

# Requests for repayment of the bank following an investment fraud

Topic: **Abuse and fraud** Case number: **2023/08**

At the instigation of unknown fraudsters, the client opened an account with a well-known crypto exchange and bought an amount in a cryptocurrency, charging his credit cards with considerable sums over time. He then transferred the cryptocurrency amounts to unknown third parties, where they disappeared. He accused the bank of having insufficiently checked the crypto exchange and demanded that it should initiate a so-called chargeback procedure. The bank refused, as the relevant deadlines had already expired. The Ombudsman saw no basis for initiating a mediation procedure in this case, as the client only requested the chargeback procedure when he had already transferred – on his own initiative – the cryptocurrencies from his account with the beneficiary of the card payments.

The client explained that he had been a victim of fraud. In the course of 2022, as part of the actions provoked by the fraudsters under false pretenses, he charged over CHF 170 000 to his credit cards issued by the bank without having recognized the fraud. He claimed that the crypto exchange where he had used his credit cards had not provided its services. In such a case, longer chargeback periods of up to 540 days would apply, during which the amounts charged could be reclaimed on the grounds that the retailer had not provided the promised services properly. The chargeback code is “Services Not as Described”. The bank had, as the client set forth, not checked this and had assumed in its reply that he had denied having authorized the charges. This, however, was undisputed.

The client argued that the crypto exchange, which is well-known in the market, had claimed to comply with money laundering regulations and to subject the transactions commissioned with it to a due diligence check, which it had not done. In addition, it would have needed a FINMA license for its activities with Swiss clients but did not have one.

The documents relating to the criminal complaint filed by the client in this connection showed that he had used the credit card charges to purchase cryptocurrencies from the crypto exchange and then had transferred these to the wallets of the fraudsters. It also emerged that the events took place between December 2021 and March 2022, and not by the end of 2022, as the client had stated.

The Ombudsman could well understand the client’s dismay at the fraud to which he had fallen victim, and which had caused him considerable damage. As part of his role as a neutral mediator, he had to examine whether there was sufficient evidence of misconduct on the part of the bank that had issued the credit cards and whether the client had suffered a loss as a result.

An issuer of credit cards in Switzerland has no obligation to check the recipient of card payments. Within the credit card network, it is the task of the acquirer bank to check which merchants accept card payments and to conclude the necessary contracts with them for the acceptance of cards as a means of payment. Moreover, it is primarily the cardholder’s responsibility to check a merchant and its services before making a card payment. If a transaction is ordered by the cardholder, the card issuer must in principle process it. It usually has no knowledge of the transaction paid for with the card and does not have to question it. The question of whether the merchant needed a FINMA license

and what the civil law consequences would be if he did not have one was irrelevant in this case, as the events took place after the FinSA came into force but before the corresponding transitional periods expired at the end of 2022.

The crypto exchange from which the client purchased the cryptocurrencies was licensed as a “virtual asset provider” at its registered office and was supervised by the local regulator. The client dossier did not reveal which allegedly promised anti money laundering and due diligence services it was supposed to have violated.

On the other hand, it was clear from the documents that the client had already transferred the cryptocurrencies – which were correctly acquired on the basis of his orders and paid for with the credit cards – to third-party crypto wallets at the time he submitted the request for repayment to the card issuer. A chargeback procedure, as the client had requested from the bank, would probably have been unsuccessful under these circumstances, even if the deadlines had been met, as the crypto exchange would argue that it had provided the services paid for with the cards as ordered by the client.

For these reasons, the Ombudsman was unable to find any convincing arguments in the client’s dossier that would have allowed him to initiate mediation proceedings with the card-issuing bank with any prospect of success. He closed the case with an explanatory notice.