

Cancellation of a credit entry from a currency exchange without the consent of the account holder

Topic: **Account/savings book** Case number: **2022/02**

The client asked the bank by telephone whether he could change Lebanese pounds into Swiss francs and have the amount credited to his account. The bank affirmed this, whereupon he visited the bank and the transaction was carried out at the counter as discussed over the phone. A few days later, the bank informed him that the amount credited to his account had been cancelled and that the pound notes were ready for collection at the counter. The client took the view that the bank had no right to revert to the transaction and objected to the bank's action. After the parties failed to reach an agreement, the client submitted the case to the Ombudsman. In the course of the Ombudsman proceedings, the bank showed itself willing to credit the amount back to the client's account.

After a trip to Lebanon, the client had cash left over in Lebanese pounds to the equivalent of about CHF 2 500, which he no longer needed and wanted to change. The bank processed the transaction, which had been discussed over the phone, without reservation, but came back a few days later because it could not find a buyer for the Lebanese pounds. The bank informed the client that the currency could not be traded and that it had therefore debited the credited amount from his account and that he could collect the notes from the counter at the next opportunity.

The client was of the opinion that both parties had fulfilled their contractual obligations from the exchange transaction. The bank could not unilaterally go back on it and debit the amount from his account without his consent. The bank countered these arguments, saying that the contract was void because of impossible content, since the Lebanese pounds had not been tradable at the time of acceptance.

Based on the documents, the Ombudsman was unable to gain a sufficient picture of the dispute. He therefore asked the bank to explain in more detail on what contractual basis it had reversed the transaction. It was indeed clear from the files that the transaction had been discussed verbally in advance and then settled without reservation. The written transaction statement showing the account credit also did not show any reservation. The Ombudsman asked the bank to in particular clarify whether it had acted as self-contractor or commission agent and, if necessary, to explain how this had been agreed with the client.

In the Ombudsman's experience, a bank usually acts as a self-contractor in such an exchange transaction on the basis of the statutory law of sale. It thus appeared questionable whether the tradability of the notes received, i.e. the possibility of reselling them directly on the market, was indeed an essential element of the contract. The bank then contacted its legal department. It finally decided not to reverse the transaction and to credit the proceeds of the bill of exchange back to the client without clarifying the legal questions that arose. From the bank's point of view, this was done as a gesture of goodwill and without acknowledging any legal obligation. The client agreed to this solution.