

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Jeffrey P. Schlansky

96-02344

Name of Respondent

Dean Witter Reynolds, Inc.

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on June 3, 1996, Claimant Jeffrey P. Schlansky ("Claimant"), who appeared Pro Se, alleged that Respondent Dean Witter Reynolds, Inc. ("Respondent" or "DWR") improperly invested his money to his detriment. Claimant asserted that Respondent originally had agreed to invest his money in 5 mutual funds but only purchased one fund. Claimant further alleged that in December of 1995, he contacted his broker C.B. Schultz at DWR and made arrangements for establishing a custodial account wherein the dividends would be automatically reinvested. Claimant also alleged that it was agreed that DWR would remain as custodian. Claimant contended that in early January of 1996, he submitted applications as requested and that later that month he began receiving incorrect information from DWR concerning the status of the investments. Claimant further contended that DWR established the wrong type of account with T. Rowe Price which would result in tax penalties and that he made multiple attempts to ascertain exactly what went wrong. Claimant also contended that DWR placed the blame for the creation of the wrong type account on him and did not fully cooperate with him. Claimant asserted that Respondent did not properly process his applications for the purchase of Robertson Stephens Value and Growth Fund, Third Avenue Value Fund, Neuberger Berman Guardian Fund and the Mutual Beacon Fund. Claimant contended that as a result of the above, he has suffered a loss for which the Respondent should be held liable.

Respondent Dean Witter Reynolds, Inc. through its representative and in-house counsel, Linda Poole, Esq., maintained that Claimant wanted it to be a retirement account custodian for accounts he held with other companies. Respondent further maintained that it does not perform that function for any client and that Claimant never disclosed to it his desire to have it serve as a custodian. Respondent contended that it would have made an exception to the prohibition if

it were the custodian for a relatively small percentage of account assets and if the Claimant agreed to hold it harmless for damages resulting from investments over which it had no control. Respondent further contended that it agreed to help Claimant with processing his investment applications and that mistakes were made by it and by him resulting in the creation of a single mutual fund account in his name with T. Rowe Price instead of the five planned. Respondent also contended that it took steps to correct the problem and that Claimant's damages are overstated. Respondent asserted that as a result of the above, it should not be held liable.

### **RELIEF REQUESTED**

Claimant Jeffrey P. Schlansky requested \$10,000.00 in actual damages.

Respondent Dean Witter Reynolds, Inc. requested that the claims be dismissed in their entirety.

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

The arbitrator considered and reviewed all documentation submitted by the parties concerning Respondent's motion to dismiss the claims as the Claimant signed a letter titled "IRA Non-TRADITIONAL INVESTMENT HOLD HARMLESS LETTER" which discharged it from any claims arising from his mutual fund transactions. The arbitrator denied the motion.

### **AWARD**

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Donald S. Simons, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on May 29, 1996, and by the Respondent on July 17, 1996.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The Respondent Dean Witter Reynolds, Inc. is liable and shall pay to the Claimant Jeffrey P. Schlansky \$500.00 in actual damages.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. Respondent Dean Witter Reynolds is liable and shall pay to the Claimant Jeffrey P. Schlansky \$150.00 as reimbursement of the filing fee.
4. All other relief requests are denied.

**AFFIRMATION**

I, **DONALD S. SIMONS, ESQ.**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



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Signature of Arbitrator

**DATE OF DECISION:** October 4, 1996