jones on or about: August 7, 2008.

Respondent signed the Submission Agreement: June 30, 2008.

Motion to Stay all Proceedings Pending Claimants' Compliance with FINRA Rule 12204(b)(2) filed by Respondent on or about: April 17, 2009.

Response to Respondent's Motion to Stay all Proceedings Pending Claimants' Compliance with FINRA Rule 12204(b)(2) filed by Claimants on or about: April 30, 2009.

Reply in Support of Motion to Stay filed by Respondent on or about: May 11, 2009.

CASE SUMMARY

Claimants asserted the following causes of action: 1) controlling person liability-Section 20(A) of the Exchange Act; 2) breach of fiduciary duty; 3) breach of contract; 4) unsuitability; 5) violation of securities regulatory rules; 6) violation of the Alabama Securities Act; 7) fraudulent suppression; and, 8) common law claims. The causes of action relate to Claimants' investment in the Morgan Keegan Select Intermediate Bond Fund-C, a Morgan Keegan proprietary mutual fund.

Unless specifically admitted in its respective Answers to Claimants' Statement of Claim, 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 in an amount between \$100,000.00 and \$500,000.00, comprised of all net out of pocket losses in the accounts, all charges to the accounts and the lost earnings that the accounts would have earned if it had been properly invested or benefit of the bargain damages; 2) pre-judgment interest at the maximum statutory rate on all losses sustained from the date of the transactions until the date of the award; 3) post-judgment interest at the maximum statutory interest rate; 4) rescission; 5) all costs of these proceedings, including hearing session fees and costs in bringing this action to protect Claimants' rights and best interests; 6) attorneys' fees under Alabama statutory laws, common law and under the NASD Rules of Fair Practice; 7) additional costs and expenses including expert witness fees; and, 8) punitive damages.

Respondent requested: 1) that the Panel reject Claimants' Statement of Claim in its entirety; 2) attorneys' fees and costs; and, 3) that forum fees be borne by Claimants.

OTHER ISSUES CONSIDERED AND DECIDED

The Panel acknowledges that they have each read the pleadings and other materials filed by the parties.

On or about February 6, 2009, Claimants filed with FINRA Dispute Resolution a notice of their non-participation and voluntary opt-out of any class actions filed against Respondent ("opt-out notice"). In their opt-out notice, Claimants further stated that this non-participation applies only to Respondent and that Claimants reserve their right to participate in any existing or future class actions, if other defendants [besides Respondent] are named.

Respondent filed a Motion to Stay in which it requested that the Panel stay this action in its entirety due to Claimants' failure to file a sufficient notice that they will opt out of the relevant class action proceedings in compliance with FINRA Rule 12204(b)(2). In response, Claimants asserted that they had complied with FINRA Rule 12204 by providing the February 6, 2009 opt-out notice to FINRA Dispute Resolution. Claimants further asserted that they opted out of any class actions with respect to their claims solely against Respondent because: it preserves a possible judicial remedy against parties who are not subject to the FINRA arbitration process; and, it allows Claimants a venue to be heard, while also preventing Claimants from pursuing more than once against Respondent. Following a telephonic pre-hearing conference with the parties, the Panel issued an Order dated June 15, 2009, which denied Respondent's Motion to Stay. The Panel found that Claimants' opt-out notice complied with FINRA Rule 12204(b)(2).

At the outset of the hearing, Claimants' counsel notified the Panel that Claimant Ware had settled her claims against Respondent. Accordingly, the Panel made no determination with respect to the claims asserted by Claimant Ware against Respondent.

During the evidentiary hearing, Claimants notified the Panel that Claimant Lorraine Higgins is deceased and requested, without opposition, that Wayne Higgins, Executor of the Estate of Lorraine Higgins, be substituted in her place as a Claimant in this matter. The Panel granted Claimants' request.

During the evidentiary hearing, Claimants Crow, Scruggs, Higgins, Jones, Kelley, Killary and Vanderburg clarified that their common law claims included a claim for negligent supervision.

At the close of Claimants' case-in-chief, Respondent moved to dismiss Claimants Crow, Scruggs, Higgins, Jones, Kelley, Killary and Vanderburg's claims, asserting that these Claimants failed to prove their case, to which said Claimants objected. The Panel heard oral argument by the parties on Respondent's motion and thereafter granted Respondent's motion in part by dismissing with prejudice Claimants Crow, Scruggs, Higgins, Jones, Kelley, Killary and Vanderburg's claims of breach of contract and negligent supervision. The Panel denied Respondent's motion to dismiss Claimants Crow, Scruggs, Higgins, Jones, Kelley, Killary and Vanderburg's other claims.

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:

Claimants Crow, Scruggs, Higgins, Jones, Kelley, Killary and Vanderburg's claims of breach of contract and negligent supervision are dismissed with prejudice.

Claimants Crow, Scruggs, Killary and Vanderburg's claims are denied in their entirety.

Respondent is liable to Claimants Kelley, Higgins and Jones on their claims of breach of fiduciary duty and unsuitability. Accordingly, Respondent shall pay compensatory damages as follows:

- \$72,624.00 to Claimant Kelley
- \$17,333.00 to Claimant Higgins
- \$31,478.00 to Claimant Jones

Respondent is liable for and shall reimburse Claimants the amount of \$26,312.98, representing costs incurred by Claimants' counsel on behalf of Claimants in connection with this arbitration proceeding.

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

Any and all relief not specifically addressed herein, including Claimants Crow, Scruggs, Higgins, Jones, Kelley, Killary and Vanderburg's request for punitive 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. Respondent is a party and a member firm. Accordingly, the following member fees have been assessed in this matter:

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

Discovery-Related Motion Fees

Fees apply for each decision rendered on a discovery-related motion.

One (1) Decision on discovery-related motion on the papers with (1) one arbitrator @ \$200.00	= \$ 200.00
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Claimants submitted one discovery-related motion

Total Discovery-Related Motion Fees	= \$ 200.00
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The Panel has assessed the total \$200.00 discovery-related motion fee to Respondent.

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 One (1) arbitrator @ \$200.00	= \$200.00
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Total Contested Motion for Issuance of Subpoenas Fees	= \$200.00
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The Panel has assessed the total \$200.00 of the contested motion for issuance of subpoena fees jointly and severally to all 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:

One (1) Pre-hearing session with a single arbitrator @ \$450.00/session Pre-hearing conference: April 13, 2009	1 session = \$ 450.00
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Four (4) Pre-hearing sessions with Panel @ \$1,125.00/session Pre-hearing conferences: September 25, 2008	1 session = \$ 4,500.00
October 6, 2008	1 session
October 16, 2008	1 session
June 15, 2009	1 session

Twenty-four (24) Hearing sessions with Panel @ \$1,125.00/session	= \$27,000.00
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Hearing Dates:	August 24, 2009	2 sessions
	August 25, 2009	2 sessions
	August 26, 2009	2 sessions
	August 27, 2009	2 sessions
	August 28, 2009	2 sessions
	August 31, 2009	2 sessions
	September 1, 2009	2 sessions
	September 2, 2009	2 sessions
	September 8, 2009	2 sessions
	September 9, 2009	2 sessions
	September 10, 2009	2 sessions
	September 11, 2009	2 sessions

Total Hearing Session Fees	=\$31,950.00
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The Panel has waived \$1,125.00 of the hearing session fees.

The Panel has assessed \$30,825.00 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

<i>John G. Manley</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Ronald Griffith Wilkins</i>	-	<i>Public Arbitrator</i>
<i>David L. Walby</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

/s/ 9/16/09

John G. Manley
Public Arbitrator, Presiding Chairperson Signature Date

/s/ 9/16/09

Ronald Griffith Wilkins
Public Arbitrator Signature Date

/s/ 9/16/09

David L. Walby
Non-Public Arbitrator Signature Date

September 16, 2009
Date of Service (For FINRA Dispute Resolution office use only)

MEM

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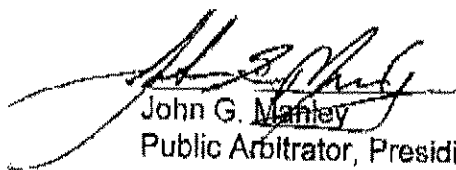
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Concurring Arbitrators' Signatures


 John G. Manley
 Public Arbitrator, Presiding Chairperson

9-16-2009
 Signature Date

 Ronald Griffith Wilkins
 Public Arbitrator

 Signature Date

 David L. Walby
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 Signature Date

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<i>David L. Walby</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

 John G. Manley
 Public Arbitrator, Presiding Chairperson

Ronald Griffith Wilkins
 Ronald Griffith Wilkins
 Public Arbitrator

 Signature Date

9/16/2008
 Signature Date

 David L. Walby
 Non-Public Arbitrator

 Signature Date

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

FINRA Dispute Resolution
Arbitration No. 08-01677
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ARBITRATION PANEL

John G. Manley	-	Public Arbitrator, Presiding Chairperson
Ronald Griffith Wilkins	-	Public Arbitrator
David L. Walby	-	Non-Public Arbitrator

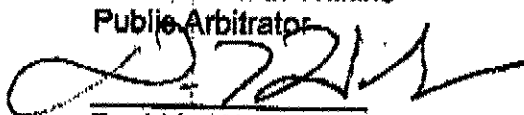
Concurring Arbitrators' Signatures

 John G. Manley
 Public Arbitrator, Presiding Chairperson

Signature Date

 Ronald Griffith Wilkins
 Public Arbitrator

Signature Date



 David L. Walby
 Non-Public Arbitrator

9/16/09

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