

N.A.S.D. REGULATION AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION

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In the Matter of the Arbitration Between

Name of Claimant

Eileen P. Boland

96-04137

Name of Respondents

First Montauk Securities Corp.  
Richard Jacaruso

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**REPRESENTATION**

Claimant Eileen P. Boland ("Claimant") appeared pro se.

For Respondents First Montauk Securities Corp. and Richard Jacaruso ("Respondents") appeared Monica R. Harris, Esq., in-house counsel at First Montauk Securities Corp.

**CASE INFORMATION**

The Statement of Claim was filed on September 4, 1996.

Claimant's Submission Agreement was signed on September 3, 1996.

A Joint Statement of Answer was filed by Respondents on November 13, 1996.

Respondent First Montauk Securities Corp.'s Submission Agreement was signed on November 11, 1996.

Respondent Richard Jacaruso's Submission Agreement was signed on October 17, 1996.

**HEARING INFORMATION**

Hearing Date/Session: February 11, 1997 - 1 Session

The hearing was held at the Club Quarters Hotel located in New York City, New York.

**CASE SUMMARY**

Claimant alleged that since July 28, 1994, Jacaruso bought three stocks and sold two stocks in his IRA account without her prior approval and without finding out her investment objectives. Claimant further alleged that Jacaruso had no discretionary powers and had never contacted her by phone. Claimant also alleged that none of the stocks bought were suitable to her investment objectives of safety of principal, reasonable rate of return and diversification. Claimant asserted that the first time the brokerage firm asked her for her investment objectives was in a letter dated March 1, 1996. Claimant further asserted that these questions should have been asked by Jacaruso at the time he opened her account.

Respondents maintained that on or about May 1990 claimant opened an account at First Montauk with Eileen P. Boland ("Boland"). Respondents further maintained that Boland resigned from First Montauk on or about 1992, and claimant's account was handled by a second registered representative. Respondents also maintained that on or about April 1993, claimant's second account executive resigned

and her account was not transferred out, and remained dormant from approximately April 1993 through July 1994. Respondents contended that in July 1994, Jacaruso became claimant's account executive, and at such time, claimant's account had long positions in ICC Technologies, Inc. ("ICC"), New Valley Corp ("New Valley"), SilentRadio, Inc. ("SilentRadio"), and Tie Communications, Inc. ("Tie").

Respondents further contended that Jacaruso never personally met claimant, but had spoken with her on the telephone, mostly in the evenings. Respondents conceded that claimant's account was not a discretionary account and asserts that Jacaruso never treated it as such. Respondents also contended that the number of transaction in claimant's account while it was under Jacaruso's management amount to six. Respondents maintained that prior to executing each transaction, Jacaruso contacted claimant. Respondents further maintained that claimant in each instance would respond by telling Jacaruso to proceed if he believed it was in her best interest. Respondents also maintained that the stocks that were purchased for her account may not have paid out dividends, but does not necessarily qualify these investments as unsuitable.

Respondents contended that since the inception of claimant's account at First Montauk, she had consistently held long positions in five stock or less. Respondents further contended that at no time did claimant ever contact Jacaruso or anyone else at First Montauk to question her portfolio positions, nor to express dissatisfaction in her limited amount of positions. Respondents also contended that the March 1, 1996 letter was an attempt by First Montauk to ascertain whether claimant's investment objectives had recently changed. Respondents maintained that claimant's investment objectives were known to them since the inception of her account, and had remained constant throughout the duration of her account.

Respondents further maintained that throughout the period of July 1995 through July 1996, claimant received monthly account statements which provided month-end share prices, illustrating the stock's progressive price decline. Respondents also maintained that despite claimant's ability to ascertain both the activity and progress in her account, she nevertheless continued to retain her stock position. Respondents contended that in January 1996, claimant forward correspondence to First Montauk's headquarters, however they never received a copy of this first letter. Respondents further contended that once claimant's instruction were known, they immediately complied with it. Respondents also contended that unless and until claimant liquidates her Today's Man position, she has not realized any losses.

#### **RELIEF REQUESTED**

Claimant requested \$20,000.00 in actual losses and \$20,000.00 in punitive damages and damages for pain and suffering.

Respondents requested the claim of the Claimant be denied in its entirety, that the panel award Respondents their costs associated with the defense of this action including but not limited to, its attorneys' fees and any other relief the panel deems just and equitable.

#### **OTHER ISSUES CONSIDERED AND DECIDED**

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 NASD.

#### **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. Respondents First Montauk Securities, Corp. and Richard Jacaruso be and hereby are liable jointly and severally and shall pay to Claimant Eileen P. Boland actual damages in the sum of \$6,000.00.
2. Claimants request for punitive damages and damages for pain and suffering are hereby denied.
3. Each party shall bear their respective costs, including attorneys' fees.

**FORUM FEES**

Pursuant to Rule 10332 of the Code of Arbitration Procedure, the arbitrators have determined that NASD Regulation shall retain the \$120.00 non-refundable filing fee and \$400.00 Hearing Session deposit previously deposited by claimant.

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

**ARBITRATORS' SIGNATURES**

I, David Fogel, Esq., do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.



David Fogel, Esq.  
Public - Chairperson

I, Anthony P. Connolly, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-referenced matter.

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Anthony P. Connolly  
Public Arbitrator

I, William E. Smith, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-referenced matter.

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William E. Smith  
Industry Arbitrator

Date of Decision: March 18, 1997

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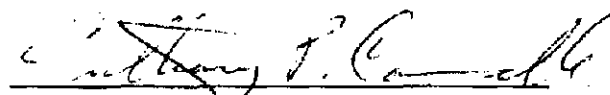
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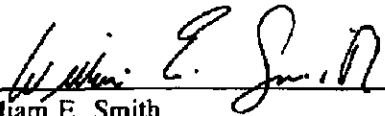
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