

# Damage due to a not executed payment

Topic: **Payment transactions** Case number: **2021/05**

In October 2020, the client gave the bank a payment order for around CHF 84,000 for an extraordinary purchase into her pension fund, which was mistakenly not executed. After receiving the year-end statement for the debit account, the client discovered the error and claimed damages of around CHF 30,000 from the bank. She justified this with a tax loss because she could not deduct the intended purchase amount from her income in 2020 and an economically equivalent purchase into her pension fund was more expensive in the following year. The bank refused to make concessions on the grounds that it would have been possible for the client to recognise the error in good time and to report it. In the ombudsman proceedings, the bank showed itself willing to pay for part of the damage.

In the present case, the bank's clear mistake was undisputed. The client wanted to debit the money for her transfer to the savings account and had to call the amount six months in advance, as she could only have withdrawn CHF 20,000 a month without notice. The bank argued to her that she had received a receipt in November 2020 because she had not used the called amount. The balance of the savings account was shown on it. She could therefore have recognised the bank's mistake and corrected it in time by means of a complaint in the same year. The client did not agree with this argumentation, as only the account balance could be seen on the receipt, but not the individual bookings.

According to the client, the total loss amounted to around CHF 30,000. CHF 1,000 of this was due to the somewhat more expensive purchase into the pension fund in 2021, which the client made in order to achieve the same economic success as with a purchase in the previous year. She was able to prove that this was correspondingly more expensive in 2021 with a statement from the pension fund. CHF 29,000 accounted for the additional taxes she had to pay for the tax year 2020 because she could not deduct the amount she wanted to pay into the pension fund from her income. In a first step, the Ombudsman contacted the client to understand why she had not deducted the tax benefit she could obtain by paying into the pension fund in the following year from the claimed loss. She claimed that she had planned other tax-optimising measures for 2021. As there were still several years to go before the client's earliest possible retirement, the Ombudsman was of the opinion that the client still had sufficient time to reduce the claimed tax loss by taking appropriate measures.

The client finally accepted this and reduced the claim to the CHF 1,000 for the pension fund purchase, which had become more expensive due to the bank's error. The Ombudsman then contacted the bank, which finally agreed to reimburse the client for the CHF 1,000.