

# Delayed sale of Pillar 3a fund units

Topic: **Pension products** Case number: **2020/18**

Several months before his 65th birthday, the client instructed the bank to terminate his pension relationship at the beginning of January 2020 and to sell his Pillar 3a fund units. The bank required him to provide a current confirmation of residence. He found this unnecessary and asked for a justification. The bank subsequently did not sell the fund units until mid-March 2020, which was an extremely unfavourable time, as the securities prices had already fallen substantially due to the Corona crisis. The client demanded compensation from the bank for the reduced proceeds. The bank and its pension foundation rejected his claim, whereupon he submitted the case to the Ombudsman. In the course of the Ombudsman proceedings, the client was finally fully compensated by the bank.

As is usual with pension foundations set up by banks, the bank was the managing director of the pension foundation with which the client had concluded a pension agreement. The client refused to comply with the bank's request, sent to him several months after his termination order, to obtain a current confirmation of residence for the dissolution of the pension agreement. He claimed that he had never changed his place of residence since opening the pension account in 1993 and that the bank had always corresponded with him using this address. He considered the requirement to be harassing and referred to other pension foundations that had not required him to confirm his place of residence when he terminated his pension relationship. The bank referred to the regulations of the pension foundation and insisted on the confirmation of residence.

The client turned 65 in January 2020. The applicable pension fund regulations stipulated that the pension relationship must be terminated at the latest when a client reaches the AHV retirement age, if the respective client did not previously confirm to the pension foundation that he was still employed. Based on this, the bank finally terminated the pension relationship independently without having received a confirmation of residence. However, this did not happen until 17 March 2020. The fund shares were also sold on this – retrospectively – very unfavourable date, which meant that the client received considerably lower proceeds than he would have, had the shares be sold at the termination date he had requested, which was at the beginning of January 2020.

In response to his complaint against this procedure, the bank stated that the customer had not complied with its request to submit a current confirmation of residence despite several requests. The certificate of receipt from 1993 submitted by him was not sufficient. The requests had been made before the Corona crisis. The pension foundation reserved the right to sell the fund units at the price determined by it, provided the pension assets were invested in investment groups. The client could not accept these arguments and submitted the case to the Ombudsman.

In his submission, the customer told the Ombudsman that he still did not see why, in view of his personal situation, he had to submit an official confirmation of residence, which entailed fees. There was no reasonable doubt as to his residence. Furthermore, the relevant provision could only make sense as a prerequisite for the payment of the credit balance, since it was probably intended to ensure that withholding tax could be deducted before the credit balance was paid out if the client had moved his residence abroad. In any case, the lack of a current confirmation of residence could not be

used as a reason why the units in the pension fund could not have been sold at the time he wanted. Finally, the client pointed out that the regulations of the pension foundation stipulate that the pension relationship must be terminated when the client reaches AHV retirement age. In his case, this had been the case in mid-January 2020 and thus only a few days after the sale date he had requested. If the fund units had been sold at that time, he would not have incurred a loss. By selling the fund units only in mid-March 2020, the bank had also violated the pension fund regulations.

The Ombudsman contacted the bank and asked it to reconsider the client's case in the light of these arguments. He also pointed out to the bank that the provision in the regulations stating that the pension foundation was entitled to request a current confirmation of residence in order to determine the client's place of residence was expressly formulated as an "optional provision". In the Ombudsman's view, given the personal circumstances described by the client, it was in fact impossible to see why this was mandatory in the present case. After re-examining the case, the bank decided to compensate the customer in full for the damage claimed, but continued to insist on a current confirmation of residence for the payment of the credit balance. The client finally agreed to submit one, quoting the popular saying: "the wiser head gives in....".