

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Rose LaValley

95-00225

Name of Respondent

Merrill Lynch, Pierce, Fenner & Smith, Inc.  
Edythe DeMarco

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**CASE SUMMARY**

In a claim filed with the National Association of Securities Dealers, Inc. on January 16, 1995, Claimant, Rose LaValley ("LaValley"), who appeared Pro Se, alleged that in late 1991, Respondent Edythe DeMarco ("DeMarco"), an employee of Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. (Merrill Lynch"), recommended the purchase by Claimant of Nuveen Premium Insured Muni Income Fund ("Nuveen Fund"). Claimant further alleged that DeMarco represented that the Nuveen Fund was a long-term investment, that it was insured, and that there was no risk to her principal provided that she held the fund for at least five years. Claimant stated that based on DeMarco's representations, she authorized the purchase of 6,666 shares of the Nuveen Fund. Claimant asserted that she was sixty-nine years old at the time, had previously invested only in certificates of deposit, and that her investment objectives were long-term safety, and steady monthly income. LaValley further stated that shortly after the purchase the value of the Nuveen Fund decreased, but that DeMarco reassured her that it was a long-term, safe investment. Claimant alleged that on August 10, 1993, DeMarco telephoned Claimant and recommended that she switch from the Nuveen Fund to the Alliance Mortgage Securities Fund ("Alliance Fund"). Claimant alleged that DeMarco stated that changes in interest rates may have an adverse effect on the value of the Nuveen Fund, and utilized scare tactics to pressure Claimant into authorizing the sale of the Nuveen Fund and the purchase of 10,627 shares of the Alliance Fund over the telephone. Claimant alleged that DeMarco failed to provide her with an Alliance Fund prospectus at the time of the purchase, failed to explain the related sales charges, failed to disclose that the Alliance Fund is not insured, and recommended the switch in order to generate commissions. Claimant further stated that subsequent to the switch, the value of her Alliance Fund investment and the monthly interest payments decreased. Claimant stated that when DeMarco subsequently recommended the purchase of Narragansett Tax-Free Fund, Claimant refused and requested the liquidation of her Alliance investment. As a result of the above,

Claimant alleged that she has suffered damages for which the Respondents should be held liable.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Edythe DeMarco ("DeMarco") through in-house counsel Marie A. Vavra-Coleman, Esq., New York, New York, denied any and all allegations of wrongdoing or liability contained in the Statement of Claim. Respondents maintained that in October 1991 DeMarco made several recommendations to Claimant that were consistent with Claimant's primary investment objective of monthly income. Respondents further maintained that Claimant authorized the purchase of the Nuveen Fund in December of 1991. Respondents contended that in August 1993, DeMarco contacted the Claimant to discuss the possibility of selling the Nuveen Fund shares, explaining that an expected rise in short-term interest rates would result in a decrease in the Nuveen Fund payout and share price. Respondents further contended that DeMarco recommended purchasing the Alliance Fund because she believed it would be less affected by rising interest rates. Respondents stated that Claimant authorized the sale of the Nuveen Fund for a net profit of \$2,482.00, and purchased 10,627 of Alliance Fund with part of the proceeds. Respondents denied that DeMarco recommended these transactions merely to generate commissions, and stated that Claimant received a 30% discount on the Nuveen Fund sales commission, and was not charged a commission on the Alliance Fund purchase or subsequent sale. Respondents maintained that Claimant's losses on the Alliance Fund sale were partially offset by the profit she realized from the sale of the Nuveen Fund, and the \$4,650.00 in monthly income that she received from the Alliance Fund. As a result of the above, the Respondents contended that they should not be held liable in this matter.

#### **RELIEF REQUESTED**

Claimant, Rose LaValley, requested \$9,990 in actual damages.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Edythe DeMarco, requested that the Statement of Claim be denied in all respects and that they be awarded their costs.

#### **AWARD**

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single public Arbitrator, Gerard S. Marsan, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on January 11, 1995, by Respondent Merrill Lynch, Pierce, Fenner & Smith, Inc. on March 15, 1995, and by Respondent Edythe DeMarco on March 20, 1995.

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. Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Edythe DeMarco, shall be and hereby are jointly and severally liable for, and shall pay to Claimant, Rose LaValley, \$2,862.20 in actual damages.


2. Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Edythe DeMarco, shall be and hereby are jointly and severally liable for, and shall pay to Claimant, Rose LaValley, interest at the rate of twelve percent (12%) on the above award from January 1, 1995 to July 11, 1995.

3. The parties shall bear their respective costs.

4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. ("NASD") by the Claimant shall be retained by the NASD, Inc. Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Edythe DeMarco, shall be and hereby are jointly and severally liable for, and shall pay to Claimant, Rose LaValley, \$75.00 as reimbursement of one-half of the filing fee.

**AFFIRMATION**

I, GERARD S. MARSAN, ESQ., do hereby affirm upon my oath of 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:

*July 24, 1995*