AMERICAN ARBITRATION ASSOCIATION

Commercial Arbitration Panel

Payward, Inc. and Payward Ventures, Inc. v. Mazars USA LLP

Case No. 01-25-0001-2986

INTERIM AWARD

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration Agreement dated March 29, 2023 entered into by the above-named parties, and having been duly sworn and having duly heard proofs and allegations of the parties, hereby render this Interim Award, as follows:

A. Procedural History

The above case was filed by Payward, Inc. ("Payward") and Payward Ventures, Inc. ("PVI," and together, "Kraken") with the American Arbitration Association ("AAA") on March 10, 2025 asserting claims for Breach of Contract, Breach of the Implied Covenant of Good Faith and Fair Dealing, Unjust Enrichment, and Declaratory Relief. The Demand for Arbitration was answered by Mazars USA LLP ("Mazars") on March 24, 2025, denying the claims and asserting a counterclaim for work performed but unpaid. A hearing on the claims was held at the AAA headquarters in New York City on November 10 to 13, 2025. Final closing arguments were submitted on January 16, 2026, and submissions were closed by AAA on January 21, 2026. This is the decision of the arbitrator, William C. Carpenter, Jr.

B. Findings of Fact

a. Introduction

Kraken operates an online trading platform through which customers can buy and sell cryptocurrency assets. Since its trading operations launched in 2013, Kraken has become one of the largest secondary market trading platforms with more than nine million customers in over 190 countries. Mazars is an international accounting firm providing accounting and auditing services worldwide.

In November of 2020, Kraken retained Mazars to perform an audit for its 2020 consolidated financial statements which was completed and issued in July of 2022. Mazars was again retained in July of 2022 to perform the audit of Kraken's 2021 financial statements. The audit was completed and issued in February of 2023. For these audits, Kraken had prepared financial statements by booking financial information based on summary data into suspense accounts. While an imprecise and time demanding process, clean audits were issued for those years.

On March 23, 2023, Mazars was again retained to audit Kraken's 2022 consolidated financial statements. Instead of using the suspense account procedure noted above, Kraken began implementing a new automated accounting process known as "Lighthouse". The intent was to provide more accurate financial statements which would assist Mazars in performing its auditing function. Unfortunately, the implementation of Lighthouse was challenging and created delays in Mazars' ability to complete the audit.

As work was progressing on the 2022 audits, Mazars learned that the Securities and Exchange Commission ("SEC") and the United States Department of Justice ("DOJ") had open investigations into Kraken's conduct. On May 2, 2023, the SEC served a subpoena on Mazars seeking information on the financials of Kraken. On May 15, 2023, Kraken received a Wells Notice stating that the SEC had made a preliminary determination to commence an enforcement action against Kraken. In the summer of 2023, Mazars received a similar subpoena from DOJ again related to whether Kraken was operating an unregistered securities exchange. On November 20, 2023, the SEC brought civil claims against Kraken for allegedly operating as an unregistered securities exchange, broker-dealer, and clearing agency.[1]

On December 14, 2023, Mazars informed Kraken that it was withdrawing from the engagement relating to the 2022 audit. The audit was not complete nor was any opinion given as to Kraken's financial statements. It is Mazars' withdrawal and the reasons behind it, that are at the core of this dispute.

b. The Contract

Both Payward and PVI executed contracts with Mazars related to the 2022 audit. The contracts are both dated March 23, 2023, and while there are some differences

[1] Subsequently, these charges were dismissed with prejudice on March 27, 2025.

in language, on the critical and relevant provisions they are consistent. The objective of the audit was to review the financial statements of the entities and to express an opinion about whether each company's financial statements were fairly presented, in all material respects, in conformity with accounting principles generally accepted in the United States. The contracts laid out the duties and responsibilities of both parties and set forth the conditions upon which Mazars could terminate its services. Specifically in both contracts it states:

"Except as outlined in this letter, or as may be required by applicable professional/regulatory standards, or as otherwise required by law or applicable professional/ethical codes of conduct, we (Mazars) may not terminate this engagement."

This provision was one negotiated by the parties and is not standard language in Mazars' engagement letters. It was, however, critical to Kraken as it was facing deadlines from state regulatory agencies to provide consecutive year audited financial statements to continue to operate in many jurisdictions. For years, Kraken had operated in the United States under a money services business ("MSB") registration with FinCEN. However, states began to require crypto exchanges to obtain money transmitter licenses ("MTLs") which required audited financials. Thus the 2022 audit was a critical component for them to continue to operate in the various states.

Initially the language suggested by Kraken simply stated that "Except as outlined in this letter, we (Mazars) may not terminate this agreement". This sentence was objected to by Mazars' legal counsel, [redacted], which led to the language noted above. In the comments related to the negotiation of this provision, [redacted] agreed that the new language was acceptable and was intended to address the circumstances where Mazars simply elected to terminate without a requirement to do so.

The Payward Inc. contract has some additional language related to when Mazars could withdraw from completing the audit that states:

> "If for any reason we (Mazars) are unable to complete our audit or are unable to form, or have not formed, an opinion, we retain the right to take any course of action permitted by professional standards or regulatory requirements, including

> declining to express an opinion or issue a report, or withdrawing from the engagement."

While this provision is not contained in the Payward Ventures, Inc. engagement letter, it too maintained the requirement of withdrawing only as required by professional standards or regulatory requirements.

c. The Crypto Decision

By the time that Mazars and Kraken entered the contracts to perform the 2022 audit, there was a great deal of uncertainty and regulatory pressure surrounding the cryptocurrency industry. Reacting to these pressures, Mazars' Global Executive Board ("GEB") and its Group Independence and Acceptance Committee ("GIAC") issued a new policy related to audits of cryptocurrency companies. In an internal confidential email dated April 3, 2023, all of Mazars' entities worldwide were advised of the following policy:

> "Due to external events, including the collapse of FTX, and recent media and social media focus on the cryptocurrency sector, Mazars has taken additional steps in order to safeguard the firm against the risks associated with this sector. The following approach and guidance have been agreed with the GEB and must be followed with immediate effect . . . The following requirements should be implemented immediately:
>
> **Cryptocurrency exchanges and brokers**
>
> i. No new audit, audit related, AUP or Assurance services are permitted for clients which are cryptocurrency exchanges and/or cryptocurrency brokers; and
>
> ii. Current audit work for such existing clients should be discontinued at the first available opportunity. **The timing of the resignation should take into consideration reputational or litigation risk only. If necessary, obtain legal advice.**"

While the Mazars entity in the United States is part of a worldwide organization, testimony at the hearing reflected that it had some discretion in the extent it complied with the directions provided by GEB and GIAC. That said, it appears Mazars was committed to enter 2024 with no crypto exchanges or brokers as its clients, had communicated this to its insurers, a merger partner, Forvis, and Kraken's audit team. In order to meet this goal, Kraken's audit needed to be completed by December 31, 2023.

d. Mazars Client Acceptance Committee (CAC)

i) February, 2023 Memo

At the beginning of each audit engagement and periodically thereafter, a review of the company to be audited is completed. For Kraken's 2022 audit, the initial review occurred in February or March of 2023 before the CAC which was composed of [redacted], Mazars' general counsel, [redacted], CEO for Mazars and [redacted], who headed Mazars' quality and risk management team. In a detailed 11-page memo from the audit lead partner, [redacted], the CAC was provided information about Kraken's prior years' performance as demonstrated in the prior audits, the risk related to Kraken's business both by internal and external circumstances, new developments in Kraken's management team, and present and potential regulatory matters. Recognizing that Kraken had invested and improved its governance and internal controls and did not have the same risk factors that other similar companies had experienced, the recommendation to engage for the 2022 audit was approved.

ii) May, 2023 Memo

The next memo to the CAC was dated May 7, 2023 and reflected a call held on May 2nd that also included members of the GEB. The memo was intended to notify the CAC of a delay in Kraken's audit and serve as a follow-up related to Mazars' receipt of an SEC subpoena. The memo reflected that Mazars had been notified by Kraken that its trial balance had a $250 million unreconciled difference in its suspense account/realized gains account compared to its US GAAP accounting records. While an arduous process, Kraken was working on closing each quarter to pinpoint where the difference may have developed. The memo reflected that the audit team did not expect this would impact the previously agreed internal deadline of July 31, 2023 to complete the audit nor did it impact its view on management integrity.

In regards to the SEC subpoena, it was noted that the SEC had requested Mazars' workpapers for Kraken's audit with a due date of May 17, 2023 and Mazars expected to comply with that deadline.

The memo concluded by indicating that Kraken had been transparent in its communications to the audit team regarding the delay that came up in its reconciliation, as well as the SEC inquiry. It was expected that Mazars would still meet the internal deadline to complete the audit and asked that the CAC re-affirm continuing with the audit.

iii) June, 2023 Memo

On May 15, 2023 Kraken received an official Wells Notice from the SEC indicating that the agency's staff had made a preliminary determination to recommend an enforcement action against Kraken for failure to register as a securities exchange, broker-dealer, and clearing agency. Kraken advised Mazars of the notice on June 15 and that Kraken indicated it was drafting a response to the Wells Notice with the assistance of outside counsel. The memo reflects the notice by SEC was similar to action taken against other crypto companies.

As an update to the reconciliation effort noted in the May CAC memo, Kraken continued to proceed month by month to determine where the discrepancy occurred. The memo indicated that Kraken was unsure how long the reconciliation process would take but it would provide Mazars with weekly updates. The audit team believed there would be an impact on the previously agreed internal deadline to complete the audit and had advised Kraken they wanted to complete the audit as soon as possible.

The memo also reflected that Kraken was advised that Mazars did not intend to continue as its auditor beyond the 2022 audit. It noted that Mazars' global and local risk teams had re-evaluated its exposure to the industry and had decided to no longer provide auditing services to crypto clients once existing contracts had been concluded. In doing so, however, it was noted that the audit team was unaware of any material disagreements with management or Kraken's Board that was causing the disengagement.

The memo again requested that the CAC continue to support completion of the audit and the earlier acceptance not be rescinded.

iv. October, 2023 Memo

By October of 2023, it was becoming clear that the efforts to reconcile the 2022 financials had also led to the discovery of significant issues with financial information used to audit the 2020 and 2021 financial statements. It appeared to Mazars that the issues discovered were accounting issues related to the allocation of balances and fortunately did not involve any misappropriation of assets or customer funds. With Mazars facing its self-imposed deadline of December 31, 2023 and Kraken faced with the potential of losing the ability to practice in many states without audited financial statements, five potential options were developed to address the issues. After conferring with the CAC and Kraken's audit committee and counsel, it was decided that Mazars would:

- Inform the client (Kraken) that the prior year audit reports (2020 and 2021) should not be relied upon;
- Issue a comparative-year audit report for 2022 and 2021; with a qualification for the prior year (2021) income statement, cash flows, and opening equity as of January 1, 2021, and emphasis of matter for the 2021 balance sheet.

As a result of the issues discovered, it now appeared that the 2022 audit was being pushed for completion to late November or early December. Despite these issues, the engagement team again recommended that the audit proceed forward and not be rescinded.

v) November 9, 2023 Memo

By this date it appeared that the reconciliation that was necessary for the 2022 financials had been completed with the use of Lighthouse and had been provided to Mazars in early October. However, the identification of the potential prior year's misstatements had made it difficult to predict when the audit would be completed. The option to use Lighthouse to reconcile the 2021 activity would likely delay the completion of the audit for another three months which would affect Mazars' internal deadline and cause significant regulatory issues for Kraken. As such, Kraken continued to investigate the variances using the same process previously utilized for 2020 and 2021.

In November Mazars received a subpoena from the SEC requesting its workpapers related to Kraken's audits. While Mazars was in the process of complying with the subpoena, it did not believe the audit procedures would be impacted by the SEC action and there was no indication that Mazars was the subject of the investigation. The memo stated:

> "The audit team is aware of its responsibilities relating to the code of conduct and objectivity under applicable professional standards. . . Mazars continues to evaluate its independence and objectivity relating to the Payward audits and is not influenced either by the SEC or management in any way to change the nature, timing and extent of its audit procedures relating to the FY2022 audit and the prior year misstatements with implications on the earlier audit opinions."

The audit team recommended that the acceptance not be rescinded.

vi) November 16, 2023 Memo

By mid-November, the atmosphere surrounding the SEC subpoena had raised potential issues as to the audit team's independence, integrity and objectivity under the applicable professional standards and code of professional conduct. This memo simply articulated that none of the audit procedures were being impacted by the ongoing SEC inquiries with Mazars, the above-mentioned Wells Notice or any other regulators. In addition, the CAC was advised that there was no indication that Mazars was being investigated by the SEC for any potential wrongdoing or professional negligence, etc. or were they aware of any actual or threatened litigation against Mazars in relation to these audits.

The engagement team concluded its independence had not been impaired nor had its integrity and objectivity been affected in any way and the engagement should continue.

vii) December 11, 2023 Memo (draft prepared on December 3)

In late November and early December, the investigative posture related to Kraken began to change. While Mazars was well aware of both the SEC inquiry and the opening of a DOJ investigation, the significance of those investigations and potential detrimental effect to Mazars began to crystalize. On November 9, 2023, Mazars received a grand jury subpoena requesting its workpapers and communications with Kraken. This was followed on November 20, 2023, with the SEC instituting an enforcement action against Kraken charging that it was acting as a securities exchange, broker-dealer and clearing agency without having registered any of those functions with the SEC. It asserted that Kraken's failure to register these functions had deprived investors of significant protections, including inspection by the SEC, recordkeeping requirements, and safeguards against conflicts of interest. The complaint further asserted that Kraken's business practices, deficient internal controls, and poor recordkeeping practices presented a range of risks for its customers. Of particular significance to Mazars, the SEC complaint listed seven specific comments or findings that were made by Mazars which appeared to be from its audit workpapers. They included:

1. Kraken's business practices, deficient internal controls and inadequate recordkeeping present a range of additional risks that would also be prohibited for any properly registered securities intermediary. For example, Kraken has at times held customer crypto assets valued at more than $33 billion, but it has commingled these crypto assets with its own, creating what its independent auditor had identified in its audit plan as "a significant risk of loss" to its customers. Similarly, Kraken has held at times more than $5 billion worth of its customers' cash, and it also commingles some of its customers' cash with some of its own. In fact, Kraken has at times paid operational expenses directly from bank accounts that hold customer cash. In addition, during 2023, the independent auditor determined that issues related to Kraken's recordkeeping for customer custodial assets had resulted in material errors to Kraken's financial statements for 2020 and 2021.
2. In documents provided to its auditor, Kraken stated "crypto assets are not separated by type or client, geography, margin vs. non-margin, etc."
3. Concerning Kraken's custody of crypto assets, in its audit plan for 2022, Kraken's independent auditor stated: "There is significant risk of loss of custodial (and proprietary) digital assets through theft/loss of public keys or improper controls over accounting for custodial digital assets that are comingled between customers and with the Company's proprietary digital assets."

4. Kraken's independent auditor has observed that as of December 31, 2021, approximately $33.6 million of customer custodial fiat appeared to be in Kraken's operational bank accounts. Kraken's independent auditor similarly observed that as of December 31, 2020, approximately $30.8 million of customer custodial fiat appeared to be in Kraken's operational accounts.
5. As part of the audit of Kraken's 2021 financial statements, Kraken's independent auditor identified multiple control deficiencies and informed Kraken's board of directors of a significant deficiency in the company's internal controls.
6. In materials provided to its auditor, Kraken stated: "In August 2023, the Company self-identified the possibility of an error." This error was largely based on Kraken's failure to establish a sub-ledger before offering its margin lending product.
7. Kraken's auditor determined that these errors were material to the 2020 and 2021 financial statements of Payward and Payward Ventures.

The memo also highlighted the ongoing DOJ investigation and the cooperation that was being provided by both Mazars and Kraken. Commenting on the Justice subpoena that Mazars had received, the memo stated: "It's a troubling development. It seeks our workpapers and our internal and external emails. Our legal counsel is handling it and we are assessing its impact on the client continuance process."

The memo also reflected that there had been ongoing discussions with Kraken as to the effect the delays in receiving final trial balances and the latest financial statements (outlined in previous CAC memos) would have on Mazars' ability to complete the audit in a timely fashion.

Based on the above, the memo concludes that withdrawing from the engagement was the appropriate course of action. The memo states:

> "We also evaluated our professional obligations under the circumstance where we are made aware of noncompliance or suspected noncompliance with laws and regulations (NOCLAR). The guidance we evaluated is presented as part of Appendix A.

We believe that the recent DOJ grand jury subpoena, as well as the prior discussion points related to regulatory matters give us points to consider related to suspected noncompliance with laws and regulations. As noted in paragraph .05 in the guidance provided, one of the objectives is 'to determine whether withdrawal form [*sic*] the engagement and the professional relationship is necessary, when permitted by law and regulation.'

We considered the level of uncertainty and risk, as Mazars is unable to determine or evaluate the extent of the impact to Kraken's financial statements and disclosures, and management's current inability to estimate the exposure to a reasonable extent, we have to determine whether withdrawal/resignation is necessary."

In the Conclusion paragraph recommending withdrawing, it states:

"In discussions with the Mazars USA LLP client continuance team, there is significant uncertainty regarding the Kraken caused by the DOJ investigation. In considering the impact of these new events, we incorporated our past client continuance activities which included the prior matters, most significantly the SEC subpoenas which requested our workpapers and related discussions for financial statement years 2020, 2021 and the in-process audit work for 2022.

The internal control deficiencies that we have identified indicate continued issues with their financial reporting (including restatements of the prior year's financial statements. . .

After our assessment, we have determined we must withdraw from this engagement due to the level of uncertainty that arises because of the potential outcome of these matters and unknown impact on Kraken's financial statements, including disclosures."

e) Withdrawal documents

On December 14, 2023, Mazars formally advised Kraken's officers and the audit committee that it had decided to withdraw and resign as its auditors. This decision was communicated in two forms. First was a phone call that was not recorded but was memorialized by Mazars in a memo prepared by [redacted]. On the call for Kraken was David Ripley, CEO of Payward, Inc., Carrie

Dolan, Payward's CFO, and Alison Davis, Audit Committee Chair. Mazars' representatives included [redacted], a Mazars partner who headed its Quality and Risk Management group, [redacted], who was the partner who led the audit of Kraken, and [redacted], who was the senior manager for the audit. The critical comments memorialized in the call memo included:

> "Our decision was based primarily on the evaluation of two matters – (i) our receipt of the DOJ grand jury subpoena; (ii) SEC complaint that was filed on November 20. As part of our client continuance process, Mazars also considered the prior SEC subpoenas issued to Mazars, specifically for FY2020, 2021 audits and the in process 2022 audits. The decision to withdraw is mainly due to the level of uncertainty and risk, as Mazars is unable to determine or evaluate the extent of the impact to Kraken's financial statements and disclosures.
>
> Professional standards set out our responsibilities when we are made aware of suspected noncompliance with laws and regulations. Noncompliance can be via acts of commission, omission, intentional or unintentional. While we have no knowledge of the extent of any noncompliance or that any such noncompliance was intentional; we are not able to rely on the Kraken's internal controls to detect or prevent any such noncompliance. In addition, it is impossible to identify the pervasiveness of the suspected issues, or whether such suspected instances are expected to recur.
>
> The fact that we cannot rely on internal controls to rectify, remediate, or mitigate any noncompliance underlines the position that we must resign from these two engagements."

Further in the memo Mazars explained:

> "the DOJ subpoena was issued directly to Mazars, as part of its investigation of Kraken. . .Per the DOJ subpoena, all our workpapers, emails, texts, etc. need to be produced…..Per legal experience in other matters, this DOJ subpoena is likely to result in indictment, however we are not basing our decision on what the likely outcome will be – rather based on the level of uncertainty and risk to the accuracy of the financial statements and footnote disclosures."

After Kraken expressed surprise, [redacted] commented:

> "…we deliberated all of these factors in our assessment. We had a continuance evaluation with every event. The issue with the DOJ matter is slightly different from past is the level of uncertainty and the types of charges/the nature of what the DOJ is going after – potential lack of compliance with the laws and regulations. We are concerned about entity level controls around compliance with laws and regulations. It is not only financial statement related internal controls. We are not guessing on the potential outcome – it is the uncertainty and the possibility that drove the decision and the potential but unknown impact on the financial statements."

The phone call was followed up by the formal resignation letter. In it, Mazars states:

> "We came to this decision during our most recent evaluation of continuance of this engagement which was triggered by our receipt of a grand jury subpoena from the Department of Justice with respect to Kraken, which closely followed in timing an U.S Securities and Exchange Commissioner's (SEC) complaint filed against Payward, Inc. and Payward Ventures Inc. on November 20, 2023. In considering the impact of these recent events, we took into account our past client continuance process which included prior matters, most significantly the SEC subpoenas which requested our workpapers and related discussions with the SEC regarding financial statement years 2020, 2021 and the in-process audit work for 2022. After our recent continuance assessment, we determined we must withdraw from this engagement due to the level of uncertainty and risk that arises from these recent matters and the unknown impact on Kraken's financial statements, including disclosures."

At this point, while Mazars had met its deadline to discontinue audits on cryptocurrency companies by the end of 2023, it placed Kraken in a position where its ability to continue to operate in the United States was in jeopardy. What occurred after Mazars withdrew is important and will be addressed if damages become appropriate, but what must first be decided is whether Mazars' decision to withdraw is consistent with its contractual obligations and professional responsibilities.

C. Findings

Fundamental to making a decision in this matter is first determining why Mazars decided to terminate the contract. This is not an easy determination to make as it is often subject to either later justification or second guessing. That is particularly true when one is attempting to mold that decision to fit within the parameters of professional standards or a code of conduct. There is also a general presumption that those who work in a particular profession and are subject to these standards should be given the benefit of the doubt as to the reasoning they utilize to justify a difficult decision. That presumption begins to diminish, however, when it is inconsistent with documents and statements made at the time the event occurs. Such is the case here.

I have no doubt that the circumstances surrounding this audit were difficult, challenging and at times frustrating. Kraken was in its early years of operation but was rapidly growing into a major player in the cryptocurrency world. Unfortunately, its accounting procedures and automation were lagging behind what would be expected and needed for an organization in this business. At the same time, it is also clear that in recent years significant improvements had been made in personnel, oversight by an experienced audit committee and a move away from manual accounting input. All said, however, these challenges had been overcome during Mazars' audits for 2020 and 2021, and there was nothing to suggest that the 2022 audit could not be similarly accomplished in the time frame needed for both parties. In fact, it appeared that with the development of Lighthouse the ability to provide more reliable and accurate financial statements was on the horizon.

So, the question is "what happened in late 2023 that caused the situation to change?" Based on the testimony during the hearing and the contemporaneous documents created when the decision was made to terminate the audit, I have no doubt that the receipt of the grand jury subpoena, the legal advice Mazars was receiving regarding the likelihood that Kraken would be indicted and the filing of the SEC complaint were the paramount reasons for Mazars' decision to withdraw. I also am equally confident that if the SEC and DOJ matters did not exist, the audit would have proceeded forward to completion, although perhaps not in the exact desired timeframe of the parties. Any attempt to justify Mazars' conduct in another manner is simply unconvincing and at best a desperate attempt to fit the facts into a legally justifiable silo.

What is perhaps most surprising is that even with the assistance of counsel and those responsible for overseeing risk management, Mazars did not take reasonable steps to create a legally supportable explanation. If the reason for withdrawing was its inability to complete the audit consistent with its professional responsibilities and obligations, Mazars could have easily documented it in a clear and precise manner. It did not. I give Mazars credit for being honest, but it now must live with the words and documents it used in December of 2023 to discontinue the audit.

Unfortunately, making the above findings does not end this inquiry. The next step is to decide if the reasons I have found for Mazars' withdrawal fit within the language of the parties' contracts. Those contracts had specific language negotiated by the parties, and due to Kraken's regulatory quandary, were insisted to by Kraken to prevent Mazars from simply walking away without completing the audit. The provisions of the contracts that are in dispute which limit Mazars' disengagement options states:

"Except as outlined in this letter, or as may be ***required*** by applicable professional/regulatory standards, or as otherwise ***required*** by law or applicable professional/ethical codes of conduct, we may not terminate this engagement."

I have highlighted the word "required" as I find it is a critical component to the limitation in the contracts. It would have been easier to find that this language reflects that the ability to terminate the audit is not one that is available as a possible option but one that is mandated by the standards or code of conduct. However, I have reviewed every professional regulation and code of conduct cited by counsel in their closing arguments and none of them mandate withdrawing as the only course of action. So, if "required" was interpreted to mean the only available option, then it would be no different than simply saying "Mazars may not terminate this agreement", the language specifically rejected by Mazars when negotiating the agreement. What required does mean is that if you wanted to disengage from this audit, you could not simply make a corporate decision to leave. The reasons for the decision must be supported by the guidance provided in the regulations and rules for performing an audit. So, a review of the relevant regulations and code becomes necessary.

Since the grand jury investigation and the SEC complaint relate to the alleged failure of Kraken to comply with certain laws and regulations, Section 1.180.010

entitled “Responding to Noncompliance with Laws and Regulations” of the American Institute of Certified Public Accountants (“AICPA”) Code of Professional Conduct would seem to be a good place to determine if it justifies Mazars’ actions. The Code advises that when an auditor becomes aware of credible information concerning noncompliance or suspected noncompliance they should:

(a) Obtain an understanding of the matter, including the nature of the act and the circumstances in which it has occurred or is likely to occur;
(b) The auditor should discuss the matter with the appropriate level of management, and
(c) Advise them to take appropriate and timely actions to rectify, mediate or mitigate the consequences of noncompliance.

The Code then indicates that the auditor should evaluate the response of management and determine whether withdrawing from the engagement is necessary. In making this determination the auditor should consider:

a) The legal and regulatory framework
b) The urgency of the matter
c) The pervasiveness of the matter throughout the client
d) Whether the auditor continues to have confidence in the integrity of management
e) Whether suspected noncompliance is likely to reoccur
f) Whether there is credible evidence of actual or potential harm to the interest of the entity, investors, creditors, employees or the general public.

While providing guidance as to the factors to consider, it does not mandate any particular course of action by the auditing team. Here the legal and regulatory framework regarding the cryptocurrency industry was clearly uncertain and Mazars recognized that this was an area of significant dispute in the industry. While there was obviously an urgency to finish the audit, other than Mazars’ internal deadlines, there was no urgency to withdraw from the audit. Mazars continually expressed confidence in Kraken’s management, and it appears that Kraken was willing to comply with regulatory requirements once it was clear those that applied. It also appears Kraken was willing to accept and recognized it was likely that something less than a clear audit would be provided by Mazars. Finally, while the SEC and DOJ actions could potentially cause harm to Kraken continuing to be a viable company, that harm was unclear at the time Mazars withdrew.

The next accounting standard that appears relevant is the AICPA Auditing Standards that address the auditor's overall responsibility when conducting an audit of financial statements in accordance with generally accepted accounting standards (GAAS). It is important to note that there was no indication of fraud or misappropriation identified by Mazars during the audit. Further, the SEC complaint primarily related to a dispute over governance and at the time of the withdrawal it was unclear as to the matters under investigation by DOJ. But this was at a time of general uneasiness and uncertainty by regulators as to how the crypto industry should be regulated and how those businesses were being operated. So, the relevant section in AICPA is Section 250 that relates to identified or suspected noncompliance with laws and regulations in the audit of financial statements. The guidance provided as to how to appropriately report in the audit noncompliance set forth three possible outcomes:

- If the auditor concludes that the noncompliance has a material effect on the financial statements, and it has not been adequately reflected in the financial statements, the auditor should express a qualified or adverse opinion on the financial statements.
- If the auditor is precluded by management or those charged with governance from obtaining sufficient appropriate audit evidence whether noncompliance that may be material to the financial statements has, or is likely to have, occurred, the auditor should express a qualified opinion or disclaim an opinion on the financial statements on the basis of a limitation on the scope of the audit.
- If the auditor is unable to determine whether noncompliance has occurred because of limitations imposed by the circumstances rather than by management or those charged with governance, the auditor should evaluate the effect on the auditor's opinion, in accordance with section 705 which outlines the considerations in deciding whether to issue a qualified or adverse opinion or a disclaimer of opinion.

Since here the limitations are due to the action of outside entities, DOJ and SEC, Section 705 reflects that if the auditor has the inability to obtain sufficient appropriate audit evidence and, in the auditor's, professional judgement the possible effect on the financial statement is material but not pervasive, a qualified opinion would be appropriate. If the effect on the financial statements would be material and pervasive, a disclaimer of opinion would be the appropriate action. [2]

I do note that Section 250 does reflect that when evaluating the implications of noncompliance, the auditor may consider whether withdrawal from the engagement is necessary when management does not take the remedial action that the auditor considers appropriate in the circumstances, even when the noncompliance is not material to the financial statements. However, there is no suggestion here that management failed to act consistent with the demands or expectations by Mazars relating to the SEC and DOJ matters. In fact, it appears the opposite is true. Mazars consistently confirmed, even when it made the decision to withdraw, that it had no disagreement with Kraken's management and no issues with management's integrity.

So, the question is whether, under appliable accounting regulations and code of conduct, the knowledge of the DOJ investigation, the receipt of a grand jury subpoena and the filing of an SEC complaint, are sufficient bases to allow Mazars to withdraw from the audit. I find they are not.

This was a judgment call by Mazars not a mandated result under either accounting regulations or codes of conduct. Mazars had a clear path under the regulations to appropriately withdraw. and if it had crafted a clear, precise reasoning for that decision following the regulation guidance, it would have been difficult to rule against Mazars' professional judgement that the best course of action was to withdraw from the audit. However, Mazars failed to do so and instead used the uncertainty and risk associated with the DOJ and SEC investigations. I appreciate that withdrawing from an audit is a very rare occurrence, but it was no surprise that taking this action would have a significant impact on Kraken's ability to operate. Failing to appropriately justify its decision at the time it was communicated to

[2] Similar guidance is provided in AS 2405 of PCAOB

Kraken is now preventing Mazars from using the safeguards in the accounting rules and regulations to justify its decision.

Finally, I do note that there is a difference in the engagement letters used for Payward Ventures, Inc and the one for the parent company Payward, Inc. The one provided to Payward, Inc. provided the following additional language:

> "If for any reason we are unable to complete our audit or are unable to form, or have not formed, an opinion, we retain the right to take any course of action permitted by professional standards or regulatory requirements, including declining to express an opinion or issue a report or withdrawing from the engagement."

Why this language is not in the engagement letter for Payward Ventures, Inc. is unclear and not explained. However, I do not believe it is critical to the decision here. The failure to complete the 2022 audit directly affected Kraken's operations in the United States which operated under the umbrella of Payward Ventures. Therefore, to a degree there is an economic loss from the actions taken by Mazars here, it is limited to Payward Ventures, Inc. and not the parent company. While a thorough analysis of the language would likely result in the same conclusion, I do not believe further review is needed.

So having found that there was no regulatory provision that justifies the action of Mazars under its contract with Payward Ventures, I will turn to the issue of damages.

D. Damages

The withdrawal of Mazars from the 2022 audit created an "existential" threat situation for Kraken as it jeopardized its ability to provide critical documentation to the numerous state regulatory entities which would allow them to obtain money transmitter licenses needed to continue to operate in each state. In December of 2023, the U.S. market represented 40% of Kraken's business generating 400 million dollars annually. Kraken had been able to stall state regulators from taking adverse action by communicating the effort being made with Mazars to finalize audited financial statements needed for licensing. With Mazars withdrawing, that representation no longer was viable. Kraken also believed that simply hiring another auditing firm to complete the 2022 audit and potentially redoing the 2021 audit would delay the process for at least six months to more likely a year, and it was running out of time to satisfy the licensing requirements. Faced with the prospect of losing its ability to operate in most U.S. states, Kraken was forced to look for other creative solutions.

Kraken found the solution by agreeing to purchase TradeStation, part of a financial brokerage business that had a crypto offering. However, primarily due to the SEC oversight actions related to companies that offered crypto, TradeStation had decided to leave the crypto market. Critical to Kraken's decision to purchase TradeStation is that it had audited financial statements together with an ongoing relationship with an auditing firm and already had money transmitter licenses in 37 states and in states that Kraken desperately needed. The purchase price was $12,500,000 and with alleged related transactional and regulatory legal fees, Kraken now seeks to recover $17,794,801.30 related to this purchase.

In addition, Kraken is seeking:

- $446,750 for civil penalties imposed by the states of Arkansas, Ohio and Texas between January 1, 2024 and June 1, 2024 when Kraken was able to begin using MTLs acquired from TradeStation
- $608,320 in lost profits resulting from its forced shutdown in Maine
- $3,357,746 for the amount paid for the 2022 audit
- $1,851,502.68 for the amount paid for the 2021 audit
- Pre-judgment interest from December 14, 2023 in the amount of $2,526,207.60
- Legal fees as the prevailing party to be determined after the decision is rendered

In total, the amount sought by Kraken equals $26,585,327.58 not including legal fees associated with the mediation and arbitration of this case.

In response, Mazars denies that it owes any of the fees as they are not causally related to the alleged breach of the contract with Kraken nor were they reasonably foreseeable when the decision to withdraw from the audit was made. In addition, under the contract Mazars is seeking a total of $224,588.40 as reimbursable attorney fees it expended to comply and respond to governmental subpoenas issued by DOJ and SEC during the investigation of Kraken. Putting aside the damage request related to TradeStation, I find I have been provided with sufficient evidence to decide most of the remaining requests.

First, I find it appropriate that the fee paid for the 2022 audit that was not completed should be returned to Kraken. Without a final audit opinion, the work performed provided no value to Kraken. The same, however, is not true for the 2021 audit. The need to reevaluate the clean opinion for that audit related to Kraken's discovery of errors as it ran the Lighthouse program. While there perhaps were discussions as to how the 2021 opinion could be modified, I find no formal request to redo the audit nor any conduct contributed to Mazars as to why it needed to be redone. As such I award, in relation to the audits, only the $3,357,746 expended for the 2022 audit from which Mazars withdrew.

Next Kraken seeks lost profits totaling $608,320 related to its inability to get the necessary approval to operate in the State of Maine. Here I agree with Mazars that Kraken's inability to operate in Maine went far beyond the simple failure to provide financial statements. Maine was one state that appeared to have significant issues with Kraken operating in their state and was particularly vigilant in enforcing their regulations. I do not find a direct correlation between Mazars' conduct and Maine's decision to force Kraken to cease to do business, and therefore, the amount requested is denied.

Kraken also is seeking to recover civil penalties imposed by the states of Arkansas, Ohio and Texas between January 1, 2024 and June 1, 2024, when approval to use the MTLs from the TradeStation acquisition was given by those states. Again, the decision to continue to operate in these states in recognition that penalties may be imposed was Kraken's alone and it cannot create damages by refusing to comply with those state's regulations. As such, the request for additional damages of $446,750 is denied.

This brings us to the three remaining requests for damages. First is the acquisition and legal fees associated with the TradeStation purchase. It is here that I believe I need further clarification and argument on what amount fairly represents the cost/benefits to Kraken. There does not appear to be any disagreement as to the cost figures set forth in Kraken's closing argument, but a significant disagreement exists as to whether the purchase of a totally different company was reasonably anticipated or was a reasonable consequence or would have normally flowed from Mazars' conduct. In other words, can Mazars be liable for any possible consequence that flows from its conduct or only ones that would be reasonably expected? Even Kraken admits that this was a very unusual and disparate action to take.

There is also an issue, not particularly well dressed in the papers, as to the substantial value that the purchase of TradeStation appears to have brought to Kraken. The licensing status in the various states that TradeStation already had and the ability to comply with the state regulations had value to Kraken and in essence allowed it to continue as a viable company. So, a question remains as to whether this value is one that I must consider as mitigating against the purchase price for the company. And if so, how does one calculate that benefit? Since this was not the focus of final arguments, I have decided to re-open the hearing and allow the parties to file a short memo of no longer than 12 pages to address these issues. I would also ask that any caselaw referenced in the memo be provided.

Kraken also has requested that it be awarded pre-judgement interest. This was not addressed by Mazars in its closing argument, so I am asking that Mazars include in the 12-page submission whether it believes Kraken is entitled to pre-judgement interest and whether the calculation provided by Kraken is correct. I would also ask Kraken to update its interest calculation and promptly provide it to Mazars' counsel.

Finally, there is the issue of Mazars' request for reimbursement of fees related to its compliance with responding to document requests from the DOJ and SEC. I find that the expenses that were incurred before December 14, 2023, while the contract was still in place and Mazars had not withdrawn, will be awarded. However, any expenses incurred after that date are denied as the contract under which this obligation arose had been breached by Mazars. I would ask that Mazars provide the calculation for this amount in its response.

The 12-page memos addressing the issues set forth above are to be provided within 14 days of this decision being forwarded to counsel by AAA. The issue of prevailing party and legal fees will be addressed once the issues above have been resolved.

Dated: February 23, 2026
William C. Carpenter, Jr.
<u>/s/ Hon. William C. Carpenter, Jr., Arbitrator</u>

Original Version Filed: June 26, 2026
Public Version Filed: August 5, 2026

AMERICAN ARBITRATION ASSOCIATION

Commercial Arbitration Panel

Payward, Inc. and Payward Ventures, Inc. v. Mazars USA LLP

Case No. 01-25-0001-2986

SECOND INTERIM AWARD

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration Agreement dated March 29, 2023 entered into by the above-named parties, and having been duly sworn and having duly heard proofs and allegations of the parties, and having previously rendered an Interim Award dated February 23, 2026, hereby render this Second Interim Damage Award, as follows:

A. Procedural Status

On February 23, 2026, the decision on liability and some of the damages requested by Kraken was issued in my Interim Award. In that decision, I reopened the hearing to allow the parties to address issues surrounding the purchase of TradeStation and prejudgment interest. This decision is intended to address and resolve these issues. The previous decisions as to damages are hereby incorporated and will not be addressed in this Second Interim Damage Award.

B. Additional Damages

a. TradeStation

There is no dispute as to the circumstances surrounding the purchase of TradeStation and the legal standards for addressing this issue. Once Mazars withdrew from the audit, Kraken was left with the inevitable situation of no longer having financial statements needed to obtain the money transmitter licenses required to continue to operate in most states. In every state in which Kraken was operating, it either had a license that needed to be renewed, or it had no license and was operating at the grace of the state regulatory agency. The missing piece needed for renewals and the issuance of licenses in pending applications was audited financial statements that Kraken now no prospect of receiving in a time frame that would satisfy the state regulators. Without a solution to this crisis, Kraken faced the risk of being forced to withdraw from the U.S. market, which at the time accounted for approximately 40% of its business, revenues of more than $37 billion and profits approaching $600 million. There is also no question that Mazars was aware of the significance for Kraken to have the audited financial statements and the potential consequences if they were not forthcoming. Mazars had been Kraken's accounting firm for years and was familiar with the regulatory requirements for Kraken to continue to operate in the United States. Mazars even on occasion would be asked to provide letters to the regulatory agencies to demonstrate Kraken's ongoing efforts to obtain what was needed by each state agency. As such, I have no doubt Mazars fully understood and appreciated the potential consequences to Kraken when it withdrew from the audit.

As explained in my earlier decision, Kraken believed it did not have the time to simply hire a new auditing firm and continue to operate as before. Many of the regulators had waited patiently for months or years for the financial statements to be provided, and allowing Kraken to continue to operate without the required licenses which were intended to safeguard the investments of their citizens was unrealistic. Simply put, Kraken had run out of time unless an alternative solution was found. That alternative solution was the acquisition of TradeStation at a cost of $12,500,000. With attorneys' fees and costs, Kraken is seeking $17,794,801.30 related to the purchase of TradeStation.

On all accounts it appears that TradeStation was the perfect fit. It had money transmitter licenses in all the states in which Kraken was operating (except Washington), and it had an ongoing relationship with a well-respected accounting firm as well as the financial information needed to satisfy state regulators. In addition, it had no other assets or services that Kraken needed to accommodate, and the acquisition could be accomplished relatively quickly. There is no dispute that the decision to acquire TradeStation resolved Kraken's licensing crisis and allowed it to legally operate in most states.

b. Legal standards

The parties agree that any consideration of damages related to the purchase of TradeStation must be viewed in light of the requirements for awarding consequential damages. A party can liable for consequential damages only if they were reasonably foreseeable. Under Delaware law, a loss may be foreseeable as a probable result of a breach if the loss follows from the breach either (1) in the ordinary course of events or (2) as a result of special circumstances that the breaching party had reason to know it would be a reasonable consequence to the breach. In other words, a party may recover consequential damages if it establishes that the breaching party could reasonably have anticipated that the damages would be the probable result of the breach.

c. Findings

Since the beginning of Mazars signing on to perform the 2022 audit, (and even before) it was aware that audited financial statements were the critical missing link for Kraken to receive the licensing that was now required by most state regulatory agencies. They also knew that Kraken had delayed the regulators from taking adverse action by assuring them that the audited financial statements would soon be provided. Mazars also provided necessary assurance to the regulators that the audit was ongoing and there were no concerns as to the cooperation or integrity of Kraken's management. So, it is clear Mazars knew that its decision to step away would have a dramatic effect on Kraken and had the potential of causing significant hardship to the continued operation of the company. So, it was foreseeable that Kraken had three possible alternatives to address the difficult position caused by Mazars' actions.

First, Kraken could continue to engage with state regulators and hope they would continue to be patient and understanding of its situation and allow it to operate without the required licensing until a new auditing firm could be engaged and issue an auditing opinion. However, it is uncontested that even with Mazars' willingness to assist another auditing firm, the ability to timely engage a reputable firm in a less than favorable crypto environment and to have auditing opinions in time to prevent adverse regulatory consequences would be difficult at best. This would have added nine months to a year of limbo status inconsistent with its previous representations to the states. In addition, Mazars' withdrawal certainly would have created an uneasy and uncertain situation which would cause the regulators to be more concerned about Kraken's operation. When you add this uncertainty to the general aversion to the crypto industry caused the failure and investigations of other companies, it placed Kraken in an extremely risky situation.

The second alternative available to Kraken was to simply withdraw from the U.S. market at least until it was in a position to comply with state regulations. While foreseeable, it was an alternative that was not economically viable. The U.S. market represented nearly 40% of Kraken's business and billions in revenue and millions in profits. Mazars, having conducted Kraken's audits for three years, would clearly be in a position to appreciate the financial consequences for the company if this occurred.

The third alternative was to find another avenue to satisfy the regulatory requirements. It was not required that Mazars knew at the time of the breach how this would be accomplished but only that it was foreseeable that its conduct would have required Kraken to look for other means to become licensed. Here the path Kraken pursued was to identify another company that it could partner with or acquire that either had the needed money transmitter licensing already or a similar crypto entity that had a full audit history with the required financial documentation. While it was noted during the hearing that this solution was somewhat unorthodox, there was testimony that it was not unusual or abnormal that mergers and acquisitions would be used to resolve licensing or registration problems.

As noted by Robert Moore in his testimony, there were not many good alternatives on the table to solve Kraken's situation. Finding another accounting firm to do an audit of multiple-year financial records would take too long. Stopping U.S. operations would likely cause the company to go out of business and there was no clear alternative means to satisfy the regulatory requirements without audited financials beyond finding the money transmitter licensing ("MTLs") through another company. This clearly created very special and unique circumstances caused by Mazars' decision to withdraw and made more foreseeable by Mazars' special knowledge, participation and understanding of the importance in obtaining the money transmitter licensing for Kraken to continue operation. Kraken's decision to pursue a merger, acquisition or partnership was one that Mazars had reason to know, and should have reasonably anticipated, would be a reasonable path forward as a consequence of its breach. As such, I find the cost of acquiring TradeStation to be appropriate consequential damages and the purchase price for TradeStation of

$12,500,000 is awarded. By acquiring TradeStation Kraken was able to receive MTLs from all the states they had been operating in except Maine and now legally operate in those states. This is directly what could have been received if Mazars had completed the audit.

Finally, it is also important to note that while Mazars has asserted that the TradeStation acquisition was not foreseeable and it is not liable for any damages connected to it, it has not presented any evidence to suggest that the purchase price was unreasonable or suggested that the acquisition was an inappropriate resolution to the difficult circumstances facing Kraken. As such, I have made no damage adjustment to the purchase price.

d. Attorneys' fees

In addition to the purchase price for TradeStation, Kraken has asked I award the attorneys' fees of $751,508.44 associated with the purchase as well as attorney costs of $4,543,292.86 connected to change of control applications and consent orders negotiated with various states following the acquisition. Since I have found that the acquisition of TradeStation was a foreseeable consequence of Mazars' conduct, I agree that the attorneys' fees of $751,509.44 associated with the purchase is recoverable. However, I do not find the fees associated with the change of control process sufficiently connected to Mazars' conduct and those fees are not awarded.

e. Prejudgment interest

As the parties have noted, under Delaware law, prejudgment interest is awarded as a matter of right and unless specifically waived by the parties, is awarded from the time monies are due or when the event causing the loss arises. I do not find that the language of the arbitration provisions reflects an intention by the parties to waive prejudgment interest as an interest award is compensatory in nature and is intended to compensate a party for the loss of the use of their money. The interest rate should be calculated as simple interest and may not be compounded. The following dates should be used to calculate prejudgment interest:

i) TradeStation – April 15, 2024
ii) 2022 audit- December 14, 2023
iii) TradeStation acquisition attorneys' fees – As I am unable to determine, based on the information provided in exhibit A attached to Kraken's

supplemental brief, which invoices relate to the acquisition and which to the change of control, counsel is to confer and attempt to ascertain the date of the last invoice that related only to the acquisition which has been awarded. For simplicity, I have decided that the prejudgment interest for the $751,509.44 will begin to run 60 days after the last acquisition related invoice.

iv) Mazars' attorneys' fees associated with responding to the SEC and DOJ subpoenas - 60 days from the last invoice related to this activity.

As there appears to be no dispute as to the interest rate of 10.5%, it should be used for calculation of the prejudgment interest.

C. Conclusion

The following damages are awarded:

To Kraken:

TradeStation acquisition - $12,500,000

Acquisition attorney invoices – $751,509.44

2022 audit – $3,357,746

Prejudgment interest as set forth above

To Mazars:

Attorneys' fees related to SEC/DOJ subpoenas - $8,606.00 plus prejudgment interest as set forth above.

Applications to award attorney fees as a prevailing party are to be submitted within 15 days of this award. Any response to an application are to be submitted within 15 days of the filed application.

Dated: April 15, 2026

/s/ William C. Carpenter, Jr., Arbitrator
Hon. William C. Carpenter, Jr., Arbitrator

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AMERICAN ARBITRATION ASSOCIATION

Commercial Arbitration Panel

Payward, Inc. and Payward Ventures, Inc. v. Mazars USA LLP

Case No. 01-25-0001-2986

FINAL AWARD

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration Agreement dated March 29, 2023 entered into by the above-named parties, and having been duly sworn and having duly heard proofs and allegations of the parties, and having previously rendered an Interim Award dated February 23, 2026, and Second Interim Award dated April 15, 2026, hereby render this Final Award, as follows:

A. Procedural Status

There have been two previous decisions made in this matter. The first Interim Award related to whether a contract breach had occurred and decided some of the damage issues. The Second Interim Award was the final award and resolved the remaining damage issues. As a result of those decisions, Kraken requests that it be declared as the prevailing party, and, consistent with the parties' agreements, to be awarded legal fees it has incurred handling this matter from mediation through arbitration. Mazars concedes that Kraken should be declared the prevailing party but does dispute if the awarding of legal fees is appropriate and, if so, the extent of an award. The following is intended to resolve this dispute.

B. Agreement

In deciding the issue of attorneys' fees, it is important to first appreciate that Delaware traditionally follows the American Rule that requires each party to pay its own legal fees regardless of the outcome of the litigation.[1] This limitation, however,

[1] TranSched Systems Ltd. v. Versyss Transit Sols., LLC, 2012 WL 1415466 (Del. Super. Ct. Mar. 29, 2012)

can be overcome if there is a contractual provision in which the parties have agreed to some shifting of those fees to the prevailing party. The parties do not dispute that, as a result of the decisions rendered in this litigation, Kraken is the "prevailing party" and that in the Engagement Agreements prepared by Mazars and agreed to by Kraken, there is a provision that allows an allocation of legal fees. In the March 23, 2023 letter agreements[2] the following language is included:

"In its decision, the arbitrator will declare one party the prevailing party and will have the power to award all reasonable legal fees associated with the arbitration and prior mediation to the prevailing party."

This language clearly provides (1) discretion to the arbitrator whether to award legal fees to the prevailing party, (2) that such an award is not mandatory and (3) the fees awarded are required to be reasonable.

C. Fees Requested

Kraken is seeking a fee award totaling $3,247,609.54. Included in this amount are (i) attorneys' fees of $1,971,228.24, (ii) expert fees of $1,066,014 and litigation costs of $210,367.30.

(a) Attorneys' Fees

I do not believe there is any significant dispute that this matter was a difficult and unique case that required a great deal of work and effort by Kraken's counsel to establish its client's claims. Both sides were represented by excellent attorneys that handled the matter professionally and with a great deal of skill and expertise. It also appears that the hourly rate charged by Kraken's counsel was consistent with rates imposed in complex commercial litigation particularly in the New York and Delaware legal community. As such, I do not believe there is a need to consider separately each of the "reasonableness" factors found in Rule 1.5(a) of the Delaware Lawyers' Rules of Professional Conduct. Overall, the factors were fairly met. Where I do deviate from Kraken's assertions is whether it was reasonable to engage the services of four and at times more attorneys to litigate this matter. Ms. Zaytsev is an experienced and skilled litigator and clearly has the expertise needed to handle the matter. Ms. Mariella was added initially as an associate but was made a partner of

[2] Claimant's Exhibits 48 and 49

the firm soon after the litigation began. I cannot dispute she was an active participant in litigating this matter and even though two partners working on this matter appears to be excessive, it is justified under the circumstances as to how it developed. In addition, it appears that Ms. Waldo was the primary associate assigned to the case and certainly her services were reasonable. However, beyond these three individuals, I have difficulty justifying the expense as it appears to be excessive and unreasonable particularly in an arbitration setting intended to minimize cost. So, I am awarding the fees listed in Exhibit 1 related to the fees of Ms. Zaytsev, Ms. Mariella and Ms. Waldo reduced by 10% or 15% provided to the client at different times. I am not awarding what is listed on invoices as "B. other charges" as I find they are not legal fees of counsel. This results in an award of attorneys' fees of $1,565,868.

(b) Expert fees

In its fee submission, Kraken is requesting that the fees of its accounting experts, AlixPartners, also be awarded. AlixPartners is a global consulting firm that provides expert analysis and testimony on accounting matters. The invoices from AlixPartners reflect work performed from January of 2025 to January of 2026 and total $1,066,014.00. In particular, Denis O'Connor of AlixPartners was retained to assist counsel, provide an expert opinion report and to testify at the hearing. His hourly rate was more than $1400.00. While I can appreciate counsels' need to have the expertise of Mr. O'Connor to gain sufficient knowledge of the accounting standards that were at issue in this case, the invoices provided reflect that the vast majority of his time related to counseling with counsel and preparing his expert/rebuttal report. I do not find this work to be legal fees as contemplated by the parties' Agreement and the amounts requested appear to be excessive for an arbitration. If the parties intended to shift these costs to the prevailing party, they could have done so in a clear and precise manner. They did not, and I am not willing to expand the definition of "legal" to the work performed by an accounting consultant now. As such, the expert fees of AlixPartners will not be awarded.

(c) Litigation cost

The final area of cost that is included in Kraken's application would be best described as miscellaneous cost that was expended to pursue the arbitration. The costs include data processing, graphics, court reporter fees and fees paid to AAA to conduct the arbitration. While I have no doubt that these costs were incurred by

Kraken, its application makes no attempt to characterize the costs as "legal" fees. Simply put, these are expenses that Kraken incurred during the litigation and they are litigation costs, not legal fees. Therefore, they will not be awarded.

D. Miscellaneous contentions

While most of the objections raised by Mazars have been decided above, there is one issue that needs clarification. Mazars argues that the fee application must be reduced to account for the claims and damages that Kraken did not win in the two prior decisions made in this matter. In other words, it asserts that legal fees to be awarded should only relate to specific claims in which Kraken was successful. While perhaps this contention has some merit in determining who the prevailing party is, the claim-by-claim approach has been rejected by the Delaware courts. In *Bako Pathology LP v. Bakotic*, a case this arbitrator is all too familiar with, the Supreme Court of Delaware found that courts have determined "Prevailing Party" to be a contractual term of art that parties have bargained for in their agreements. Having chosen this common term, the Courts have presumed the parties intended that the court follow the traditional application of that term. In Delaware, this means the court will apply an all-or-nothing approach involving an inquiry into which party predominated in the litigation as opposed to a claim by claim or other partial basis approach.[3] In other words, to achieve predominance, the party should have prevailed on the case's chief issue.[4] Once the prevailing party has been determined, legal fees need not be calculated by claim. Not only is this legally correct but it is practical. Litigation preparation is generally not practiced by claim nor is counsel's time divided by each claim in a complaint. Therefore, since I am required by the parties' Agreements to determine a prevailing party, it is clear that Kraken was successful on the primary issues in this litigation and is the prevailing party. The award need not be reduced by a review of each individual claim.

E. Confirmation fee

Kraken has also asked that I order that it is entitled to reasonable legal fees if it is required to confirm the arbitration award in a court of competent jurisdiction.

[3] *Bako Pathology LP v. Bakotic* 288 A.3d 252 (Del. 2022).
[4] *2009 Caiola Family Trust v. PWA, LLC*, 2015 WL 6007596 (Del. Ch. Oct. 14, 2015).

Mazars has indicated it intends to pay the entire award within 60 days and therefore confirmation will be unnecessary. While it is speculative as to the time needed if confirmation is required, in order for this Award to be final, I will allow attorneys' fees up to 10 hours calculated at the hourly fee rate of Ms. Zaytsev for any confirmation action that is needed.

F. Conclusion

Kraken is awarded attorneys' fees in the amount of $1,565,868. The request to award expert fees and litigation costs is denied. The AAA administrative fees and expenses and the Arbitrator fees and expenses shall be borne as incurred.

This award is in full settlement of all claims and counterclaims submitted to this arbitration. All claims not expressly granted herein are hereby, denied.

Dated June 26, 2026

/s/ William C. Carpenter, Jr., Arbitrator
Hon. William C. Carpenter, Jr., Arbitrator

I, William C. Carpenter, Jr., do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

Dated June 26, 2026

/s/ William C. Carpenter, Jr., Arbitrator
Hon. William C. Carpenter, Jr., Arbitrator