

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

James A. Womack, Jr.

Case Number: 20-02252

vs.

Respondents

Luke McKelvy

Jennifer McKelvy

McKelvy Wealth Management, LLC

Hearing Site: Charlotte, North Carolina

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. Associated Person and Non-Members

This case was decided by a majority-public panel.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant James A. Womack, Jr.: Michael E. Ciochina, Esq., Watson Bailey Ciochina, LLP, Asheville, North Carolina.

For Respondent Luke McKelvy: Connie M. Fickel, Esq. and Hakop Stepanyan, Esq., Lewis Brisbois Bisgaard & Smith, LLP, Los Angeles, California.

Respondent Jennifer McKelvy did not appear.

Respondent McKelvy Wealth Management, LLC did not appear.

CASE INFORMATION

Statement of Claim filed on or about: July 16, 2020.

James Anthony Womack, Jr. signed the Submission Agreement: July 13, 2020.

Statement of Answer and Counterclaim filed by Respondent Luke McKelvy on or about: September 17, 2020.

Luke McKelvy signed the Submission Agreement: September 16, 2020.

Reply to Respondent Luke McKelvy's Statement of Answer and Counterclaim filed by Claimant on or about: October 6, 2020.

Jennifer McKelvy did not file a Statement of Answer or sign the Submission Agreement.

McKelvy Wealth Management, LLC did not file a Statement of Answer or sign the Submission Agreement.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: anticipatory breach and breach of contract; defamation (libel & slander); intentional interference with contractual relationships; and invasion of privacy and dissemination of private information. The causes of action relate to a "Buy-Sell Agreement of Purchase/Sale of Practice" between Claimant and Respondent Luke McKelvy.

In the Statement of Answer and Counterclaim, Respondent Luke McKelvy denied the allegations made in the Statement of Claim, asserted various affirmative defenses, and asserted the following causes of action: breach of contract; breach of implied covenant of good faith and fair dealing; fraud; negligent misrepresentation; constructive fraud; unfair and deceptive trade practices under N.C. Gen. Stat. §§ 75-1.1, 75-16, and 75-16.1; computer trespass/conversion; and tortious interference with contract.

Unless specifically admitted in the Reply to Respondent Luke McKelvy's Statement of Answer and Counterclaim, Claimant denied the allegations made in the Statement of Answer and Counterclaim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: compensatory damages and punitive damages in the combined amount of in excess of \$10,000,000.00, with the specific amount to be determined; costs; attorneys' fees; and for such other and further relief as deemed just and proper by the Panel.

In his Statement of Answer, Respondent Luke McKelvy requested that Claimant's Statement of Claim be denied, including Claimant's request for attorneys' fees and costs.

In his Counterclaim, Respondent Luke McKelvy requested compensatory, punitive and treble damages in an amount exceeding \$1,000,000.00, pre- and post-judgment interest; attorneys' fees and costs; and for any such other and further relief deemed reasonable and appropriate by the Panel.

In the Reply to Respondent Luke McKelvy's Counterclaim, Claimant requested that Respondent Luke McKelvy's claims be dismissed, and the relief sought by the Claimant be fully awarded.

OTHER ISSUES CONSIDERED AND DECIDED

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

Respondent Jennifer McKelvy is not a member or associated person of FINRA and did not voluntarily submit to arbitration. Therefore, the Panel made no determination with respect to the claims against Respondent Jennifer McKelvy.

Respondent McKelvy Wealth Management, LLC is not a member or associated person of FINRA and did not voluntarily submit to arbitration. Therefore, the Panel made no determination with respect to the claims against Respondent McKelvy Wealth Management, LLC.

On or about February 24, 2021, Respondent Luke McKelvy filed a Motion for Virtual Final Hearing. On or about February 25, 2021, Claimant filed a Motion to Set Final Hearing dates, which included, amongst other things, Claimant's consent to a virtual final hearing. In an Order dated April 6, 2021, the Panel directed that the final hearing would be held virtually.

On or about June 25, 2021, Respondent Luke McKelvy filed a Motion for Entry of Sanctions Against Claimant and Claimant's counsel to which Claimant responded on July 2, 2021 and Respondent Luke McKelvy replied on July 13, 2021. The Panel issued an Order dated July 20, 2021 that denied all sanctions except Respondent Luke McKelvy's request for monetary sanctions in the form of attorneys' fees and forum fees, which the Panel deferred until the evidentiary hearing. Thereafter, the Panel granted Respondent Luke McKelvy's request for monetary sanctions in the form of attorneys' fees and forum fees, as set forth in the Award section below.

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. Respondent Luke McKelvy is liable for defamation and shall pay to Claimant the sum of \$5,000.00 in compensatory damages.
2. Respondent Luke McKelvy's Counterclaim is denied.
3. Claimant and Claimant's counsel represented to the Panel that Claimant was not using a script or notes while testifying during the evidentiary hearing, which was later determined to be untrue. The Panel is therefore awarding sanctions against Claimant. As such, Claimant is liable for and shall pay to Respondent Luke McKelvy a monetary sanction in the amount of \$10,000.00. Though the Panel does not have jurisdiction to award sanctions against counsel, the Panel believes that Claimant's counsel was largely responsible for this misconduct.
4. 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 (“Code”), the following fees are assessed:

Filing Fees

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

Initial Claim Filing Fee	=\$ 1,575.00
Counterclaim Filing Fee	=\$ 2,000.00

**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 the member firm that employed Respondent Luke McKelvy at the time of the event(s) giving rise to the dispute, Commonwealth Financial Network is assessed the following:

Member Surcharge	=\$ 1,900.00
Member Process Fee	=\$ 6,175.00

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:

One (1) pre-hearing session with a single Arbitrator @ \$450.00/session	=\$ 450.00
Pre-Hearing Conference: April 14, 2021	1 session

Three (3) pre-hearing sessions with the Panel @ \$1,400.00/session	=\$ 4,200.00
Pre-Hearing Conferences: November 18, 2020	1 session
April 5, 2021	1 session
July 20, 2021	1 session

Twenty-Four (24) hearing sessions @ \$1,400.00/session	=\$ 33,600.00
Hearings:	
June 15, 2021	1 session
June 16, 2021	2 sessions
June 17, 2021	2 sessions
June 18, 2021	2 sessions
July 26, 2021	2 sessions
July 27, 2021	2 sessions
July 28, 2021	2 sessions
July 29, 2021	2 sessions
July 30, 2021	2 sessions
August 2, 2021	1 session
August 9, 2021	2 sessions
August 10, 2021	2 sessions

August 13, 2021

2 sessions

Total Hearing Session Fees =\$ 38,250.00

The Panel has assessed \$19,125.00 of the hearing session fees to Claimant.

The Panel has assessed \$19,125.00 of the hearing session fees to Respondent Luke McKelvy.

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

ARBITRATION PANEL

Mary E. Woytek	-	Public Arbitrator, Presiding Chairperson
Victoria Liccione	-	Public Arbitrator
Bruce Wayne Campbell	-	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

Mary E. Woytek

Mary E. Woytek
Public Arbitrator, Presiding Chairperson

08/25/2021

Signature Date

Victoria Liccione

Victoria Liccione
Public Arbitrator

08/25/2021

Signature Date

Bruce Wayne Campbell

Bruce Wayne Campbell
Non-Public Arbitrator

08/25/2021

Signature Date

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August 26, 2021

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