

**Award**  
**FINRA Dispute Resolution Services**

---

In the Matter of the Arbitration Between:

Claimants

William P. Cella and Elaine F. Cella

Case Number: 19-01625

vs.

Respondents

First Republic Securities Co. LLC  
First Republic Investment Management Inc.  
First Republic Bank

Hearing Site: New York, New York

---

Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

Nature of the Dispute: Customer vs. Member and Non-Members

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Claimants William P. Cella and Elaine F. Cella: Charles J. Hecht, Charles Hecht P.C., New York, New York.

For Respondents First Republic Securities Co. LLC and First Republic Investment Management Inc., Nicole Ryan, Esq., and Sara Brody, Esq., Sidley Austin LLP, San Francisco, California. First Republic Securities Co. LLC and First Republic Investment Management Inc. are hereinafter collectively referred to as “Respondents”.

Respondent First Republic Bank did not enter an appearance in this matter.

**CASE INFORMATION**

Statement of Claim filed on or about: June 10, 2019.

Amended Statement of Claim filed on or about: April 12, 2021.

William P. Cella signed the Submission Agreement: June 18, 2019.

Elaine F. Cella signed the Submission Agreement: June 18, 2019.

Statement of Answer filed by Respondents on or about: August 13, 2019.

Amended Statement of Answer filed by Respondents on or about: March 30, 2021.

First Republic Securities Co. LLC signed the Submission Agreement: August 9, 2019.

First Republic Investment Management Inc signed the Submission Agreement: August 12, 2019.

First Republic Bank did not file a Statement of Answer or sign the Submission Agreement.

### **CASE SUMMARY**

In the Amended Statement of Claim, Claimants asserted the following causes of action: misallocation of assets; improper investments; misrepresentation/non-disclosures; and suitability. The causes of action relate to TiVo stock and the allocation and other securities.

Unless specifically admitted in the Answer to the Amended Statement of Claim, Respondents denied the allegations made in the Amended Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Amended Statement of Claim, Claimants requested compensatory damages of approximately \$2,750,00.00, with interest at the New York legal rate of 9% per annum; alternatively, reimbursement for the market adjusted loss in an amount in excess of \$2,000,000.00, with interest at the New York legal rate of 9% per annum; punitive damages; reimbursement for Claimants' filing fees, mediation fees, and any disbursement incurred or advanced in bringing this arbitration, and any other amounts paid to FINRA for this arbitration proceeding; and such other and further relief as the Panel deems appropriate.

In the Answer to the Amended Statement of Claim, Respondents requested that Claimants take nothing by reason of the Statement of Claim, that the Statement of Claim be dismissed with prejudice, and that the costs and attorneys' fees associated with the arbitration proceeding be assessed against Claimants in an amount to be established according to proof following the Panel's determination on the appropriateness of attorneys' fees and costs. Respondents also request such other and further relief as the panel may deem just and proper.

r.

At the close of the hearing, Claimants requested compensatory damages in the amount of \$1,926,126.00, including statutory interest at the rate of 9% per annum, and punitive damages ranging between \$2,500,000.00 and \$7,500,000.00.

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

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

Respondent First Republic Bank is not a member or associated person of FINRA and did not voluntarily submit to arbitration. Therefore, the Panel made no determination with respect to the claims against Respondent First Republic Bank.

At the conclusion of Claimants' case-in-chief, Respondents made a Motion to Dismiss and Claimant opposed the motion. After due deliberation, the Panel denied the motion.

On February 26, 2021, Respondents filed a Motion to Proceed with Virtual Hearing. On March 5, 2021, Claimants filed an Opposition to Respondents' motion and Respondents filed a Reply on March 10, 2021. By Order dated March 19, 2021, the Panel granted Respondents' Motion to Proceed with Virtual Hearing.

The Award in this matter may be executed in counterpart copies.

**AWARD**

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

1. Claimants' claims are denied in their entirety.
2. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages and attorneys' fees, are denied.

**FEES**

Pursuant to the Code of Arbitration Procedure ("Code"), the following fees are assessed:

**Filing Fees**

FINRA Dispute Resolution Services assessed a filing fee\* for each claim:

Initial Claim Filing Fee = \$ 2,000.00

*\*The filing fee is made up of a non-refundable and a refundable portion.*

**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 event giving rise to the dispute. Accordingly, as a party, Respondent First Republic Securities Co. LLC is assessed the following:

Member Surcharge = \$ 3,025.00

Member Process Fee = \$ 6,175.00

**Postponement Fees**

Postponements granted during these proceedings for which fees were assessed or waived:

September 21-25, 29 and 30, 2020, postponement requested by the parties WAIVED

**Discovery-Related Motion Fees**

Fees apply for each decision rendered on a discovery-related motion.

Five (5) decisions on discovery-related motions on the papers with one (1) Arbitrator @ \$200.00/decision = \$ 1,000.00

One (1) decision on a discovery-related motion on the papers with the Panel @ \$600.00/decision = \$ 600.00

Claimants submitted two (2) discovery-related motions

Respondents submitted three (3) discovery-related motions

---

Total Discovery-Related Motion Fees = \$ 1,600.00

The Panel has assessed \$800.00 of the discovery-related motion fees jointly and severally to Claimant.

The Panel has assessed \$800.00 of the discovery-related motion fees jointly and severally to Respondents.

**Hearing Session Fees and Assessments**

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

Three (3) pre-hearing sessions with the Panel @ \$1,400.00/session = \$ 4,200.00  
Pre-Hearing Conferences: December 3, 2019 1 session  
April 5, 2021 1 session  
May 7, 2021 1 session

Twenty-nine (29) hearing sessions @ \$1,400.00/session = \$ 40,600.00  
Hearings: May 10, 2021 2 sessions  
May 11, 2021 2 sessions  
May 12, 2021 2 sessions  
May 13, 2021 2 sessions  
May 14, 2021 2 sessions  
May 17, 2021 2 sessions  
May 18, 2021 2 sessions  
May 28, 2021 2 sessions  
June 30, 2021 2 sessions  
July 26, 2021 1 session  
November 29, 2021 2 sessions  
February 1, 2022 2 sessions  
February 2, 2022 2 sessions  
February 3, 2022 2 sessions  
February 4, 2022 2 sessions

---

Total Hearing Session Fees = \$ 44,800.00

The Panel has assessed \$42,700.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$2,100.00 of the hearing session fees jointly and severally to Respondents.

All balances are payable to FINRA Dispute Resolution Services and are due upon receipt.



**ARBITRATION PANEL**

Madelon M. Rosenfeld	-	Public Arbitrator, Presiding Chairperson
Joan Maxine Secofsky	-	Public Arbitrator
Judith C. Zerden	-	Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

**Concurring Arbitrators' Signatures**

***Madelon M. Rosenfeld***

\_\_\_\_\_  
Madelon M. Rosenfeld  
Public Arbitrator, Presiding Chairperson

**02/24/2022**

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

***Joan Maxine Secofsky***

\_\_\_\_\_  
Joan Maxine Secofsky  
Public Arbitrator

**02/24/2022**

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

***Judith C. Zerden***

\_\_\_\_\_  
Judith C. Zerden  
Public Arbitrator

**02/24/2022**

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

Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

February 25, 2022

\_\_\_\_\_  
Date of Service (For FINRA Dispute Resolution Services use only)