

Lehman Brothers Litigation against Citibank Belgium: An Update

For many years, Citibank Belgium sold financial products, issued and guaranteed by Lehman Brothers.

In September 2008, Lehman Brothers Holdings Inc. went broke. 4,100 clients of Citibank Belgium (representing about 130 million Euros) lost their savings.

Civil part

In May 2009, Deminor¹ (mandated by more than 500 clients) initiated a civil lawsuit against Citibank Belgium before the Brussels Commercial Court².

On 7 January 2010, it was announced that a settlement was reached between Deminor and Citibank Belgium³. The settlement offer (for all duped clients of Citibank Belgium) included a cash payment of 65% of the face value of the Lehman Brothers notes. In addition, clients were offered the opportunity to place the amount of the cash payment in a blocked 3-year Time Deposit account with automatic capitalization of interest with Citibank Belgium, yielding a 5,3% gross annual interest rate.

It is important to emphasize that the agreement was reached by the efforts of the Belgian Minister of Economy (Mr Vincent Van Quickenborne), who appealed to Citibank Belgium to come up with a good settlement for their customers as this would help avoid a long and uncertain legal procedure.

In February 2010, Deminor and Citibank Belgium announced that more than 98,6% of the clients accepted the settlement. More than 68% accepted the opportunity to place the amount of the payment in a 3-year Time Deposit account.

Criminal part

¹ Deminor is a European company assisting investors in listed and non-listed companies (see <http://www.deminor.be/BE/EN/deminor>).

² Deminor initiated the lawsuit with the support of the Monard-D'Hulst law firm (see <http://www.monard-dhulst.be/eng/default.asp>).

³ <http://www.deminor.com/BE/EN/cases/content/documents/PR-Deminor-Citibank-07%2001%2010-EN.pdf>

In addition to the civil procedure, and after an investigation by the Belgian Economic Inspection, the Brussels Public Prosecutor started a criminal procedure against Citibank Belgium and three directors (the current and former legal director (François Staroukine and Bernard Beyens) and the current general director (José de Peñaranda)).

During the criminal trial, more than 1,200 clients formulated their civil claim. A majority of them relinquished their rights as a result of the aforementioned settlement.

On 1 December 2010, the Brussels Criminal Court convicted Citibank Belgium and its directors for deliberately misleading advertising. The Court decided that the bank deliberately misinformed their clients about the risks connected to Lehman Brothers products and that they used various tricks to systematically sway customers to exchange their savings for Lehman products, concealing the bank's true risks, returns and capital guarantees. The Court referred to the fact that some clients didn't know they invested in a structured investment; they thought they were putting their money on a forward account. Furthermore, Citibank Belgium kept on selling Lehman Brothers products even when the rating of the bank was lowered.

The Bank was convicted for violating the Act of 16 June 2006 on the public offer of securities and the permission to trade securities on a regulated market⁴ and the Belgian Consumer Protection Act. The three directors were convicted for violating the Act of 16 June 2006. All defendants were acquitted from abuse of trust and money laundering.

The Court imposed (partially suspended) fines on the bank and its directors and awarded the 63 clients that didn't relinquish their rights as a result of the settlement, full compensation of their damages. For the moment, they will receive a provisional compensation of 65% of the face value of the Lehman Brothers notes. Later, they will receive the balance according to the value of their bonds. In other words, contrary to the clients that joined the settlement, the 63 clients that opted out of the settlement will be fully compensated.

⁴ Moniteur Belge 21 June 2006. The Act of 16 June 2006 is the implementation in Belgium of Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (L 345, 31 December 2003) and Directive 2005/1/EC of the European Parliament and of the Council of 9 March 2005 amending Council Directives 73/239/EEC, 85/611/EEC, 91/675/EEC, 92/49/EEC and 93/6/EEC and Directives 94/19/EC, 98/78/EC, 2000/12/EC, 2001/34/EC, 2002/83/EC and 2002/87/EC in order to establish a new organisational structure for financial services committee (L 79, 24 March 2005).

The attorneys of the duped savers announced that the verdict is an important precedent for other Belgian securities cases.

Mid December 2010, Citibank Belgium and its directors lodged an appeal with the Brussels Court of Appeal against the decision of the Brussels Criminal Court.

Stefaan Voet

Ghent – 19 January 2011