

IN THE SUPREME COURT OF FLORIDA

Supreme Court Case No.: SC19-1545

CATHERINE ELIZABETH CZYZ,

Respondent/Appellant,

vs.

THE FLORIDA BAR ASSOCIATION,

Complainant/Appellee.

_____ /

RESPONDENT'S/APPELLANT'S
MOTION TO VACATE FINAL JUDGMENT
OF JANUARY 6, 2022

Respondent/Appellant, files this, her Motion to Vacate Final Judgment based upon new evidence and/or fraud pursuant to Florida Rule of Civil Procedure 1.540, and states as follows:

1. This Honorable Court's issued an Order on January 6,

RECEIVED, 01/04/2023 08:34:21 PM, Clerk, Supreme Court

2022, suspending her from the practice of law for two years in Florida and a payment of \$41, 708.45 plus pre-judgment interest to Erin Neitzelt the Final Judgment is attached hereto as Respondent/Appellant's Exhibit "A".

2. Respondent/Appellant recently discovered new evidence that shows that Sun Trust Bank, N.A. (currently Truist Financial Corporation) is/was the bank that opened and serviced Catherine Elizabeth Czyz and The Czyz Law Firm, P.A.'s Lawyers Trust Account, not PNC Financial Services Group, Inc. (PNC), attached as Respondent/Appellant's Exhibit "B" is a check from the Sun Trust Bank, N.A. IOTA/IOLTA account.

3. The Florida Bar Association presented a witness from the Florida Bar Association, named Mr. Jetter, who falsely or mistakenly testified that Catherine Elizabeth Czyz and The Czyz Law Firm, P.A. had their IOTA/IOLTA account at PNC and that Respondent/Appellant did not produce any bank records from PNC for him to review showing tht the account

was open at the time in question, See Final Hearing transcripts filed with the Court.

4. The Florida Bar Association did not call a witness from The Florida Bar Foundation to testify regarding the IOTA/IOLTA account, the company who keeps the records.

5. Respondent/Appellant subpoenaed a PNC representative who testified that PNC did not find a IOTA/IOLTA account under The Czyz Law Firm, P.A.'s Tax ID number nor Catherine Elizabeth Czyz's social security number or Florida Bar number, See Final Hearing transcripts filed with the Court.

6. As such, Respondent/Appellant could not present bank records to the Florida Bar Association.

7. Based upon the belief that The Florida Bar Association And The Florida Bar Foundation had the correct information, they filed suit against PNC.

8. Upon sending a subpoena to The Florida Bar Foundation,

it was discovered that The Florida Bar Foundation did not have anyone testify at the Final Hearing, that it did not have the Sun Trust Bank, N.A. IOTA/IOLTA account attached or connected to Catherine Elizabeth Czyz's Florida Bar Number and that it provided Mr. Jetter with a batch of IOTA/IOLTA account numbers for three (3) attorneys, including Respondent/Appellant., attached as Respondent/Appellant's Exhibit "C" is the response to subpoena to The Florida Bar Foundation.

9. Furthermore, Judge Shenko, in *Czyz et al. v. Atwood, et al.*, 2022-CA 2396, held, as a matter of law, dismissing Czyz et al.'s action with prejudice against PNC, that the IOTA/IOLTA account was not with PNC as the Florida Bar Association's witness testified, but with Sun Trust Bank, N.A.. in an Order issued on January 3, 2023, in section 6. a., the Order is attached hereto as Respondent/Appellant's Exhibit "D".

10. As such, it was impossible for Respondent/Appellant to

produce IOTA/IOLTA account from PNC at the Final Hearing and as a result the Referee's findings and punishment was based upon false or mistaken evidence due to an egregious error or gross negligence of The Florida Bar Foundation and/or The Florida Bar Association.

11. New evidence of mistake is grounds for vacating the Final Judgment pursuant to Florida Rule of Civil Procedure 1.540.

12. Furthermore, the counsel for The Florida Bar Association misrepresented evidence during the Final Hearing and during the post-Final Hearing sentencing phase in order to attain the judgment of money and suspension against the Respondent/Appellant.

13. Ms. Hinson misrepresented that the Florida Bar Association's expert, Jason L. Gunter, Esq., testified that he couldn't remember when he spoke to his client, Erin Neitzelt, instead of his actual testimony where he admitted that he was speaking to her about their strategy against the Respondent/Appellant in January, 2017, while

Catherine Elizabeth Czyz was actively representing Erin Neitzelt, and impeaching him by his prior testimony.

work as an attorney and did not represent clients in the two year period from the date of filing, other than representing herself and her law firm's claims against Erin Neitzelt.

14. Ms. Hinson misrepresented Catherine Elizabeth Czyz's testimony, arguing to the Referee that she did not know how to plead a prima facia case of discrimination, rather than her actual testimony of refusing to recite 36 pages of the Complaint, as the question was harassing, and properly directing Ms. Hinson to review the pleading in evidence.

15. Ms. Hinson misrepresented to the Referee that Erin Neitzelt could not make a discrimination claim when Erin Neitzelt testified that she did have a case, and when Jason L. Gunter, Esq. could not answer why 100 women he represented for Sex discrimination had a case, but not Erin Neitzelt.

WHEREFORE, the Respondent/Appellant requests

this Honorable Court to issue an Order vacating the Final Judgment and 1. Immediately re-instating Catherine Elizabeth Czyz to practice law in Florida, 2. Erin Neitzelt takes nothing, and 3. Expunging Catherine Elizabeth Czyz's record of Erin Neitzelt's Complaint/Inquiry, and any other relief this Honorable Court feels is just and proper.

RESPECTFULLY SUBMITTED,

/s/ Catherine E. Czyz

Catherine E. Czyz

Pro Se

USPS Mailing Address:

931 Village Boulevard, Suite 905-242

West Palm Beach, FL 33409

catherinexliv@gmail.com

561-502-1542- direct

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-courts on January 4, 2023 to:

Shanee L. Hinson, Esq. and

Tiffany Roddenberry, Esq. and

Kevin Cox, Esq. and/or the attorneys listed as counsel of
record at this time.

By: ___/s/ *Catherine E. Czyz*_____

Catherine E. Czyz

Pro Se

931 Village Boulevard, Suite 905-242

West Palm Beach, FL 33409

catherinexliv@gmail.com

561-502-1542- direct

EXHIBIT "A"

Supreme Court of Florida

THURSDAY, JANUARY 6, 2022

CASE NO.: SC19-1545

Lower Tribunal No(s).:
2017-00,628(2A)

THE FLORIDA BAR

vs. CATHERINE ELIZABETH CZYZ

Complainant(s)

Respondent(s)

Upon consideration of the report of referee and the briefs filed in this case, the Court hereby approves the referee's findings of fact and recommendations as to guilt. The Court also approves the referee's findings in aggravation and mitigation. Further, the Court approves the referee's recommended sanction and respondent is suspended from the practice of law for two years, effective thirty days from the date of this order so that respondent can close out her practice and protect the interests of existing clients. If respondent notifies this Court in writing that she is no longer practicing and does not need the thirty days to protect existing clients, this Court will enter an order making the suspension effective immediately. Respondent shall fully comply with Rule Regulating the Florida Bar 3-5.1(h). Respondent shall also fully comply with Rule Regulating the Florida Bar 3-6.1, if applicable. In addition, respondent shall accept no new business from the date this order is filed until she is reinstated.

Respondent shall pay restitution in the amount of \$41,708.45 together with prejudgment interest to Erin Neitzelt as a condition of reinstatement.

CASE NO.: SC19-1545

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Respondent is further directed to comply with all other terms and conditions of the report.

Judgment is entered for The Florida Bar, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, for recovery of costs from Catherine Elizabeth Czyz in the amount of \$5,392.15, for which sum let execution issue.

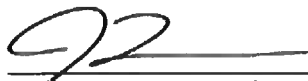
Respondent's Motion for Judicial Notice of Video Deposition of Erin Neitzelt, dated October 15, 2021, is hereby denied.

Not final until time expires to file motion for rehearing, and if filed, determined. The filing of a motion for rehearing shall not alter the effective date of this suspension.

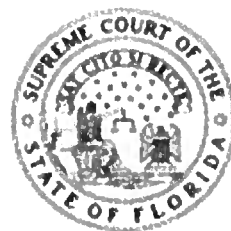
CANADY, C.J., and POLSTON, LABARGA, LAWSON, MUÑIZ, COURIEL, and GROSSHANS, JJ., concur.

A True Copy

Test:



John A. Tomasino
Clerk, Supreme Court



as

Served:

TIFFANY A. RODDENBERRY
SHANEÉ L. HINSON
PATRICIA ANN TORO SAVITZ
CATHERINE ELIZABETH CZYZ
KEVIN W. COX
HON. CHARLES P. SNIFFEN, JUDGE

EXHIBIT "B"

EXHIBIT "C"

IN THE CIRCUIT COURT OF THE
TWENTIETH JUDICIAL CIRCUIT IN AND
FOR LEE COUNTY, FLORIDA.

CASE NO: 22-CA-002396

CATHERINE E. CZYZ, ESQ.,
THE CZYZ LAW FIRM, P.A., and
THE CZYZ LAW FIRM, PLLC,

Plaintiffs,

vs.

SCOTT E. ATWOOD, ESQ., THE ATWOOD LAW FIRM, P.A.,

JASON L. GUNTER, ESQ., JASON L. GUNTER, P.A.

d/b/a GUNTERLAW, RICHARD AKIN, ESQ.,

HENDERSON, FRANKLIN, STARNES AND HOLT, P.A.

ERIN BETH NEITZELT, PNC FINANCIAL SERVICES GROUP, INC.,

and JP MORGAN CHASE BANK, NA,

Defendants.

_____/

AMENDED SUBPOENA DUCES TECUM WITHOUT DEPOSITION
(*RECORDS MAY BE E-MAILED OR MAILED IN LIEU OF APPEARANCE)

THE STATE OF FLORIDA

TO: THE FLORIDA BAR FOUNDATION
875 Concourse Parkway South, Suite 195
Maitland, Florida 32751

This is a subpoena seeking the following with respect to:

1. **CATHERINE E. CZYZ, ESQ. (FL BAR NO. 105627)**

A. Attorney Trust Account (IOTA) Records:

- (i) Any and all documents of any kind regarding PNC Financial Services Group, Inc.

(PNC) servicing the IOTA account and/or any PNC IOTA checks and/or PNC IOTA bank statements for the above named attorney and/or associated with her law firm, The Czyz Law Firm, P.A., and/or associated with her prior names or prior law firms.

(ii.) Any and all documents referenced in the testimony of the Florida Bar Foundation representative at the Final Hearing of *The Florida Bar Association v. Catherine Elizabeth Czyz* showing PNC is the listed IOLTA account holder for the above referenced attorney and/or any of her law firms.

(iii.) Any documents that show the date that the PNC IOLTA account was opened and by whom.

(iv.) Any documents that show the date that the PNC IOLTA account was closed, if it was closed, and by whom.

(v.) Any documents showing that the PNC IOLTA account was not closed and/or is still active.

(vi.) Any and all documents showing that Catherine E. Czyz, Esq. opened an IOLTA account at SunTrust Bank for The Czyz Law Firm, P.A., specifically SunTrust IOLTA account number: **001012 063102152 1000082208520**.

(vii.) Any and all documents showing any communication between Sun Trust Banks and/or Truist Financial Corporation regarding The Czyz Law Firm, P.A. IOLTA account., specifically SunTrust IOLTA account number: 001012 063102152 1000082208520.

(viii.) Any and all documents showing that PNC at any time took over the control, management , servicing or in any way possession of The Czyz Law Firm, P.A. IOLTA account number: 001012 063102152 1000082208520.

(ix.) Any and all documents or bank statements in your possession for the time period required by The Florida Bar Association for the action of *The Florida Bar Association v. Catherine Elizabeth Czyz*.

(x.) If no documents are in your possession responsive to (ix.), all documents that show why The Florida Bar Foundation and/or The Florida Bar Association did not request those records or Bank statements from Sun Trust Banks.

(xi.) Any and all documents that show that The Florida Bar Foundation and/or The Florida Bar Association made an egregious error in having PNC as the account holder of Catherine E. Czyz, Esq.'s and/or The Czyz Law Firm, P.A.'s IOLTA account, and/or showing the testimony of The Florida Foundation representative was incorrect.

B. DOCUMENTS REGARDING CONVERSATIONS OR CORRESPONDENCE BETWEEN ENTITIES AND/OR PEOPLE REGARDING CATHERINE E. CZYZ, ESQ. SINCE MARCH, 2016 AS FOLLOWS:

(i.) Between The Florida Bar Foundation or its agents and The Florida Bar Association

- or its agents.
- (ii.) Between The Florida Bar Foundation and any named Plaintiff in this action.
 - (iii.) Between The Florida Bar Foundation and any named Defendant in this action.
 - (iv.) Between The Florida Bar Foundation and any agent of ReedSmith law firm.
 - (v.) Between The Florida Bar Foundation and any agent of HomerBonner law firm.
 - (vi.) Between The Florida Bar Foundation and any agent of KlienPark law firm.
 - (vii.) Between The Florida Bar Foundation and any agent of Greenberg Traurig law firm.
 - (viii.) Between The Florida Bar Foundation and any Judge or public official.

YOUR RESPONSE IS DUE WITHIN FIFTEEN DAYS OF RECEIPT

You are required to produce the records by mail or in person to ATTN: Catherine E. Czyz, Esq., 931 Village Boulevard, Suite 905, West Palm Beach, Florida 33409. OR E-mail to: Catherine XLIV@gmail.com

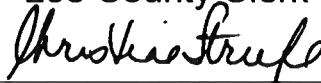
We have satisfied all state and federal laws including 45 CFR 164.512(e)(1), please ensure you satisfy this subpoena.

These items will be inspected and may be copied at that time. You will not be required to surrender the original items. You may comply with this subpoena by providing legible copies of the items to be produced to the Plaintiff whose name appears on this subpoena on or before the scheduled date of production. You may mail or deliver the copies to the attorney whose name appears on this subpoena and thereby eliminate your appearance at the time and place specified above.

If you fail to appear or fail to furnish the records instead of appearing as provided above, you may be in contempt of Court. This subpoena is issued by the Clerk of Court whose name appears on this subpoena and, unless excused by the Court, you shall respond to this subpoena as directed.

Dated this 17 day of November, 2022.

Kevin C. Karnes
Lee County Clerk



Clerk of Court, Lee County



IN THE CIRCUIT COURT OF THE
TWENTIETH JUDICIAL CIRCUIT IN
AND
FOR LEE COUNTY, FLORIDA.
CASE NO: 22-CA-002396

CATHERINE E. CZYZ, ESQ.,
THE CZYZ LAW FIRM, P.A., and
THE CZYZ LAW FIRM, PLLC,

Plaintiffs,

vs.

SCOTT E. ATWOOD, ESQ., THE ATWOOD LAW FIRM, P.A.,
JASON L. GUNTER, ESQ., JASON L. GUNTER, P.A.
d/b/a GUNTERLAW, RICHARD AKIN, ESQ.,
HENDERSON, FRANKLIN, STARNES AND HOLT, P.A.
ERIN BETH NEITZELT, PNC FINANCIAL SERVICES GROUP, INC.,
and JP MORGAN CHASE BANK, NA,

Defendants.

**THE FLORIDA BAR FOUNDATION'S RESPONSE TO AMENDED SUBPOENA
DUCES TECUM WITHOUT DEPOSITION**

The Florida Bar Foundation (FBF or the Foundation), by and through undersigned counsel, responds to the Amended Subpoena Duces Tecum Without Deposition issued by the Clerk of Court, Lee County dated November 17, 2022. By agreement, with Ms. Catherine Czyz, the Foundation accepted service of the subpoena via email transmission on November 21 with a response date of December 6, 2022. The Foundation responds as follows:

1. CATHERINE E. CZYZ, ESQ. (FL BAR NO. 105627)

A. Attorney Trust Account (IOTA) Records:

(i) Any and all documents of any kind regarding PNC Financial Services Group, Inc. (PNC) servicing the IOTA account and/or any PNC IOTA checks and/or PNC IOTA bank statements for the above named attorney and/or associated with her law firm, The Czyz Law Firm, P.A., and/or associated with her prior names or prior law firms.

RESPONSE: This request is vague, overbroad and undefined. Moreover, it seeks documents and materials that are privileged pursuant to Rule 5.1-1(g)(7), Rules Regulating The Florida Bar. "Any and all documents of any kind" is too vague and broad. Moreover, Respondent does not have in its possession any documents regarding PNC Financial Services, Group, Inc. servicing any particular account, nor does it have any PNC checks or bank statements for any account, attorney or law firm. It also does not know what, if any, prior names or prior law firms may have been associated with Catherine E. Czyz, Esq. or The Czyz Law Firm, P.A. Respondent further states that it does not collect or keep account service records, checks or bank statements regarding any bank or law firm in its role as Florida's IOTA administrator.

Subject to its objections and explanations above, the Foundation responds universally to the Amended Subpoena Duces Tecum as follows:

Pursuant to Rule 5.1-1(g), Rules Regulating the Florida Bar, Respondent maintains certain records relating to IOLTA trust accounts opened in the State of Florida. Pursuant to Rule 5.1-1(g)(4), the Foundation receives notice regarding the establishment of IOTA accounts for funds covered by the rule. The rule reads,

"Lawyers or law firms must advise the foundation, at its current location posted on The Florida Bar's website, of the establishment of an IOTA account for funds covered by this rule. The notice must include: the IOTA account number as assigned by the eligible institution; the name of the lawyer or law firm on the IOTA account; the eligible institution name; the eligible institution address; and the name and Florida Bar number of the lawyer, or of each member of The Florida Bar in a law firm, practicing from an office or other business location within the state of Florida that has established the IOTA account."
Id.

Moreover, Rule 5.1-1(g)(7) provides,

"Confidentiality and Disclosure. The foundation must protect the confidentiality of information regarding a lawyer's or law firm's trust account obtained by virtue of this rule. However, the foundation must, on an official written inquiry of The Florida Bar made in the course of an investigation conducted under these Rules Regulating The Florida Bar, disclose requested relevant information about the location and account numbers of lawyer or law firm trust accounts."

On or about January 3, 2019, Respondent received a request from Roy Jeter, CPA, Branch Auditor, Tallahassee Branch Office of The Florida Bar for a list of account numbers and related banks in the Foundation's records for three lawyers, one of which was Catherine Czyz. The Foundation performed an Account Verification on January 4, 2019 for the three lawyers in question and submitted that information via telefax to Mr. Jeter. That was the extent of the Foundation's involvement in this matter. After due diligence and review, the Foundation knows of no further requests or communications regarding Ms. Czyz or The Czyz Law Firm.

The documents referenced above consist of 6 pages. The names and information relating to the other two lawyers have been redacted and the resulting package has been placed in a sealed envelope pending the Court's determination of the confidentiality and discoverability issues contained in Rule 5.1-1(g)(7), Rules Regulating the Florida Bar.

(ii.) Any and all documents referenced in the testimony of the Florida Bar Foundation representative at the Final Hearing of *The Florida Bar Association v. Catherine Elizabeth Czyz* showing PNC is the listed IOLTA account holder for the above referenced attorney and/or any of her law firms.

Response: Upon information and belief, and after due diligence and review of its records, no representative of The Florida Bar Foundation appeared at or testified at the Final Hearing referenced in this request. As stated above, the full extent of the Foundation's involvement in the referenced matter was providing The Florida Bar the documents referenced above. As such, the Foundation does not have or know what documents, if any, were referenced at the Final Hearing referenced in this request.

(iii.) Any documents that show the date that the PNC IOLTA account was opened and by whom.

Response: The documents produced in response to 1 A (i) above, indicate the start and closing date of the account in question. They do not indicate who may have opened or closed that account. After reasonable search and inquiry, the Foundation does not know who may have opened the account in question. Further, the records readily available and accessible to the Foundation do not contain the information requested. Please note that the Foundation has records in off-site storage that may be retrieved. However, the custodian of those records charges for the location, retrieval and replacement of those records. Should the requesting party wish to review the offsite records, the Foundation will provide the name and contact person for such storage company so that the requesting party may make financial arrangements with the storage company for the review of such records.

(iv.) Any documents that show the date that the PNC IOLTA account was closed, if it was closed, and by whom.

Response: The documents produced in response to 1 A (i) above, indicate the start and closing date of the account in question. They do not indicate who may have opened or closed that account. After reasonable search and inquiry, the Foundation does not know who may have closed the account in question. Further, the records readily available and accessible to the Foundation do not contain the information requested. Please note that the Foundation has records in off-site storage that may be retrieved. However, the custodian of those records charges for the location, retrieval and replacement of those records. Should the requesting party wish to review the offsite records, the Foundation will provide the name and contact person for such storage company so that the requesting party may make financial arrangements with the storage company for the review of such records.

(v.) Any documents showing that the PNC IOLTA account was not closed and/or is still active.

Response: None

(vi.) Any and all documents showing that Catherine E. Czyz, Esq. opened an IOLTA account at SunTrust Bank for The Czyz Law Firm, P.A., specifically SunTrust IOLTA account number: 001012 063102152 1000082208520.

Response: After reasonable search and inquiry, no such account found.

(vii.) Any and all documents showing any communication between Sun Trust Banks and/or Truist Financial Corporation regarding The Czyz Law Firm, P.A. IOLTA account., specifically SunTrust IOLTA account number: 001012 063102152 1000082208520.

Response: This request appears to be directed to parties other than The Florida Bar Foundation. After reasonable search and inquiry relating to records readily available and accessible to the Foundation, no such documents found. Please note that the Foundation has records in off-site storage that may be retrieved. However, the custodian of those records charges for the location, retrieval and replacement of those records. Upon information and belief, the Foundation does not reasonably believe there are records responsive to this request contained in its off-site storage. Should the requesting party wish to review such records, the Foundation will provide the name and contact person for such storage company so that the requesting party may make financial arrangements with the storage company for the review of such records.

(viii.) Any and all documents showing that PNC at any time took over the control, management , servicing or in any way possession of The Czyz Law Firm, P.A. IOLTA account number: 001012 063102152 1000082208520.

Response: This request appears to be directed to parties other than The Florida Bar Foundation. After reasonable search and inquiry, no such documents found.

(ix.) Any and all documents or bank statements in your possession for the time period required by The Florida Bar Association for the action of *The Florida Bar Association v. Catherine Elizabeth Czyz*.

Response: This request is vague, overbroad and hard to decipher. It is unknown whether The Florida Bar Association has or had a required time period as referenced in this request and the Foundation does not know what that means or entails. Moreover, there are more than 150 banks and more than 35,000 individual IOLTA accounts participating in Florida's IOTA program. The Foundation does not collect, receive or keep individual IOLTA account bank statements. After reasonable search and inquiry, none.

(x.) If no documents are in your possession responsive to (ix.), all documents that show why The Florida Bar Foundation and/or The Florida Bar Association did not request those records or Bank statements from Sun Trust Banks.

Response: The Florida Bar Foundation cannot answer for The Florida Bar Association as the two are separate entities. As it relates to the matter in question, The Florida Bar Foundation was not asked to research, review or request documents from a specific bank. Instead it was asked to provide the information it possessed relating to specifically named individuals who were members of The Florida Bar. It did so, which is the extent of its involvement in the matters referenced in Plaintiff's subpoena duces tecum directed to the Foundation.

(xi.) Any and all documents that show that The Florida Bar Foundation and/or The Florida Bar Association made an egregious error in having PNC as the account holder of Catherine E. Czyz, Esq.'s and/or The Czyz Law Firm, P.A.'s IOLTA account, and/or showing the testimony of The Florida Foundation representative was incorrect.

Response: None. The Florida Bar Foundation does not "make", designate or select any bank or financial institution for any lawyer. It simply keeps a record of IOTA account information provided to it by lawyers and law firms. Moreover, as stated above, the Foundation did not testify at the Final Hearing referenced in the subpoena duces tecum.

B. DOCUMENTS REGARDING CONVERSATIONS OR CORRESPONDENCE

**BETWEEN ENTITIES AND/OR PEOPLE REGARDING CATHERINE E. CZYZ,
ESQ. SINCE MARCH, 2016 AS FOLLOWS:**

(i.) Between The Florida Bar Foundation or its agents and The Florida Bar Association or its agents.

Response: None, other than the correspondence dated January 3 and January 4, referenced above and which is being held under seal pending a determination whether the contents may be disclosed in light of Rule 5.101(g)(7).

(ii.) Between The Florida Bar Foundation and any named Plaintiff in this action.

Response: Other than emails between Catherine E. Czyz and Lushawn Phillips and Donny MacKenzie regarding acceptance of service of this subpoena duces tecum, none. Plaintiff has copies of the emails.

As previously stated, the Foundation has records in off-site storage that may be retrieved. The Foundation does not believe this off-site storage facility contains records responsive to this request. However, should the requesting party wish to review the offsite records, the Foundation will provide the name and contact person for such storage company so that the requesting party may make financial arrangements with the storage company for the review of such records.

(iii.) Between The Florida Bar Foundation and any named Defendant in this action.

Response: After reasonable search and inquiry, none. As previously stated, the Foundation has records in off-site storage that may be retrieved. The Foundation does not believe this off-site storage facility contains records responsive to this request. However, should the requesting party wish to review the offsite records, the Foundation will provide the name and contact person for such storage company so that the requesting party may make financial arrangements with the storage company for the review of such records.

(iv.) Between The Florida Bar Foundation and any agent of ReedSmith law firm.

Response: After reasonable search and inquiry, none. As previously stated, the Foundation has records in off-site storage that may be retrieved. The Foundation does not believe this off-site storage facility contains records responsive to this request. However, should the requesting party wish to review the offsite records, the Foundation will provide the name and contact person for such storage company so that the

requesting party may make financial arrangements with the storage company for the review of such records.

(v.) Between The Florida Bar Foundation and any agent of HomerBonner law firm.

Response: After reasonable search and inquiry, none. As previously stated, the Foundation has records in off-site storage that may be retrieved. The Foundation does not believe this off-site storage facility contains records responsive to this request. However, should the requesting party wish to review the offsite records, the Foundation will provide the name and contact person for such storage company so that the requesting party may make financial arrangements with the storage company for the review of such records.

(vi.) Between The Florida Bar Foundation and any agent of KlienPark law firm.

Response: After reasonable search and inquiry, none. As previously stated, the Foundation has records in off-site storage that may be retrieved. The Foundation does not believe this off-site storage facility contains records responsive to this request. However, should the requesting party wish to review the offsite records, the Foundation will provide the name and contact person for such storage company so that the requesting party may make financial arrangements with the storage company for the review of such records.

(vii.) Between The Florida Bar Foundation and any agent of Greenberg Traurig law firm.

Response: After reasonable search and inquiry, none. As previously stated, the Foundation has records in off-site storage that may be retrieved. The Foundation does not believe this off-site storage facility contains records responsive to this request. However, should the requesting party wish to review the offsite records, the Foundation will provide the name and contact person for such storage company so that the requesting party may make financial arrangements with the storage company for the review of such records.

(viii.) Between The Florida Bar Foundation and any Judge or public official.

Response: After reasonable search and inquiry, none.

I CERTIFY that a true and correct copy of this Response has been sent to:
Catherine E. Czyz, Esq., 931 Village Boulevard, Suite 905, West Palm Beach, Florida 33409
and via email to Catherine XLIV@gmail.com this 1st day of December, 2022.

PETERSON & MYERS, P.A.

By: /s/ Stephen R. Senn
Stephen R. Senn
Florida Bar No. 0833878
P. O. Box 24628
Lakeland, FL 33802-4628
ssenn@petersonmyers.com
sservice@petersonmyers.com
Telephone: (863) 683-6511

EXHIBIT "D"

IN THE CIRCUIT COURT OF THE
TWENTIETH JUDICIAL CIRCUIT IN AND
FOR LEE COUNTY, FLORIDA

CASE NO: 22-CA-002396

CATHERINE E. CZYZ, ESQ., THE CZYZ
LAW FIRM, P.A., and THE CZYZ LAW
FIRM, PLLC,

Plaintiffs,

vs.

SCOTT E. ATWOOD, ESQ., THE
ATWOOD LAW FIRM, P.A., JASON L.
GUNTER, ESQ., JASON L. GUNTER,
P.A. d/b/a GUNTERLAW, RICHARD
AKIN, ESQ., HENDERSON, FRANKLIN,
STARNES AND HOLT, P.A., ERIN BETH
NEITZELT, PNC FINANCIAL SERVICES
GROUP, INC., SHANEE L. HINSON,
ESQ., PATRICIA ANN TORO SAVITZ,
ESQ., and JP MORGAN CHASE BANK,
NA,

Defendants.

**ORDER GRANTING DEFENDANTS PNC FINANCIAL SERVICES GROUP, INC.'S
MOTION TO DISMISS WITH PREJUDICE AND JPMORGAN CHASE BANK, NA'S
MOTION TO DISMISS WITH PREJUDICE**

This cause having come to be heard before the Court on December 15, 2022, upon the motions to dismiss with prejudice filed by PNC Financial Services Group, Inc. ("PNC") and JPMorgan Chase Bank, NA ("Chase"), the Court having heard argument of counsel for PNC and Chase, and having considered the matters presented to the Court for consideration, including the materials filed with the court, it is hereby ordered and adjudged:

1. Plaintiffs were given proper notice of the hearing to be held on December 15, 2022 on the pending motions to dismiss filed by defendants.
2. Despite such notice, Plaintiff Catherine Czyz, pro se, did not appear for the hearing.

3. The corporate plaintiffs, The Czyz Law Firm P.A. and The Czyz Law Firm PLLC were ordered to obtain counsel of record per the order dated March 16, 2022, but despite such order, no such counsel of record has been obtained.

4. Although an attorney named Vienna Ingraham appeared, she refused to appear as counsel of record and stated she was only making a “limited appearance” to argue the motions to dismiss. Florida law does not allow such representation in these circumstances and Ms. Ingraham confirmed on the record on multiple occasions that she did not have authority to act as counsel of record for any of the Plaintiffs. Accordingly, Plaintiffs did not attend the duly noticed hearing.

5. The Court proceeded to hear argument on the pending motions to dismiss, and grants PNC’s and Chase’s Motions to Dismiss for the reasons that follow:

- a. Plaintiffs’ Breach of Contract claims against PNC (Count XII) and Chase (Count XVIII) fail as a matter of law because Plaintiffs failed to attach the respective contracts, or adequate portions thereof, being sued upon as required by Florida Rule of Civil Procedure 1.130(a).
- b. Plaintiffs’ claims for breach of fiduciary duty and negligence against PNC (Counts XIII and XIV) and Chase (Counts XVI and XVII) fail as a matter of law under the independent tort doctrine as Plaintiffs’ claims are purely economic and do not allege any wrongful conduct beyond the conduct alleged to have breached Plaintiffs’ purported contracts with the banks. *See Elec. Sec. Sys. Corp. v. S. Bell Tel. & Tel. Co.*, 482 So. 2d 518, 519 (Fla. 3d DCA 1986) (affirming dismissal of a negligence claim because “a breach of contract, alone, cannot constitute a cause of action in tort...”); *Island Travel & Tours, Ltd., Co. v. MYR Indep., Inc.*, 300 So. 3d 1236, 1239 (Fla.

- 3d DCA 2020) (“It is a fundamental, long-standing common law principle that a plaintiff may not recover in tort for a contract dispute unless the tort is independent of any breach of contract.”); *see also Monroe v. Sarasota Cnty. Sch. Bd.*, 746 So. 2d 530 (Fla. 2d DCA 1999) (“bodily injury or property damage is an essential element of a cause of action in negligence.”)
- c. Plaintiffs’ claims for breach of fiduciary duty against PNC (Count XIII) and Chase (Counts XVI) also fail because there is ordinarily no fiduciary relationship between a bank and its depositing customers, and Plaintiffs have not alleged any facts demonstrating any fiduciary relationship. *Kaser v. Swann*, 141 F.R.D. 337, 341 (M.D. Fla. 1991) (“Generally, a bank-depositor transaction is treated as a debtor-creditor relationship and does not create a fiduciary duty.”) (analyzing Florida law and citing *Hooper v. Barnett Bank*, 474 So. 2d 1253, 1257 (Fla. 1st DCA 1985)).

6. The Court further finds that dismissal with prejudice is warranted in PNC’s and Chase’s favor for the following reasons:

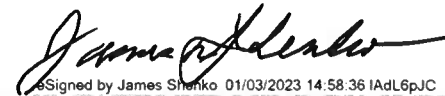
- a. As to PNC, a with prejudice dismissal is warranted because in the Referee Report which was adopted by the Florida Supreme Court, which was incorporated by reference in Plaintiffs’ Amended Complaint (Am. Compl. ¶¶ 148-149), a PNC representative testified that there was no record of Ms. Czyz having an account with PNC and that it was proven by clear and convincing evidence that Plaintiffs did not have a trust account open. Final Report of Referee ¶ 65 & pg. 32. Moreover, Plaintiffs admitted in their response to PNC’s Motion to Dismiss that the trust account was with

SunTrust Bank. This is a separate entity from PNC and dismissal with prejudice is warranted under the circumstances as any amendment would be futile.

- b. As to Chase, a with prejudice dismissal is warranted for two reasons. First, the statute of limitations has run on Plaintiffs' claims for negligence and breach of fiduciary duty. Plaintiffs alleged that the purported tortious conduct occurred in March and April 2016. Am. Compl. ¶¶ 53-56. Plaintiffs filed this lawsuit more than four years later, on February 25, 2021, rendering those claims untimely under § 95.11(3)(a) & (p), Fla. Stat. *See, e.g., Amato v. City of Miami Beach*, 208 So. 3d 235, 238 (Fla. 3d DCA 2016). The Court rejects any attempt by Plaintiffs to invoke the delayed discovery doctrine by pleading that they discovered the alleged tortious conduct in November 2020. *See* Am. Compl. ¶ 305. The delayed discovery doctrine does not apply and cannot toll the period for filing Plaintiffs' common law claims. *See R.R. v. New Life Cmty. Church of CMA, Inc.*, 303 So. 3d 916, 921 (Fla. 2020) (rejecting that delayed discovery rule applied to negligence claims or other claims omitted from § 95.031(2), Fla. Stat.). Second, Plaintiffs' allegations of breach of contract against Chase were directly contradicted in Plaintiffs' Amended Complaint where they repeatedly plead that Plaintiff Czyz opened and maintained a "business account" with Chase. Am. Compl. ¶¶ 43, 53, 111. These allegations contradict Plaintiffs' later allegations, forming the basis for the breach of contract claim, that the account maintained by Chase was supposed to be an

“attorney trust account.” *See id.*, ¶ 312. Accordingly, any amendment of the breach of contract claim against Chase would also be futile due to Plaintiffs’ admission that Chase was supposed to maintain, and did maintain, a “business account.”

DONE AND ORDERED in Chambers at Lee County, Florida.



Signed by James Shenko 01/03/2023 14:58:36 IAdL6pJC

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