

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Barbara Lee

93-03498

Name of Respondent

Walter J. Marvin

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**REPRESENTATION**

For Claimant: Claimant appeared pro se.

For Respondent: Paul M. Collins, Esq. of Hinman, Straub, Pigors & Manning,  
P.C., Albany, New York.

**CASE INFORMATION**

Statement of Claim filed: September 20, 1993.

Claimant's Submission Agreement signed on: September 17, 1993.

Statement of Answer filed by Respondent, Walter J. Marvin on: April 29, 1994.

Respondent, Walter J. Marvin's Submission Agreement signed on: Respondent  
Walter J. Marvin did not submit a Submission Agreement as required pursuant  
to Section 25(b)(1) of the NASD Code of Arbitration Procedure.

**HEARING INFORMATION**

Hearing Date / Sessions: November 3, 1994 / Two Sessions.

Hearing Location: Holiday Inn located at 205 Wolf Road, Albany, New York.

**CASE SUMMARY**

Claimant alleged that Respondent engaged in excessive trading and "churned" her

account. Claimant further alleged that three Mutual Funds recommended by Respondent, and purchased by Claimant based upon Respondent's recommendations, were unsuitable investments for Claimant given Claimant's age, health, and lack of experience in the stock market. Claimant also alleged that Respondent failed to properly diversify her account.

Respondent maintained that Claimant's stated investment objective was to earn income and that Claimant sought a high return from her investments. Respondent further maintained that he advised Claimant to purchase 3 Mutual Funds and that he recommended that Claimant's investment be for the long term. Respondent maintained that Claimant purchased the Mutual Funds Respondent recommended on July 7, 1987 and that the purchases were suitable for Claimant. Respondent further maintained that starting in February 1988, Claimant insisted on making trades in her account and selling the Mutual Funds she had purchased in July of 1987, in contravention of Respondent's long term strategy. Respondent denied all allegations of wrongdoing and maintained as an affirmative defense that Claimant failed to state a cause of action upon which relief could be granted. Respondent further maintained as an affirmative defense that Claimant's claims were barred by applicable statutes of limitation.

#### **RELIEF REQUESTED**

Claimant requested:

1. An award against Respondent for a sum of not less than \$200,000 and not more than \$1,000,000.

Respondent requested:

1. All of Claimant's Claims be dismissed.

#### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. All of Claimant's claims are denied.

**FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

2 sessions X \$1,000 = \$2,000 due.

Forum fees Assessed Against:

1. Claimant is assessed \$1,000 which represents one-half of the total forum fees due, less \$250 hearing session deposit paid by Claimant, leaving \$750 due. Claimant is liable and shall pay to the National Association of Securities Dealers, Inc. the sum of \$750.
2. Respondent is assessed \$1,000 which represents one-half of the total forum fees due. Respondent is liable and shall pay to the National Association of Securities Dealers, Inc. the sum of \$1,000.

Fees are payable to the National Association of Securities Dealers, Inc.

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NASD Award #93-03498

Concurring Arbitrators' Signatures

Name

Public Chairperson

David W. Morris, Esq.

Name

Industry Panelist

Edward LaVarnway  
Edward LaVarnway

11/30/94

Name

Public Panelist

Lorraine I. Remo, Esq.

Date of Decision: December 13, 1994

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NASD Award #93-03498

STATE OF:

SS:

COUNTY OF:

On this      day of      , 1994, before me personally appeared **David W. Morris, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

STATE OF: *N. Y.*

SS:

COUNTY OF: *Albany*

On this *30* day of *November*, 1994, before me personally appeared **Edward LaVarnway** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

*Nancy K Gardeneer*

NANCY K. GARSENEER  
Notary Public, State of New York  
Qualified in Albany County  
My Comm. Expires *1-31-96*

STATE OF:

SS:

COUNTY OF:

On this      day of      , 1994, before me personally appeared **Lorraine I. Remo, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

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NASD Award #93-03498

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Name

Public Chairperson

David W. Morris  
David W. Morris, Esq.

\_\_\_\_\_

Name

Industry Panelist

\_\_\_\_\_  
Edward LaVarnway

\_\_\_\_\_

Name

Public Panelist

\_\_\_\_\_  
Lorraine I. Remo, Esq.

\_\_\_\_\_

Date of Decision: December 13, 1994

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NASD Award #93-03498

STATE OF: *New York*

SS:

COUNTY OF: *Saratoga*

On this *3<sup>rd</sup>* day of *December*, 1994, before me personally appeared **David W. Morris, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

*Victor DeBellis*

VICTOR DEBELLIS  
Notary Public, State of New York  
Residing in Saratoga County  
Reg. No. 5010035  
Commission Expires March 22, 1995

STATE OF:

SS:

COUNTY OF:

On this      day of      , 1994, before me personally appeared **Edward LaVarnway** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

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STATE OF:

SS:

COUNTY OF:

On this      day of      , 1994, before me personally appeared **Lorraine I. Remo, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

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NASD Award #93-03498

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Name

Public Chairperson

David W. Morris, Esq.

Name

Industry Panelist

Edward LaVarnway

Name

Public Panelist

Lorraine I. Remo  
Lorraine I. Remo, Esq.

Date of Decision: December 13, 1994



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NASD Award #93-03498

STATE OF:

SS:

COUNTY OF:

On this      day of      , 1994, before me personally appeared **David W. Morris, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

---

STATE OF:

SS:

COUNTY OF:

On this      day of      , 1994, before me personally appeared **Edward LaVarnway** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

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STATE OF: *New York*

SS:

COUNTY OF: *Schenectady*

On this *9<sup>th</sup>* day of *December*, 1994, before me personally appeared **Lorraine I. Remo, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

*Ran W. Anger*