

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Gertrude R. and Daniel M. Krauss

93-00938

Name of Respondents

Merrill Lynch Pierce Fenner & Smith, Inc.
Kerry R. Truckly

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 11, 1993, Claimants Daniel M. and Gertrude R. Krauss, who appeared Pro Se, alleged that Claimant Gertrude R. Krauss has held an account with Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. since January 1989 whereby Claimant Daniel M. Krauss manages the account which has been managed conservatively because Claimant Gertrude R. Krauss, his mother, is 70 years old and does not want to be in risky investments. Claimants further alleged that in July of 1992 some of the high yielding 9.7% CMO's in the account were being recalled by the issuer and in a conversation on July 22, 1992, Respondent Kerry R. Truckly said that all of the CMO's in the account would probably be recalled eventually, at which time, Respondent Kerry R. Truckly mentioned some other possible investments that he thought Claimants might be interested in, one which was the Nuveen Fund. Claimants contended that Respondent Kerry R. Truckly told them the Nuveen Fund was a pool of tax free municipal bonds yielding more than 6% whereby he was touting the tax free aspect of the fund, at which time, Respondent Kerry R. Truckly mentioned that the Nuveen Fund was very liquid and the only requirement was that you had to leave your money in the fund for three months to get your interest but that it could be taken out any time after that. Claimants further contended that Respondent Kerry R. Truckly said that he was recommending the Nuveen Fund to a lot of his CMA clients and that he felt it was a better place to let the money sit than the CMA account, at which time, Claimants told Respondent Kerry R. Truckly that their main concern was being liquid and that they probably would cash in the fund at the end of the three month period. Claimants asserted that they invested the CMA money, \$25,995.00, into the Nuveen fund and subsequently, on August 4, 1992 they finally received the confirmation of purchase along with the prospectus in the mail. Claimants further asserted

that after reading the prospectus is when they found out they purchased a new issue of a closed end mutual fund whereby Respondent Kerry R. Truckly failed to mention these points to them. Claimants further alleged that they voiced their displeasure to Respondent Kerry R. Truckly with the purchase, at which time, Respondent Kerry R. Truckly reassured them and stated that it was a high quality fund which should immediately rise in value. Claimants further contended that Respondent Kerry R. Truckly stated that, if Claimants still weren't comfortable with it, when the time came to cash in, three months, he would work a deal with the trader to get back all of the original principal plus earned interest. Claimants further asserted that the value of Nuveen quickly dropped to the \$13.00 range and subsequently, on November 11, 1992 after holding Nuveen for the required three months, Claimants decided to call Respondent Kerry R. Truckly to sell it whereby he managed to talk Claimants into holding on for a while longer. Claimants further alleged that on November 27, 1992 they informed Respondent Kerry R. Truckly that they wanted out at the promised \$15.00 and subsequently, Respondent Kerry R. Truckly informed Claimants that he can't guarantee that price but could work a deal with no commission. Claimants argued that in January, 1993 after much disagreement, the Nuveen Fund had sold at \$14.00 per share, at which time, Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. informed Claimants that they were willing to split the \$1,733.00 loss, whereby Claimants advised Respondents that they expected full restitution to be paid because of the misrepresentations they received which led to the purchase of a totally unsuitable investment.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Kerry R. Truckly, by and through their in-house counsel, Nicholas R. Piccininni, Esq., maintained that the Claimants Daniel M. and Gertrude R. Krauss opened a joint Cash Management account with Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. on January 10, 1989 and subsequently on December, 1990 Financial Consultant Respondent Kerry R. Truckly was assigned to service the Claimants' account. Respondents further maintained that in May and June 1992, certificates of deposit ("CD") were redeemed and a collateralized mortgage obligation ("CMO") was called in the Claimants' account and in July, 1992 another CMO was called at which time, Claimant Daniel M. Krauss spoke with Respondent Kerry R. Truckly for suggestions on reinvesting the proceeds of the called CMO's and the redeemed CD's and that he was looking for investments with the highest possible yields. Respondents contended that Respondent Kerry R. Truckly suggested several tax-free funds as well as to other CMO; however, Claimant Daniel M. Krauss rejected these suggestions because of the brokerage commissions associated with them and in fact, in all his dealings with Respondent Kerry R. Truckly, Claimant Daniel M. Krauss displayed a high level of understanding of his investments and inquired specifically regarding costs, commissions and fees. Respondents further contended that Respondent Kerry R. Truckly recommended the Nuveen Premium Income Municipal Fund 2, Inc. (the "Fund"), a new issue listed on the New York Stock Exchange whereby he explained to Claimant Daniel M. Krauss the underwriters fees and, particularly, that such fees were built into the price of the investment at there would be no commissions directly charged to the account. Respondents asserted that Respondent Kerry R. Truckly also explained that the Fund would return a higher yield than the Claimants would receive in the Merrill Lynch Ready Asset Trust. Respondents further asserted that Claimants

authorized the investment of \$25,995.00 into the Fund at a price of \$15.00 per share and subsequently, on July 23, 1992, a buy order was placed, at which time, the Claimants received a total of 1,733 shares of the Fund whereby, contrary to the Statement of Claim, at which time, Claimant Daniel M. Krauss did not express his desire to liquidate this investment after a three month period. Respondents further alleged that the Claimants received a prospectus and a trade confirmation for their purchase of the Fund shares and in fact, Claimant Daniel M. Krauss telephoned Respondent Kerry R. Truckly to acknowledge receiving and reading the Fund's prospectus, but at no time did Claimant Daniel M. Krauss express displeasure with the investment or his purported desire to liquidate the shares in three months. Respondents further alleged that there were no further conversations regarding the investment in the Fund until November, 1992 whereby Claimant Daniel M. Krauss had followed the Fund's share price, and had noticed that it was trading at about \$13.25 per share, at which time, he asked if his principal investment in the Fund was guaranteed and Respondent Kerry R. Truckly indicated that when the Fund's share price reached \$15.00, he would be able to liquidate without a loss to principal and in an effort to accommodate Claimants he said he would not charge commissions on the liquidation. Respondents further contended that Claimant Daniel M. Krauss elected to continue to hold onto his shares of the Fund and later on November 27, 1992 Claimant Daniel M. Krauss telephoned to express his desire to sell the Claimants' shares of the Fund at \$15.00 per share whereby Respondent Kerry R. Truckly informed him that the share price was around \$13.50 per share and suggested that he should wait until the dividends were paid by the Fund before liquidating, at which time, Claimant Daniel M. Krauss asked for a guarantee that he would receive the entire principal amount when the shares were sold and Respondent Kerry R. Truckly made no assurances or guarantee. Respondents further asserted that in January, 1993 Claimant Daniel M. Krauss gave instructions to sell the shares of the Fund which were liquidated at a price of \$14.00 per share. Respondents further maintained that Claimants were not misled into purchasing an unsuitable investment as their decision to purchase the Fund was made after full and complete disclosure of the nature of the Fund, including the risk of price fluctuation, thus the claim should be denied.

RELIEF REQUESTED

Claimants Daniel M. and Gertrude R. Krauss requested \$1,817.50 in actual damages and reimbursement of the NASD filing fee.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. and Kerry R. Truckly requested the claim be dismissed in its entirety.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Donald A. Antrim, Esq., was selected to

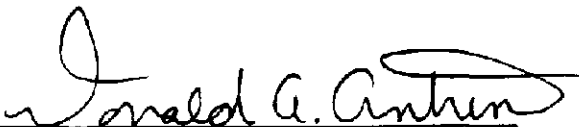
review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on March 3, 1993, by the Respondent Merrill Lynch, Pierce, Fenner and Smith, Inc. on May 7, 1993 and by the Respondent Kerry R. Truckly on May 12, 1993.

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 claim of Claimants Daniel M. and Gertrude R. Krauss against Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. and Kerry R. Truckly is dismissed.
2. The parties shall bear their respective costs.
3. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants Daniel M. and Gertrude R. Krauss shall be retained by the NASD, Inc.

AFFIRMATION

I, DONALD A. ANTRIM, 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.



Donald A. Antrim, Esq.

DATE OF DECISION: August 24, 1993