

**Award**  
**FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimant  
Estate of Malcolm Schvey

Case Number: 12-02533

vs.

Respondent  
Janney Montgomery Scott LLC

Hearing Site: New York, New York

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Nature of the Dispute: Customer vs. Member

This case was decided by an all-public panel.

**REPRESENTATION OF PARTIES**

For Claimant Estate of Malcolm Schvey: Richard B. Fosher, Esq., Oakes & Fosher, LLC, St. Louis, Missouri.

For Respondent Janney Montgomery Scott LLC: Theodore Snyder, Esq., Murphy & McGonigle, PC, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: July 9, 2012.

Amended Statement of Claim filed on or about: December 6, 2013.

Claimant signed the Submission Agreement: June 29, 2012.

Statement of Answer filed by Respondent on or about: October 25, 2012.

Answer to Amended Statement of Claim filed on or about: March 24, 2014.

Respondent signed the Submission Agreement: October 22, 2012.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted the following causes of action: breach of fiduciary duty, common law fraud, breach of contract, negligence, negligent misrepresentation, omission, and negligent supervision.

In the Amended Statement of Claim, Claimant asserted the following causes of action: violation of Section 349 of the Consumer Protection Act, breach of fiduciary duty, common law fraud, breach of contract, negligence, negligent misrepresentation, omission, and negligent supervision.

The causes of action relate to unspecified securities.

Unless specifically admitted in its Answer and Amended Answer, Respondent denied the allegations made in the Statement of Claim and Amended Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested compensatory damages of approximately \$800,000.00 plus interest, punitive damages, attorneys' fees, costs, and such other and further relief as deemed just and proper.

In the Amended Statement of Claim, Claimant requested compensatory damages of approximately \$1,000,000.00 plus interest, punitive damages, attorneys' fees, costs, and such other and further relief as deemed just and proper.

Respondent requested that Claimant's claim be dismissed in its entirety, expungement of this matter from the CRD record of unnamed party Michael Appelbaum, and costs.

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

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable for and shall pay to Claimant compensatory damages in the amount of \$427,060.00.
2. Respondent's request for expungement is denied.
3. Any and all relief not specifically addressed herein, including punitive damages and attorneys' fees, is denied.

## FEES

Pursuant to the Code, the following fees are assessed:

### Filing Fees

FINRA Dispute Resolution assessed a filing fee\* for each claim:

Initial Claim Filing Fee = \$ 1,575.00

*\*The filing fee is made up of a non-refundable and a refundable portion.*

### Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Janney Montgomery Scott LLC is assessed the following:

Member Surcharge	= \$ 2,250.00
Pre-Hearing Processing Fee	= \$ 750.00
Hearing Processing Fee	= \$ 4,000.00

### Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

October 21 – 24, 2014 adjournment by Respondent = \$ 1,200.00

The Panel has assessed the \$1,200.00 adjournment fee to Respondent.

### Hearing Session Fees and Assessments

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

One (1) Pre-hearing session with the Panel @ \$1,200.00	= \$ 1,200.00
Pre-hearing conference: December 11, 2014      1 session	

Seven (7) Hearing sessions @ \$1,200.00	= \$ 8,400.00
Hearing Dates: May 26, 2015      2 sessions	
May 27, 2015      2 sessions	
May 28, 2015      2 sessions	
May 29, 2015      1 session	

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Total Hearing Session Fees = \$ 9,600.00

The Panel has assessed the hearing session fees of \$9,600.00 to the Respondent.

All balances are payable to FINRA Dispute Resolution and are due upon receipt.

**ARBITRATION PANEL**

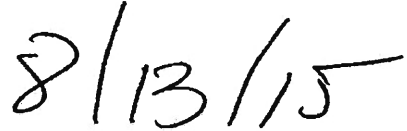
Mitchell S. Friedman	-	Public Arbitrator, Presiding Chairperson
Sanford S. Stevens	-	Public Arbitrator
Sandra Gale Behrle	-	Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

**Concurring Arbitrators' Signatures**



\_\_\_\_\_  
Mitchell S. Friedman  
Public Arbitrator, Presiding Chairperson



\_\_\_\_\_  
Signature Date

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Sanford S. Stevens  
Public Arbitrator

\_\_\_\_\_  
Signature Date

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Sandra Gale Behrle  
Public Arbitrator

\_\_\_\_\_  
Signature Date

August 14, 2015

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

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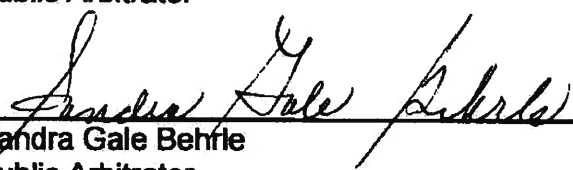
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