Delayed execution of a securities sale order

Topic: **Stock exchange / securities account** Case number: **2020/25**

> At the end of February 2020, the client instructed the bank by registered letter to sell her entire securities portfolio and to transfer the proceeds to a bank in Luxembourg. The order was not executed by the bank until around two weeks after receipt of the registered letter. The proceeds of the sale did not arrive in the recipient's account until another 10 days later. The client, who was represented by a lawyer, asserted a claim for damages of approximately EUR 350'000 against the bank, which she justified with market price losses that she had incurred due to the delayed execution of the order. The bank initially rejected this claim in full and later offered to pay 50% of the damages claimed. The client considered this insufficient and submitted the case to the Ombudsman. After the Ombudsman contacted the bank, it compensated the client in full.

In its response to the client's lawyer, the bank argued that placing a time-critical stock exchange order by registered mail was unusual. The order could only have been executed in a timely manner if the client had separately drawn the bank's attention to its urgency. Only then could the responsible office within the bank have ensured that the order could have been executed no later than two days after receipt. In addition, the client had breached her duty to inform the bank immediately of the non-execution of the order, which was incumbent on her on the basis of the general terms and conditions. If she had done so, the order could still have been executed on a date on which the client would not yet have suffered any loss due to the stock market development. The bank offered the client a meeting to discuss solutions for the case. After initially rejecting the claims for damages as completely unjustified, the bank finally offered her 50% of the damages claimed.

The client and her lawyer reacted very gruffly to the bank's communications and could not understand the reasoning. They threatened to make the case public and finally decided to submit it to the Ombudsman.

The Ombudsman could understand the client's anger. Since, in his experience, the handling of the case and the arguments used by the bank in its defence did not correspond to the prevailing practices in the Swiss financial market and the legal justification seemed untenable to him, he contacted the bank and asked it to explain, as a first step, why the delay complained of by the client had occurred in the first place. The bank did not answer this question but offered the client full settlement of the claimed damages without further explanation.

This made it unnecessary for the Ombudsman to address the parties' arguments in detail. However, in his view, stock exchange orders are per se considered time-sensitive. A bank should be organised in such a way that such orders can be executed promptly. Of course, special circumstances are conceivable which could prevent immediate execution in a specific situation. However, such circumstances were not evident in the present case. The Ombudsman was also unable to understand the bank's arguments. A look at the general terms and conditions cited by the bank also showed that stock exchange orders were explicitly excluded from the obligation of the client to specifically inform the bank of the urgency of an order, should the bank be liable for more than just the loss of interest in the event of delayed execution.