
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Mary Bailey

Case Number: 03-05936

Names of the Respondents
Kovack Securities, Inc.
Veravest Investments, Inc.

Hearing Site: Boca Raton, FL

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Mary Bailey ("Bailey"), hereinafter referred to as "Claimant": Chandra Parker Doucette, Esq., Boca Raton, Florida.

For Respondent Kovack Securities, Inc. ("Kovack"): Scott L. Warfman, Esq., Scott L. Warfman, P.A., Miami, Florida.

For Respondent Veravest Investments, Inc. ("Veravest"): Richard M. Leslie, Esq., Shutts & Bowen LLP, Miami, Florida.

CASE INFORMATION

Statement of Claim filed on or about: August 18, 2003.

Claimant signed but did not fully date the Uniform Submission Agreement.

Statement of Answer and Motion to Dismiss filed by Respondent Kovack on or about: November 7, 2003.

Response to Respondent Kovack's Motion to Dismiss filed by Claimant on or about: November 19, 2003.

Respondent Kovack did not file an executed Uniform Submission Agreement.

Statement of Answer filed by Respondent Veravest on or about: October 17, 2003.

Respondent Veravest signed the Uniform Submission Agreement: September 11, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: 1) breach of contract; 2) breach of fiduciary duty; 3) fraud; 4) violations of unspecified Federal and State laws; 5) negligence; and 6) gross negligence. The causes of action relate to the purchase of a Kemper Gateway (n/ka/ Scudder Gateway) Annuity.

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

RELIEF REQUESTED

Claimant requested compensatory damages of \$100,000.00, plus attorney's fees, the costs of this proceeding and such other relief as is deemed appropriate.

Respondent Kovack requested that all claims against it be dismissed and that Respondent be awarded all attorney's fees and costs incurred in responding to the Statement of Claim. Respondent Kovack also requested that all references to this matter be expunged from the NASD Central Registration Depository ("CRD") record of Respondent Kovack.

Respondent Veravest requested that all claims against it be dismissed.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Kovack did not file with NASD Dispute Resolution, a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the undersigned arbitrators (the "Panel") on all issues submitted.

By Order dated January 12, 2004, the Panel denied Respondent Kovack's Motion to Dismiss.

By Order dated December 1, 2004, the Panel granted Respondent Veravest's ore tenus Motion to Dismiss made at the conclusion of Claimant's presentation of evidence.

The Panel denied Respondent Kovack's ore tenus Motion to Dismiss made at the conclusion of Claimant's presentation of evidence.

The parties have agreed that 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 the 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 dismissed in their entirety.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Kovack's public and non-public registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Kovack must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. Claimant's claims for relief pursuant to Florida Statutes Chapter 517, if any, are

specifically denied.

4. Any and all claims for relief not specifically addressed herein, including requests for attorney's fees, are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 225.00
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Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Respondent Kovack is a member firm and a party.

Member surcharge	= \$1,100.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$1,700.00</u>
Total Member Fees	= \$3,550.00

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Respondent Veravest is a member firm and a party.

Member surcharge	= \$1,100.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$1,700.00</u>
Total Member Fees	= \$3,550.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were incurred during these proceedings.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session.

No three-day cancellation fees were incurred during these proceedings.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional

arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

No injunctive relief fees were incurred during these proceedings.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with the Panel @ \$750.00	= \$1,500.00
Pre-hearing conferences:	
January 12, 2004	1 session
January 7, 2005	1 session
Nine (9) Hearing sessions with the Panel @ \$750.00	= \$6,750.00
Hearing Date:	
November 29, 2004	2 sessions
November 30, 2004	1 session
December 1, 2004	2 sessions
March 29, 2005	2 sessions
March 30, 2005	2 sessions
Total Forum Fees	= \$8,250.00

The Panel has assessed \$4,125.00 of the forum fees to Claimant.

The Panel has assessed \$4,125.00 of the forum fees to Respondent Kovack.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during these proceedings.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$4,125.00
Total Fees	= \$4,350.00
Less payments	= \$ 975.00
Balance Due NASD Dispute Resolution	= \$3,375.00

Respondent Kovack is solely liable for:

Member Fees	= \$3,550.00
Forum Fees	= \$4,125.00
Total Fees	= \$7,675.00

<u>Less payments</u>	= \$4,600.00
Balance Due NASD Dispute Resolution	= \$3,075.00

Respondent Veravest is solely liable for:

<u>Member Fees</u>	= \$3,550.00
Total Fees	= \$3,550.00
<u>Less payments</u>	= \$3,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Herbert Branitsky, Esq.	-	Public Arbitrator, Presiding Chairperson
Kevin S. Doty, Esq.	-	Public Arbitrator
Richard D. Hanson	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/
Herbert Branitsky, Esq.
Public Arbitrator, Presiding Chairperson

April 6, 2005
Signature Date

/s/
Kevin S. Doty, Esq.
Public Arbitrator

April 6, 2005
Signature Date

/s/
Richard D. Hanson
Non-Public Arbitrator

April 7, 2005
Signature Date

April 7, 2005

Date of Service (For NASD Dispute Resolution office use only)

<u>Less payments</u>	<u>= \$4,600.00</u>
Balance Due NASD Dispute Resolution	= \$3,075.00

Respondent Veravest is solely liable for:

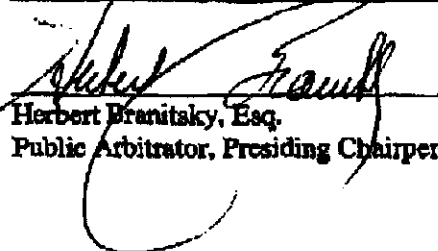
<u>Member Fees</u>	<u>= \$3,550.00</u>
Total Fees	= \$3,550.00
<u>Less payments</u>	<u>= \$3,550.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

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ARBITRATION PANEL

Herbert Branitsky, Esq.	-	Public Arbitrator, Presiding Chairperson
Kevin S. Doty, Esq.	-	Public Arbitrator
Richard D. Hanson	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Herbert Branitsky, Esq.
Public Arbitrator, Presiding Chairperson

4/6/05
Signature Date

Kevin S. Doty, Esq.
Public Arbitrator

Signature Date

Richard D. Hanson
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

<u>Less payments</u>	= \$4,600.00
Balance Due NASD Dispute Resolution	= \$3,075.00

Respondent Veravest is solely liable for:

<u>Member Fees</u>	= \$3,550.00
Total Fees	= \$3,550.00
<u>Less payments</u>	= \$3,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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Kevin S. Doty, Esq.	-	Public Arbitrator
Richard D. Hanson	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Herbert Branitsky, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Kevin S. Doty, Esq.
Public Arbitrator

6 April 2005

Signature Date

Richard D. Hanson
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

<u>Less payments</u>	= \$4,600.00
Balance Due NASD Dispute Resolution	= \$3,075.00

Respondent Veravest is solely liable for:

<u>Member Fees</u>	= \$3,550.00
Total Fees	= \$3,550.00
<u>Less payments</u>	= \$3,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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Kevin S. Doty, Esq.	-	Public Arbitrator
Richard D. Hanson	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Herbert Branitsky, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Kevin S. Doty, Esq.
Public Arbitrator

Signature Date



Richard D. Hanson
Non-Public Arbitrator

4-7-05
Signature Date

Date of Service (For NASD Dispute Resolution office use only)