

**Award  
FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Names of the Claimants

General Henry Cobb, Jr.  
Cobb Restaurant Group  
CIC Capital Management Company, LLC  
Cobb Investment Company, LLC  
CIC Financial

Case Number: 08-01465

Names of the Respondents

Morgan Keegan & Company  
Joe Hamilton

Hearing Site: Birmingham, Alabama

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Nature of the Dispute: Customer vs. Member and Associated Person.

**REPRESENTATION OF PARTIES**

For General Henry Cobb, Jr., Cobb Restaurant Group, CIC Capital Management Company, LLC, Cobb Investment Company, LLC and CIC Financial, hereinafter collectively referred to as "Claimants": Richard S. Frankowski, Esq., Burke Harvey & Frankowski, L.L.C., Birmingham, Alabama; and, Jeffery Erez, Esq. and Jeffrey Sonn, Esq., Sonn & Erez, PLC, Fort Lauderdale, Florida.

For Morgan Keegan & Company ("Morgan Keegan") and Joe Hamilton ("Hamilton"), hereinafter collectively referred to as "Respondents": Peter S. Fruin, Esq. and Bradley B. Rounsaville, Esq., Maynard Cooper & Gale, P.C., Birmingham, Alabama.

**CASE INFORMATION**

Statement of Claim filed on or about: May 5, 2008.

Claimant General Henry Cobb, Jr., signed the Submission Agreement: April 21, 2008.

Claimant Cobb Restaurant Group signed the Submission Agreement: May 19, 2008.

Claimant CIC Capital Management Company, LLC signed the Submission Agreement: May 19, 2008.

Claimant Cobb Investment Company, LLC signed the Submission Agreement: May 19, 2008.

Claimant CIC Financial signed the Submission Agreement: May 19, 2008.

Respondent Morgan Keegan signed the Submission Agreement: June 30, 2008.

Statement of Answer filed by Respondents on or about: August 8, 2008.

Respondent Hamilton did not file an executed Submission Agreement.

Motion to Stay All Proceedings Pending Claimants' Compliance with FINRA Rule 12204(b) (2) filed by Respondents on or about: April 15, 2009.

Response to Respondents' 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 Stay All Proceedings Pending Claimants' Compliance with FINRA Rule 12204(b) (2) filed by Respondents on or about: May 7, 2009.

### **CASE SUMMARY**

Claimants asserted the following causes of action: (1) breach of fiduciary duty; (2) breach of contract; (3) unsuitability; (4) violations of Securities Regulatory Rules; (5) violations of the Alabama Securities Act; (6) common law claims; (7) controlling person liability-Section 20(a) of the Exchange Act; and, (8) failure to supervise. The causes of action relate to the purchase of the following Regions Morgan Keegan ("RMK") Bond Funds in Claimants' accounts: RMK Multi-Sector High Income Fund; RMK Advantage Income Fund; RMK Select High Income - A; RMK High Income Fund; and, RMK Strategic Income Fund. The causes of action also relate to Claimants' investments in: Prospect Capital Corporation; GNMA CMO Series 2003; Triangle Capital Corp.; Lord Abbett Bond Debenture - A; Pioneer High Yield Fund - A; and, Dividend Capital Strategic Global Realty Fund.

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

### **RELIEF REQUESTED**

In the Statement of Claim, Claimants requested damages in excess of \$4,000,000.00, including, but not limited to: (1) all net out of pocket loses in the accounts; (2) all charges to the account; (3) the lost earnings that the account would have earned if it had been properly invested; (4) pre-judgment interest at the maximum statutory interest rate pursuant to Alabama law; (5) post-judgment interest at the maximum statutory interest rate; (6) rescission of the purchases of the Fund shares; (7) costs; (8) attorneys' fees; (9) costs and expenses, including expert witness fees; and, (10) punitive damages.

At the close of the hearing, Claimants clarified their compensatory damage request to be \$4,379,941.00 or, in the alternative, recessionary damages of \$ 3,311,842.00 under the Alabama Securities Act.

Respondents requested: (1) that the Panel reject Claimants' Statement of Claim; (2) attorneys' fees and costs; and, (3) forum fees.

### **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 2, 2009, Claimants filed with FINRA Dispute Resolution a notice of voluntary opt-out of any class action with respect only to Respondent Morgan Keegan. In their correspondence, Claimants stated that if other defendants are named in existing or future class actions, Claimants reserve the right to participate in any such action as to those defendants.

Respondents filed a Motion to Stay All Proceedings Pending Claimants' Compliance with FINRA Rule 12204(b) (2) in which they asserted, among other things, that Claimants' failure to file a notice in this proceeding, opting out of the relevant class actions was an effort by Claimants to pursue the same claims in multiple forums, thereby violating FINRA Rule 12204(b) (2). In their response to said motion, Claimants asserted, among other things, that because the class actions do not involve the same claims or the same defendants, and because Claimants have already opted out of claims against Respondent Morgan Keegan in any class action, Respondents' Motion to Stay should be denied. After considering all submissions by Respondents and Claimants on the issue, the Panel issued an Order dated May 19, 2009 which denied Respondents' motion and ordered Claimants to file a notice by May 29, 2009 to state that they will not participate in the following class action suits: In re Regions Morgan Keegan Closed-End Mutual Fund Litigation, Civil Action No. 2:07-CV-2830 and In re Regions Morgan Keegan Open-End Mutual Fund Litigations, Civil Action No. 2:07-CV-2784-dkv.

In compliance with the Panel's Order, Claimants filed with FINRA Dispute Resolution an Amended Notice of Non-Participation in Class Actions dated May 28, 2009.

Respondent Hamilton did not file with FINRA Dispute Resolution a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration (the "Code") and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

At the outset of the evidentiary hearing, the parties entered into a written stipulation which stated that the parties stipulate and agree to the following:

1. The only investments at issue in this arbitration are: RMK Select High Income Fund;, RMK High Income Fund; RMK Strategic Income Funds; RMK Advantage Income Fund; and, RMK Multi-Sector High Income Fund (collectively, "the Funds").
2. The following investments are not at issue in this arbitration: Prospect Capital Corp., GNMA CMO Series 2003; Triangle Capital Corp., Dividend Capital Strategic Global Realty Fund; Lord Abbett Bond Debenture; and, Pioneer High Yield Fund.
3. Because the investments listed in paragraph (2) are not at issue in this arbitration, any and all claims relating to those investments are dismissed with prejudice.
4. Because Claimants General Henry Cobb, Jr. and Cobb Restaurant Group did not purchase any of the Funds at issue, any and all claims brought by these two claimants are dismissed with prejudice.

During the evidentiary hearing, Respondent Hamilton requested expungement of all references to this matter from his Central Registration Depository ("CRD") records, to which Claimants objected.

At the close of Claimants' case-in chief, Respondents asserted a Motion to Dismiss on the basis that Claimants had not set forth a case for which relief could be granted, to which Claimants objected. The Panel denied Respondents' 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, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

The Panel finds in favor of Claimants CIC Capital Management Company, LLC, Cobb Investment Company, LLC and CIC Financial and against Respondent Morgan Keegan on the basis of misrepresentation and failure to disclose the true nature of the RMK Funds.

Respondent Morgan Keegan is liable and shall pay to Claimants CIC Capital Management Company, LLC, Cobb Investment Company, LLC and CIC Financial compensatory damages in the amount of \$1,072,998.00, plus pre-award interest at the rate of 6% per annum accruing from April 13, 2009 until February 12, 2010.

Claimants' claims against Respondent Hamilton are denied in their entirety.

Respondent Hamilton's request for expungement is denied.

Each party shall bear its own costs.

Any and all relief not specifically addressed herein, including Claimants' request for punitive damages and the parties' respective requests for attorneys' fees, are denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee = \$ 1,800.00

*\*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 Morgan Keegan is assessed the following:

Member surcharge = \$ 2,800.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$ 5,000.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

August 11 - 14, 2009, adjournment by joint request of parties = \$ 1,200.00

The Panel has assessed \$600.00 of the adjournment fees jointly and severally to Claimants.

The Panel has assessed \$600.00 of the adjournment fees jointly and severally to Respondents.

**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 contested motions for the issuance of a subpoena  
(1) one arbitrator @ \$200.00 = \$ 200.00

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Total Contested Motion for Issuance of Subpoenas Fees = \$ 200.00

The Panel has assessed \$100.00 of the contested motion for issuance of subpoenas fees jointly and severally to Claimants.

The Panel has assessed \$100.00 of the contested motion for issuance of subpoenas fees jointly and severally to Respondents.

**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), which 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: November 24, 2009 1 session  
November 30, 2009 1 session

Four (4) Pre-hearing sessions with Panel @ \$1,200.00/session = \$ 4,800.00  
Pre-hearing conferences: October 9, 2008 1 session  
June 1, 2009 1 session  
July 23, 2009 1 session  
January 18, 2010 1 session

Eleven (11) Hearing sessions @ \$1,200.00/session = \$13,200.00  
Hearing Dates: February 8, 2010 2 sessions  
February 9, 2010 3 sessions  
February 10, 2010 2 sessions  
February 11, 2010 2 sessions  
February 12, 2010 2 sessions

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Total Hearing Session Fees = \$18,900.00

The Panel has assessed \$9,450.00 of the hearing session fees jointly and severally to Claimants CIC Capital Management Company, LLC, Cobb Investment Company, LLC and CIC Financial.

The Panel has assessed \$9,450.00 of the hearing session fees to Respondent Morgan Keegan.

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

**ARBITRATION PANEL**

*John F. O'Neill, Jr.* - *Public Arbitrator, Presiding Chairperson*  
*James Edward Seale* - *Public Arbitrator*  
*David L. Walby* - *Non-Public Arbitrator*

**Concurring Arbitrators' Signatures**

/s/

2/23/10

\_\_\_\_\_  
John F. O'Neill, Jr.  
Public Arbitrator, Presiding Chairperson

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Signature Date

/s/

2/23/10

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James Edward Seale  
Public Arbitrator

\_\_\_\_\_  
Signature Date

/s/

2/23/10

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David L. Walby  
Non-Public Arbitrator

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Signature Date

February 23, 2010

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Date of Service (For FINRA Dispute Resolution use only)

FINRA Dispute Resolution  
Arbitration No. 08-01465  
Award Page 6 of 6

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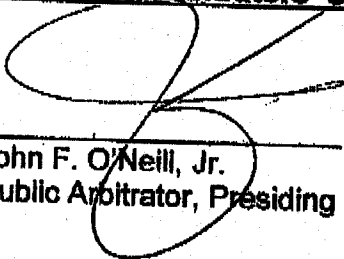
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2/23/10  
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 Signature Date

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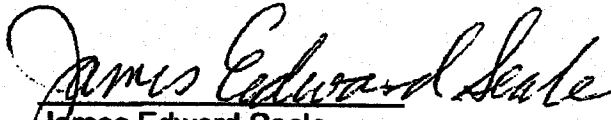
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Signature Date

  
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FINRA Dispute Resolution  
Arbitration No. 08-01466  
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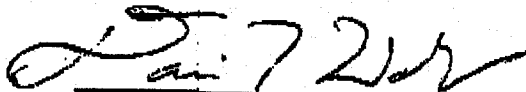
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