Losses within the scope of an asset management mandate

Topic: **Asset management** Case number: **2019/07**

> The clients concluded an asset management mandate with the bank in January 2018. After suffering book losses of around 7% of the assets invested in the mandate, they terminated the mandate in December 2018 and sold the investments at a loss. They demanded full compensation from the bank for the fact that the asset management mandate did not match their client profile. The bank refused to pay compensation. In the course of the ombudsman proceedings, it became apparent that the parties' accounts of how the asset management mandate came about differed widely and that, as a result, key questions could not be clarified. No solution could therefore be reached.

According to the clients, they had transferred part of their savings to a bank in Switzerland several years ago due to a major economic and political crisis in their country of domicile. They had merely wanted to keep them in safe custody and were not prepared to take investment risks. After a change in client advisory services, they were forced to take out an asset management mandate. The new client advisor had made it clear to them that they would no longer be welcome as clients if they did not invest their banking assets, around 80% of which they held in the form of account balances. They had pre-signed the documents for the client profile, which had been drawn up before the asset management mandate was concluded. These were subsequently completed by the client advisor himself. The resulting risk capacity and risk tolerance was therefore incorrect. From the circumstances explained, they concluded that the bank had to compensate them in full for the losses incurred.

In its statement to the Ombudsman, the bank stated that it had regularly discussed investment ideas with the clients and that they had been open to them. Against the background of the low interest rate environment, they had been advised to invest more than 20% of their bank assets. No undue pressure had been exerted on them. In view of their comfortable financial circumstances, it was perfectly justifiable to take certain investment risks. The proposed mandate was fully in line with the risk capacity and risk appetite of the clients. In fact, the documents for the client profile had been pre-signed by the clients. However, the client advisor completed them together with them during a telephone conversation and explained in detail the asset management mandate selected on the basis of these documents. The completed documents were subsequently sent to them. The asset management mandate was terminated after such a short investment period, contrary to the bank's recommendation. If the clients had maintained the mandate, the book losses would have disappeared again after a relatively short time. The bank was not prepared to compensate the clients and took a firm stance in this regard.

As a rule, investment losses must be borne by the clients, unless the bank's misconduct is evident, e.g. incorrect clarification of the clients' risk capacity and risk tolerance or incorrect implementation of the selected asset management mandate.

The documents relating to this case clearly showed that the clients were very unlucky both in terms of the time when the asset management mandate was concluded and the time when it was terminated. In retrospect, both were chosen in such a way that the well-known poor investment year 2018 had a very negative impact on them. It also became apparent that they reacted very nervously to the book

losses. The client advisor was badly insulted.

There was no doubt that they were capable of taking risks. However, the question arose as to whether their risk tolerance had been correctly assessed. The Ombudsman had no doubts about this purely on the basis of the documents. The documents described the risks of the mandate in a transparent manner and with clear examples which, in the Ombudsman's opinion, should have been understood by academically educated clients. Based on these examples, they could have recognized that they were taking certain risks with the investments. If, as they pointed out, they really did not want to take such risks at all, they would have had to forgo the conclusion of the mandate altogether. There is no such thing as investments without risks entirely, which can be assumed to be common knowledge. According to the documents, the clients had already taken investment risks in the past with part of their bank assets. The extent of the book losses was incidentally unremarkable within the scope of the mandate against the background of the poor investment year 2018.

However, the parties' account of how the documents had been prepared differed greatly. As a neutral mediator, the Ombudsman must respect the parties' credibility. Therefore, actual evidence procedures such as the examination of witnesses cannot be part of the ombudsman procedure. The different representations of the facts of the case could therefore not be clarified in the course of the ombudsman procedure. The Ombudsman was able to understand that the customers were disappointed about the investment losses suffered. He explained the arguments of the parties in a final notice. They were informed that they could turn to the ordinary courts if they wanted to pursue the claims they had asserted. The Ombudsman advised them to consult a competent lawyer in advance about the opportunities and risks of such a step and drew their attention to the fact that they basically bear the burden of proof for their presentation of the facts, which differed from the written documents.