

Compliance by the bank with court injunction in the absence of the client's consent

Topic: **Proof of identity** Case number: **2017/18**

The client complained to the Ombudsman about the fact that the bank had submitted mortgage notes from his company's custody account to the court, without sufficient legal grounds, and that banking secrecy had therefore also been breached. In support of his claim, the client referred to a Federal Supreme Court decision but only appended the cover page of said decision to his mediation request. Upon reading the decision in question, available on the internet, the Ombudsman found that the bank had simply followed up on a final injunction by the court of jurisdiction. In the absence of any signs of wrongful conduct on the part of the bank, and given the client's obviously querulous attitude, there were insufficient grounds for the Ombudsman's involvement.

In his request, based on various arguments, the client asked the Ombudsman to initiate mediation proceedings and grant compensation. As grounds for his request, he basically claimed that the bank had submitted bearer mortgage notes held in the custody account that one of his companies had with the bank to the cantonal court in question without sufficient legal grounds. Because he and his company were therefore deprived of the mortgage notes in question for an indefinite period, any sale of the encumbered property was blocked. In addition, by informing the court about the existence of the business relationship with himself and his company, the bank disclosed these details, and the associated information, to a large group of people. The client claimed that such a disclosure to third parties, in no way authorised to have access to such information, constituted a breach of banking secrecy by the bank. To demonstrate that he was not party to the legal proceedings in question, the client enclosed a copy of the cover page of a Swiss Federal Supreme Court ruling with his request. He felt that he and his company would now have problems selling the property in question and with interim financing, a situation he wished to have resolved through mediation with the Ombudsman. Having reviewed the documents provided and having performed some brief research online, the Ombudsman decided not to agree to the client's request for mediation. In his ruling, the Ombudsman first reiterated in general that he is only able to intervene when certain conditions are met. In fact, any mediation endeavour requires the existence of signs of a failure on the part of the bank in question as well as apparent resulting loss or damage for the client. In his request to the Ombudsman, the client alleged that the crucial breach was the fact that, in the absence of any final attachment order and/or another provisional measure stipulated in accordance with Art. 14 of the Swiss Federal Intermediated Securities Act, the bank was not authorised to submit the mortgage notes to the court or to disclose to the latter any information whatsoever regarding the securities in the custody account.

In light of these elements, and having performed some research, the Ombudsman found that the allegations made by the client were unfounded or unjustified. His view was based on several observations. The ruling the client relied upon in support of his request to the Ombudsman, and for which he only submitted the cover page, had been published on the internet by the Federal Supreme Court. In fact, said judgement makes it clear that the subject of the legal proceedings in question was the client's objection to a change in the ownership ration for the condominium units proposed by the property's other condominium owners, a dispute which was ultimately brought before the courts. The client had previously filed several appeals with the Federal Supreme Court to no avail. The client then

opposed the enforcement of the change to the ownership ratios even though the ruling had been made final. The Federal Supreme Court ruling cited by the client contains the following notes regarding his behaviour:[...] Given the history of the dispute, the querulous conduct at the co-owners' meetings and during the proceedings intended to slow down the process by any means (and in particular the sale of the condominium unit to his own company during the main proceedings in order to escape them; failure to participate in the evidence collection and review process, in particular in the examination of parties and the on-site visit during the substantive proceedings; the numerous written exchanges and, as was previously the case in the substantive proceedings, the succession of querulous requests submitted during the course of the enforcement proceedings), it is clear that the appellant took advantage of the fact that the higher cantonal court sent the response by first class mail rather than by registered mail to claim that he never received it. Such actions do not deserve any legal protection. [...] In light of the Federal Supreme Court's explanations and remarks, the Ombudsman felt it was clear that the bank had submitted the mortgage notes and associated information to the relevant court solely based on the latter's order. As far as the Ombudsman was concerned, complying with such a legal injunction in no way constituted a failure on the part of the bank. For the sake of completeness, the Ombudsman also pointed out to the client that, in his opinion, the bank was under no obligation to retrieve the three mortgage notes so they could be recorded in the custody account held by the client's company again. In addition to the fact that the bank had no such obligation under the terms of the custody account agreement, it also had no standing to file a request of that nature with the court.

Given the client's litigious tactics as noted by the Federal Supreme Court, the Ombudsman was not surprised to find the client was unwilling to accept his decision and that he filed a request for reconsideration, without providing any new relevant arguments, insisting on the Ombudsman's intervention. The latter rejected this request as obviously unfounded and told the client that he would not respond to any further correspondence regarding this matter in the future.