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Asset management

A multi-million dollars return guarantee

Par Sébastien Pittet le 15 September 2025

A bank that guarantees its client a 5 % return on their investments must bear the consequences. In judgments 4A_361/2024 and 4A_363/2024 of 18 June 2025, the bank learned this the hard way and was ordered to pay more than USD 31 million.

In June 2010, a bank met with two brothers from a wealthy Qatari family with a view to establishing a business relationship. After several discussions, the parties entered into a credit agreement in which the bank undertook to make available to the clients just over USD 373,000,000 to be managed by the bank and USD 336,000,000 in cash. In return, the clients pledged shares in a Qatari bank valued at USD 550,000,000.

The agreement and its annex provide, among other things, for the following : (i) only custody fees of 0.1 % will be charged by the bank (no application or management fees) and (ii) an annual return of 5 % on the invested assets (*i.e.*, on the GBP 373,000,000) is guaranteed by the bank. In several previous versions of the contract, it was stated in small print at the bottom of each page that the rates of return mentioned were indicative.

In July 2011, the clients complained that the return on their investment was less than 5 %. For its part, the bank maintained that this rate was only indicative. The dispute continued until January 2018, when the clients brought an action before the Court of First Instance of the Canton of Geneva seeking payment of approximately USD 56,000,000 from the bank (which, in the meantime, had been taken over by another bank).

The clients' alleged damages include (i) fees unduly charged by the bank, (ii) underperformance of the investments (i.e. the difference between the guaranteed annual return of 5 % and the actual return), (iii) a loss of earnings on investments not made (i.e. the non-utilisation of the entire USD 373,000,000 intended for investment) and (iv) a loss of capital on investments sold (investments in unprotected capital-protected products).

At first instance, the court upheld all the items of damage claimed by the clients. At second instance, the Court of Justice partially upheld the bank's appeal and awarded damages of approximately USD 31,700,000, with only the claims relating to the capital loss on the investments sold being dismissed. Both the clients and the bank appealed against this decision.

With regard to the bank's appeal (TF 4A_363/2024)

The bank criticised the cantonal judges for arbitrarily finding (i) that it had undertaken to guarantee a 5 % return on the investments and (ii) that this return related to all the assets to be invested.

An initial version of the contract specified a guaranteed return of 4 %. During the negotiations, the bank gradually raised this rate in order to meet the clients' requirements, eventually setting a guaranteed return of 5 %. In this context, the bank cannot rely on the statement that the rates stated were only indicative, since the very subject of the discussions was precisely this rate of return. Furthermore, the contract stipulates that the advanced amount is equal to the invested amount. The return guaranteed by the bank was therefore based on the total amount of the loan intended for investment, i.e. approximately USD 373,000,000.

The bank also considers that the clients ratified the investments made and the bank charges levied, as they did not object within the one-month complaint period provided for in the general terms and conditions.

With regard to the investments, the Federal Court points out that the 5 % return guarantee was on an annual basis, so that it was not necessary to dispute the account statements on a monthly basis. More generally, in January 2014 (after several requests), the clients received a large number of documents (several thousand pages) detailing the investments made in recent years and the fees charged. It could not reasonably be expected of clients to analyse all of these documents within a month. Furthermore, clients cannot be criticised for waiting until they had received all of the documentation before objecting. In a wealth management relationship, clients are not expected to regularly check and analyse the investments made or the fees charged (on this point, see, for example, the Geneva judgment ACJC_1265_2024, c. 2.3 s.). The purpose of this service is precisely to delegate the management of assets to the service provider. Furthermore, the bank itself was slow to provide the complete documentation. The bank is therefore abusing its rights by invoking the complaint clause against the clients.

The Federal Court finally considered the question of damages. To prove their damages, the clients produced 'extremely precise and detailed' calculations. They also provided a private expert opinion attesting to the accuracy of the calculations. In this case, given the extent of the efforts made and the accuracy of the calculations provided by the clients to prove their damages, the Federal Court considered, on the one hand, that the clients' calculations were not open to criticism and, on the other hand, that the bank had not sufficiently refuted the accuracy of the calculations and the expert opinion.

The bank's appeal is therefore dismissed.

Regarding the clients' appeal (TF 4A_361/2024)

As a reminder, the clients accuse the bank of selling products at a loss when it had committed to investing in capital-protected products. The Federal Court points out that a capital-protected product (and more specifically a structured product with capital 'protection') does not necessarily offer total protection of the capital invested. The protection is therefore relative. The investor is not guaranteed to recover the entire amount of their investment, but only the amount contractually agreed with the product issuer. However, in this case, the contract did not stipulate that investments had to be made in products with *fully* protected capital, nor did it prohibit the bank from selling acquired products. On this point, the bank did not therefore breach its

contractual obligations by selling certain investments at a loss.

The clients' appeal was therefore dismissed.

This ruling highlights several classic elements of legal proceedings relating to investment losses. Contrary to the majority of Federal Court decisions in this area, the judges ruled in favour of the clients on this occasion.

The application of claim clauses sometimes leads courts to hand down decisions that may seem unfair to clients. Clients may have their claims dismissed entirely (TF 4A_161/2020) or see their claims reduced (Liégeois, cdbf.ch/1428/) due to their passivity. This ruling illustrates some interesting limitations of these clauses, the strict application of which could conflict with the sense of justice. In such situations, as one professor likes to point out, a materially fair judgement is necessary.

Proving damage is often a significant obstacle for clients (see in particular : Pittet, cdbf.ch/1297/). Although this ruling is favourable to clients, it demonstrates all the difficulties they may face (on this issue : Thévenoz/Hirsch, The power of the judge to assess investment damage (Art. 42 para. 2 CO)). Even in this very specific situation, where the return on investment was contractually set at 5 %, the efforts required of clients to prove the damage are considerable. When the client takes care to do so, this decision highlights the importance for the bank to accurately contest the damage alleged by the client.

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