

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

City Of Montevallo Water & Sewer Board

89-03037

Name of Respondent(s)

William Doyne McCord  
Richard Gene Smith  
Dan Edward Moudy  
Richard Lee Knox  
Richard Michael Brucki  
Richard Henry Wilson  
Gary Hugh Nichols  
Joe Hirsch Selz  
James Lee Hoyt  
United Capital Corporation

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Heard before the <arbitrator/members of the Arbitration Panel>:

Name	Public/Industry
John F. Galvin, Esq.	Public
Daniel Eugene Bivins, III	Public
Robert H. Black, Jr. Esq.	Industry

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on October 30, 1989, the City of Montevallo Water and Sewer Board (hereinafter "Claimant"), alleged that Respondents, William Doyne McCord, Richard Gene Smith, Dan Edward Moudy, Richard Lee Knox, Richard Michael Brucki, Joe Hirsch Selz, Richard Henry Wilson, Gary Hugh Nichols, James Lee Hoyt, and United Capital Corporation: induced Claimant into buying unsuitable securities; and, misrepresented and omitted material facts in connection with transactions in Claimant's account. Claimant brings causes of action against Respondents of negligence and common law fraud and alleges violations of the federal securities laws, the federal RICO statute and various NASD rules.

In an answer filed by Respondents, William Doyne McCord, Dan Edward Moudy, Richard Lee Knox, Richard Michael Brucki, Joe Hirsch Selz, Richard Henry

Wilson, Gary Hugh Nichols, James Lee Hoyt, and United Capital Corporation, all allegations of wrongdoing contained in the Statement of Claim are denied and such Respondents asserted that: 1) Claimant fails to state a claim upon which relief may be granted; 2) Claimant expressly ordered, approved, authorized, participated in and ratified the acts and transactions complained of, and upon which relief is sought; 3) Claimant failed to mitigate damages; 4) Claimant's claim is barred by the principle of laches; 5) Claimant had full control of investment decisions; 6) Respondents acted in good faith; and, 7) Claimant's losses were caused by his own conduct.

#### PROCEDURAL SUMMARY

Respondent, Richard Gene Smith, submitted a Motion To Dismiss the claim asserted against him as a party to this proceeding which was denied by the Director of Arbitration.

Respondent, Joe Hirsch Selz, submitted a Motion To Dismiss the claim asserted against him pursuant to Rule 12(b) of the NASD Code of Arbitration Procedure which was denied by the Director of Arbitration.

Respondents, William Doyme McCord, Dan Edward Moudy, Richard Lee Knox, Richard Michael Brucki, Joe Hirsch Selz, Richard Henry Wilson, Gary Hugh Nichols, James Lee Hoyt and United Capital Corporation were dismissed from the proceedings pursuant to a settlement agreement reached between them and the Claimant. Settlement negotiations were ongoing on the hearing date of February 14, 1991 and concluded at approximately 2:00 p.m. at which time such proceeding continued against Richard Gene Smith, the only Respondent remaining in this action. All Respondents, with the exception of Richard Gene Smith, were dismissed prior to the presentation of evidence at the hearing.

Respondent, Richard Gene Smith, failed to appear at the hearing although the record reflects that he was properly notified of the hearing. The arbitration panel took judicial notice of the fact that Respondent, Richard Gene Smith, had been properly served and had not been dismissed as a party Respondent to this action.

The Claimant withdrew its RICO claim against the Respondents.

#### RELIEF REQUESTED

Claimant requested actual damages in the amount of \$115,625.00, treble damages pursuant to the federal RICO statute, pre-judgment interest, costs, attorneys' fees and punitive damages.

#### AWARD

On February 14, 1991 in New Orleans, Louisiana during a hearing lasting three (3) sessions, the undersigned arbitrator(s) heard the controversy between the parties as set forth in submissions to arbitration signed by Donald Hughes, on behalf of the Claimant, City of Montevallo Water and Sewer

Board, on October 27, 1989.

All Respondents having denied that this controversy is arbitrable under the NASD Code of Arbitration Procedure failed to file with the NASD properly executed submissions to arbitration, but are required to submit to arbitration pursuant to Section 12 of the NASD Code of Arbitration Procedure and having answered the claim, and appeared at the hearing are bound by the determination of the arbitration panel on all issues submitted.

After considering the pleadings, the testimony, and the evidence presented at the hearing, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award be entered. In either case, the parties have agreed to receive conformed copies of the Award while the original remains on file with the NASD;
2. Respondent, Richard Gene Smith, is liable for and shall pay to Claimant, City of Montevallo Water and Sewer Board, damages in the amount of Twelve Thousand Seven Hundred Sixty Dollars (\$12,760.00) plus legal interest at the rate of 6 percent per annum from October 27, 1989 until paid;
3. Respondent, Richard Gene Smith, is liable for and shall pay to Claimant, City of Montevallo Water and Sewer Board, attorneys' fees (pursuant to Ala. Code Sec. 8-6-19a) in the amount of Four Thousand Dollars (\$4,000.00);
4. Claimant's claim for punitive damages is denied in its entirety; and,
5. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

#### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

1. Claimant, City of Montevallo Water and Sewer Board, is hereby assessed Forum Fees in the amount of Seven Hundred Fifty Dollars (\$750.00);
2. The NASD shall retain the Seven Hundred Fifty Dollar (\$750.00) filing fee previously deposited by the Claimant;
3. Respondents, William Doyme McCord, Dan Edward Moudy, Richard Lee Knox, Richard Michael Brucki, Richard Henry Wilson, Gary Hugh Nichols, Joe Hirsch Selz, James Lee Hoyt and United Capital Corporation are hereby assessed, jointly and severally, Forum Fees in the amount of One Thousand Three Hundred Fifty Dollars (\$1,350.00); and,
4. Respondent, Richard Gene Smith, is hereby assessed Forum Fees in the amount of One Hundred Fifty Dollars (\$150.00).

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

Concurring Arbitrator(s) Signature

Dated:

3/17/91

John F. Galvin

John F. Galvin, Esq.  
Presiding Chair

Daniel Eugene Bivins, III

Robert B. Bieck, Esq.  
Industry Arbitrator

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

Concurring Arbitrator(s) Signature

Dated:

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John F. Galvin, Esq.  
Presiding Chair

March 11, 1991

*Daniel Eugene Bivins III*  
Daniel Eugene Bivins, III

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Robert B. Bieck, Esq.  
Industry Arbitrator

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

Concurring Arbitrator(s) Signature

Dated:

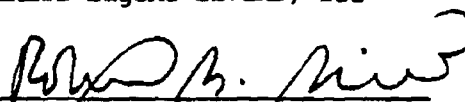
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John F. Galvin, Esq.  
Presiding Chair

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Daniel Eugene Bivins, III

MARCH 11, 1991

  
Robert B. Bieck, Esq.  
Industry Arbitrator