

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

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In the Matter of the Arbitration Between:

Claimants

Gary Hager Trustee, KW Automation  
401(k) PSP FBO Gary Hager;  
Gary Hager Trustee, FFI Automation, Inc.  
401(k) Profit Sharing Plan FBO Gary Hager;  
Gary Hager Roth IRA; Gary Hager IRA;  
Gary Hager; and Kathleen Hager IRA

Case Number: 20-00983

vs.

Respondents

Kevin Nevin, Sandlapper Securities LLC,  
Sandlapper Wealth Management LLC  
f/k/a Colony Park Financial Services, LLC, and  
Dempsey Lord Smith LLC

Hearing Site: Minneapolis, Minnesota

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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: Customers vs. Associated Person and Members

This case was decided by a majority-public panel.

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

Claimants Gary Hager Trustee, KW Automation 401(k) PSP FBO Gary Hager; Gary Hager Trustee, FFI Automation, Inc. 401(k) Profit Sharing Plan FBO Gary Hager; Gary Hager Roth IRA; Gary Hager IRA; Gary Hager; and Kathleen Hager IRA (collectively, “Claimants”) were represented by counsel until August 2021. Thereafter, they were pro se.

Respondent Kevin Nevin (“Nevin”) did not enter an appearance.

For Respondents Sandlapper Securities, LLC (“SLS”) and Sandlapper Wealth Management LLC (“SWM”) f/k/a Colony Park Financial Services, LLC (“Colony”), collectively referred to as, “Sandlapper”): Trevor L. Gordon, Sandlapper Securities, LLC, Greenville, South Carolina.

For Respondent Dempsey Lord Smith, LLC (“Dempsey”): Daniel H. Wirth, Esq. and David Younker, Esq., Gregory Doyle Calhoun & Rogers LLC, Marietta, Georgia.

### **CASE INFORMATION**

Statement of Claim filed on or about: March 26, 2020.  
Claimants signed the Submission Agreement: March 25, 2020.

Statement of Answer filed by Sandlapper and Nevin on or about: May 29, 2020.  
Sandlapper signed the Submission Agreement: June 1, 2020.  
Colony as officer for successor company SWM signed the Submission Agreement: June 26, 2020.  
Nevin did not sign the Submission Agreement.

Statement of Answer filed by Dempsey on or about: May 29, 2020.  
Dempsey signed the Submission Agreement: May 26, 2020.

### **CASE SUMMARY**

In the Statement of Claim, Claimants asserted the following causes of action: breach of fiduciary duties, violation of Minnesota Securities Statutes, consumer and common law fraud, breach of contract, general negligence, suitability, negligent misrepresentation, civil liability for theft, failure to supervise, and respondeat superior. The causes of action related to Claimants' allegation that Nevin purchased, on behalf of Claimants, high-commission alternative investments that were contrary to their growth objective and charged management fees.

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

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

At the time of the hearing, Nevin was not represented by counsel and did not appear.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimants requested compensatory damages in the estimated amount of \$392,092.00; punitive damages in the amount of \$50,000.00 against Nevin, Sandlapper, and Dempsey, jointly and severally, under the Minn. Stat. § 549.20, or in such amount as the Panel deems just in their discretion; punitive damages in the amount of \$24,518.00 against Nevin, Sandlapper, and Dempsey, jointly and severally, under Minn. Stat. § 604.14; reasonable attorneys' fees and costs as required by the Minnesota Securities and Consumer Fraud Laws, Minn. Stat. § 80A.76 Section 509 and Minn. Stat. §§ 8.31 subd. 3(a) and 325F.68-69; costs and disbursement in pursuing this arbitration, including any expert witness fees, pursuant to Minn. Stat. § 45.026, subd. 2; and interest at the legal rate of 10% per annum, from the date of the award and continuing until the award is paid in full, pursuant to Minn. Stat. § 549.09(c)(2); and such other relief as the Panel shall deem just and equitable.

In the Statement of Answer, Sandlapper requested that all Claimants' claims against them be dismissed in their entirety.

In the Statement of Answer, Dempsey requested that the Panel enter an award dismissing the

claims against it and awarding its costs and attorneys' fees.

At the hearing, Dempsey requested attorneys' fees.

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

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

On May 15, 2020, a Notice of Appearance was filed on behalf of Sandlapper. A Notice of Appearance was not filed on behalf of Nevin. On May 29, 2020, a Statement of Answer was filed on behalf of Sandlapper and Nevin. After May 29, 2020, no additional pleadings were filed by or on behalf of Nevin.

Nevin did not file a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and, having answered the claim, is bound by the determination of the Panel on all issues submitted.

On June 1, 2021, Dempsey filed a Partial Motion to Dismiss pursuant to Rule 12504 of the Code ("Partial Motion to Dismiss") and a Motion to Bifurcate ("Motion to Bifurcate"). On July 28, 2021, Claimants filed a response in opposition to the Partial Motion to Dismiss and Motion to Bifurcate. On August 2, 2021, Dempsey filed a reply in support of its Partial Motion to Dismiss and Motion to Bifurcate. On October 13, 2021, Dempsey filed a supplemental brief in support of its Partial Motion to Dismiss. On October 15, 2021, the Panel heard oral arguments on the Motions to Dismiss and Bifurcate. On the same date, the Panel issued an Order denying the Motion to Bifurcate and granting the Partial Motion to Dismiss pursuant to Rule 12504(a)(6)(B) on the grounds that Dempsey was not associated with the account(s), security(ies), or conduct at issue. The Order further stated that Dempsey was not Claimants' investment advisor.

Claimants, Nevin, and Sandlapper did not appear at the evidentiary hearing. As noted above, Nevin was not represented by counsel at the time of the evidentiary hearing. Upon review of the file, the Panel determined that Claimants and Sandlapper received due notice of the hearing and that arbitration of the matter would proceed without Claimants, Nevin, and Sandlapper present, in accordance with the Code.

On January 3, 2022, Dempsey made an oral Motion to Dismiss based on Claimants' failure to appear at the evidentiary hearing. The Panel grants Dempsey's Motion to Dismiss herein on the following grounds:

Claimants provided no evidence to support their claims. Claimants therefore did not sustain their burden of proof.

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. Claimants' 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, 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 parties, SLS, Colony, and Dempsey are each 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:

September 21-24, 2021, postponement requested by parties = \$ WAIVED

#### **Discovery-Related Motion Fees**

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

Two (2) decisions on discovery-related motions on the papers = \$ 400.00  
with one (1) Arbitrator @ \$200.00/decision

Claimants submitted one (1) discovery-related motion  
Dempsey submitted one (1) discovery-related motion

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Total Discovery-Related Motion Fees = \$ 400.00

The Panel has assessed \$200.00 of the discovery-related motion fees jointly and severally to Claimants.

The Panel has assessed \$200.00 of the discovery-related motion fees jointly and severally to Nevin and Sandlapper.

**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: July 20, 2020	1 session	
October 15, 2021	1 session	
	= \$	1,125.00
One (1) hearing session @ \$1,125.00/session		
Hearing: January 3, 2022	1 session	
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Total Hearing Session Fees	= \$	3,375.00

The Panel has assessed \$1,687.50 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$562.50 of the hearing session fees jointly and severally to Sandlapper and Dempsey.

The Panel has assessed \$1,125.00 of the hearing session fees to Dempsey.

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

**ARBITRATION PANEL**

Frederick Ramos	-	Public Arbitrator, Presiding Chairperson
Steven M. Bialick	-	Public Arbitrator
Lee T. Beske	-	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**

***Frederick Ramos***

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Frederick Ramos  
Public Arbitrator, Presiding Chairperson

**01/24/2022**

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

***Steven M. Bialick***

\_\_\_\_\_  
Steven M. Bialick  
Public Arbitrator

**01/24/2022**

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

***Lee T. Beske***

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Lee T. Beske  
Non-Public Arbitrator

**01/25/2022**

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

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January 25, 2022

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