

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Gail, Mary and Edward J. McElroy

88-03728

Name of Respondent(s)

Joseph P. McGivney and Associates, Inc.  
Stephen M. Foran

ARBITRATION-CHICAGO

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on December 5, 1988, Claimants Gail McElroy, Mary McElroy and Edward McElroy alleged that Respondents Joseph P. McGivney and Associates, Inc. and Stephen M. Foran, as part of a fraudulent scheme, held "investment classes" and used these classes as a sales technique to push and hype unsuitable common stocks, falsely representing that the purchase of the securities would make large profits for Claimants and that the investments were safe and conservative. In addition, the Statement of Claim alleged that Respondents materially misrepresented and omitted to disclose other material facts and information about the investment violating the anti-fraud provisions of the Securities Acts, Article 3 of the Rules of the NASD, and the RICO act [18 U.S.C. Section 19651 (a) and (c)]. In addition, the liability of Respondent McGivney & Associates, Inc. is based on Respondent Superior.

In a Statement of Answer filed with the NASD on November 1, 1989, and as later supplemented on December 13, 1990, Respondents Joseph P. McGivney and Associates, Inc. and Stephen M. Foran denied the allegations of the Statement of Claim, stating that Gail McElroy was an experienced business person who solicited the trades complained of, the training classes did not hype any stocks, and that prospectuses were made available to Respondents.

RELIEF REQUESTED

Claimants Gail McElroy, Mary McElroy, and Edward J. McElroy requested entry of an award against Respondents Joseph P. McGivney & Associates, Inc. and Stephen M. Foran in an amount in excess of \$29,000.00, plus treble damages, interest and attorneys' fees pursuant to the RICO claims, and interest, forum fees, costs, and attorneys' fees under the remaining claims.

Respondents Joseph P. McGivney & Associates, Inc. and Stephen M. Foran requested that the Statement of Claim be dismissed and denied in its entirety.

### PROCEDURAL MATTERS

On February 19 and 20, 1991, in Chicago, Illinois during a hearing lasting two sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed on November 15, 1988 by Claimants Mary McElroy and Gail McElroy, on January 11, 1989 by Claimant Edward McElroy, on February 19, 1991 by Stephen M. Foran on behalf of Respondent Joseph P. McGivney & Associates, Inc. and on February 19, 1991 by Respondent Stephen M. Foran.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signal award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the originals remain on file with the NASD.

### AWARD

The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Joseph P. McGivney and Associates, Inc. and Stephen M. Foran are jointly and severally liable for and shall pay to the Claimant Gail McElroy the sum of \$14,603.02 plus pre-judgment interest at the rate of 6% per annum non-compounded from January 1, 1988 until the award is served, then post-judgment interest on the original award amount at the rate of 6% per annum non-compounded from 30 days after award is served until the full amount of the award is paid;
2. Respondents Joseph P. McGivney and Associates, Inc. and Stephen M. Foran are jointly and severally liable for and shall pay to Claimants Mary McElroy and Edward McElroy the sum of \$15,883.89 plus pre-judgment interest at the rate of 6% per annum non-compounded from January 1, 1988 until the award is served, then post-judgment interest on the original award amount at the rate of 6% per annum non-compounded from 30 days after award is served until the full amount of the award is paid;
3. Each party shall bear their own costs, including attorneys' fees, except for those specifically enumerated herein;
4. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain as forum fees, the \$200.00 non-refundable filing fee and the \$550.00 hearing session deposit previously deposited with the NASD by the Claimants Gail McElroy, Mary McElroy and Edward McElroy. Respondents Joseph P. McGivney

and Associates, Inc. and Stephen M. Foran are jointly and severally  
liable for and shall pay to the NASD additional forum fees of  
\$950.00

By the Panel

Dated: \_\_\_\_\_

/S/ \_\_\_\_\_  
Philip P. Rummel, Esq.  
Presiding Chair

Dated: April 1, 1991

/S/ Bradford S. Allen  
Bradford S. Allen, Esq.

Dated: \_\_\_\_\_

/S/ \_\_\_\_\_  
Joy Pava Shulruff, Esq.  
Industry Arbitrator

66-3278

and Associates, Inc. and Stephen M. Foran are jointly and severally liable for and shall pay to the NASD additional forum fees of \$950.00

Dated: April 2, 1991 /s/ Philip P. Rummel  
Philip P. Rummel, Esq.  
Presiding Chair

Dated: \_\_\_\_\_ /s/ \_\_\_\_\_  
Bradford S. Allen, Esq.

Dated: \_\_\_\_\_ /s/ \_\_\_\_\_  
Joy Pava Shulruff, Esq.  
Industry Arbitrator

Date Served by NASD: April 12, 1991

88-3278

and Associates, Inc. and Stephen M. Foran are jointly and severally  
liable for and shall pay to the NASD additional forum fees of  
\$950.00

By the Panel

Dated: \_\_\_\_\_

/S/ \_\_\_\_\_  
Philip P. Rummel, Esq.  
Presiding Chair

Dated: \_\_\_\_\_

/S/ \_\_\_\_\_  
Bradford S. Ahlen, Esq.

Dated: March 27, 1991

/S/ Joy Pava Shulruff  
Joy Pava Shulruff, Esq.  
Industry Arbitrator