

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimant  
Gary J. Kovach

Case Number: 20-00743

vs.

Respondents  
Kovack Securities, Inc.  
and Brian Kovack

Hearing Site: Cleveland, Ohio

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Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

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

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Claimant Gary J. Kovach (“Claimant”): John A. Hubbard, Esq. and Zane M. Thompson, Esq., Hubbard Snitchler & Parzianello PLC, Plymouth, Michigan.

For Respondents Kovack Securities, Inc. (“KSI”) and Brian Kovack (hereinafter, collectively referred to as “Respondents”): Debra A. Jenks, Esq. and Robert J. Harvey, Esq., Jenks & Harvey LLP, West Palm Beach, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: March 5, 2020.  
Claimant signed the Submission Agreement: March 3, 2020.

Statement of Answer filed on or about: May 11, 2020.  
Respondents signed the Submission Agreement: May 11, 2020.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted the following causes of action: breaches of contract, tortious interference with business relationships and expectations, and promissory estoppel. In relation to the causes of action, Claimant alleged that he had agreements with two financial advisors that he recruited to KSI and that he had supervised at KSI. Claimant alleges that he was deprived of overrides from the financial advisors’ production at KSI.

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

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested compensatory, actual, and consequential damages in the amount of \$300,000.00; punitive damages; attorneys' fees and costs associated with the action; and any relief that the Panel deems appropriate under the circumstances.

In the Statement of Answer, Respondents requested that the Panel dismiss Claimant's claims in their entirety and provide Respondents with any relief that is just and equitable.

On January 13, 2022, Claimant filed a Notice of Withdrawal of His Request for Attorneys' Fees and Costs.

At the hearing, Claimant requested compensatory damages in a range between \$175,000.00 and \$435,000.00.

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

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

During the recorded evidentiary hearing, after the conclusion of Claimant's case-in-chief, Respondents made an oral Motion for a Directed Verdict/Motion to Dismiss based on failure to establish a prima facie case on Counts I-IV of the Statement of Claim ("Motion to Dismiss"). The Panel heard oral arguments on the Motion for a Directed Verdict/Motion to Dismiss. On the record, the Panel denied the Motion for a Directed Verdict/Motion to Dismiss.

The Award in this matter may be executed in counterpart copies.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and any post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are denied in their entirety.
2. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, treble damages, and attorneys' fees, are denied.

### **FEES**

Pursuant to the Code of Arbitration Procedure, the following fees are assessed:

#### **Filing Fees**

FINRA Dispute Resolution Services 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, as a party, KSI is assessed the following:

Member Surcharge = \$ 1,900.00  
Member Process Fee = \$ 3,750.00

**Postponement Fees**

Postponements granted during these proceedings for which fees were assessed or waived:

July 13-15, 2021, postponement requested by parties = \$ WAIVED

**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 the Panel @ \$1,125.00/session	= \$ 2,250.00
Pre-Hearing Conferences: June 25, 2020	1 session
December 13, 2021	1 session
Five (5) hearing sessions @ \$1,125.00/session	= \$ 5,625.00
Hearings: January 25, 2022	2 sessions
January 26, 2022	2 sessions
January 27, 2022	1 session

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Total Hearing Session Fees = \$ 7,875.00

The Panel has assessed \$3,937.50 of the hearing session fees to Claimant.

The Panel has assessed \$3,937.50 of the hearing session fees jointly and severally to Respondents.

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

**ARBITRATION PANEL**

Jeffrey M. Bain	-	Public Arbitrator, Presiding Chairperson
Kevin Brodar	-	Public Arbitrator
Peggy Foley Jones	-	Non-Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument, which is my award.

**Concurring Arbitrators' Signatures**

***Jeffrey M. Bain***

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Jeffrey M. Bain  
Public Arbitrator, Presiding Chairperson

***02/15/2022***

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

***Kevin Brodar***

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Kevin Brodar  
Public Arbitrator

***02/15/2022***

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

***Peggy Foley Jones***

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Peggy Foley Jones  
Non-Public Arbitrator

***02/17/2022***

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

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February 17, 2022

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