

Payment instructions debiting an estate account

Topic: **Proof of identity** Case number: **2018/24**

One of the co-heirs of the bank client asked the bank to debit the deceased's account for a bill for expenses incurred by her prior to the customer's death, and to pay a similar bill from a fiduciary company commissioned by her. The bank refused to debit the deceased's account for both invoices and insisted on the submission of a certificate of inheritance and the agreement of all heirs for the requested transactions. The co-heir then contacted the Ombudsman and asked if there was any way to convince the bank to pay the two bills from the account without the agreement of the numerous other co-heirs. The Ombudsman had to disappoint her.

According to the co-heir, she was the only person in contact with her elderly aunt who died in an old people's home. She had assisted her aunt in various ways for many years and had engaged a fiduciary company to carry out certain administrative tasks after her death. The expenses associated with the death were paid by the bank from the deceased's account but not the joint heir's bill for the services she provided or the bill for the fiduciary company she hired. For these, the bank requested a certificate of inheritance and the agreement of all heirs. The joint heir obtained the certificate of inheritance. More than 10 heirs were listed on it with whom, according to the co-heir, the deceased had had no contact. The balance in the bank account was just under 20,000 CHF. The co-heir therefore felt it unreasonable for her to contact the other heirs, unknown to her for the most part, and request their consent to debit the account. On the one hand she wanted the Ombudsman to tell her if there was any way the bank was obliged to pay the bills from the estate account as requested, and, on the other, whether she could prohibit the bank from continuing to contact her about the account.

The Ombudsman informed the co-heir that the bank can only follow the instructions given by its customer or by a person authorised to represent said customer. Upon the customer's death, the community of heirs of the deceased jointly become the bank's contracting partner. As the Ombudsman understands it, until such time as the estate has been divided up, the heirs can only dispose of assets belonging to the estate jointly or through a jointly instructed representative. If bills are submitted to the bank for payment from the estate account, the bank may only then pay these with a corresponding instruction from the community of heirs or where the requirements for agency without authority pursuant to Art. 419 et seqq. of the Swiss Code of Obligations are met. Under the latter clause, in the case of an estate, the bank must check that the requested payment would be in the recognised best interests of all members of the community of heirs. For costs associated with the death, this is obvious. The bill submitted by the co-heir for her own services is somewhat different. By her own admission, she had provided such services for years free of charge. These could therefore be deemed courtesies on account of a personal connection rather than remunerated services. In the case of the bill for the fiduciary company, it could be argued that these were unnecessary expenses. In other words, the other co-heirs could object to both of these bills. The Ombudsman therefore saw no error on the part of the bank in refusing to pay these amounts.

Moreover, the members of a community of heirs are joint owners of the assets in the estate and, subject to contractual or statutory powers of representation and administration, hold all rights over the inheritance jointly. In the Ombudsman's view therefore, it was for the co-heir and the other heirs

to organise themselves as a community of heirs. If this is unsuccessful, the law states that, at the request of a co-heir, the relevant authority can appoint a representative for the community of heirs until such time as the estate has been divided up. The banking relationship will continue to exist, in principle under the same contractual terms and conditions, until it is terminated and the account is closed. Ultimately, the Ombudsman did not see any way of prohibiting the bank from continuing to contact the co-heir in relation to the account relationship either.

Finally, the Ombudsman recommended that the co-heir contact the other co-heirs and that they organise themselves as a community of heirs in order to reach an agreement regarding payment of the two bills and so that the estate can be finalised jointly. If this was unsuccessful, she would be free to make use of one of the remedies provided for by law for such instances.