

Incorrectly executed balancing order of an executor of a will

Topic: **Stock exchange / securities account** Case number: **2021/19**

The executor instructed the bank to balance the account of the deceased and to transfer the account balance and the securities to his executor account at another bank. Instead of transferring the securities, the bank sold them and transferred the sales proceeds. After receiving the statements, the executor complained to the bank and demanded that it buy back the shares and pay for the heirs' loss. The bank refused. After a written complaint about a month later, the bank agreed to compensate the community of heirs for the lost profit due to the now higher price of the shares minus the saved securities transfer fees. The executor refused and contacted the Ombudsman. He continued to demand the reversal of the securities sales and pointed out that the loss had increased again due to the renewed rise in prices. The Ombudsman informed him in a notice that, in his opinion, the bank had made him a fair compensation offer and that a further concession in the mediation procedure was unrealistic.

The bank explained to the executor that a transfer of securities to an account, as he had requested on his behalf, was not possible. Securities could only be transferred in favour of a securities account. It also took the view that the sale had been in the interest of the heirs, who were known to the responsible client advisor. It refused to reverse the sale, as the banking relationship with the deceased had been balanced in the meantime.

The Ombudsman shared the executor's view that a sale of the securities had not been permissible on the basis of the situation described, even taking into account the bank's arguments, without consulting him, and could therefore well understand his displeasure about this. The executor claimed that the securities had continuously increased in value. Since they were no longer present in the inheritance portfolio, the heirs could not have benefited from this increase in value. This argument was also understandable.

However, the Ombudsman was of the opinion that in finding a solution in this case, the duty to mitigate damages of the heirs represented by the executor, who had been harmed by the incorrect execution of the order, should be taken into account. The executor could have easily bought back the securities with the funds of the estate after his application for reversal had been rejected by the bank for the first time. He could then have claimed the loss, consisting of any price gain between the sale and the repurchase that took place a short time later, as well as the transaction costs against the bank. The heirs would have been able to profit from the price development again, and the damage would have been considerably less than that which had finally arisen due to the delay.

Taking into account the duty to mitigate damages, the Ombudsman considered the bank's offer of compensation to the executor to be reasonable. The bank agreed to compensate him for the difference between the proceeds of the sale and the market value the sold securities would have had at the time of his written complaint. From this amount, the bank deducted the transfer costs that would have been incurred if the executor's original order had been executed correctly. The Ombudsman therefore did not see any convincing arguments that he could have presented to the bank to persuade it to pay a higher compensation or to offer another solution. He closed the case with a notice to the executor.