Losses within the scope of an asset management mandate

Topic: **Asset management** Case number: **2019/08**

> The client, who was represented by a lawyer, had an asset management mandate with the Swiss subsidiary of a major international bank for many years. The bank gave up part of its business and suggested that the client concerned switch to another bank of her choice. The client accepted this proposal. Almost one and a half years later, the client terminated the asset management mandate and complained to the new bank about losses and excessive fees. She demanded compensation for the difference between the value of her portfolio when it was taken over from her former bank and the value of the same when the business relationship with the new bank was terminated. The latter refused to do so, arguing that the losses were caused by negative market developments in 2018. In the context of an asset management mandate, the investment risk had to be borne by the client and no specific investment performance was owed. The fees charged by it had been validly agreed and it had implemented the mandate correctly. The client's lawyer then turned to the Ombudsman. In the ombudsman proceedings, the bank was prepared to compensate the customer on a small scale by way of a settlement, which she accepted.

The value of the client's portfolio was less than CHF 200,000. She demanded compensation from the bank of around CHF 10,000. Her lawyer was of the opinion that the annual fees of 1.5% of the value of the investments charged by the bank were exorbitant. In addition, at 40%, the equity component was too high for a conservative investment strategy. The bank also took foreign currency risks, which it hedged with relatively expensive swaps. With a conservative investment strategy, it should not have taken on any foreign currency risks at all. Finally, he objected to the large number of transactions and did not accept the bank's statement that these were due to withdrawals of money from the client, as no such withdrawals had taken place. According to the lawyer, given the value of the portfolio, an investment in a few broadly diversified investment funds would have been more appropriate.

The lawyer's complaint to the Ombudsman was relatively superficial. The Ombudsman therefore asked him to address the Bank's arguments and to comment on the allegation that the losses were due to negative market developments that affected the entire investment community. In addition, he was asked to state what specific losses his client had suffered as a result of the misconduct he claimed had been committed. Finally, he was asked to explain to what extent the fees charged by the bank were exorbitant. He did not comply with this request and made no further comments in the ombudsman proceedings.

However, as the Bank's previous statements to the client's lawyer raised questions, the Ombudsman contacted the Bank nevertheless and asked it to comment on the case. Since this statement contained allegations that turned out to be contrary to the case file, the bank had to be reminded several times to deal with the various complaints carefully. Finally, the bank stated that it had changed the portfolio after taking over the client's former bank because it contained many products which were foreign to its investment universe and which it had not actively pursued, namely many of the former bank's own products. Contrary to her earlier assertion, the client had not withdrawn any assets that had led to the adjustment of investments. The "balanced" investment strategy pursued by the previous bank with an investment horizon of four to seven years corresponded most closely to the “conservative” investment strategy in the classification of the new bank. This investment strategy included approximately 45% bond funds, 25% equity funds, 15% alternative products and 15% liquidity with a deviation of approximately 5%. Since bonds in CHF would hardly yield any returns, the bank invested in USD bond funds and hedged the currency risk with swaps. It demonstrated with comparative figures that the investment performance of the mandate was disappointing, but not exceptionally bad. The losses were not due to errors and it had to be taken into account that the mandate, which was designed for an investment target of 5 to 7 years, was terminated after a short time, after a phase with a generally very disappointing market development in 2018. The fees charged by the bank, which the client had requested to be reimbursed as part of the loss she had incurred, were lower than those charged by the previous bank and had been accepted by the client. The bank also referred to a written declaration of discharge by the client in which, a few months before the dissolution of the mandate, the client expressly accepted its implementation and the associated transactions and released her from liability. In order that the case could be resolved comparatively, the bank was prepared to reimburse the client for the fees for the currency swaps totalling approximately CHF 700.

The Ombudsman would only have been able to continue his mediation efforts if the client’s lawyer had been able to demonstrate to the client that the management fees had not been validly agreed and that the losses had arisen because the bank had made mistakes in the implementation of the asset management mandate which had led to an adequately causal damage for its client. As no such arguments were presented to the Ombudsman despite being requested to do so, he recommended the proposed settlement for acceptance. The client’s lawyer followed this recommendation.