

NASD OFFICE OF HEARING OFFICERS

Department of Enforcement,

Complainant,

v.

**Jack M. Schwartz,
(CRD No. 1027281)**

Respondent.

Disciplinary Proceeding No. C04050024

Hearing Officer - SNB

**ORDER ACCEPTING
OFFER OF SETTLEMENT**

I. INTRODUCTION

NASD's Department of Enforcement ("DOE") filed the Complaint in Disciplinary Proceeding No. C04050024 on June 13, 2005. Respondent Jack M. Schwartz ("Respondent Schwartz") submitted an Offer of Settlement ("Offer") to the DOE on October 31, 2005. Pursuant to Code of Procedure Rule 9270(e), the DOE and the National Adjudicatory Council ("NAC") Review Subcommittee or the Office of Disciplinary Affairs ("ODA") have accepted the uncontested Offer. Accordingly, this Order now is issued pursuant to Code of Procedure Rule 9270(e)(3). The findings, conclusions and sanctions set forth in this Order are those stated in the Offer as accepted by the DOE and approved by the NAC.

Under the terms of the Offer, Respondent Schwartz has consented, without admitting or denying the allegations of the Complaint, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NASD, or to which NASD is a party, to the entry of findings and violations consistent with the allegations of the Complaint, and to the imposition of the sanctions set forth below, and fully understands that this Order will become part of his permanent disciplinary record and may be considered in any future actions brought by NASD.

II. BACKGROUND

From June 28, 1993 through May 26, 2004, Respondent Schwartz was associated with NASD member Linsco/Private Ledger Corp. ("LPL") and was registered with NASD as a general securities representative and a general securities principal.

Respondent Schwartz is currently associated with another NASD member and is registered with NASD as a general securities representative, a general securities principal and a financial and operations principal.

III. FINDINGS AND CONCLUSIONS

It has been determined that the Offer be accepted and that findings be made as follows:

R.L. and M.L. were customers of Respondent Schwartz from on or about April 17, 2001 through on or about June 19, 2003.

In February 2001, R.L met with Respondent Schwartz to discuss investing approximately \$600,000. R.L. was 61 years old, while his wife M.L. was 59 years old. At the time, R.L. and M.L. were planning for their upcoming retirement. R.L. informed Respondent Schwartz that they would need to withdraw \$6,000 a month to pay for living expenses.

On April 17, 2001, R.L. and M.L. opened two accounts through Respondent Schwartz with LPL – a rollover IRA account held by R.L. and a brokerage account held jointly by R.L. and M.L.

On April 20, 2001, R.L. and M.L. authorized an automatic withdrawal of \$6,000 a month from their joint brokerage account.

Respondent Schwarz recommended to R.L. and M.L. that they use most of the assets in their investment accounts to purchase Class B shares of American Skandia Advisors Total Return Bond Fund. Respondent Schwartz recommended this action even though the prospectus

for the American Skandia Advisor Funds stated that, because it is more advantageous to purchase Class A shares for amounts greater than \$500,000, a request to purchase Class B shares for \$500,000 or more would be considered as a purchase request for Class A shares or would be denied. Respondent Schwartz also recommended this action despite the fact that R.L. and M.L. were planning to withdraw \$6,000 a month, which would subject them to contingent deferred sales charges on the sales of their Class B shares.

R.L. and M.L. followed Respondent Schwartz's recommendation and purchased \$581,000 of Class B shares of American Skandia Advisors Total Bond Fund in five separate transactions from May 3, 2001 to July 2, 2001:

Date	Amount	Account
05/03/01	\$62,000	R.L. Rollover IRA
05/17/01	\$190,000	R.L. Rollover IRA
05/17/01	\$25,000	Joint Brokerage Account
06/05/01	\$250,000	R.L. Rollover IRA
07/02/01	\$54,000	R.L. Rollover IRA

R.L. and M.L. kept only \$16,120 in a money market, which was held in their joint brokerage account.

Respondent Schwartz also recommended that R.L. transfer the assets held in his rollover IRA account into a managed account offered through LPL called a Strategic Asset Management ("SAM") account. R.L. would pay a quarterly fee on the assets held in this account. Respondent Schwartz made this recommendation to R.L. even though LPL's advisory compliance manual stated that SAM accounts were to be used only to manage no-load or load-waived mutual funds on a discretionary basis.

R.L followed this recommendation from Respondent Schwartz to transfer his assets to a SAM account. On June 11, 2001, R.L. opened a SAM account through Respondent Schwartz. By August 17, 2001, R.L. had transferred all of the assets in his rollover IRA account to the SAM account and had closed the rollover IRA account.

Respondent Schwartz did not have reasonable grounds for believing that his recommendations, which resulted in the purchases and actions by R.L. and M.L., were suitable for these customers based on their financial situation and needs.

Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rules 2310 and 2110 by Respondent Schwartz.

Based on these considerations, the sanctions hereby imposed by the acceptance of the Offer are in the public interest, are sufficiently remedial to deter Respondent Schwartz from any future misconduct, and represent a proper discharge by NASD of its regulatory responsibility under the Securities Exchange Act of 1934.

IV. SANCTIONS

It is Ordered that the following sanctions be imposed against Respondent Schwartz:

1. a suspension of ten business days from association with any NASD member in any capacity;
2. a fine of \$5,000; and
3. an order to pay restitution to customers R.L. and M.L. in the total amount of \$17,837.57. Satisfactory proof of payment of the restitution or of reasonable and documented efforts undertaken to effect restitution shall be provided to the NASD staff no later than 120 days after acceptance of this Offer. If for any reason Respondent Schwartz cannot locate customers

R.L. and M.L. after reasonable and documented efforts within such period, or such additional period agreed to by the staff, Respondent Schwartz shall forward any undistributed restitution to the appropriate escheat, unclaimed property, or abandoned property fund for the state in which customers R.L. and M.L. are last known to have resided.

SO ORDERED.

Dated: November 1, 2005


James M. Stephens, Regional Counsel, on behalf
of the Director of the Office of Disciplinary
Affairs, pursuant to delegated authority