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Morgan Keegan Liable In Madoff Feeder Case: FINRA

By **Erin Coe**

Law360, New York (March 7, 2011) -- A Financial Industry Regulatory Authority arbitration panel held Thursday that Morgan Keegan & Co. Inc. should pay more than $250,000 to a Florida couple after placing their entire investment in a now-bankrupt hedge fund that steered investments to Bernard Madoff's Ponzi scheme.

The panel ruled that the Regions Financial Corp. subsidiary did very little due diligence on the investment to Greenwich, Conn.-based Greenwich Sentry LP, a feeder for Bernard L. Madoff Investment Securities LLC that sought bankruptcy protection in November.

Jeffrey and Marisel Lieberman's entire account of $200,000 was invested in Greenwich Sentry, and they brought a claim in December 2009 accusing Memphis, Tenn.-based Morgan Keegan and their financial adviser of engaging in a Ponzi scheme. They alleged fraudulent misrepresentation, breach of fiduciary duty, negligence, negligent misrepresentation and negligent supervision, among other claims.

"The panel believes that there is clear and convincing evidence that respondent Morgan Keegan was grossly negligent in not performing substantial due diligence, and as a result it fraudulently misrepresented the risk of this investment to claimants," according to the ruling. "The panel believes that this resulted in the total loss of claimants' investment."

The panel indicated that Morgan Keegan failed to produce the PricewaterhouseCoopers audited report of Greenwich Sentry that it allegedly relied on and did not do an available Internet search.

Morgan Keegan admitted that it did not even request the audited report of the Madoff firm, which, according to the claimants' expert witness, would have led to red flags, and the company did not produce a detailed report indicating the extent and results of its due diligence, the panel said.

The panel directed Morgan Keegan to pay the Liebermans $200,000 in compensatory damages, in addition to interest at the rate of 6 percent a year accruing from May 2007. The company was also ordered to shell out $50,000 in punitive damages and $14,000 in expert witness fees.

Claims against Julio Almeyda, the couple's financial adviser, were dismissed with prejudice, and the panel recommended that all references to the case should be expunged from his registration records.

The panel noted that Almeyda was not aware of the lack of due diligence performed by his firm and did not know that his representations to the Liebermans about the level of risk of the investment in the hedge fund were false and misleading.

Barbara Riesberg, an attorney who represented the plaintiffs, said her clients were extremely pleased with the decision and that they would file a bid to confirm the award and seek attorneys' fees.

A representative for Morgan Keegan was not immediately available for comment.

In October a FINRA arbitration panel awarded about $9.2 million to a group of investors who claimed Morgan Keegan fraudulently recommended they buy "highly risky" bond funds backed by illiquid mortgage-backed loans and collateralized debt obligations.

The award included more than $1.1 million in legal fees for attorneys representing more than 30 named claimants.

The claimants had sought $10.4 million from Morgan Keegan over losses stemming from their purchase of investment products with names like RMK High Income Fund Inc. and RMK Advantage Income Fund Inc.

Morgan Keegan faces numerous claims stemming from the funds, which took a beating in 2007 and 2008 amid the collapse of the U.S. real estate market.

The plaintiffs are represented in this matter by RiesbergLaw.

Morgan Keegan and Almeyda are represented by Greenebaum Doll & McDonald PLLC.

The case is In the Matter of: Lieberman et al. v. Morgan Keegan & Co. Inc., case number 10-00009, in the Financial Industry Regulation Authority.

--Additional reporting by Pete Brush. Editing by Lisa Uhlman.