

Claim for damages due to non-execution of a sales order and incorrect investment advice

Topic: **Investment advice** Case number: **2020/23**

The client, who was already at an advanced age, had invested money from a house sale with the bank at the beginning of 2019. At the beginning of March 2020, the client noticed book losses attributable to the effects of the coronavirus crisis on the financial markets. He went to the bank and wanted to sell the investments. The bank advised him against it and no sale was made. About three weeks later, he visited the bank again and sold the investments against the bank's explicit advice. In retrospect, the timing of the sale turned out to be extremely unfavourable. The client thus realised a considerable investment loss. He demanded that the bank share in the additional loss incurred because he had not already sold his investments during his first visit to the bank at the beginning of March 2020. When he was unable to reach an agreement with the bank, he submitted the case to the Ombudsman. The Ombudsman considered that there was no prospect of the bank coming to an agreement and closed the case by issuing a notice to the client.

The Ombudsman tried to clarify two points in a personal conversation with the client. First, he considered it essential to ask whether the client had given the bank an order to sell his investments during his first visit, which the bank failed to carry out. Secondly, it had to be clarified whether the bank's advice to the client not to sell the investments was comprehensible on the basis of the client profile that had been drawn up, in which the client's risk capacity and risk tolerance and thus his investment horizon were recorded.

It turned out that the client had visited the bank at the beginning of March 2020 with the firm intention of selling his investments. At the time, the client advisor advised him against selling based on the opinion of the bank's chief economist. In its response to the client's complaint, the bank had stated that, based on this advice, he had not issued a sell order on that day, but would have been free not to follow the bank's advice and to sell his investments. In his discussion with the Ombudsman, the client returned to the course of this conversation several times, presenting the Ombudsman with various slightly different versions. In the end, however, he repeatedly confirmed that he had not given a sell order.

In this conversation with the Ombudsman, he showed himself to be an experienced investor who had been investing in various investment products for more than 20 years and had already experienced at least two significant financial crises. He was well informed about the ongoing developments in connection with the coronavirus crisis through regular newspaper reading and was aware of the numerous, sometimes strongly contradictory, advice that various experts were giving investors in view of the increased risks. The Ombudsman concluded that the client had not given the bank a sales order on the occasion of his first visit at the beginning of March and that the bank's advice to him to refrain from selling at that time was justifiable.

In the further course of the conversation, the client then took the view that the advice that the bank had repeated on the occasion of his second visit, not to sell his investments, had been insufficiently justified by his client advisor. If he had known exactly what support measures politicians and central banks had taken to prop up prices on the stock markets, he might have refrained from selling and

benefited from the prices that had risen again in the meantime, which would have largely made up for his book losses. A week after the personal meeting, the client telephoned the Ombudsman and told him that, after careful consideration, he had come to the conclusion that he had already given the bank a sales order on the occasion of his first visit. However, the bank had not taken him seriously and had simply disregarded his order.

In his final notice to the client, the Ombudsman stated that, in his view, there were no convincing arguments on the basis of which he could have contacted the bank and persuaded it to make concessions. As a neutral intermediary, the Ombudsman may not question the credibility of the parties and therefore cannot clarify disputed facts in a binding manner by means of an evidentiary procedure. Whether a sales order had been placed on the occasion of the client's first visit would have to be clarified by means of evidence and therefore had to be left open in the Ombudsman proceedings. The Ombudsman informed the client that in a court proceeding he would be obliged to prove his claim that he had given a sales order. The client had never contacted the bank between his two visits in March 2020 and had never complained about the lack of execution of the order. In his decision, the Ombudsman revealed that he could not entirely avoid the impression that the client had slightly adjusted his statements several times in order to achieve the result he desired.

In the Ombudsman's view, the client himself was responsible for the sale that finally took place on the occasion of the second visit to the bank, contrary to the bank's explicit advice. The statement that the advice had not been sufficiently justified seemed somewhat far-fetched against the background of the client's regular reading of newspapers, from which he had quoted vividly during the personal conversation with the Ombudsman.

When reviewing the file, the Ombudsman also found that the client had held his investments in two different custody accounts. One of the two accounts was managed by the bank under an asset management mandate. With regard to the second custody account, the client had concluded an investment advisory contract. In This second portfolio contained cluster risks and the investments seemed to the Ombudsman to be too risky in light of the client's profile. The client said he was aware of these two points and did not want to go into them further. The Ombudsman then definitively closed the case. Later, the client wrote to the Ombudsman and submitted another version of events, which unfortunately could not be addressed in view of the circumstances.