

FILED  
NOV 18 1999

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA NOV 18 1999  
ATLANTA DIVISION

LUTHER D. THOMAS, Clerk  
By: *ja*  
Deputy Clerk

UNITED STATES SECURITIES AND EXCHANGE  
COMMISSION,  
Plaintiff,

vs.

PASCHAL GENE ALLEN,  
Defendant.

Civil Action No.

1 99-CV-2986

**COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF**

Plaintiff, United States Securities and Exchange Commission (the  
"Commission"), alleges:

**SUMMARY**

1. This case involves securities fraud and Municipal Securities Rulemaking Board ("MSRB") rule violations by Paschal Gene Allen. While serving as a public finance banker in the Atlanta office of Stephens Inc., a broker-dealer, Allen: (i) took undisclosed payments in connection with a securities transaction he recommended to his financial advisory client, Fulton County, Georgia; and (ii) took undisclosed compensation from underwriter's counsel in connection with five municipal securities offerings by various Georgia municipalities.

2. In the Fall of 1994, Allen recommended to Fulton County that it take moneys then on deposit in a debt service reserve fund and invest those moneys in a portfolio of long-term United States Treasury securities and an associated put

option (the "Treasury Put Transaction"). The County adopted Allen's recommendation, and the transaction closed on November 29, 1994. Allen did not disclose, however, that he arranged to take, and subsequently took, \$20,970.10 in payments from the transaction.

3. In other conduct occurring between September 1991 and April 1993, Allen received undisclosed compensation totaling \$10,900 from underwriter's counsel in connection with five separate municipal securities offerings in Georgia. In these offerings, Stephens served as underwriter and a Georgia law firm served as underwriter's counsel. In each offering, the issuer paid the underwriter's counsel fees of the law firm; yet, Allen, who served as Stephens' lead banker on the transactions, did not disclose his payment arrangement with the law firm to the issuers or in the bonds' offering documents.

4. Allen had a duty to disclose his payment arrangement in the Treasury Put Transaction to Fulton County; his failure to do so violated Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]. In addition, Allen's failure to disclose his compensation arrangement with the law firm on the five bond issues to the affected issuers and in the bonds' offering documents, violated Section 15B(c)(1) of the Exchange Act [15 U.S.C. § 78o-4(c)(1)] and MSRB Rule G-17. Allen, unless permanently enjoined by this Court, will likely continue to engage in such violations. The Commission accordingly seeks to enjoin Allen from committing

future violations and seeks disgorgement of his ill-gotten gains and civil money penalties.

### **JURISDICTION**

5. The Commission brings this action pursuant to the authority conferred upon it by Sections 21(d) and (e) of the Exchange Act [15 U.S.C. §§ 78u(d) and (e)] to restrain and enjoin the defendant, for other equitable relief, and for civil money penalties.

6. The Court has subject matter jurisdiction over this action pursuant to Sections 21(d)(3)(A), 21(e), and 27 of the Exchange Act [15 U.S.C. §§ 78u(d)(3)(A), 78u(e), and 78aa].

7. Allen, directly or indirectly, has made use of the means and instrumentalities of interstate commerce, of the mails or of the facilities of a national securities exchange, in connection with the acts, practices and courses of business alleged herein, certain of which occurred within the Northern District of Georgia.

### **THE DEFENDANT**

8. Defendant Allen, age 39, served as a banker in the public finance department of Stephens Inc. from September 1990 through early August 1997. Throughout his tenure at Stephens, Allen worked in Stephens' Atlanta office, primarily serving municipal securities underwriting clients. By 1994, Allen also served financial advisory clients, principally Fulton County.

### **OTHER RELEVANT ENTITIES**

9. At all relevant times, Fulton County, Georgia was the most populous county in the State of Georgia, having its county seat in Atlanta. During the relevant period, the Fulton County Commission was empowered to enter into securities investments, which it did with the advice and assistance of its full-time Finance Department staff and its outside financial advisors.

10. Stephens Inc. ("Stephens") is an Arkansas corporation with its principal place of business in Arkansas. At all relevant times, Stephens was a broker-dealer and municipal securities dealer, and was registered with the Commission pursuant to Sections 15(b) and 15B(a) of the Exchange Act.

### **BACKGROUND OF THE TREASURY PUT TRANSACTION**

11. In July 1992, Stephens was selected to provide financial advisory services to Fulton County. The terms of Stephens' financial advisory relationship with the County provided, among other things, that Stephens' bankers were to render independent, conflict-free advice to the County.

12. In late 1992, the County issued \$163 million in bonds to refinance its outstanding water and sewer debt (the "1992 refunding bonds"). The bond resolution governing the 1992 refunding bonds established two funds into which bond proceeds were deposited: an escrow fund and a debt service reserve fund. Under applicable federal tax regulations, the County was permitted to invest the moneys on deposit in both funds at a blended yield not to exceed 6.39%, which

was the yield on the 1992 refunding bonds. Because of market conditions at the time the funds were established, however, the County was able to invest the moneys in the escrow fund at a yield of just 5.8%, and the moneys in the debt service reserve fund at less than 4.05%. Thus, the transaction was in "negative arbitrage" because the funds' blended yield was substantially below what the County was permitted to make under the applicable tax regulations.

**ALLEN RECOMMENDS THE  
TREASURY PUT TRANSACTION TO THE COUNTY**

13. By September 1994, Allen had become one of the principal Stephens bankers providing financial advisory services to the County. On September 21, 1994, Allen approached the County with a proposal to invest the money in the debt service reserve fund in what would become the Treasury Put Transaction. Allen told the County's Finance Department staff that the County could reap advantages from entering into the proposed investment, including the ability to recapture nearly \$900,000 in negative arbitrage, and could do so without affecting the tax-exempt status of the underlying bonds that secured the debt service reserve fund.

14. Allen proposed using the services of a broker, which, under Stephens' supervision, would place the proposed Treasury Put Transaction out for competitive bids. At the time, Stephens and the broker had a practice of splitting commissions from competitive bidding business referred to the broker by Stephens. Also at the time, Stephens' financial advisory fee agreement with the

County provided that if Stephens were to obtain competitive bids for proposed investments of the County's bond proceeds, then Stephens could receive fees for its services from the providers of the investments.

#### **ALLEN ARRANGES FOR UNDISCLOSED PAYMENTS TO HIMSELF**

15. Unbeknownst to Stephens and the County, however, Allen arranged for himself to receive \$20,970.10 from the commission to be paid by the winning provider of the Treasury Put Transaction. Although this \$20,970.10 was to come from Stephens' share of the commission, the County was never informed of the overall size of the commission or the amount paid to Stephens. Allen arranged for the \$20,970.10 to be paid upon closing of the Treasury Put Transaction as follows: (1) \$12,695 toward the purchase of a boat; (2) \$1,000 for the boat's trailer; (3) \$2,597.40 for a one-week rental of a beach cottage in Florida; and (4) \$4,677.70 for a two-week rental of a beach cottage in North Carolina.

#### **COUNTY QUESTIONS FEES AND EXPENSES**

16. Before agreeing to Allen's recommendation that the County invest in the Treasury Put Transaction, the County's finance staff asked about the fees all parties were to receive on the transaction. Allen did not provide the staff with the information it requested. Instead, for example, in an October 26, 1994 memorandum to the County, Allen wrote that (1) any fees would be paid by the winning provider and (2) the total of all fees and expenses would not exceed the Internal Revenue Service's allowable cap.

17. In fact, however, as Allen knew, or was reckless in not knowing, at the time he wrote the October 26, 1994, memorandum: (1) the fees and expenses, even though paid by the winning provider, reduced the yield that the County received from the Treasury Put Transaction; and (2) any undisclosed payments paid to him from the transaction was a matter of importance to the County, regardless of whether the undisclosed payments fell within any allowable cap on fees and expenses.

#### **ALLEN TAKES HIS UNDISCLOSED PAYMENTS**

18. The Treasury Put Transaction closed on November 29, 1994, which was the date on which the sale of securities was completed. By December 1, 1994, the winning provider had wired the brokerage commission to the broker. Over the ensuing days and weeks, consistent with their prior agreement, the broker made \$20,970.10 in payments for Allen's benefit out of Stephens' share of the commission received by the broker. Unbeknownst to Stephens and the County, Allen took possession of, and shared with his family, the boat, boat trailer, and vacation rentals purchased with those moneys. At no time did Allen disclose to Fulton County his arrangement to receive, or his receipt of, payments on the Treasury Put Transaction, despite his duty to make such disclosure. By 1998, after disclosing the payments to Stephens, Allen paid \$20,970.10 to Stephens.

19. By engaging in the foregoing acts, practices and courses of business, Allen acted with an intent to deceive or defraud, and he breached his fiduciary duty to Fulton County.

20. By reason of the foregoing, Allen violated Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

#### **THE FEE-SPLITTING WITH UNDERWRITER'S COUNSEL**

21. By 1991, Allen had formed a "strategic alliance" with a Georgia law firm to pursue municipal securities underwriting business in Georgia. Under the strategic alliance, the law firm would assist Allen and his employer with development of municipal securities business. In return, Allen would cause the law firm's naming as underwriter's counsel on any resulting transactions. Because the law firm had no prior experience in the bond arena, the parties agreed that Allen would provide all needed assistance to the law firm.

22. During Allen's tenure at Stephens, the strategic alliance resulted in twelve Georgia municipal securities offerings in which Stephens served as underwriter and the law firm served as underwriter's counsel. Between September 1991 and April 1993, in connection with five of these offerings, the law firm paid Allen a total of \$10,900 for his assistance with the preparation of the preliminary official statements and official statements for these offerings.



23. In each of these five offerings, the issuer paid the underwriter's counsel fees, which—over all five offerings—totaled \$57,000. In turn, the law firm paid Allen shortly after its receipt of each fee. In each offering, Allen served as lead banker and, on behalf of Stephens, signed the bond purchase agreement, which obligated the issuer to pay underwriter's counsel fees.

24. In the official statement for each offering, Allen's compensation from the law firm was not disclosed. Nor were any officials of any of the issuers informed of the law firm's payments to Allen.

25. By reason of the foregoing, Allen violated Section 15B(c)(1) of the Exchange Act [15 U.S.C. § 78o-4(c)(1)] and MSRB Rule G-17.

#### **PRAYER FOR RELIEF**

Wherefore the Commission respectfully requests that this Court make findings that Allen violated the federal securities laws specified in this Complaint and grant relief against him as follows:

#### **I.**

Issue a Final Judgment of Permanent Injunction against Allen permanently enjoining him from violating Sections 10(b) and 15B(c)(1) of the Exchange Act [15 U.S.C. §§ 78j(b) and 78o-4(c)(1)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5], and MSRB Rule G-17.

II.

Order Allen to disgorge the ill-gotten gains he received as a result of the fraudulent conduct alleged here, plus prejudgment interest thereon.

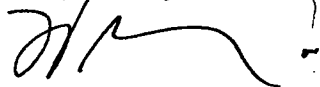
III.

Order Allen to pay civil penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)].

IV.

Enter orders granting such other relief as the Court considers just and proper.

Respectfully submitted,



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Dated November 17, 1999  
Washington, D.C.