IN THE SUPREME COURT OF IOWA

NO. 23-0439

PRINCIPAL SECURITIES, INC,

Petitioner-Appellee,

v.

MARK A. GELBMAN,

Respondent-Appellant.

PETITIONER-APPELLEE'S BRIEF

APPEAL FROM THE IOWA DISTRICT COURT FOR POLK COUNTY
THE HONORABLE CELENE GOGERTY

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DID THE DISTRICT COURT COMMIT AN ERROR OF LAW IN FINDING THAT THE ARBITRATION AWARD WAS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE AND VACATING THE AWARD PURSUANT IOWA CODE § 679A.12(1)(F)?

ROUTING STATEMENT

This appeal should be routed to the Iowa Court of Appeals because it involves issues of well-settled law and no issues of first impression.

STATEMENT OF THE CASE

Appellee Principal Securities, Inc. ("PSI") takes no issue with the first, second, and fourth paragraph of Appellant Mark A. Gelbman's ("Gelbman") statement. PSI supplements paragraph two to note that it filed a Reply In Support of Its Motion for Vacatur with the District Court on September 29, 2022. PSI disputes the third paragraph which is nothing more than a summary of Gelbman's argument. The Order of the District Court vacating the Award because the Award was not supported by substantial evidence was not error and was in accordance with well settled statutory and legal authority. PSI further adds that the District Court Order denied PSI's request to vacate the award on the ground that the arbitrator exceeded his authority, granted PSI's request to the vacate the Award on the ground that it was not supported by substantial evidence, but did not address

PSI's request to vacate the award on the alternate theory that the award was in violation of public policy.

STATEMENT OF FACTS

I. Gelbman's Termination

Gelbman was associated with PSI as a registered representative from October 2011 through March 2021. *See* Appx. at 569. After receiving a complaint from one of Gelbman's customers about his service of her account, PSI conducted an internal review of Gelbman's business. *See* Appx. at 573. Its review revealed that Gelbman improperly exercised discretion in several customers' accounts without the proper documentation and approval. *See id.*; *see also* Appx. at 457, 542–49. PSI's policies provided as follows:

> **Chapter 5 – Solicitation & Client Accounts**
> **Section 5.G**
> **Discretionary Authority**
> All transactions in a client's account(s) must be pre-authorized and approved by the account owner with very limited exception as specifically indicated or referenced in this policy. Thus, prior to execution of every transaction, the account owner must specify the security, and provide instructions regarding the timing of the transaction, price and quantity. Pursuant to this requirement:
> . . .
> - In order to evidence that transactions are customer-authorized and not discretionary, owner pre-approval of transactions must be documented in the client file within 24 hours (within one business day) of obtaining the approval. The documents should provide details such as who authorized the trade, how the authorization was received (e.g., phone or in person), and specifically what was approved (e.g., type of transaction, security, timing of the transaction, price and quantity).

> With written or verbal (and documented) customer consent, time and price discretion may be used for orders for a definite amount of a specific security. The duration of time and price authority is limited to the end of the business day on which the order was received.

Appx. at 457.

Thus, pursuant to the policy, Gelbman was required to obtain approval from customers in advance of every trade, on the day of the trade, as to the security, the timing of the trade, the price, and the quantity. This means that for rebalancing trades like those at issue, Gelbman had to obtain approval for the sale transaction on the day of that trade and then, separately obtain approval of the purchase transaction on the date of that trade. Moreover, Gelbman was required specifically to document the customer approval for each trade on the two separate dates. *See id*. Gelbman admitted he "erroneously rebalanced the Clients' accounts" without obtaining pre-approval and permission for both the liquidating trade, as well as for the purchasing trade in numerous customer accounts. Appx. at 218, ¶ 10. In addition, and a separate violation of the policy, his files did not contain the required documentation evidencing customer consent to the trades, a fact Gelbman also admitted. *See* Appx. at 366 (110:10–14).

As a result of its findings relating to Gelbman's discretionary trading, PSI terminated Gelbman's association with the firm on March 30, 2021. *See* Appx. 569.

II. Gelbman's Form U5

In accordance with industry rules, PSI filed a Form U5 for Gelbman on April 12, 2021. *See id.* Gelbman's Form U5 states that the "Reason for Termination" was "[d]ischarged," and that "Mark Gelbman was terminated for failure to adhere to the firm's policies and procedures regarding discretionary trading." *See id.*

In addition, Section 7 of the Form U5 contains "Disclosure Questions," and the answers to these questions must be explained completely if the answer to any question is "YES." Question 7B, which focuses on events subject to internal review asks:

Internal Review Disclosure

		Yes	No
7B.	Currently is, or at termination was, the individual under internal review for fraud or wrongful taking of property, or violating *investment-related* statutes, regulations, rules or industry standards of conduct?	◉	○

Id. at 570. PSI answered "YES" to Question 7B, which meant that PSI was required to provide an explanation. *See id.* The summary provided states that the internal review was initiated on January 4, 2021, and described the nature of the internal review: "After receiving a customer complaint regarding fee disclosure and suitability of a variable annuity, the Firm reviewed Mr. Gelbman's book of business. Through its review, the Firm found Mr. Gelbman had failed to adhere to its policies regarding discretionary trading." *Id.* at 573. The internal review

concluded when PSI decided to terminate Gelbman's association with the firm. *See id.*

Question 7F, which focuses on the termination disclosure, asks:

Termination Disclosure

		Yes	No
7F.	Did the individual voluntarily *resign* from your *firm*, or was the individual discharged or permitted to *resign* from your *firm*, after allegations were made that accused the individual of:		
1.	violating *investment-related* statutes, regulations, rules or industry standards of conduct?	◉	○
2.	fraud or the wrongful taking of property?	○	◉
3.	failure to supervise in connection with *investment-related* statutes, regulations, rules or industry standards of conduct?	○	◉

Id. at 572. In response to Question 7F, PSI responded "YES." The form notes that Gelbman was discharged on March 30, 2021, and the reason for his termination was a failure to follow the firm's policies and procedures regarding discretionary trading. *Id.* at 574. Because Gelbman was discharged after allegations were made that he violated PSI's rules, PSI was required to mark "YES" in response to Question 7F on the Form U-5, indicating that Gelbman was discharged after allegations were made that accused him of violating industry standards of conduct. Importantly, FINRA Regulatory Notice 10-39 provides, in relevant part, "A firm that is terminating a registered person for misconduct subject to disclosure specified in Question 7F is <u>required</u> to answer that question in the affirmative . . . ." *See* Appx. at 479 (emphasis added).

III. Gelbman's FINRA Arbitration Claim

In June 2021, Gelbman initiated an arbitration proceeding before FINRA against PSI seeking expungement of the termination disclosure from his Form U-5. *See* Appx. 216–23; *see also* Appx. at 202. In the Statement of Claim, Gelbman admits he told a compliance representative with PSI that "he had erroneously rebalanced the Clients' accounts without making two separate phone calls to obtain permission for both liquidations and purchases in their accounts." Appx. at 218, ¶ 10. He asserted one cause of action in the Statement of Claim: expungement of the termination disclosure based on the defamatory nature of the entry. *See id.* at 219–22.

Specifically, Gelbman alleged that the termination disclosure is "defamatory in nature and could tend to mislead the public." *Id.* at 221, ¶ 24. Gelbman requested the following relief:

> a. amendment of the Reason for Termination entry in Section 3 of [Gelbman's] Form U5 to read "Voluntary;"
>
> b. expungement of the Reason for Termination explanation on [Gelbman's] CRD;
>
> c. amendment of the answers to questions 7B and 7F(1) on [Gelbman's] Form U5, from "Yes" responses to "No;" and
>
> d. deletion of the Internal Review and Termination Disclosure Reporting Pages accompanying occurrence numbers 2121897 and 2121898."

Id. at 223. Gelbman did not specifically request any other language modification to the U5 disclosure. *Id.*

PSI filed its Statement of Answer in September 2021, denying Gelbman's claims and requesting dismissal of the claims in their entirety. Appx. 225–35; *see also* Appx. at 202–203. PSI argued that it made accurate and truthful statements on the Form U5 regarding Gelbman's violation of the firm's policies with respect to discretionary trading. Appx. at 231–33. PSI's policy plainly states, "All transactions in a client's account(s) must be pre-authorized and approved by the account owner . . . ." Appx. at 457. By his own admission, Gelbman did not properly obtain the consent of each customer for each transaction during the relevant time period, and he did not provide any required supporting documentation evidencing those communications. *See* Appx. at 232–33. As a result, PSI argued, the termination disclosure was truthful, and a true statement cannot be defamatory. *See Huegerich v. IBP, Inc.*, 547 N.W.2d 216, 221 (Iowa 1996); *Hovey v. Iowa State Daily Publ. Bd., Inc.*, 372 N.W.2d 253, 255 (Iowa 1985).

IV. The FINRA Arbitration Hearing and Subsequent Award

The expungement hearing took place via Zoom on February 8, 2022. *See* Appx. at 204. At the hearing, Gelbman's counsel requested the same relief noted in the Statement of Claim and withdrew his monetary request for $1.00 damages. *See*

Appx. at 265-266 (9:24–10:1). During the course of the hearing Gelbman failed to provide any testimony or documentary evidence that he was not under internal review at the time of his termination. *Cf.* Appx. at 304-305 (48:22–49:9). During the course of the hearing Gelbman failed to provide any testimony or documentary evidence that would contradict the fact that at the time Gelbman separated from the firm, there were allegations that accused him of violating investment-related rules. *See id*.

During the hearing, PSI provided voluminous evidence that Mr. Gelbman was fully apprised of the discretionary trading rules and that those rules were reviewed with him on a regular basis. Specifically, PSI introduced into evidence the policy itself, Gelbman's Registered Representative Agreement under which he agreed to be "familiar with and abide by the compliance policies," annual reviews with Gelbman that included reminders that discretionary trading was not permitted and that documentation supporting client trade approvals was required, FINRA Rule 3260 setting forth the same requirements regarding discretionary trading as PSI's policy, and a Frequently Asked Questions form provided to Gelbman regarding and reinforcing discretionary trading policies. *See* Appx. 491–93; 472–73; 495–500; 387–92; 394–97; 399–404; 406–10; 452–55, 457; 475–76; 502–04; 542–49; *see also* Appx. 321-23 (65:24–67:9), 326-27 (70:5–71:12), 328-32

(72:2–76:5), 334-38 (78:11–82:18), 343-44 (87:17–88:1), 344-45 (88:22–89:25), 347-48 (91:15–92:7), 348-49 (92:21–93:17).

The only evidence in the record to support Gelbman's lack of knowledge regarding the policy was his own self-serving statement that he did not understand the operation of the policy as it worked within the advisory platform. *See* Appx. at 291 (35:3–23). Nonetheless, during the hearing Gelbman admitted that he fully understood PSI's rules regarding discretionary trading and that there were not any applicable exceptions for the trading at issue. *See id*. at 336-38 (80:2–82:18), 353-54 (97:20–98:8). Gelbman provided no evidence that his failure to obtain approval for the rebalancing transactions or to document properly the purported approval for those trades was a merely "technical" violation. PSI introduced evidence that both PSI policy and FINRA Rules prohibit placing trades for customers that are not specifically approved as to security, time, and price. *See* Appx. at 457, 475–76. Moreover, PSI introduced evidence that FINRA does not find these to be merely technical violations and has brought enforcement actions in similar situations. *See* Appx. at 472–73.

PSI further introduced numerous documents reflecting that Gelbman had agreed to keep up with industry rules and regulations, *see* Appx. at 491–93, had agreed to keep up with PSI policies, *id*., had been provided policies that clearly delineated that discretionary trading was prohibited and identified that

documentation regarding approval was required, *see* Appx. at 457, and evidence that supervisors reviewed these specific requirements with Gelbman on an annual basis, *see* Appx. at 495–500. Gelbman's evidence regarding the purported inducement not to resign was insubstantial. The only evidence before the arbitrator on this point was a snip of a text message. In response to Gelbman's text that it might be best to resign, his supervisor texted back "I think this is a mistake" and suggested a time to meet and discuss further. Appx. at 540. Gelbman's offered testimony on the subject *never* stated that he was specifically told not to resign by anyone at PSI. In fact, Gelbman's testimony is clear that the only conversation on this topic was on March 3. *See* Appx. at 307 (51:2–25). Moreover, he never testified that anyone at any point told him not to resign. *See* Appx. at 306-08 (50:19–52:25).

On February 23, 2022, the arbitrator issued the Award in the arbitration case, granting Gelbman's expungement request in part, but making other rulings inconsistent with the relief requested by the parties and the findings therein. *See* Appx. 197–205. Perhaps most importantly, the arbitrator found that the disclosure, that Gelbman violated firm policy, was in fact true, identifying that Gelbman had in fact failed to abide by a trading requirement. Appx. at 203, ¶ 1. Although identifying that the termination disclosure should be expunged, the arbitrator

inconsistently ordered that the "Reason for Termination" on Gelbman's Form U-5 remain the same ("Discharged"). *Id.* at 203, ¶ 1.

Despite finding that Gelbman had in fact violated firm policy and that was why he was terminated—thus implicitly finding that the disclosure was true—the Arbitrator further ordered that PSI change the "Termination Explanation" and replace it with the following language: "Mr. Gelbman unknowingly failed to abide by a technical trading requirement for nondiscretionary clients. A program change triggered this technical requirement. Principal Securities, Inc.'s own actions, especially incomplete training, largely caused this failing. Moreover, during its investigation, Principal Securities, Inc. encouraged Mr. Gelbman not to resign." Appx. at 203, ¶ 1. Lastly, and also inconsistent with other sections of his order, the arbitrator ordered, "Any 'Yes' answers should be changed to 'No,' as applicable." *Id.*

V. The District Court Proceedings

PSI filed its Motion to Vacate or in the Alternative Modify Arbitration Award in the District Court. Appx. at 56–79. PSI argued three grounds for vacatur, including that "the Award is not supported by substantial evidence on the record." Appx. at 56. In response to that argument, Gelbman argued: (1) that Iowa Code § 679A.12(1)(f) was preempted by the Federal Arbitration Act and could not be applied; and (2) that it was an improper request to ask the Court to retry the matter.

Appx. at 131–34. PSI filed a Reply in Support of its Motion to Vacate addressing Gelbman's arguments. Appx. at 104–11. The Court held a hearing on December 9, 2022. Appx. at 148–49. Counsel for PSI argued, among other things, that the Award lacked substantial evidence. Appx. at 178–80. Counsel for Gelbman argued the same positions put forth in his briefing on that point. Appx. at 190–92. Importantly, Gelbman never argued to the District Court that the evidence supporting the award was substantial. *Id.* Gelbman never argued to the District Court that Gelbman's own testimony as the only evidence was sufficient and constituted substantial evidence. *Id*.

The District Court denied PSI's motion to vacate on the grounds that the Arbitrator exceeded his authority, but granted PSI's motion to vacate on the ground that there was insubstantial evidence to support the award. Appx. at 155–63. The Order did not address PSI's contention that the Award should be vacated because it violated public policy. *Id*.

ARGUMENT

This Court can easily affirm the District Court's order vacating the arbitration award. As an initial matter, Gelbman has waived each argument that he raises on appeal twice over. He failed to make any of these arguments before the District Court, so none of them are preserved. Even on appeal, he has failed to satisfy the requirement of Rule 6.903 that he include "references to the pertinent

parts of the record" in his argument. Iowa R. App. P. 6.903(2)(g)(3). Gelbman's argument is devoid of any relevant facts. He, for instance, never mentions the substance of his testimony, choosing instead to insist—without elaboration—that it "supports the finding made by the Arbitrator." Appellant's Brief at 19.

But even if this Court could reach the merits, Gelbman's arguments would not fare much better. The District Court correctly identified the governing legal standard—the same standard that Gelbman invokes in this appeal. And the District Court correctly found that substantial evidence did not support Gelbman's contention before the arbitrator that PSI's report of the circumstances of his termination was inaccurate when all the evidence, including Gelbman's own testimony established that that report was, in fact, true.

1. The District Court did not commit an error of law when it found the arbitration award was not support by substantial evidence and vacated the arbitration award pursuant to Iowa Code § 679A.12(1)(f)

I. Preservation of Error

PSI agrees that this matter was timely appealed. PSI does not agree that the matters at issue in this appeal were raised in the District Court. Although rather convoluted, Gelbman's appeal is based on his argument that the District Court committed an error of law and exceeded its powers in vacating the award because (1) the District Court grounded its opinion in the lack of findings in the Award; (2) because the District Court was required to accept the arbitrator's assertion and the

District Court could not second guess his conclusions; and (3) there was substantial evidence to support the arbitration award in the form of Gelbman's own testimony. Appellant's Brief at 16–19. While these arguments are without merit for the reasons set forth below, none of these arguments were raised in the District Court. *See* Appx. at 131–34; 190–92. The only arguments raised by Gelbman regarding Iowa Code § 679A.12(1)(f) was that it did not apply because it was preempted by the Federal Arbitration Act and that it was improper to ask the District Court to retry the matter. *See id.* Because Gelbman failed to raise these arguments in the District Court, this appeal should be denied. *See Ronnfeldt v. Shelby Cnty. Chris A. Myrtue Mem'l Hosp.*, 984 N.W.2d 418, 421 (Iowa 2023) ("Generally, we will only review an issue raised on appeal if it was first presented to and ruled on by the district court." (quoting *State v. Mitchell*, 757 N.W.2d 431, 435 (Iowa 2008))).

II. Standard and Scope of Review

The standard of review for this matter is for correction of errors of law. Gelbman's argument on appeal is that the "District Court erred as a matter of law" in determining that the arbitration award was not supported by substantial evidence. Appellant's Brief at 18, 19. Gelbman appears to confuse the scope of judicial review of an arbitration award with the scope of review employed by the appellate court in reviewing the District Court's factual finding that the award was not supported by substantial evidence. Gelbman is correct that an appeal from an

Order on a motion to vacate an award is handled in the same manner as from an order or judgment in a civil action. *See* Iowa Code § 679A.17(2) ("The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action."); *see also Sellers v. Gupta*, 978 N.W.2d 105 (Iowa Ct. App. 2022) (affirming district court award finding no abuse of discretion). Pursuant to Iowa Rule of Appellate Procedure 6.907, the review shall be for "correction of errors at law." Iowa R. App. P. 6.907; *Sellers*, 978 N.W.2d at 105 ("we review for correction of errors at law"). "Where there is substantial evidence in the record to support the trial court's decision, an appellate court is bound by those findings of fact." *Iowa Fuel & Minerals, Inc. v. Iowa State Bd. of Regents*, 471 N.W.2d 859, 862 (Iowa 1991) (citing Iowa R. App. P. 14(f)(1); *Midwest Recovery Serv. v. Wolfe*, 463 N.W.2d 73, 74 (Iowa 1990)); Iowa R. App. P. 6.904(3)(a). Trial court findings are construed "broadly and liberally . . . to uphold, rather than defeat, the trial court's judgment." *Crowe-Thomas Consulting Grp., Inc. v. Fresh Pak Candy Co.*, 494 N.W.2d 442, 444 (Iowa Ct. App. 1992).

III. PSI's Contentions

Even if Gelbman had preserved his arguments for this Court's review, the District Court's decision vacating the arbitration award was based on sound principles of law and should be affirmed. The District Court order vacated the arbitration award pursuant to Iowa Code § 679A.12(1)(f) on the ground that the

award was not supported by substantial evidence. *See* Appx. at 163. Gelbman claims that the "District Court erred as a matter of law because the Arbitrator's Award did not lack support by substantial evidence on the record as a whole." Appellant's Brief at 16. However, Gelbman appears to confuse a finding of fact by the District Court with its application of the law. Thus, Gelbman suggests to this Court to apply the wrong standard of review. The applicable standard of review is for errors at law. The District Court's Order makes clear that it did not commit any errors of law; instead, the District Court correctly identified the applicable law including the correct standard of review and the limited grounds pursuant to which it could consider vacatur. After applying the law correctly, the District Court made a factual finding that there was not substantial evidence to support the Award. This Court is bound by the District Court's finding of fact so long as it is "supported by substantial evidence." *EnviroGas, L.P. v. Cedar Rapids/Linn Cnty. Solid Waste Agency*, 641 N.W.2d 776, 781 (Iowa 2002). Evidence is substantial if "a reasonable mind would accept it as adequate to reach the same conclusion." *Id*. (citation omitted). The appellate court "will not reweigh the evidence." *Id*. at 785. The District Court's factual determination that the Award was not supported by substantial evidence was itself supported by substantial evidence such that it cannot be overturned. For all of these reasons, and those discussed in detail below, the Order of the District Court is due to be affirmed.

A. The District Court correctly identified the law applicable to the motion to vacate.

The District Court carefully and thoughtfully identified the law that it applied and followed, all of which was appropriate under the current state of the law in Iowa. In fact, Gelbman fails to point to a specific error of law by the Court, which alone should be fatal to his claim. *See* Iowa R. App. P. 6.903(2)(g)(3) ("Failure to cite authority in support of an issue may be deemed waiver of that issue."); *Kachevas, Inc. v. State*, 524 N.W.2d 450, 452 (Iowa Ct. App. 1994) (deeming two "claims as waived since no authority to support the issues was stated, argued, or cited"). Nowhere in his brief does Gelbman identify a case that the District Court should not have relied on or that the District Court misapplied. The standard of review cited by the District Court, *see* Appx. at 154–55, is identical to the standard that Gelbman suggests should have been followed, *see* Appellant's Brief at 14–16.

The District Court correctly noted "'judicial review of arbitration awards is very limited in Iowa.'" Appx. at 154 (quoting *Humphreys v. Joe Johnston L. Firm, P.C.*, 491 N.W.2d 513, 514 (Iowa 1992)). The District Court also appropriately noted that it could not "vacate or refuse to confirm the award even if the court could not or would not grant the same relief," that it was not the District Court's function "to determine whether the arbitrator has correctly resolved the grievance," and that "even a court's conviction that the arbitrator committed error does not

suffice to overturn the decision." Appx. at 155 (quoting Iowa Code § 679A.12(2); *Postville Cmty. Sch. Dist. v. Billmeyer*, 548 N.W.2d 558, 562 (Iowa 1996); *Ales v. Anderson, Gabelmann, Lower & Whitlow, P.C.*, 728 N.W.2d 832, 841 (Iowa 2007)). The District Court's stated standard of review was identical to that espoused by Gelbman and cites many of the same cases. *Compare* Appellant's Brief at 14–15 *with* Appx. at 154–55. Thus, the standard of review applied by the District Court was not error.

The District Court further correctly identified that the only grounds for vacatur that it could consider were those embodied in Iowa Code § 679A.12(1). *See* Appx. at 155. Gelbman unequivocally agrees that the standard identified by the District Court is the correct standard: "Iowa Code section 679A.12 describes the only grounds upon which an arbitration award can be vacated and is the governing statue here." Appellant's Brief at 16. Thus, the grounds relied upon by the District Court for vacatur was not error.

Finally, the District Court identified the correct legal standards applicable to a motion to vacate an arbitration award because the award was not supported by substantial evidence under Iowa Code § 679A.12(1)(f). Specifically, the Court noted, "evidence is substantial if a reasonable person would accept the evidence as sufficient to reach a conclusion" and that the District Court could "not consider evidence to be insubstantial merely because different conclusions can be drawn

from the evidence." Appx. at 157 (quoting *Ales*, 728 N.W.2d at 839; *State v. Dohlman*, 725 N.W.2d 428, 430 (Iowa 2006)).

Thus, the law identified by the District Court was correct and it committed no error in this regard.

B. The District Court correctly applied the law.

Not only did the District Court cite the correct legal standards for its analysis, its application of those standards was also correct. Gelbman argues that the District Court committed error in three ways: (1) because its decision was based on the Arbitrator not making findings in the award; (2) because the District Court was required to accept and could not second guess the Arbitrator; and (3) because there was substantial evidence in the record to support the award. Gelbman's arguments are incorrect for the reasons discussed in detail below.

Gelbman first argues that District Court erred because "it grounded its decision on its view that the Arbitrator made no findings in the Award for the Court to review." Appellant's Brief at 17. Gelbman's premise is false; the District Court's decision was not based on the fact that there were no findings in the Award, but instead simply described the award. *See* Appx. at 157. The District Court specifically noted that because there were no findings to review, the District Court then "examines the evidence to determine if the evidence supports each aspect of the Award." *Id*. Gelbman does nothing to explain why the process

followed by the District Court was improper and he cannot do so. Gelbman's first argument fails.

Gelbman next argues that the "District Court erred as a matter of law and exceeded its power by determining that the portion of the Award recommending replacement explanation language was not supported by substantial evidence." Appellant's Brief at 18. In support of this proposition, Gelbman argues that the "District Court was required to accept the Arbitrator's assertion that he reached his decision after reviewing 'the pleadings, the testimony and evidence presented at the hearing, and any post-hearing submissions'" and that "[i]t was beyond the District Court's purview to question the Arbitrator's statement and to second-guess his conclusions." Appellant's Brief at 18 (citation omitted). Gelbman utterly fails to cite a single case or statute in support of these two propositions. Gelbman does not cite any supporting authority because he cannot. Moreover, such a suggestion is nonsensical.

The Iowa Supreme Court has commanded that an arbitration "award *must* be vacated if not supported by substantial evidence." *Humphreys*, 491 N.W.2d at 516 (emphasis added); *see also Principal Fin. Sec., Inc. v. Raymond James & Assocs., Inc.*, No. 00-1226, 2002 WL 536026, at *1 (Iowa Ct. App. Apr. 10, 2002); *Ales*, 728 N.W.2d at 832. "Generally, evidence is substantial if a reasonable person would accept the evidence as sufficient to reach a conclusion." *Humphreys*, 491

N.W.2d at 516 (citing *Johnson v. Dodgen*, 451 N.W.2d 168, 171 (Iowa 1990)). The District Court's review thus necessarily requires a review of the evidence in the arbitration to determine if the award is supported by substantial evidence. *See id.* at 515–16 (stating that Iowa Code § 679A.12(1)(f) has modified the scope of review of arbitration in Iowa and requires the District Court to review the evidence to determine whether it is substantial). The District Court did not err in reviewing the evidence in the arbitration to determine whether it was substantial. If Gelbman takes issue with the District Court's finding that the evidence was insubstantial he must "show on appeal that the District Court erred in its *finding* of [in]substantial evidence." *Id*. at 516 (emphasis added). Gelbman has not done so, and this argument likewise fails.

Gelbman's third and final argument is that the "District Court erred as a matter of law and exceeded its power by determining that the Award was not supported by substantial evidence in its finding that the Form U5 filings were neither defamatory nor misleading." Appellant's Brief at 19. Gelbman argues that the District Court's determination was wrong for two reasons: (1) because the Award identifies that it was made after the Arbitrator considered the pleadings, testimony, and evidence at the hearing; and (2) because there was evidence in the record—the testimony of Gelbman—to support the decision. *Id*.

Gelbman's first point, like many of his other points, is unsupported by any authority supporting his contention. Moreover, it is irrelevant: the District Court did not dispute that the Arbitrator considered his Award to be based on the pleadings, evidence, and testimony before him. That does not change the fact that the District Court was required to review the evidence and determine whether substantial evidence supported the Award. The District Court simply noted that, without findings or reasoning from the Arbitrator, the Court's review is made more challenging, but did not say that was its basis for vacating the award. *See* Appx. at 159.

Gelbman's second point asserts that the District Court's decision was wrong because there was evidence in the record to support the Arbitrator's decision. However, the question before the District Court was not whether there was *any* evidence in the record that could support the Award, but whether there was *substantial* evidence "on the record as a whole" to support the award. Iowa Code § 679A.12(1)(f). As noted above, "evidence is substantial if a reasonable person would accept the evidence as sufficient to reach a conclusion." *Humphreys,* 491 N.W.2d at 516. The District Court provided great detail in the different evidence it reviewed and how it reached its determination that, while Gelbman provided testimony to support his position (and thus the award), his testimony was the *only* evidence in the record supporting the Award and was in fact contradicted by the

majority of other evidence in the record. *See* Appx. at 159–62. Thus, the District Court found—not that the evidence was nonexistent—but that it was not substantial. The District Court's finding in this regard is given great deference and is binding on this Court so long as it is supported by substantial evidence. *See Iowa Fuel*, 471 N.W.2d at 862; *Crowe-Thomas*, 494 N.W.2d at 444. Gelbman has not met his burden to show that the District Court's factual finding in this regard should not be followed. He has not even argued that the District Court's determination was not supported by substantial evidence. Finally, the testimony was not substantial evidence because it did not prove that the statements were untrue. Instead, his testimony demonstrated that he violated the policy because he did not obtain approval from the customers prior to the closing transactions, which was in violation of PSI's policy.[1] *See* Appx. 158–59, 163–65.

Thus, Gelbman has failed to meet his burden to demonstrate that the District Court committed an error of law in determining to vacate the arbitration Award.

[1] Appellant's citation of *Raper v. State*, 688 N.W.2d 29, 51 (Iowa 2004), is unavailing. That case is inapplicable: it does not involve an arbitration, issues of vacatur, nor does it stand for the proposition that the testimony of plaintiff alone is considered substantial evidence. Instead, it finds that there was substantial evidence to support a finding of the District Court noting "a reasonable mind would accept the evidence as adequate" to support the trial court's finding. *Id*. The same could certainly not be said in this case where the only evidence is Gelbman's own testimony and it is contradicted by multiple other items evidence.

CONCLUSION

For the reasons set forth herein, PSI respectfully requests that the Court affirm the District Court's Order vacating the arbitration award, remand this case for rehearing in arbitration, deny Gelbman's request for attorneys' fees, and award such other and further relief deemed appropriate under the circumstances.

ORAL ARGUMENT

Because the issues in this appeal are straightforward and involve well-settled issues of law, PSI states that oral argument is unnecessary.

Respectfully submitted,

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CERTIFICATE OF FILING AND SERVICE

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CERTIFICATE OF COST

The undersigned hereby certifies that the cost of printing the PSI's Brief was $0 because it was filed electronically.

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