

Withdrawal of a financing commitment by the bank

Topic: **Fixed-rate mortgage** Case number: **2022/16**

The clients lived in a couple relationship and explained that they had concluded a five-year fixed-rate mortgage with the bank in April 2021 for the purchase of a property with a term starting in April 2022. Shortly before the term began, the bank informed them that it would not grant the financing. The clients had to take out alternative financing with a competing bank. Due to the increase in interest rates for fixed-rate mortgages in the meantime, they suffered damages, which they claimed against the first bank. After the bank refused to make concessions, the clients contacted the Ombudsman. In the ombudsman proceedings, the bank largely accommodated them.

The clients had obtained offers from various banks at an early stage for the financing of their residential property, which they wanted to purchase in April 2022. They submitted the required documents to the banks. After consulting with his superiors, the client advisor of one bank presented them with a very attractive offer, which they accepted in the form of a five-year fixed-rate mortgage by e-mail at the beginning of April 2021. When they asked if they still needed to do anything, the client advisor replied that no, everything was “okay” and he would initiate the issuing of the contracts. Shortly afterwards, the client advisor died unexpectedly.

A new client advisor was assigned to the clients. At the end of 2021, discussions were still taking place with the new client advisor about the details of the mortgage, including the amount of pension assets that should be used and questions about amortisation. The clients also asked whether a consumer loan that one of the partners wanted to take out would negatively affect the affordability calculation for the mortgage. In mid-March 2022, the client advisor informed them, to their surprise, that the financing would not be granted. The clients immediately wrote to the bank asking it to honour what they considered to be a binding commitment for the mortgage. The bank then informed them by letter that the offer made in mid-March 2021 had contained conditions, including the need for credit approval from the competent authorities. There was no such approval, and the mortgage was not eligible for approval because it did not meet the requirements regarding the share of own funds for owner-occupied residential property. Thus, the conditions for credit approval were not met.

In order not to jeopardise the purchase of the residential property, the clients had to find alternative financing immediately. They took out a Saron mortgage with a competing bank, from which they had already obtained an offer earlier, as the interest rates for fixed mortgages had risen sharply in the meantime. They claimed damages of almost CHF 14 000 from the original bank, consisting of the difference between the then current Saron interest rate and the agreed interest rate for the five-year fixed-rate mortgage for its entire term. The bank refused to make any concession.

The clients submitted the case to the Ombudsman and reiterated their claim for damages. They pointed out that the CHF 14 000 was the minimum they were claiming because with the Saron mortgage they had to bear the risk of interest rate increases over the next five years, which they would not have had with the fixed-rate mortgage. The Ombudsman contacted the bank and pointed out that, in principle, a mortgage can be concluded without any formalities and that the conclusion of a mortgage is to be affirmed if the parties agree on the essential key data (amount, term, interest rate). Based on the e-mail exchange with the former client advisor at the beginning of April 2021 and

the documents available to the Ombudsman, it could be assumed that the parties had reached a mutually binding agreement on a five-year fixed-rate mortgage and that the clients no longer had to expect that the bank would withdraw its commitment.

In its statement to the Ombudsman, the bank admitted that the communication in this case had not been as it should have been. It had to be assumed that the former client advisor had wanted to communicate that he would initiate the credit approval process, not the issuing of the contracts. According to the bank, the fact that a loan approval process was still underway should also have been clear to the clients, who had never asked for the contracts for months and were still discussing approval-relevant points with the new client advisor at the end of the year. The main reason for the refusal was negative entries at the Central Office for Credit Information. The bank was of the opinion that the clients could and should have looked for financing alternatives long before the negative decision and thus also before the increase in interest rates for fixed mortgages. It was therefore still not prepared to make any concessions.

The Ombudsman then discussed the case with the bank management. He again pointed out what he considered to be clear communication between the former client advisor and the clients. In his opinion, the bank did in principle present factual reasons for refusing the mortgage. However, these were already known at the time of the former client advisor's commitment, or the necessary information would have been available at that time. These should therefore have been included in the loan approval process before the commitment was made. The bank then decided to compensate the clients for the difference between the Saron interest rate at the time and the interest rate for the five-year fixed-rate mortgage for its entire term. It refused to provide further compensation for possible interest rate