

## **AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of the Arbitration Between

Name of Claimant

Charles Samuel Neas

and

95-05889

Name of Respondent

PrimeVest Financial Services, Inc.  
Stephens, Inc.  
Synovous Securities, Inc.  
First Citizens Bank of Cleveland

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### **REPRESENTATION OF PARTIES**

Charles Samuel Neas ("**Claimant**") was represented by John E. Lawlor, Esq., Mineola, New York.

PrimeVest Financial Services, Inc. ("**Respondent PrimeVest**") was represented by Greg Olson, Esq., PrimeVest Financial Services, Inc., St. Cloud, Minnesota.

Stephens, Inc. ("**Respondent Stephens**") was represented by Kevin A. Cass, Esq., Friday, Eldredge & Clark, Little Rock, Arkansas.

Synovous Securities, Inc. ("**Respondent Synovous**") was represented by W. G. Scrantom, Esq., Page, Scrantom, Sprouse, Tucker & Ford, Columbus, Georgia.

First Citizens Bank of Cleveland ("**Respondent First Citizens**") did not submit a responsive pleading.

### **CASE INFORMATION**

The Statement of Claim was filed on or about December 18, 1995. Submission Agreement of Claimant Charles Samuel Neas was signed on December 11, 1995.

Statement of Answer, Counterclaim and Cross Claim was filed by Respondent PrimeVest Financial Services, Inc. on or about February 12, 1996. Amended Answer, Counterclaim and Cross Claim was

filed on or about February 26, 1996. Submission Agreement of Respondent PrimeVest Financial Services, Inc. was signed on February 12, 1996 by Jeffrey A. Montgomery.

Statement of Answer was filed by Respondent Stephens, Inc. on or about February 13, 1996.

Statement of Answer was filed by Respondent Synovus Securities, Inc. on or about January 30, 1996. Submission Agreement of Respondent Synovus Securities, Inc. was signed on January 30, 1996 by G. Len Sexton, III.

Respondent First Citizens Bank of Cleveland did not submit a responsive pleading in this matter.

### **HEARING INFORMATION**

A telephonic hearing session was held on April 16, 1996 for one (1) session with all arbitrators present.

A telephonic hearing was scheduled to be held on December 4, 1996. Claimant's representative was unable to participate and the arbitration panel decided to render its' decision on the outstanding motions to dismiss on the written submissions. Mr. Lawlor's office was advised of the panel's decision immediately after terminating the telephone conference call. There were no arguments presented during the telephone call.

### **CASE SUMMARY**

Claimant alleged that from March 1991 until January 1993 he placed trades with representatives of Respondents at the First Citizens Bank in Cleveland, Tennessee. Specifically, Claimant alleged that employees of First Citizens assisted in the opening of brokerage accounts and that the employees were compensated in part from the commissions generated by the purchase and sale of securities in his brokerage account. It was also alleged by the Claimant that he was allowed to borrow funds through First Citizens to purchase securities in his brokerage account. Claimant alleged that the activities of Respondents constituted violations of: Tennessee and Federal Banking laws; rule 15c2-5 of the Securities Exchange Act of 1934; NYSE Rule 382; and Federal and Tennessee securities laws.

Respondent PrimeVest denied the allegations set forth in the Statement of Claim. Respondent PrimeVest stated that the Statement of Claim failed to state that any of the transactions complained of involve it. PrimeVest also stated that since it was not involved in extending loans to the Claimant; executing securities transactions on the Claimant's behalf; and has not violated the Federal or Tennessee securities or banking laws, Claimant has failed to state a claim upon which relief may be granted.

Respondent Stephens, Inc. denied the allegations asserted against it. Specifically, Respondent Stephens stated that the alleged unregistered securities were not required to be registered pursuant to various exemptions from registration. Stephens also stated that the transactions complained of in this matter were made at the request of the claimant and not through solicitation of one of its' representatives. Finally, Stephens stated that it has complied with all applicable rules and regulations required of it.

Respondent Synovus stated that all of the activity complained of in this matter occurred prior to the time it established a brokerage relationship with First Citizens.

Respondent First Citizens did not submit a responsive pleading.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$151,000, punitive damages in an amount to be assessed by the arbitration panel, attorneys' fees, statutory interest and an assessment of all costs of this proceeding against Respondents.

Respondent PrimeVest requested that it be dismissed from this action and that no damages be assessed against it, an award of its' fees, costs, and expenses. Its' Cross claim asserted against Stephens, Inc., PrimeVest requested that it be indemnified for any award rendered against it in favor of Claimant.

Respondent Stephens, Inc. requested that the Statement of Claim be denied and that it be awarded its' costs, attorneys' fees and all other proper relief.

Respondent Synovus requested that it be dismissed from this matter.

Respondent First Citizens did not submit a responsive pleading.

### **OTHER ISSUES CONSIDERED & DECIDED**

The panel having considered the written submissions of the parties, grants all motions to dismiss asserted in this matter. It is noted that Claimant was provided opportunities to respond to the motions to dismiss and failed to do so. The arbitration panel also notes that Claimant's representative has failed to respond to discovery requests or cooperate with Respondents to satisfy their discovery requests.

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 the NASD Regulation, Inc. Office of Dispute Resolution.

### **AWARD**

After considering the pleadings, and the written submissions of the parties, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The motions to dismiss submitted by Respondents PrimeVest, Stephens and Synovous shall be and hereby are granted without prejudice. Pursuant to §10305 of the NASD Code of Arbitration Procedure, Claimant is referred to his remedies under applicable law and pursue his remedies, if any, in the court action currently pending.
2. Claimant shall be and hereby is liable for and shall pay to Respondent PrimeVest the sum of \$1,500 as attorneys' fees incurred in this matter.
3. Claimant shall be and hereby is liable for and shall pay to Respondent Stephens the sum of \$1,500 as attorneys' fees incurred in this matter.
4. Claimant shall be and hereby is liable for and shall pay to Respondent Synovous the sum of \$1,500 as attorneys' fees incurred in this matter.
5. All cross claims and counterclaims shall be and hereby are dismissed in their entirety.
6. All other costs, expenses and fees incurred in this matter shall be borne by the respective parties.

### **FORUM FEES**

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each prehearing conference, if any. There was one (1) session x \$750 = \$750 in forum fees. Pursuant to §10332(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §10332(c) of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$200 and shall **retain** as forum fees the hearing session deposit in the amount of \$750 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by the Claimant Charles Samuel Neas. Pursuant to §10332(c) of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$500

and shall **refund** the hearing session deposit in the amount of \$750 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by PrimeVest Financial Services, Inc. The \$350 member surcharge also deposited with the NASD Regulation, Inc. Office of Dispute Resolution shall also be refunded to PrimeVest Financial Services, Inc.

Pursuant to §10333 of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$350 previously paid by Respondent Stephens, Inc. **Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.**

Dated:

/s/ Peter J. Towle, Esq.

Peter J. Towle, Esq.

Public Arbitrator, Presiding Chair

December 24, 1996

/s/ Milton H. Sitton, Esq.

Milton H. Sitton, Esq.

Industry Arbitrator

December 26, 1996

/s/ Ronald W. Greene

Ronald W. Greene

Public Arbitrator

December 27, 1996