

Damage due to faulty investment advice

Topic: **Investment advice** Case number: **2020/24**

The client was of advanced age and had, after having sold a property, total assets of around CHF 400'000, of which she held around CHF 250'000 in a savings account with the bank. Due to her low pension income of around CHF 2'000 per month, she was dependent on a certain consumption of her assets for her daily living. According to her description of the events, her client advisor had urged her to make investments. The bank drew up a client profile which resulted in the investment profile "balanced» and made an investment proposal based on this. The client decided to invest a total of CHF 114'000 and chose two foreign currency bonds and one structured product from the seven investments proposed by the bank. She subsequently suffered considerable losses and was of the opinion that the bank had given her incorrect advice. She demanded compensation from the bank, which the bank refused. She then contacted the Ombudsman, who initiated mediation proceedings. The bank finally agreed to pay compensation of CHF 10'000, which corresponded to 50% of the loss it had calculated. The client accepted this settlement.

The client had turned to the bank with a complaint after she had suffered a total loss with a structured product. The product was based on the expectation of constant or rising interest rates in CHF. Unfortunately, the actual interest rate development was the opposite. She claimed that her assets had shrunk from CHF 114'000 in 2014 to CHF 75'000 at the end of 2019. In her opinion, the bank had given her incorrect advice and had not properly informed her about the investment risks.

After reviewing the file submitted by the client, the Ombudsman had concerns about whether her risk capacity and risk appetite had been correctly recorded in the client profile prepared by the bank. The bank had concluded that the client fit the "balanced" investment profile. In this profile, someone must be willing and able to cope with certain price fluctuations. The categories "income" and "security" would have been available as less risky investment profiles. The client had stated in the bank's client profile questionnaire that she had little knowledge of financial investments, that she was not dependent on the money invested for the next five years and could cope with a loss of one third of the assets held with the bank without restricting her usual lifestyle. The Ombudsman doubted whether the questionnaire she had filled in realistically reflected her financial situation and whether the evaluation of the answers had led to the correct risk profile. This was particularly so because, in his view, the client was dependent on asset depletion for her livelihood, given her low pension income, which did not even cover her rent, and her risk capacity therefore appeared to him to be lower than indicated by the client profile. In addition to the concerns about the client profile, the Ombudsman also questioned whether the investments made on the basis of this profile actually corresponded to it. Finally, the question arose as to whether the client had taken on cluster risks with the three investments. He therefore contacted the bank and asked it to comment on his concerns.

The bank was of the opinion that it had not made any mistakes in connection with the investment advice given to the client and was not prepared to assume part of the loss. The client profile had been drawn up in accordance with the regulatory requirements at the time. According to their calculation, the client's assets would have been sufficient to pay the rent until the end of her statistical life expectancy, even after a loss of one third of the assets invested with the bank, taking into account the financial participation of her partner in the joint living expenses. The client had been accompanied

at the investment consultation by a competent person whose knowledge was to be credited to her. Further, she had been interested in the three investments finally chosen. She had decided herself to invest only part of the money (the amount of CHF 114'000) and had selected three of the seven securities proposed which she considered to be particularly interesting. She had been informed about the risks of the structured product in a product sheet. The risks of the foreign currency bonds had also been adequately explained to her. It was not apparent to the bank that the client had not understood them. If one considered the entire assets of the client held with the bank, including the remaining liquidity, and not only the amount finally invested at the client's request, no cluster risks had been entered into with the three investments. The investment proposal had included the entire bank assets of CHF 250'000 held by the client.

The bank's reply did not allay the Ombudsman's concerns. He was still of the opinion that the client should not have taken major price fluctuations due to her life situation and that the investments were unsuitable and too risky even under the "balanced" objective determined by the bank. With a monthly income of CHF 2'000, the client was dependent on the preservation of her assets to a large extent, even if her partner contributed his share to the rent. In such a situation, investing a substantial part of the assets in a structured product with the risk of complete loss of capital and in investments with foreign currency risk did not seem to him to make sense in the final analysis. The Ombudsman understood in principle that the client should be given credit for the expertise of her companion. However, it was not clear from the documents what expertise the companion actually had. The bank had undoubtedly provided comprehensive investment advice. In the Ombudsman's view, the bank could not discharge itself from essential obligations by referring to the accompanying person.

When providing investment advice, the Ombudsman understands that the bank has a duty to make recommendations that are appropriate in view of the client's risk capacity and risk appetite. If the bank makes a recommendation that is obviously unreasonable and inappropriate for the client concerned at that time and does not adequately inform the client of the potential for loss, the bank may be deemed to have breached its duty of care. In providing advice, a bank must then ensure that the client understands the recommended investments and their risks.

Obviously, a client has the right to make investments that are riskier than would be appropriate according to the client profile. However, in the Ombudsman's view, if an advisory client selects only certain securities from an investment proposal that covers the entire portfolio, it is the responsibility of the investment advisor to comment on the resulting composition of the portfolio and to point out any imbalances. The bank's duties of care as an investment adviser do not end with the submission of an investment proposal, and an advisory client's particular interest in a specific product does not release the bank from these duties. If the wishes expressed by a client during an advisory meeting do not correspond to the investment profile, the Ombudsman believes that a clear warning should be given and also documented.

Overall, it seemed questionable to the Ombudsman whether the bank, acting as investor advisor, had fulfilled its due diligence obligations. After several exchanges of correspondence and a discussion, the bank finally agreed to compensate the client for half of the loss, which it calculated to be lower than the client had claimed because, among other things, it had not taken into account the periodic returns on the investments. In this case, the Ombudsman would have preferred a more generous contribution from the bank. He nevertheless submitted the settlement proposal to the client, as a better solution within the framework of the ombudsman procedure seemed unrealistic. The client agreed to the settlement proposal and thanked the Ombudsman for his efforts.