

# Termination of the business relationship with a Swiss national living abroad in the USA

Topic: **Domicile abroad** Case number: **2022/08**

The complainant had a long-standing business relationship with the bank's subsidiary. This relationship was transferred to the bank as it took over its subsidiary through an absorption merger. The bank then terminated the business relationship, but refused to give the client balance in cash, as he wished, and also did not agree to the proposed alternative of transferring his balance of around CHF 60 000 to his father's account. After the client was unable to find a solution despite an exchange of letters that lasted several months, he submitted the case to the ombudsman. In the ombudsman proceedings, the bank showed itself willing to agree to a cash settlement after re-examining the relevant facts.

The termination of the business relationship was justified to the client by the bank's compliance department with the lack of FATCA documents, which were necessary for clients in his situation. FATCA is the so-called "Foreign Account Tax Compliance Act", a US tax law with far-reaching consequences for foreign financial institutions and their affected clients. However, the bank's claim turned out to be false: the FATCA documentation required by the bank had been provided by the client without any gaps. Moreover, the client was fully "tax transparent", i.e. he had always fulfilled his tax obligations to the US authorities and was also willing and able to provide the corresponding evidence. However, the bank adhered to the termination of the banking relationship because it did not want to have any more client relationships of this kind for business policy reasons.

In his situation, the client was unable to open a bank account in Switzerland on acceptable terms within the time limit set by the bank. Since he regularly stays in Switzerland for longer periods of time and needs money here, he decided to balance the terminated account in cash and then use the money in this form for holidays and purchases, which was, however, refused to him by the bank. Later, he agreed with his father that the latter should hold his money in trust in his bank account. The bank also refused the transfer necessary for this. It insisted that the money be transferred to an account in his name. The bank justified this attitude to the client with internal directives and requirements, about which it did not provide any more detailed explanations.

After his last complaint, the bank drew the client's attention to the fact that, on the basis of Art. 45 of the Banking Ordinance and the Swiss Bankers Association Guidelines on the treatment of assets without contact and dormant assets held at Swiss banks, it was obliged after a certain period of time to publish and deliver such assets to the Federal Finance Administration if no contact could be established with the client, a legal successor or a representative. It further stated in general terms that the conditions imposed for netting would serve the client's security and clarity regarding the ownership of the assets.

The client then contacted the Ombudsman and demanded that the bank allow him to balance the account it had terminated in the form he had requested. In addition, he demanded the reimbursement of newly introduced fees for clients domiciled abroad, which were incurred after his first balancing order was refused by the bank. Furthermore, he did not understand the reference to the provisions on assets without contact and dormant assets and the comment on security and clarity

of ownership.

The Ombudsman then contacted the bank and pointed out that, in his view, the client was entitled under civil law to dispose of his credit balance, including by means of a cash withdrawal (Art. 84 of the Swiss Code of Obligations). Should the bank not permit such a disposal, or only permit it to a limited extent, it would have to be able to clearly justify this by stating the legal basis used. Such a justification was not apparent in the correspondence with the client to date, insofar as the Ombudsman was aware of it.

The bank finally showed itself willing, after consultation with its specialist departments, to exceptionally allow the account to be balanced in cash and to repay the fees charged. The Ombudsman was pleased that the case could be resolved. However, he felt obliged to make a clear criticism to the bank, as he considered the handling of the client complaint to be deficient in several respects before he became involved. He also made it clear to the bank that, in his opinion, the issues underlying the case had nothing to do with the provisions on contact and dormant assets and should not be mixed up with them under any circumstances.