

**COPY**

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Daniel J. Capon, M.D., Claimant v. Christopher R. Greenwell, Neil D. Dabney, Michael A. Sanchez, First Allied Securities, Inc., Round Hill Securities, Inc. and Dabney Group LLC/Dabney Flanigan, LLC, Respondents

Case Number: 03-05937

Hearing Site: San Francisco, California

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Nature of the Dispute: Customer vs. Members and Associated Persons

**REPRESENTATION OF PARTIES**

For Claimant:

Daniel J. Capon  
Hillsborough, California

For Respondent Christopher R. Greenwell:

James A. Hennefer  
San Francisco, California

For Respondents Michael A. Sanchez,  
Neil D. Dabney, First Allied Securities, Inc.,  
and Dabney Group LLC/Dabney Flanigan, LLC:

Charles J. Murray  
Lewis Brisbois Bisgaard & Smith  
San Francisco, California

For Respondent Round Hill Securities, Inc.:

Andrew M. Zack  
Munro and Zack  
Troy, Michigan

**CASE INFORMATION**

Revised Statement of Claim filed: September 24, 2003

Claimant's Answer to Respondent Round Hill Securities, Inc.'s Motion to Dismiss Revised Statement of Claim filed: December 23, 2005

Claimant's Supplement to the Answer to Respondent Round Hill Securities, Inc.'s Motion to Dismiss Revised Statement of Claim filed: January 3, 2006

Claimant's Uniform Submission Agreement signed: August 14, 2003

Statement of Answer of Respondent Christopher R. Greenwell filed: November 25, 2003

Respondent Christopher R. Greenwell's Uniform Submission Agreement signed: November 20, 2003

Respondent Michael A. Sanchez's Statement of Answer filed: November 25, 2003

Respondent Neil D. Dabney's Statement of Answer filed: November 25, 2003

Respondent First Allied Securities, Inc.'s ("First Allied") Statement of Answer filed: November 25, 2003

Respondent Dabney Group LLC/Dabney Flanigan, LLC's ("Dabney Flanigan") Statement of Answer filed: November 25, 2003

Respondents First Allied, Neil D. Dabney, Michael A. Sanchez and Dabney Flanigan's Joinder in Motion to Dismiss Revised Statement of Claim filed: December 2, 2005

Respondents First Allied, Neil D. Dabney, Michael A. Sanchez and Dabney Flanigan's Reply in Support of Their Motion to Dismiss Claimant's Revised Statement of Claim filed: January 3, 2006

Respondent Round Hill Securities, Inc.'s ("Round Hill") Statement of Answer filed: December 17, 2003

Respondent Round Hill's Motion to Dismiss Revised Statement of Claim filed: April 1, 2004

Respondent Round Hill's Reply Brief in Support of its Motion to Dismiss Revised Statement of Claim filed: January 3, 2006

Respondent Round Hill's Supplemental Reply Brief in Support of its Motion to Dismiss Revised Statement of Claim filed: January 4, 2006

Respondent Round Hill's Uniform Submission Agreement signed: October 27, 2003

### **CASE SUMMARY**

Claimant alleged the following claims with respect to investments in Uranium Resources Inc. ("URIX"): 1) Securities Fraud; 2) Fraud and Misrepresentation; 3) Breach of Fiduciary Duty; 4) Breach of Contract; 5) Negligent Supervision; and 6) Punitive Damages.

In separately filed pleadings, Respondents denied Claimant's allegations of wrongdoing and denied any liability to Claimant. Respondents also asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested:

1. The difference between the cost of the purchase of the URIX securities and the net recovery received by Capon upon their sale;
2. The ticket charge and commissions on the unauthorized purchase;
3. Punitive damages; and
4. Costs, expenses and attorney's fees.

Respondent Christopher R. Greenwell requested:

1. That Claimant be awarded nothing by the Revised Statement of Claim and that an award be entered in favor of Greenwell and other respondents;
2. That Claimant be required to pay all costs incurred in these proceedings, as well as all costs and attorneys' fees reasonably incurred by Greenwell and other respondents; and
3. Such other and further relief be awarded as is just and proper in this matter.

Respondents Michael A. Sanchez, Neil D. Dabney, First Allied and Dabney Flanigan requested that a final judgment be entered on their behalf and against Claimant, costs, and all other relief the Panel deems just and proper. Said Respondents also requested that the Panel make a recommendation of expungement of Claimant's claim against all respondents.

Respondent Round Hill requested dismissal of Claimant's claims, costs and attorney's fees.

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

Respondents Michael A. Sanchez, Neil D. Dabney, First Allied and Dabney Flanigan did not file with NASD Dispute Resolution ("NASD-DR") properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD-DR Code of Arbitration Procedure ("the Code") and, having answered Claimant's Claim, are bound by the determination of the Panel on all issues submitted.

The Panel agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **AWARD**

After considering the pleadings and positions of the parties relative to Respondents' Motions to Dismiss, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. The NASD Code of Arbitration Procedure, Rule 10304, states that 'No...claim...shall be eligible for submission to arbitration under this Code where six (6) years have elapsed from the occurrence or event giving rise to the...claim. This Rule shall not...apply to any case which is directed to arbitration by a court of competent jurisdiction.'
2. Claimant was advised of the purchase of the URIX stock by means of the broker's March 1997 end-of-month statement, followed by similar statements each month thereafter.
3. Claimant entered his claim on August 15, 2003 – at a minimum six years and four-and-a-half months after the 'event'.
4. Although a court dismissed Claimant's claim in April of 2002, no evidence was presented that the Magistrate directed the case to arbitration.
5. Accordingly, this Panel finds Claimant's claim to be ineligible for arbitration under the NASD Code and grants Respondents' Motion to Dismiss, with prejudice.
6. The Panel recommends the expungement of all reference to the above captioned arbitration from Christopher R. Greenwell, Neil D. Dabney, Michael A. Sanchez, First Allied, Round Hill and Dabney Flanigan's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondents Christopher R. Greenwell, Neil D. Dabney, Michael A. Sanchez, First Allied, Round Hill and Dabney Flanigan must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
7. Each party shall bear its own costs, including attorney's fees.
8. All other relief not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

**Filing Fees**

NASD-DR received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee = \$250.00

**Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, First Allied, Dabney Flanigan and Round Hill are parties and the following fees are assessed:

**First Allied**

Member Surcharge	= \$1,500.00
<u>Pre-Hearing Process Fee</u>	= \$ 750.00
<b>Total Member Fees</b>	<b>= \$2,250.00</b>

**Dabney Flanigan**

Member Surcharge	= \$1,500.00
<u>Pre-Hearing Process Fee</u>	= \$ 750.00
<b>Total Member Fees</b>	<b>= \$2,250.00</b>

**Round Hill**

Member Surcharge	= \$1,500.00
<u>Pre-Hearing Process Fee</u>	= \$ 750.00
<b>Total Member Fees</b>	<b>= \$2,250.00</b>

**Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

(1) Pre-hearing conference session with the Panel @ \$1,000.00/session	= \$1,000.00
Pre-hearing conference: November 29, 2005 1 session	
<b>Total Forum Fees</b>	<b>= \$1,000.00</b>

The Panel assessed \$500.00 of the forum fees to Claimant.

The Panel assessed \$500.00 of the forum fees jointly and severally to Respondents Christopher R. Greenwell, Neil D. Dabney, Michael A. Sanchez, First Allied, Round Hill and Dabney Flanigan.

**Fee Summary**

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 250.00
Forum Fees	= \$ 500.00
Total Fees	= \$ 750.00
Less Payments	= \$( 1,425.00)
Refund Due Claimant	= \$( 675.00)

2. Respondent First Allied is charged with the following fees and costs:

Member Fees	= \$ 2,250.00
Less Payments	= \$( 1,500.00)
Balance Due NASD-DR	= \$ 750.00

3. Respondent Dabney Flanigan is charged with the following fees and costs:

Member Fees	= \$ 2,250.00
Less Payments	= \$( 0.00)
Balance Due NASD-DR	= \$ 2,250.00

4. Respondent Round Hill is charged with the following fees and costs:

Member Fees	= \$ 2,250.00
Less Payments	= \$( 1,500.00)
Less Payments by First Allied	= \$( 750.00)
Balance Due NASD-DR	= \$ 0.00

5. Respondents Christopher R. Greenwell, Neil D. Dabney, Michael A. Sanchez, First Allied, Round Hill and Dabney Flanigan are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 500.00
Less Payments	= \$( 0.00)
Balance Due NASD-DR	= \$ 500.00

All balances are payable to NASD Dispute Resolution and are payable upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Ferdinand Schoch	-	Public Arbitrator, Presiding Chair
Anthony G. Sousa, J.D	-	Public Arbitrator
Donald S. Duerson	-	Non-Public Arbitrator

**Consenting Arbitrators' Signatures**



Ferdinand Schoch  
Chair, Public Arbitrator

2/5/06

Signature Date

\_\_\_\_\_  
Anthony G. Sousa, J.D  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Donald S. Duerson  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

2/7/06  
Date of Service

**ARBITRATION PANEL**

Ferdinand Schoch	-	Public Arbitrator, Presiding Chair
Anthony G. Sousa, J.D	-	Public Arbitrator
Donald S. Duerson	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Ferdinand Schoch  
Chair, Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Anthony G. Sousa, J.D  
Public Arbitrator

\_\_\_\_\_  
Signature Date

*Donald S. Duerson*  
\_\_\_\_\_  
Donald S. Duerson  
Non-Public Arbitrator

*2-06-06*  
\_\_\_\_\_  
Signature Date

*2/7/06*  
\_\_\_\_\_  
Date of Service



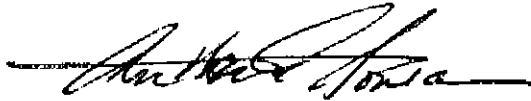
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Donald S. Duerson	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Ferdinand Schoch  
Chair, Public Arbitrator



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Signature Date

2/7/06

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Anthony G. Sousa, J.D  
Public Arbitrator

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Signature Date

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Donald S. Duerson  
Non-Public Arbitrator

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Signature Date

2/9/06

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Date of Service