Loss with futures on oil

Topic: **Other loans** Case number: **2020/06**

> The client purchased oil futures on 20 April 2020 when their price was close to 0, expecting a profitable price increase. On this day, however, the relevant oil price was negative for the first time in history, which caused the client a loss in the order of CHF 100'000. Since he did not have a corresponding account balance at the bank, the bank demanded immediate settlement of the negative balance. The client claimed that due to problems with the trading platform and the unavailability of the bank's employees, he had not been able to take measures to minimise the loss. He therefore demanded that the bank waive at least part of the claim. The bank categorically refused to accommodate him. No solution could be reached in the Ombudsman proceedings.

After 20 April 2020, several clients complained to the Ombudsman about losses with oil futures, which were largely caused by the negative oil price. A future is a standardised, exchange-traded forward transaction. The investor undertakes to purchase a certain quantity of an underlying asset, in this case oil, at a predefined price on a certain date. If the actual price of the underlying asset is higher than the predefined price on this date, the investor makes a profit. If it is lower, he makes a loss, which as a rule can amount to a maximum of the purchase price of the futures. This was communicated to the customer by the bank in its risk disclosure provisions. Since the price of the futures he had bought was close to 0, a profit seemed practically certain to the client. In his eyes, this was only offset by a small risk of loss.

On 20 April 2020, however, everything was different. The oil price was negative for the first time in history. The event was widely discussed in the press. According to the customer's account, the bank's trading platform could not map a negative price. It was not possible for him to immediately resell the futures he had bought because he could not enter a corresponding order. The bank's lines were constantly busy. He could not reach any employee of the bank to place the sell orders by telephone. When he was finally connected to an employee, the futures had already expired and were settled in cash. Since the client had no corresponding account balance at the bank, he was confronted with a claim for about CHF 100'000, which he should have settled immediately. According to his statements, he settled part of it with his available savings. The bank had promised him to at least waive the debit interest in return.

The next day, after a sleepless night, the client decided to dispute the bank's claim in principle. In his opinion, the risk disclosure was wrong, as he had lost far more than just the purchase price of the futures. In addition, he had been blocked after the purchase. He had been unable to do anything to reduce the impending loss. The trading platform's sales function had been unavailable. It no longer displayed the exchange prices of the futures correctly and no longer accepted sell orders. Since no responsible employee could be reached, it had not been possible for him to place the sell order by other means. He was also of the opinion that the bank should have sold his positions automatically, as he did not have the necessary collateral for prices below 0. In addition, he read in the press that a foreign bank competing with the bank had waived its claims from futures, which had arisen because of the negative oil price. He wrote a complaint to the bank's management. This remained unanswered for several months. The bank finally refused to make concessions.

The bank claimed that it was not responsible for the client's loss despite the false risk disclosure. It was not possible to fully map the risks of such a trade. The price development of oil on that day had been a historically unprecedented event for which the clients were liable on the basis of the relevant contractual provisions. The trading platform had functioned perfectly on that day. It was entitled, but not obliged, to carry out a forced sale in the absence of collateral. It did not comment on the alleged concessions to the client regarding the debit interest. The client then submitted the case to the Ombudsman.

The bank maintained its position vis-à-vis the Ombudsman and categorically refused to settle the matter amicably. It denied that it had made any concessions to the client and continued to claim that the trading platform had worked perfectly on the day in question. Although it had not been able to show negative prices, the bank was not liable for missing or incorrect price information. The bank explained that the client could have easily placed a sell order by telephone or, if necessary, placed so-called stop-loss orders in advance.

The Bank reacted in the same way in comparable cases submitted to the Ombudsman. No binding decisions can be made within the framework of the ombudsman procedure. The Ombudsman had to leave the question of whether the contractually stipulated comprehensive passing on of risk to the customer would actually be valid in this case to a possible judicial assessment. Moreover, facts that are presented differently by the parties cannot be clarified in a binding manner in the ombudsman proceedings by means of evidentiary proceedings. The Ombudsman had to assume that the bank was not prepared to make concessions in these cases for fundamental reasons and therefore had to close the case without result. The client decided not to settle the bank's claim. The bank was thus forced to initiate collection proceedings. The client stated that he would defend himself in the collection proceedings and assert his arguments in the necessary court proceedings.