

Increase of the interest rate for a fixed-rate mortgage set out in the written contract by the bank with reference to an error

Topic: **Fixed-rate mortgage** Case number: **2021/10**

The client claimed that he had received a new mortgage contract from the bank in connection with the purchase of a condominium, which indicated an interest rate of 1.3% for the fixed-rate mortgage. About eight months later, the bank declared that the contract was not valid and increased the interest rate to 3.1%. After the interest rate of 1.3% had already been charged for several quarters, he had received additional charges without his consent. When he complained to the bank, it explained to him that the correction of the interest rate to 3.1% and the additional charges were justified, as the increased interest rate corresponded to the actual agreements and it had made a mistake when drawing up the contract with an interest rate of 1.3%. The client then submitted the case to the Ombudsman. In the mediation procedure, the Ombudsman came to the conclusion that the bank had acted correctly. The client accepted this explanation.

The bank explained to the client in its reply to his complaint that he had sold his property and bought a condominium. His old property had been encumbered with a 10-year fixed-rate mortgage, which had continued to run for a good year beyond the date of the sale. With regard to this fixed-rate mortgage, it had been agreed to waive early termination in order to avoid an early repayment penalty. The fixed-rate mortgage had been transferred to the new condominium under the same conditions. When the mortgage contract was amended, the two digits of the interest rate were mistakenly interchanged, so that instead of the interest rate of 3.1% of the still current fixed-rate mortgage, a new, never agreed interest rate of 1.3% was listed. At the end of the year, the bank had discovered this during a check and corrected the error, which he was informed of immediately.

In his submission to the Ombudsman, the client did not say a word about the history and the negotiations that had led to the new mortgage contract. In a first step, the Ombudsman therefore asked him to comment on the bank's statement of facts. In particular, he asked him to explain whether it was true that he had decided to transfer the existing fixed-rate mortgage with an interest rate of 3.1% to his new fixed-rate mortgage in order to avoid an early repayment penalty in connection with the sale of his old property. In addition, the Ombudsman asked him whether there had ever been any discussion about reducing the interest rate to 1.3% during the relevant negotiations.

The Ombudsman supplemented his questions with the following comments: It seemed to him that the digits of the interest rate before and after the decimal point had been interchanged when the contract was drafted, if the bank's account of the history of the contract was correct. The Swiss Code of Obligations clearly stipulates when and within what period of time a contracting party has the right to come back to such an error. In the Ombudsman's view, if the presumption was correct and the digits had indeed been switched in error, without there ever having been a prior agreement on such an interest rate reduction, the bank was perfectly entitled to revert to it in the form in which it had done so.

The customer then confirmed to the Ombudsman that the statement of facts was correct. He thanked the Ombudsman for his explanations and said that he would inform the bank that he accepted the retroactive correction.