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THIS WEEK in the SBJ

LANDMARK LAWSUIT

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Miniaci family wins \$1M award against Morgan Keegan & Co.

BY PAUL BRINKMAN

The prominent Minnid family of Broward County recently won a judgment of more than \$1 million against Morgan Keegan & Co. for losses suffered in mutual funds when the risks of those funds were not properly disclosed, according to a complaint filed in Fort Lauderdale federal court.

The claims made in the Miniacis' arbitration case echoed those made on a national level by the Financial Industry Regulatory Authority (FINRA) in April.

The Miniacis' attorney, Jeff Somn of Somn & Bree, declined to comment on the case, and Morgan Keegan did not respond to requests for comment. But, the federal complaint spells out the claim that was made to arbitrators and the award



In April, FINRA said it filed a complaint against Morgan Keegan, charging the firm with marketing and selling seven affiliated bond funds to investors using false and misleading sales materials — costing investors well over \$1 billion. In addition to an unspecified fine, FINRA ordered disgorgement of ill-gotten profits and full restitution for affected investors.

According to a FINRA news release from Jan. 1, 2006, through Dec. 31, 2007, Morgan Keegan sold more than \$2 billion of the bond funds heavily invested in risky structured products — particularly in subordinated tranches of asset- and mortgage-backed securities, including subprime products.

Those investments caused the funds to experience serious financial difficulties beginning in early 2007, and led to their collapse later that year, the FINRA release said. The FINRA complaint was filed with its Of-

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Sonn

The Miniaci's attorney, Jeff Sonn of Sonn & Erez, declined to comment on the case, and Morgan Keegan did not respond to requests for comment. But, the federal complaint spells out the claim that was made to arbitrators and the award that was granted.

According to the complaint, Morgan Keegan recommended that the Miniaci's invest in various Morgan Keegan-branded mutual funds, and the family suffered losses of about \$1 million.

The complaint said the Miniaci's discovered Morgan Keegan had misrepresented and failed to disclose the true nature of the bond funds.

An e-mailed response from Morgan Keegan said the company believes the FINRA allegations are erroneous, and that its marketing materials disclosed the risk of investments, and that FINRA reviewed those materials. The investment bank said claimants in 102 cases have sought \$66 million, but have only received \$12.2 million in awards so far.

In June 2010, a three-member FINRA panel heard the parties' evidence and argument in Fort Lauderdale. On June 9, the panel ruled Morgan Keegan was liable on claims of negligent supervision and unsuitability, and should pay the award. Details of the award were outlined as follows:

■ Rose Miniaci, as trustee of the Rose Miniaci Revocable Trust: compensatory damages in the amount of \$292,009.

■ Beatriz Miniaci, as trustee of the Beatriz Miniaci Revocable Trust: compensatory damages in the amount of \$195,717.

■ Dominick Miniaci, as trustee of the Dominick Miniaci Revocable Trust: compensatory damages in the amount of \$205,199.

■ Albert Miniaci, as trustee of the Albert Miniaci Revocable Trust: compensatory damages in the amount of \$286,962.

■ Paramount Vending: compensatory damages in the amount of \$100,219.37, inclusive of interest.

Albert Miniaci is a well-known developer of restaurants and resorts in Fort Lauderdale, and has been a major local philanthropist.

The complaint to confirm the arbitration judgment also said Morgan Keegan was found not liable on a claim for violation of the Florida Securities and Investor Protection Act.

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According to a FINRA news release, from Jan. 1, 2006, through Dec. 31, 2007, Morgan Keegan sold more than \$2 billion of the bond funds.

According to the release, the funds were heavily invested in risky structured products – particularly in subordinated tranches of asset- and mortgage-backed securities, including subprime products.

Those investments caused the funds to experience serious financial difficulties beginning in early 2007, and led to their collapse later that year, the FINRA release said.

The FINRA complaint was filed with its Office of Hearing Officers. It alleged that the misleading sales materials, combined with

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the firm's misleading and deficient internal guidance and failure to train brokers about the risks, led Morgan Keegan brokers to make material misrepresentations to investors.

According to the FINRA complaint: "This was particularly acute with respect to one of the funds – the Regions Morgan Keegan Select Intermediate Bond Fund – which was marketed as a relatively safe and conservative fixed-income mutual fund investment when, in fact, the fund was exposed to undisclosed risks associated with its investment in mortgage- and asset-backed securities and subordinated tranches of structured products."

Fort Lauderdale securities attorney Mark Tepper represents others suing over similar allegations.

"Misrepresenting the risks associated with an investment is a fairly common claim made by customers," he said. "Well-known clients are difficult to represent because many arbitrators look at wealthy investors, and they perceive they must be sophisticated to have obtained this wealth, even though that is not always the case."

Even so, having a high-profile client can also mean a large firm is more eager to settle, rather than risk a high-profile loss that is mentioned in the media, Tepper said.

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SONN & EREZ PLC