

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimants

**Jane A. Trenary, Sandra K. Feary,
and T-Mar Partnership**

93-02771

Name of Respondents

**City Securities, Inc., Boyle Securities, Inc., Maureen Boyle,
Wallace Boyle, John Boyle, and John D. Mele**

REPRESENTATION OF PARTIES

Claimants, Jane A. Trenary ("Trenary"), Sandra K. Feary ("Feary"), and T-Mar Partnership (collectively, "Claimants") were represented at the hearing by L. Andrew Brehm, Esq. and Michael B. Roche, Esq. of Schnyler Roche & Zwirner, Chicago, Illinois.

Respondent, City Securities, Inc. was represented at the hearing by Paul F. Donahue, Esq. of Seyfarth, Shaw, Fairweather & Geraldson, Chicago, Illinois. Respondents, Boyle Securities, Inc., Maureen Boyle, Wallace Boyle, John Boyle, and John D. Mele ("Mele") were represented at the hearing by Lee Ann Russo, Esq. of Jones, Day, Reavis & Pogue, Chicago, Illinois.

CASE INFORMATION

The Statement of Claim was filed on July 14, 1993. Submission Agreement of Claimants, Jane Trenary and Sandra Feary were signed on July 13, 1993. Submission Agreement of Claimant T-Mar Partnership was signed on July 15, 1993.

Statement of Answer was filed by Respondent, City Securities, Inc. on October 13, 1993. Submission Agreement of Respondent, City Securities, Inc. was signed on October 8, 1993.

Joint Statement of Answer/Motion To Dismiss was filed by Respondents, Boyle Securities, Inc., Wallace Boyle, Maureen Boyle, John Boyle, and John D. Mele on October 5, 1993. Submission Agreements of Boyle Securities, Inc., John D. Mele, and Maureen Boyle were signed on September 24, 1993. Submission Agreements of Wallace Boyle and John Boyle were signed on September 27, 1993.

HEARING INFORMATION

The hearing was held on April 27, 1994 for two (2) sessions; April 28, 1994 for two (2) sessions; April 29, 1994 for two (2) sessions, May 18, 1994 for two (2) sessions, May 19, 1994 for two (2) sessions, June 1, 1994 for three (3) sessions; June 2, 1994 for three (3) sessions, June 3, 1994 for two (2) sessions, June 4, 1994 for two (2) sessions, June 21, 1994 for three (3) sessions, June 22, 1994 for three (3) sessions, June 23, 1994 for three (3) sessions, July 13, 1994 for three (3) sessions, July 14, 1994 for three (3) sessions, July 15, 1994 for two (2) sessions, July 26, 1994 for three (3) sessions, July 27, 1994 for three (3) sessions, July 28, 1994 for two (2) sessions, August 3, 1994 for three (3) sessions in Chicago, Illinois for a total of 48 sessions.

CASE SUMMARY

Claimants set forth the following claims against the Respondents in their Statement of Claim: 1. Claim for violations of Section 10(b) of the 1934 Act and SEC Rule 10b5, 2. Claim by Trenary for violations of Section 10(b) of the 1934 Act and SEC Rule 10b5, 3. Claim By T-Mar Partnership for violations of Section 10(b) of the 1934 Act and SEC Rule 10b5, 4. Claim for violation of Section 12(2) of the 1933 Securities Act, 5. Claim against Boyle Securities, Mele Wallace Boyle, and Maureen Boyle for violation of the RICO Act, 6. Claim against Boyle Securities for violation of the RICO Act, 7. Claim against City Securities for violation of the RICO Act, 8. Claim against all respondents for violation of the Illinois Securities law of 1953, 9. Claim against Certain respondents for violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, 10. Claim against certain respondents for common law fraud, 11. Claim for breach of fiduciary duty, 12. Claim against Boyle Securities for breach of contract, 13. Claim against City Securities for breach of contract, and 14. Claim against Boyle Securities, Mele, and City Securities for negligent misrepresentation.

Claimants alleged that Respondent Mele engaged in material misrepresentations and omissions concerning options and the opening of Trenary and Feary's options accounts. Claimants alleged that Respondent Boyle Securities and City Securities never furnished claimants with the options disclosure documents. Claimants also alleged that Respondent Maureen Boyle back-dated the date of her approval of Claimant's options accounts. Claimants alleged that Mele purchased options in Amgen, Apple, Uphohn, Microsoft, and Merck and that the high volume of options activity was unsuitable. Claimants alleged that Boyle Securities and City Securities breached their duty of fiduciary duty in that they did not disclose the risks associated with any of the orders. Claimants alleged that their accounts contained "bad files", that orders were processed by unregistered personnel, and that respondents failed to execute orders. Claimants alleged that they were given an unlawful extension of excess credit. Lastly, claimants alleged that Boyle Securities, through Mele, recommended the following stocks even though they lacked a reasonable and adequate basis for doing so: Tonka, Seagate Technology, Greenwich Pharmaceutical, and R.J.R. Nabisco.

Respondent, City Securities, in its Answer/Motion To Dismiss the claim, stated that they acted as clearing broker for trades claimants made with Boyle Securities and had no direct dealing with claimants. City Securities further stated that claimants repeatedly represented in writing that they were sophisticated businesswomen, that they understood the risks in investing in options, and that they were willing to withstand total losses on the investments. In its counterclaim, City Securities stated that T-Mar Partnership is liable to them for attorney's fees and that Feary, Trenary, and T-Mar Partnership are liable to them for fraud and misrepresentation.

Respondents, Boyle securities, Wallace Boyle, Maureen Boyle, John Mele, and John Boyle in their Answer/Motion To Dismiss, stated that claimants understood the risks and should be held accountable for their losses. Respondents alleged that Mele explained the risks involved with trading options and that Respondents offered no recommendations or advice. Respondents included a Motion To Dismiss Counts V, VI, VIII, and XIV of the Statement of Claim and to strike all state law claims against Wallace and John Boyle.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$2,005,302.44; treble damages in the amount of \$5,589,907.32; pre-judgment interest in the amount of \$161,156.70; attorney's fees, punitive damages, and forum fees.

Respondent, City Securities requested that the claim be dismissed and that they be awarded its costs and attorney's fees.

Respondents, Boyle Securities, Maureen Boyle, Wallace Boyle, John Boyle, and John Mele requested that the claim be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

During the hearing, Respondent, City Securities, Inc. was dismissed as a party to the arbitration after the panel ruled in their favor on a Motion To Dismiss.

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. In either case, the parties have agreed to receive conformed copies of the award while the originals remain on file with the N.A.S.D..

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. The Claimants', Jane Trenary, Sandra Feary and T-Mar Partnership, Statement of Claim is denied and dismissed in its entirety;

2. Each of the parties shall bear their own costs and expenses, including attorney's fees, other than those specifically provided for herein.

FORUM FEES

Pursuant to §43(c) of the N.A.S.D. Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("N.A.S.D.") shall retain the non-refundable filing fee in the amount of \$250.00 and shall retain as forum fees the hearing session deposit in the amount of \$1000.00 previously deposited with the N.A.S.D. by the Claimant. The NASD shall also retain the \$250 non-refundable filing fee for the counterclaim and shall refund the \$600 hearing session deposit which were filed by Respondent City Securities.

Forum fees are calculated at the rate of \$1000.00 per hearing session (x 48 sessions minus \$1000 hearing session deposit) . **Total amount due to the NASD: \$47,000.00.** The panel has ordered that respondents, Boyle Securities, Inc., Maureen Boyle, and John Mele, are jointly and severally, liable for the sum of \$47,000.00 to the N.A.S.D.

Additional Forum Fees assessed by the panel are payable to the National Association of Securities Dealers, Inc.

By The Arbitration Panel:

Dated:

8-18-94

James D. Martin s/s

James D. Martin, Esq.

Public Arbitrator, Presiding Chair

Bradford S. Allen, Esq. s/s

Bradford S. Allen, Esq.

Public Arbitrator

8-19-94

William J. Bayer s/s

William J. Bayer

Industry Arbitrator

8-18-94

Date Award Served By The N.A.S.D.: 8-24-94