CDAs Triodos Bank: 3 estimatory judgments, 2 favorable orders of provincial hearings and 2 withdrawals with firmness of judgments

Iñaki Iribarren García, managing partner at IRIBARREN ARTOLA Abogados through the CDA Claim Platform of Triodos Bank ReclamaTriodos updates us with the latest judicial news of the CDAs of Triodos Bank.

It looks better and better for the holders of CDAs who have judicially claimed from Triodos Bankel money that they deposited in their certificates, since the favorable sentences are accumulating and the Provincial Courts are about to caramel, many of them will issue substantive resolutions shortly if Triodos allows it, since it is giving up its own resources when the date of deliberation and ruling of the higher bodies approaches.

Let's go in parts.

First, three favorable sentences: Vitoria, Pamplona and Granollers.

Judgment of the court of first instance 6 of Vitoria that fully estimates the claim filed for error or vice in the consent with a sentence to triods to return to the client 375,000 euros plus interest.

Magistrate D.a Susana Diez Martinez de Lahidalga indicates that *"the only documents that are signed by XXXXXXXX are the acquisition contract that does not contain any data and that is referred to a brochure, which is not known which is and whether or not it has been signed by D. Jesús. The risk analysis of the product is also signed, however, it states that it is a non-complex product, and it is true, that it is said that all or part of the money can be lost. Finally, there is the convenience test, which is ridiculous for a product classified as high-risk.*

Therefore, the only document indicative, to some extent and briefly, of the characteristics and operation of the certificates is the risk analysis. From the testimony of XXXXXXXXXX it cannot be concluded that this document was explained with the rigor that this product entails, especially when it is already said that it is not complex, which leads us to think that the explanation was not very extensive. This is also corroborated by the telephone conversation for the acquisition of the 2014 product.

Finally, no evidence has been presented around the figure of XXXXXXXXXXXXXXX, that is, it is unknown if this person had more shares, investment funds or other types of financial products, or if he had other accounts in other entities. The truth is that everything invites us to think that this is not the case, otherwise they would have contributed. XXXXXXXXXXXXXX invested almost 400,000 euros in this product, an important amount. It is not credible that a person of whom there is no record of other assets, invests that amount of money in a product of which he knows he can lose everything.

Therefore, the action of annulment based on the error in consent is estimated due to poor information in the nature of the product."

Judgment of the court of first instance 5 of Pamplona that fully estimates the claim filed for error or vice in the consent with a sentence of triodos to return to the client 42,972 euros plus interest.

Judge D.a Vanessa Caballero García indicates that "*Likewise, it should be noted that according to the documentary, the plaintiff is a retail person, in the sense that they are inhibited from risk situations and that they place their trust in the people to whom they gave their money, that is, the benefits obtained from their work performance, since they do not have*

financial studies. Furthermore, it is not accredited in the files that the plaintiff was the owner of other risk products, and that allows us to understand that it could know each and every one of the characteristics of the product, especially when, the entity itself, allegedly, provided for financial advisors, did not contemplate market risks. The fact of adequately informing customers of the situation of the CDAS, after the closure of the market, does not replace the lack of adequate information that the entity had to provide to its customers at the time of its commercialization. Not even with the exit of the product to the foreign market so that customers can sell the shares and recover the investment. Well, although it is a feasible solution, which the entity gives to its customers, the exit of the product to the foreign market implies a change in the nature of the product they initially marketed.

In short, that lack of true, complete, understandable and truthful information about the CDA and its risks, omitted by the defendant entity, through its employees, in which its customers placed their full trust, determined that the plaintiff hired a product, ignoring exactly its essential circumstances, because it is essential that the investment can be completely lost depending on the evolution of the business, which in no case was transmitted to the customers.

Consequently, it is appropriate to declare the nullity of all the contracts of the CDAS; made by the plaintiff with the defendant entity, and, as established in art. 1303 of the CC, since there is a vice error in the consent of the actor, determinant of the hiring, being appropriate the restitution of the respective benefits: the money delivered by the plaintiff plus the commissions, the custody expenses and plus the corresponding legal interests, all of which must be compensated for the amounts of the returns if any, and their interests, since this duty of restitution arises

from the law and does not need an express request (SS 22-1 I-1983 and 24-2-92), due to the principle iura novit curia (SAP Guipúzcoa Section 3 to November 25, 2013)."

Judgment of the court of first instance 3 of Granollers that fully estimates the lawsuit filed for error or vice in the consent with a sentence of triodos to return 80,942 euros plus interest to the client.

Judge D.a Lorena Cristóbal Saez indicates that "*There is no doubt that the product object of the present litis has a complex nature (as recognized by the entity itself on its website, although initially they did not qualify it in such a way), since it is a product with a 6/6 risk, so it must scrupulously comply with the aforementioned information duties.*

This rigorous obligation to inform and verify the suitability of the product to the customer is not fulfilled if only the expected profitability in the issue is reported, but the possibility of losing the investment is not adequately reported on the terms in which it could now be produced. That is, it is not fulfilled, as is the case, if it is not informed prior to contracting of the possibility of a replacement of the market and the migration of the securities, as well as the replacement of the rules of price determination to obtain liquidity in a case of saturation of the internal market, of the alteration of the value of the securities acquired, and the possibility of, either losing the entire investment or seeing considerably reduced the investment made in the case of sale, of accessing an external market and that in such a market, the effective can be made sale of the purchased product. That non-compliance is inextricably linked to the examination of the formation of the will of the contractor, now an actor, and, as it will later develop, gives rise to the existence of an error vice in the consent given.

According to the information brochure, the CDAs were marketed focusing mainly on the essential characteristic that the CDAs are not listed on official secondary markets, but on the internal market managed by the bank itself on the basis that the transmission price has to be equal to the accounting asset value of the entity, thus avoiding price speculation. The reason for such price fixing was to ensure that transactions on them were carried out on the basis of a target price, eliminating speculation on it, which is usually common in external markets, as is the case with shares, and making their purchase / sale depend solely and exclusively on the internal supply and demand and ultimately on the profitability of the entity. It is reasonable that an average citizen may feel attracted to the product by reducing the risk of loss of invested capital in view of the stability of the market in which they were to be issued, the solvency of the financial institution and, of course, the security of the investment when made in real economies, culture, environment, etc. It was therefore carried out without informing the client that said market could be closed by the entity indefinitely or that the market itself could be altered, moving to another one other than the initial one, and as a consequence of this the customer may lose the entire investment, but not due to bankruptcy or great economic loss of the bank (since it has been shown that the net income of the same has been increasing in recent years exponentially), but by listing on the secondary market.

In short, it does not turn out from the documentary provided that the plaintiff was sufficiently informed of the characteristics of the product it currently has. From the reading of the information brochure and the information provided by telephone it does not follow that the conditions of the product could vary over time, transforming into a product totally different from the one initially acquired, varying its essential conditions, which made it more attractive for its acquisition, unlike other financial

products. This is because it could go from being a product that was sold and acquired in an internal market of the entity, whose price was fixed on the basis of its accounting, fixed and objective equity value, to a product that was listed in other markets, outside the issuing entity itself, with a variable price, in response to the supply and demand of the market, which could significantly reduce the value of the product, or on the contrary, increase it. Its value would no longer depend on the accounting asset value of the entity and would cease to be a product similar to "shares", losing all its initial characteristics.

From this it can easily be deduced that the actor could not know the risk derived from the contract he was signing. Well, although the risk of the investment was reported, in the sense of making the sale dependent on the demands of the internal market, which could cause the sale of the CDAs not to be carried out immediately (it was said that it could take a few days due to the need to marry the purchase and sale orders) it was not reported of the possible existence of a lack of liquidity that could lead to the closure of the market and the loss of the investment, necessarily having to go to the external market to recover the or part of the investment or lose the investment in its entirety.

Likewise, it should be noted that according to the documentary in cars, the plaintiff is a retail person, in the sense that they inhibit themselves from risk situations and that they place their trust in the people to whom they gave their money, that is, the benefits obtained by their work performance, since they do not have financial studies. Furthermore, it is not proven in the proceedings that the plaintiff was the owner of other risk products, and that allows to understand that it could know each and every one of the characteristics of the product, especially when, the entity itself, allegedly, provided for financial advisors did not

contemplate market risks. The fact of adequately informing customers of the situation of the CDAS, after the closure of the market, does not make up for the lack of adequate information that the entity had to provide to its customers at the time of its commercialization.

In short, that lack of true, complete, understandable and truthful information about the CDA and its risks, omitted by the defendant entity, through its employees, in which its customers placed their full trust, determined that the plaintiff hired a product, ignoring exactly its essential circumstances. For all these reasons, the contract must be declared null and void due to error in the consent."

Secondly, two favorable cars of Provincial Courts: Navarra and Vizcaya.

Third Provincial Court of Navarre Section:

"The CNMV reports accompanied by the appeal brief should be inadmissed because they are not relevant to resolve the appeal."

Section Fifth Provincial Court of Biscay:

"Well, in view of these allegations, the reality is that they have not distorted the considerations that were established in the appealed Order, because apart from the margin and regardless of the fact that it has not been proven that the resolution that is intended to be provided, issued by a Dutch Court, has acquired finality, in no way the content of it can be conditioning or decisive to resolve the issues underlying this litigation, being the issues resolved by the Commercial Court of Amsterdam outside the scope of the contractual breach of the relationship between the plaintiff investor and the commercial marketer of the litigious securities origin of this claim."

And thirdly, there are no two without three, two withdrawals from Triodos Bank to its own appeals in Provincial Courts that are added to the one carried out in the Provincial Court of Teruel: Álava and Valladolid.

In the ReclamaTriodos Platform, IRIBARREN has been defending the interests of those affected by the CDAs since the beginning of 2022, when we filed the first lawsuits in the courts. To date, there are more than 500 affected by the CDAs of Triodos Bank who have relied on our Claim **Platform** to be able to recover their money invested in this toxic product, marketed as if it were a product with hardly any risk and with a totally different nature in its essential elements to reality.

Lawyer Iñaki Iribarren, managing partner at IRIBARREN ARTOLA Abogados and the CDA Claim Platform of Triodos Bank - ReclamaTriodos, already obtained in July 2022 the first judgment in Spain that condemned Triodos Bank for the CDAs, issued by the court of first instance 1 of Pamplona, as well as the first favorable judgments in Navarra, Basque Country, Aragon, Valencian Community, Castilla y León, Balearic Islands, as well as Cantabria.

ReclamaTriodos through the Reclamation Platform is defending more than 500 affected by the CDAs throughout Spain, having so far obtained a considerable number of favorable sentences for its clients.

Every day we receive requests from those affected who contact the Platform through the phone 948 275 063 or the email info@reclamatriodos.es to be interested in the possibility of recovering their money invested in Triodos Bank CDAs claiming the entity.

Triodos Bank CDAs
Plataforma de reclamación

Iñaki Iribarren, Managing Partner at IRIBARREN ARTOLA Abogados and the CDA Claim Platform of Triodos Bank - ReclamaTriodos

Nov 3, 2023

The Office

Our Team

Areas of action

articles

contact

IRIBARREN ARTOLA ABOGADOS SLP
B71470462
C/ MONASTERIO URDAX 8,
PLANTA 1, OF 5,
31007
PAMPLONA (NAVARRA)

abogados@iribarrenartola.com

848473789

SOCIAL

legal notice | COOKIES POLICY | privacy policy