

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between

Name of Claimants

Gregg and Susan Perelman

Case No. 99-03390

Name of Respondents

Summit Investment Group, Inc.  
Pershing Division of Donaldson Lufkin & Jenrette Securities Corp.  
Timothy B. Gabriel

Hearing Site: Pittsburgh, PA

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**REPRESENTATION OF PARTIES**

Claimants, Gregg and Susan Perelman, ("Claimants"): Samuel F. Reynolds, Jr., Esq. of the Law Offices of Weisman Goldman Bowen & Gross, LLP, Pittsburgh, PA

Respondent, Summit Investment Group, Inc. ("Summit") was not represented

Respondent, Pershing Division of Donaldson Lufkin & Jenrette Securities Corporation ("Pershing"): Matthew Farley, Esq. of the law firm of Drinker Biddle & Reath, LLP, New York, NY.

Respondent, Timothy B. Gabriel, ("Gabriel"): Richard D. De Vita, Attorney at Law, Hoboken, NJ

**CASE INFORMATION**

Statement of Claim filed on or about: July 22, 1999

Claimants signed their Uniform Submission Agreement: July 21, 1999

Addendum to Statement of Claim file on or about: July 30, 1999

Claimant's Brief in Opposition to Gabriel's Motion for a More Definite Statement filed on or about: December 28, 1999

Statement of Answer and Motion to Dismiss filed by Pershing on or about: March 3, 2000

Pershing's Uniform Submission Agreement executed by David Campbell, Senior Vice President of Pershing on: January 24, 2000

Statement of Answer and Motion for a More Definitive Statement file by Gabriel on or about: November 8, 1999

Gabriel's reply to Claimants' Opposition to Gabriel's Motion for a More Definitive Statement filed on or about: January 3, 2000  
Gabriel signed his Uniform Submission Agreement on: January 2, 2001

Summit did not file an answer or a Uniform Submission Agreement.

### **CASE SUMMARY**

Claimants asserted the following causes of action: unauthorized trading; violation of Section 10(b) and Rule 10b-5; violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. Section 201-1 *et seq.*; common law fraud under Pennsylvania Law; violation of the "Know Your Customer" rule, N.Y.S.E Rule 405 and NASD Rules of Fair Practice, Article III, Section 2; breach of fiduciary duty; breach of written contract; breach of good faith and fair dealing, excessive trading; and trading in unsuitable securities. Pershing acted in bad faith or in a commercially unreasonable manner by participating in or failing to prevent the unauthorized trades and excessively risky trading in the Summit accounts. Pershing owed and thereby breached an implied obligation of good faith and fair dealing. The causes of action relates to unauthorized trading and excessive trading in Claimants' accounts to generate large commissions for Respondents.

Gabriel denied all allegations of wrongdoing asserted by Claimants and asserted among other things, the following affirmative defenses: ratification, failure to mitigate damages; waiver; Claimants' claim is barred by the Statute of Limitations; Gabriel did not violate any duty owed to Claimants; and, Gabriel complied with all rules and regulations.

Unless specifically admitted in its Answer, Pershing denied the allegations made in the Statement of Claim and asserted the following defenses: the claim fails to set forth a basis of recovery that is recognized by law or equity; the claim is barred by Claimants' own untimely actions and delay in disavowing transactions that they now claim are unauthorized; the claim is barred by waiver, ratification as well as laches and estoppel; the losses complained of are by persons and events that Pershing had no right of control; and, the losses sustained by Claimants resulted from their own lack of due care.

### **RELIEF REQUESTED**

Claimants, in their Addendum to the Statement of Claim requested:

Compensatory Damages	\$2,751,217
Punitive Damages	\$8,253,651
Attorneys' Fees	unspecified
Other Costs – disgorgement of commissions	unspecified
Forum Fees, witness and production fees	unspecified
Other case related costs	unspecified

Gabriel requested that the panel dismiss all claims, with costs assessed against Claimants;

including legal fees.

Pershing requested that the Panel grant its motion to dismiss and that Claimants be assessed costs for this arbitration.

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

(Include items such as jurisdictional issues, service, notice, consolidation, severance, non-appearance of parties, motions to bar or strike defenses, etc., that were considered and decided by the arbitrator(s). Include an explanation of the issue and fully document the panel's decision.)

That on September 25, 2000 the paneled verbally ruled that Pershing's Motion to Dismiss be granted, that ruling was reduced to a signed Order on December 28, 2000 and served on the parties.

Summit did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration, file an answer or appear at hearing but is required to submit to arbitration pursuant to the Code of Arbitration Procedure and, having no proof that Summit was properly served Claimants' claim or notice of the hearing, the panel dismissed all claims against Summit without prejudice.

At the hearing Claimants made an oral motion to conform the pleadings to the evidence in respect to claims that Respondent violated NASD and NYSE regulations, that motion was granted.

Gabriel moved for a directed verdict on all claims. The panel granted this motion in part and denied this motion in part. After the Motion for Directed Verdict only the claim for unauthorized trading remained.

#### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. That Claimants' claim for compensatory damages is denied in its entirety.
2. That Claimants' claim for punitive damages is denied in its entirety.
3. That the Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Timothy Gabriel's registration records maintained by NASD Central Registration Depository ("CRD"), with the understanding that pursuant to MASD Notices to Members 99-09 and 99-54, Respondent Timothy Gabriel must obtain confirmation from a court of competent

- jurisdiction before the CRD will execute the expungement directive.
4. That both sides shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed herein.
  5. That any and all relief requests not specifically addressed are hereby denied in their entirety.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$600

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firm was a party at the time the fees were accrued. \*

Member surcharge = \$3,600  
Pre-hearing process fee = \$ 600  
Hearing process fee = \$5,000

\* Summit ceased being a member firm before any fees accrued to it.

#### **Adjournment Fees**

Adjournments requested during these proceedings:

April 23, 24, 25 and 26, 2001, adjournment by Gabriel = \$1,200

#### **Forum Fees and Assessments**

The arbitrator (panel) has the authority to assess forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel x \$1,200 = \$2,400

Pre-hearing conferences: May 9, 2000 1 session  
September 25, 2000 1 session

Four (4) Hearing sessions x \$1,200 = \$4,800

Hearing Dates: October 4, 2001 2 sessions  
October 5, 2001 2 sessions

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Total Forum Fees	= \$7,200
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The panel has assessed \$3,600 of the forum fees to Claimants.

The panel has assessed \$3,600 of the forum fees to Gabriel.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

Pershing, tape duplication =	\$ 15
Gabriel, tape duplication =	\$180

**Fee Summary**

Claimant, Gregg and Susan Perelman, are assessed the following fees:

Initial Filing Fee	= \$ 600
Forum Fees	= \$3,600

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Total Fees	= \$4,200
Less payments	= \$1,800

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Balance Due NASD Dispute Resolution, Inc.	= \$2,400
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Respondent, Pershing Division of Donaldson Lufkin & Jenrette Securities Corp., is assessed the following fees:

Member Fees	= \$9,200
Administrative Costs	= \$ 15

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Total Fees	= \$9,215
Less payments	= \$ 15

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Balance Due NASD Dispute Resolution, Inc.	= \$9,200
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Respondent, Timothy B. Gabriel, is assessed the following fees:

Adjournment Fee	= \$1,200
Forum Fees	= \$3,600
Administrative Costs	= \$ 180

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Total Fees	= \$4,980
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Less payments = \$1,150

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Balance Due NASD Dispute Resolution, Inc. = \$3,830

All balances are due to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

Thomas M. Hardiman, Esq.	-	Public Arbitrator, Chairperson
Gerhard W. Elm	-	Public Arbitrator, Panelist
Garry Lee Hogan	-	Non-Public Arbitrator, Panelist

**Concurring Arbitrators' Signatures**

*Thomas M. Hardiman*

Thomas M. Hardiman, Chairperson  
Public Arbitrator

*Feb. 12, 2002*

Signature Date

Gerhard W. Elm, Panelist  
Public Arbitrator

Signature Date

Garry Lee Hogan, Panelist  
Non-Public Arbitrator

Signature Date

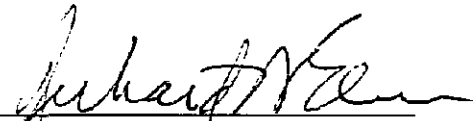
*February 15, 2002*

Date of Service (For NASD-Dispute Resolution office use only)

**Concurring Arbitrators' Signatures**

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Thomas M. Hardiman, Chairperson  
Public Arbitrator

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

  
\_\_\_\_\_  
Gerhard W. Elm, Panelist  
Public Arbitrator

2/12/02  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Garry Lee Hogan, Panelist  
Non-Public Arbitrator

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

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Public Arbitrator

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Gerhard W. Elm, Panelist  
Public Arbitrator

Signature Date

  
Garry Lee Hogan, Panelist  
Non-Public Arbitrator

2/1/02  
Signature Date

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