

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

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In the Matter of the Arbitration Between:

Claimant  
Normando Matos

Case Number: 20-02976

vs.

Respondent  
Kovack Securities, Inc.

Hearing Site: Boca Raton, Florida

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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: Customer vs. Member

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Claimant Normando Matos: Sara Hanley, Esq., Hanley Law, Naples, Florida.

For Respondent Kovack Securities, Inc.: Gara M. Seagraves, Esq., Kaufman Dolowich & Voluck, LLP, Chicago, Illinois.

\*FINRA recorded the appearance of Claimant’s counsel at the time of filing of the Statement of Claim. Counsel’s representation of Claimant may have ended with the parties’ settlement. Please see the Other Issues Considered and Decided section of this Award for information on whether Claimant’s counsel appeared at the expungement hearing.

**CASE INFORMATION**

Statement of Claim filed on or about: September 3, 2020.

Normando Matos signed the Submission Agreement: September 2, 2020.

Statement of Answer filed by Respondent on or about: October 27, 2020.

Kovack Securities, Inc. signed the Submission Agreement: October 23, 2020.

### **CASE SUMMARY**

In the Statement of Claim, Claimant asserted the following causes of action: misrepresentations, omissions, unsuitable investment recommendations, lack of supervision, and breach of contract and industry rules. The causes of action relate to the alleged mismanagement of annuities.

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

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested: compensatory damages of \$250,000.00; interest at the legal rate from the date of purchase or reasonable market return; punitive damages; rescission; the costs of this proceeding; and for such other relief as is just and proper.

In the Statement of Answer, Respondent requested the Panel enter an award dismissing the claims against Respondent and recommend that any reference to this matter be expunged from Unnamed Party Ricardo Latta's ("Latta") public and non-public records maintained by the Central Registration Depository ("CRD"), in accordance with applicable rules and procedures.

Respondent filed a request for expungement, on behalf of Unnamed Party Latta (CRD Number 1532421), of all references to this matter (Occurrence Number 2036250) from CRD registration records. Please see the Other Issues Considered and Decided section of this Award for more information.

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

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

On July 28, 2021, Respondent filed a Motion to Dismiss pursuant to Rule 12206 of the Code of Arbitration Procedure ("Code"). On August 27, 2021, Claimant filed a response opposing the Motion to Dismiss. On September 10, 2021, Respondent filed a reply in support of the Motion to Dismiss. On September 29, 2021, the Panel heard oral arguments on the Motion to Dismiss. On September 29, 2021, the Panel deferred ruling on the Motion to Dismiss until the conclusion of the presentation of evidence at the final hearing.

On October 15, 2021, Claimant filed a notice of settlement. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim.

On November 11, 2021, Respondent filed a Motion for Expungement on behalf of Unnamed Party Latta, to which no response was filed.

On December 2, 2021, Claimant filed a letter stating that he does not intend to oppose the expungement request and that his counsel does not represent him with respect to expungement.

The Panel conducted a recorded hearing by videoconference on January 6, 2022, so the parties could present oral argument and evidence on Respondent's request for expungement on behalf of Unnamed Party Latta.

Claimant and Claimant's counsel did not participate in the expungement hearing. The Panel found that Claimant had notice of the expungement request and hearing.

The Panel reviewed Unnamed Party Latta's BrokerCheck® Report. The Panel noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrence in the CRD.

The Panel also reviewed the settlement documentation, considered the amount of payment made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Panel noted that the settlement was not conditioned on any party to the settlement not opposing the request for expungement and that Unnamed Party Latta did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: pleadings, exhibits, and testimony of Unnamed Party Latta.

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. The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2036250) from registration records maintained by the CRD for Unnamed Party Ricardo Latta (CRD Number 1532421) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Ricardo Latta must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 12805 of the Code of Arbitration Procedure ("Code"), the Panel has made the following Rule 2080 affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous.

The claim, allegation, or information is false.

The Panel has made the above Rule 2080 findings based on the following reasons:

Majority Opinion:

Evidence was presented at the hearing regarding two (2) annuities ("Subject Annuities"), which were recommended by Respondent's registered representative, Unnamed Party Latta,

and purchased by Claimant in the underlying occurrence. The purchases occurred in 1999 and 2002 when Unnamed Party Latta was a registered representative at another brokerage firm.

The primary allegations in Claimant's Statement of Claim were that: (1) Unnamed Party Latta failed to activate certain benefit riders for the Subject Annuities; (2) Unnamed Party Latta failed to properly allocate the Subject Annuities; and (3) Claimant had no need for the death benefits associated with the Subject Annuities.

A majority of the Panel believed that Claimant was a sophisticated investor, and the Subject Annuities were properly recommended, both to diversify Claimant's portfolio and to meet the specific objectives expressed by Claimant in his discussions with Unnamed Party Latta. Claimant informed Unnamed Party Latta that he had potentially life-threatening health issues and wanted to provide for his partner ("Partner") in the event of his death. The Subject Annuities were purchased to take advantage of the death benefits offered by these products. The initial allocation of investments in the Subject Annuities was in growth funds. Additionally, Unnamed Party Latta recommended four (4) other annuity products, a traditional individual retirement account ("IRA") and a non-qualified brokerage account which, were invested in growth fund products and which over the course of a nearly twenty (20) year relationship performed very well. Evidence was presented indicating that the overall gain of all Claimant's investments was substantial.

When Unnamed Party Latta moved from his previous firm to Respondent in 2005, Claimant moved his accounts to Respondent, obviously satisfied with his relationship with Unnamed Party Latta. It was at that time that Claimant expressed his concern about potential market exposure in the investments of one of the Subject Annuities. Claimant stated that his primary purposes in maintaining this annuity were to protect against a large market downturn, and for the death benefit and guaranteed income it could later provide. He instructed Unnamed Party Latta to reallocate the investments in the annuity to money market funds, which was done. In 2006, Unnamed Party Latta revisited the allocation to money market funds with Claimant, suggesting Claimant consider reallocating to several growth funds. Claimant declined the recommendation, reiterating that he was more interested in the death benefit and wanted to continue to protect it from any significant market downturn. In 2007, Claimant expressed his concern about the second annuity and the growth funds investments therein, and again, he expressed his concern about a potential market downturn and requested that Unnamed Party Latta reallocate to money market funds. Unnamed Party Latta followed this instruction. Each year thereafter, Unnamed Party Latta discussed the allocation of the Subject Annuities with Claimant (along with Claimant's other investments) and each time Claimant confirmed that he wanted to keep the Subject Annuities invested in money market funds. Claimant stated that he was not particularly concerned about the performance of these annuities as it was his opinion that his Partner would be getting "enough" if Claimant passed away.

With respect to Claimant's argument that Unnamed Party Latta failed to "activate" the Guaranteed Income Benefit Rider ("Rider") in connection with one of the Subject Annuities, it is clear from both the documentation when he purchased the annuity, as well as later annuity statements, that Claimant selected the Rider. The Rider gave Claimant the option to activate the Rider and begin receiving guaranteed monthly payments at some point in the future. Unnamed Party Latta and Claimant discussed whether to activate the Rider on numerous

occasions and Claimant continually declined, stating he wanted to maintain his death benefit and was not in need of additional income. Clearly, it was up to Claimant to activate the Rider and the testimony was that he never gave such an instruction.

Claimant received a prospectus and various disclosure documents detailing the material features and risks of the Subject Annuities at the time they were sold to him along with the fees associated with the same. He also received annual statements and quarterly reports for the Subject Annuities over nearly twenty (20) years. He also received correspondence and statements at the time the Subject Annuities investments were reallocated. Accordingly, a majority of the Panel does not believe the allegations contained in Claimant’s Statement of Claim and find such allegations clearly erroneous and false.

Dissenting Opinion:

The hearing on Respondent’s Motion for Expungement on behalf of Unnamed Party Latta was held in the absence of Claimant. Claimant had settled his claim with Respondent, which is Unnamed Party Latta’s employer. Claimant chose not to attend the expungement hearing.

In the absence of a party whose Statement of Claim holds allegations which contradict Unnamed Party Latta’s statements at the hearing, the credibility of Unnamed Party Latta is a key factor in weighing his motion. The Panel must accept his statements as factual in order to approve expungement.

Unnamed Party Latta’s credibility was impeached when he made a statement that directly contradicted assertions in Respondent’s Motion for Expungement, which was filed on his behalf. In the face of this cloud on Unnamed Party Latta’s credibility, it cannot be said that the claim, allegation or information is factually impossible or clearly erroneous, or that the claim, allegation or information is false. The dissenting Arbitrator would not recommend expungement.

2. Any and all claims for relief not specifically addressed herein 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 = \$ 1,425.00

*\*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 that employed the associated person at the time of the event giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

Member Surcharge = \$ 1,700.00

Member Process Fee = \$ 3,250.00

**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: August 30, 2021 1 session

Two (2) pre-hearing sessions with the Panel @ \$1,125.00/session = \$ 2,250.00  
Pre-Hearing Conferences: December 22, 2020 1 session  
September 29, 2021 1 session

One (1) hearing session on expungement request @ \$1,125.00/session = \$ 1,125.00  
Hearing: January 6, 2022 1 session

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Total Hearing Session Fees = \$ 3,825.00

The Panel has assessed \$1,350.00 of the hearing session fees to Claimant.

The Panel has assessed \$2,475.00 of the hearing session fees to Respondent.

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

**ARBITRATION PANEL**

Edward R. Niederriter	-	Public Arbitrator, Presiding Chairperson
Sidney Seligman	-	Public Arbitrator
Melanie Anne Dernis	-	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**

***Edward R. Niederriter***

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Edward R. Niederriter  
Public Arbitrator, Presiding Chairperson

**01/12/2022**

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

***Melanie Anne Dernis***

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Melanie Anne Dernis  
Public Arbitrator

**01/12/2022**

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

**Dissenting Arbitrator's Signature**

***Sidney Seligman***

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Sidney Seligman  
Public Arbitrator

**01/12/2022**

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

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January 13, 2022

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