

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

**Wilshire Company
William J. Spivock
Visit Taveethamcharoen**

93-04279

Name of Respondents

**Summit Investment Corporation
Phillip T. Huss**

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on October 18, 1993, Claimants Wilshire Company, William J. Spivock and Visit Taveethamcharoen, through their representative, Morton Levy, DBA Investor Advocates, San Francisco, CA, alleged that Respondent Phillip T. Huss, of the Respondent firm, Summit Investment Corp., purchased 1,000 shares of Synergetics International Inc. stock without their knowledge or authorization, and further that he made recommendations to purchase securities such as Colorado Venture Capital and Big Turtle Inc. without having reasonable grounds for believing that the recommendation was suitable for the Claimants upon the basis of the facts disclosed as to the Claimants' other security holdings or their financial situations and needs. The Claimants further alleged that the Respondents failed to make reasonable efforts to obtain information concerning the financial status, tax status and investment objectives of the Claimants, and further that Respondent Summit Investment Corporation failed to adequately supervise Respondent Phillip T. Huss. The Claimants contended that due to the violations of Rules of Fair Practice of the Respondents, they have suffered damages for which the Respondents should be held liable.

Respondent Summit Investment Corporation, through its in-house counsel, Ann Exline Starr, Esq., maintained that it acted in compliance with all applicable rules and regulations in good faith and did not directly or indirectly commit any acts constituting a violation of law or giving rise to a cause of action. The Respondent also maintained that applicable statute of limitations cause the Claimants to be barred in their entirety and further that the Claimants are barred due to contributory negligence. Respondent Summit Investment Corp. contended that the

Claimants directly authorized, consented to, acquiesced to and/or ratified each of the actions of which they now complain, and further that the claims against them should be dismissed in their entirety.

Respondent Phillip T. Huss failed to file an Answer to the Statement of Claim.

In a reply to the Amended Answer, the Claimants refuted the defenses of the Respondent and reiterated that they should be awarded damages caused by the wrongdoing of the Respondents.

RELIEF REQUESTED

Claimants Wilshire Company, William J. Spivock and Visit Taveethamcharoen requested a total of \$9,821,00 in actual damages.

Respondent Summit Investment Corp. requested that the claims of the Claimants be dismissed.

Respondent Phillip T. Huss failed to file an Answer to the Statement of Claim.

OTHER ISSUES CONSIDERED & DECIDED

In accordance with Section 13 of the NASD Code of Arbitration Procedure, the Respondent Phillip T. Huss was served a copy of the Statement of Claim by regular mail and given an opportunity to respond, which he failed to do. Service of the claim was effected as indicated by a signed return green card on file at the NASD for notification of the Arbitrator's identity. Both packages were mailed to the same address.

Pursuant to the By-Laws of the NASD the arbitrator determined that Respondent Phillip T. Huss had notice of the claim, was required to submit to this arbitration proceeding and is, therefore, bound by the arbitrator's ruling and determination.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Leonard Greenwold, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on October 5, 1993 and on October 4, 1993, and by the Respondent Summit Investment Corp. on April 25, 1994, but not signed by Respondent Phillip T. Huss as required by Sections 12 & 13 of the NASD Code of Arbitration Procedure.

And, the Arbitrator, having considered all of the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents Summit Investment Corp. and Phillip T. Huss are jointly and severally liable and shall pay to Claimant Visit Taveethamcharoen \$1,698.00 in actual damages.
2. Respondents Summit Investment Corp. and Phillip T. Huss are jointly and severally liable and shall pay to Claimant William Spivock \$2,088.00 in actual damages.
3. The claims of Claimant Wilshire Company against Respondents Summit Investment Corp. and Phillip T. Huss are dismissed in their entirety.
4. The parties shall bear their respective costs.
5. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc. Respondent Summit Investment Corp. and Phillip T. Huss are jointly and severally liable and shall pay \$75.00 to the Claimants as reimbursement of one-half of the filing fee.

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AFFIRMATION

I, **LEONARD GREENWOLD**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: September 23, 1994