

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Cita Trust Company AG

Case Number: 19-02055

vs.

Respondent
Fifth Third Securities, Inc.
and Ann E. Allen

Hearing Site: Tampa, Florida

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 Associated Person

This case was decided by a majority-public panel.

REPRESENTATION OF PARTIES

For Claimant Cita Trust Company AG (“Claimant”): Stephanie Martin, Dallas, Texas and Tom Lane.

For Respondent Fifth Third Securities, Inc. (“Fifth Third”) and Ann E. Allen (“Allen”) (with Fifth Third, collectively “Respondents”): H. Toby Schisler, Esq. and R. Samuel Gilley, Esq., Dinsmore & Shohl LLP, Cincinnati, Ohio.

CASE INFORMATION

Statement of Claim filed on or about: July 29, 2019.
Claimant signed the Submission Agreement: July 25, 2019.

Statement of Answer filed on or about: September 19, 2021.
Fifth Third signed the Submission Agreement: September 18, 2019.
Allen signed the Submission Agreement: September 18, 2019.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following cause of action: breach of fiduciary duty. The causes of action relate to allegations that Respondents grossly mishandled Claimant’s investment account by allowing Claimant’s investment account to be closed without Claimant’s knowledge and the securities in the account to be returned to the issuer. The securities involved Luxor Global PLC Surrey Loan Notes.

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

RELIEF REQUESTED

In the Statement of Claim, Claimant requested compensatory damages of \$439,000,000.00.

In the Statement of Answer, Respondents did not request any relief.

At the hearing, Claimant requested compensatory damages of \$428,000,000.00.

OTHER ISSUES CONSIDERED AND DECIDED

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

On September 18, 2019, Respondents filed a Motion to Dismiss pursuant to Rule 12504 of the Code of Arbitration Procedure (“Code”). On October 28, 2019, Claimant filed a response opposing the Motion to Dismiss. On November 1, 2019, Respondents filed a reply in support of the Motion to Dismiss. On November 4, 2019, Claimant filed a sur-reply to the Motion to Dismiss. On November 19, 2019, the Panel heard oral arguments on the Motion to Dismiss. In an Order dated the same day, the Panel denied the Motion to Dismiss.

On May 18, 2021, Fifth Third filed a Motion for Sanctions against Claimant. On May 28, 2021, Claimant filed an opposition to the Motion for Sanctions. On June 3, 2021, Fifth Third filed a reply in support of the Motion for Sanctions. On June 7, 2021, Claimant filed a sur-reply to the Motion for Sanctions. In an Order dated June 16, 2021, the Panel denied the Motion for Sanctions.

On September 21, 2021, Fifth Third filed a Motion Demanding Proof of Legal Viability of Claimant CITA Trust Company AG (“Motion for Proof”). On September 28, 2021, Claimant filed a Response to the Motion for Proof. On October 1, 2021, Fifth Third filed a reply in support of the Motion for Proof. In an Order dated November 2, 2021, the Panel denied the Motion for Proof.

On October 15, 2021, Fifth Third filed a Request for Leave to File a Renewed Motion to Dismiss pursuant to Rule 12504 (“Motion for Leave”). On October 18, 2021, Claimant filed an Opposition to the Motion for Leave. On October 25, 2021, Fifth Third filed a reply in support of the Motion for Leave. On October 26, 2021, Claimant filed a sur-reply to the Motion for Leave. In an Order dated October 26, 2021, the Panel indicated that it would hear all pending motions, including the Motion for Leave, at the evidentiary hearing. At the hearing, the Panel allowed Respondents to make an oral motion to dismiss. After the conclusion of Claimant’s case-in-chief, Respondents made an oral motion to dismiss based on res judicata, in that the Claimant had filed a civil lawsuit against Fifth Third Bank, which was dismissed with prejudice, and that Fifth Third Securities was not involved in the custodial agreement that formed the basis of this complaint. Claimant opposed the oral motion to dismiss on the basis that Fifth Third Securities, specifically Allen, had a duty to supervise the account. Respondents renewed the oral motion to dismiss at

the conclusion of Respondents' case-in-chief. At the hearing, the Panel deferred ruling on the oral motion to dismiss. The oral motion to dismiss is herein denied.

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:

Claimant's claims are denied in their entirety.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial Claim Filing Fee	= \$	2,250.00
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**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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Fifth Third is assessed the following:

Member Surcharge	= \$	4,025.00
Member Process Fee	= \$	7,000.00

Postponement Fees

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

June 22-25, 2021, postponement requested by Respondent	= \$	1,500.00
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Total Postponement Fees	= \$	1,500.00
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The Panel has assessed the total postponement fees jointly and severally to Respondent.

Discovery-Related Motion Fees

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

One (1) decision on a discovery-related motion on the papers with one (1) Arbitrator @ \$200.00/decision	= \$	200.00
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Claimant submitted one (1) discovery-related motion

Total Discovery-Related Motion Fees	= \$	200.00
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The Panel has assessed \$100.00 of the discovery-related motion fees to Claimant.

The Panel has assessed \$100.00 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 Arbitrator(s), including a pre-hearing conference with the Arbitrator(s), which lasts four (4) hours or less. Fees associated with these proceedings are:

Six (6) pre-hearing sessions with the Panel @ \$1,500.00/session	= \$	9,000.00
Pre-Hearing Conferences:		
November 8, 2019	1 session	
November 19, 2019	1 session	
May 5, 2020	1 session	
December 14, 2020	1 session	
June 16, 2021	1 session	
November 2, 2021	1 session	

Five (5) hearing sessions @ \$1,500.00/session	= \$	7,500.00
Hearings:		
November 29, 2021	2 sessions	
November 30, 2021	2 sessions	
December 1, 2021	1 session	

Total Hearing Session Fees	= \$	16,500.00
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The Panel has assessed \$11,250.00 of the hearing session fees to Claimant.

The Panel has assessed \$5,250.00 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

Richard S. Zaifert	-	Public Arbitrator, Presiding Chairperson
Joel F. Martineau	-	Public Arbitrator
Thomas Roe Oldt	-	Non-Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument, which is my award.

Concurring Arbitrators' Signatures

Richard S. Zaifert

Richard S. Zaifert
Public Arbitrator, Presiding Chairperson

12/02/2021

Signature Date

Joel F. Martineau

Joel F. Martineau
Public Arbitrator

12/03/2021

Signature Date

Thomas Roe Oldt

Thomas Roe Oldt
Non-Public Arbitrator

12/03/2021

Signature Date

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December 03, 2021

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