

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimant

Henry Carter

v.

Case Number: 05-01791
Hearing Site: Houston, Texas

Respondents

Primevest Financial Services, Inc., and
First National Bank of Bryan

and

Counter-Claimant

Primevest Financial Services, Inc.

v.

Counter-Respondent

Henry Carter

and

Third-Party Claimant

Primevest Financial Services, Inc.

v.

Third-Party Respondents

Ruby Faye Baker and
Julia Carter Coleman

NATURE OF DISPUTE

Customer v. Member and Non-Member, Member vs. Customer, Member v. Customers

REPRESENTATION OF PARTIES

Henry Carter ("**Claimant**" or "**Carter**") was represented by Thomas Deon Warner, Esq., Warner Hicks LLP, Houston, Texas and Oni A. Holley, Esq., Molden Holley Fergusson Thompson & Heard LLC, Atlanta, Georgia.

Primevest Financial Services, Inc. ("**Primevest Financial**") was represented by Wesley R. Ward, Esq., Fulbright & Jaworski LLP, Houston, Texas.

First National Bank of Bryan ("**First National**") did not submit to arbitration.

Ruby Faye Baker ("**Baker**") did not make an appearance in this matter.

Julia Carter Coleman ("**Coleman**") did not make an appearance in this matter.

CASE INFORMATION

The Statement of Claim was filed on or about April 5, 2005. The Submission Agreement of Claimant was signed on or about April 4, 2005. The Amended Statement of Claim was filed on or about May 3, 2005.

Claimant's Motion to Preclude Primevest Financial's Answer to the Amended Statement of Claim was filed on or about June 15, 2005.

A Statement of Answer, Motion to Abate, Motion to Dismiss and Counterclaim was filed by Primevest Financial on or about June 15, 2005. Primevest Financial did not submit a Submission Agreement.

Claimant's Reply to Primevest Financial's Counterclaim and Opposition to Primevest Financial's Motion to Dismiss and Motion to Abate was filed on or about June 24, 2005.

Primevest Financial's Second Motion to Dismiss was filed on or about November 4, 2005.

Claimant's Opposition to Primevest Financial's Second Motion to Dismiss was filed on or about November 18, 2005.

Primevest Financial's Alternative Motion for Leave to Join Carter's Daughters was filed on or about November 4, 2005.

Claimant's Opposition to Primevest Financial's Alternative Motion for Leave to Join Carter's Daughters was filed on or about November 18, 2005.

Primevest Financial's Third Motion to Dismiss was filed on or about November 23, 2005.

Claimant's Response to Primevest Financial's Third Motion to Dismiss was filed on or about November 28, 2005.

Claimant's Motion to Clarify the Panel's November 21, 2005 Order was filed on or about November 23, 2005.

Respondent, Ruby Faye Baker, did not submit an Answer or a Submission Agreement.

Respondent, Julia Carter Coleman, did not submit an Answer or a Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract, breach of fiduciary duty and negligence. Claimant alleged that Respondents failed to restore \$132,862.31, which represented three unauthorized withdrawals, which were removed from the Claimant's account without proper authorization.

Unless specifically admitted in its Answer, Respondent Primevest Financial, denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: accord and satisfaction; payment; release; ratification; waiver; estoppel; statute of limitations; failure to mitigate; comparative responsibility; contributory negligence; and Carter authorized and ordered all of the withdrawals.

In its Counterclaim, Primevest Financial, alleged that Carter's claims are completely frivolous and baseless, and was not filed for a valid purpose; and that he is seeking to pervert and abuse the system by bringing Primevest in his family feud.

In its Third-Party claim, Primevest Financial, requested that they be granted leave to join Carter's daughters as parties to this action.

RELIEF REQUESTED

Claimant requested an award in the amount of \$132,878.46 in compensatory damages, interest, his costs and attorneys' fees and any other relief the panel deemed just and proper.

Primevest Financial requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

In its Counterclaim, Primevest Financial, requested an unspecified award of damages against Carter for his malicious and abuse conduct in filing this frivolous suit.

In its Third-Party claim, Primevest Financial, requested that this case be dismissed in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

On or about November 21, 2005, the Panel entered an Order denying Primevest Financial's Motion to Dismiss without prejudice.

On or about November 21, 2005, the Panel entered an Order granting Primevest Financial's Motion for Leave to Join Carter's Daughters in this arbitration proceeding.

On or about November 28, 2005, the Panel entered an Order with regards to Claimant's Motion to Clarify the Panel's November 21, 2005 Order.

Respondent, *Primevest Financial Services, Inc.*, did not file with the NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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 original(s) remain on file with NASD Dispute Resolution ("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) Claimant's claims, each and all, against Respondent, Primevest Financial Services, Inc., are dismissed with prejudice;
- 2) The Counter-Claim of Respondent, Primevest Financial Services, Inc, is dismissed with prejudice;
- 3) The Third-Party Claim of Respondent, Primevest Financial Services, Inc, is dismissed with prejudice;
- 4) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and

- 5) Any relief not specifically enumerated, including punitive damages and attorneys' fees, is hereby denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 300.00
Counter claim/Third Party Claim filing fee	= \$ 500.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firm is Primevest Financial Services, Inc.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference: August 23, 2005 1 session	
Two (2) Hearing sessions x \$1,125.00	= \$2,250.00
Hearing Dates: December 6, 2005 2 sessions	
Total Forum Fees	= \$3,375.00

The Arbitration Panel has assessed \$3,375.00 of the forum fees to Henry Carter.

Fee Summary

Claimant, Henry Carter, is liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$3,375.00
Total Fees	= \$3,675.00
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$2,250.00

Respondent, Primevest Financial Services, Inc., is liable for:

Counter claim/Third Party Claim Filing Fee	= \$ 500.00
Member Fees	= \$5,200.00
Total Fees	= \$5,700.00
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 500.00

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

ARBITRATION PANEL

Edward Thomas Leech – Public Arbitrator, Presiding Chair
Anita Vestal – Public Arbitrator
Walter F. Schleyer - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Edward Thomas Leech
Edward Thomas Leech
Public Arbitrator, Presiding Chair

12/12/05
Signature Date

/s/ Anita Vestal
Anita Vestal
Public Arbitrator

12/10/05
Signature Date

/s/ Walter F. Schleyer
Walter F. Schleyer
Non-Public Arbitrator

12/09/05
Signature Date

12/12/05
Date of Service (For NASD office use only)

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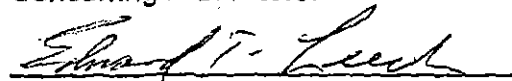
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Edward Thomas Leech
Public Arbitrator, Presiding Chair

DECEMBER 12, 2005
Signature Date

Anita Vestal
Public Arbitrator

Signature Date

Walter F. Schleyer
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

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Edward Thomas Leech
Public Arbitrator, Presiding Chair


Anita Vestal
Public Arbitrator

Signature Date

12-10-05
Signature Date

Walter F. Schleyer
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

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Anita Vestal – Public Arbitrator

Walter F. Schleyer - Non-Public Arbitrator

Concurring Arbitrators:

Edward Thomas Leech
Public Arbitrator, Presiding Chair

Signature Date

Anita Vestal
Public Arbitrator

Signature Date

Walter F. Schleyer
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)