AUTORITÉ DES MARCHÉS FINANCIERS

The Ombudsman's Case of the Month
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Misexecution of trade orders: when a complainant is mistaken about his actual loss

My main tasks in each mediation case are to determine whether a malfunction has occurred, establish any losses resulting from it and, where such is the case, evaluate the nature and amount of that loss. Sometimes, however, it turns out that the complainant's actual loss is not what he or she believes. That is what happened in this month's case.

The facts

Ms S emailed her bank on 5 May 2015 saying she wanted to sell her shares in A, B and C that same day at the limit price[1], i.e. setting a minimum price at which the order should be executed.

The following day, she checked her account and found that the sales orders had indeed been executed but below her limit price. She contacted her intermediary, who offered to cancel the disputed trades free of charge as a goodwill gesture.

Ms S considered the intermediary's offer inadequate and asked me to help her recover the difference – approximately €5,000 – between her limit price and the execution price.

The analysis

After examining Ms S's case file, and based on the trade advices she provided, I concluded that the bank had failed to carry out her orders (a copy of which she sent me) because it had executed them at market rather than at limit, as requested.

That said, although the orders ought to have been passed with the limit specified in her instructions, it transpired from the trading records that they could not have been executed under any circumstances, since the limits set by Ms S had not been reached on 5 May 2015.

Limits set by Ms S vs. highest price on 5 May 2015

	Minimum limit set by Ms S	Highest price at 5 May 2015
Share A	€35	€33.11
Share B	€95	€84.64
Share C	€128	€124.80

Moreover, unless specific references and special provisions are stipulated in the account agreement, a trade order is valid only for the trading day on which it was placed[2]. Consequently, in accordance with market rules and the account agreement[3], Ms S's orders gave no specific validity and would thus have expired at the end of the 5 May trading session. She ought to have renewed them, at either the same price or a different price, as she deemed fit.

[1] A limit order specifies a maximum acceptable purchase price and a minimum acceptable sales price. It can be executed only at the set price or better. See Article 2.1.2 of Euronext Instruction 4-01– Trading Manual

[2] Article 4204/1, Euronext Rule Book I: "Orders entered into the Central Order Book may be valid for the Trading Day, until a specified date, or until cancelled, subject to a maximum duration of 365 days. Absent specification of its duration, an order shall be deemed to be valid for the Trading Day".

[3] "Absent specification of its duration, an order shall be deemed to be valid for the Trading Day." *ibid*

The recommendation

Even though – regrettably – the bank did make a mistake in sending Ms S's orders, I concluded that Ms S did not suffer the type of loss alleged in her complaint, calculated on the basis of the price at which she wanted to sell her shares.

I was unable to rule that a loss of opportunity had occurred in this case, precisely because there was no opportunity to execute the orders, given that the minimum prices stipulated by Ms S had not been reached either on 5 May 2015 or thereafter.

But even though I could not uphold Ms S complaint on the given grounds, she nevertheless had suffered a loss, since she no longer owned her shares and could not therefore renew her selling instructions at the price she wanted. In my view, therefore, Ms S's loss should be compensated by cancelling the trades free of charge. Which is precisely what her intermediary had offered to do.

I therefore informed Ms S that, in my view, her bank's proposal was both appropriate and constituted due compensation for her loss.

The lesson to be learned

It is sometimes hard for investors or savers to be objective about the type of loss they believe they have incurred or the amount of damages due to them. My role in such cases is to clarify this delicate issue and explain the underlying reasons. In the case in point, there are two lessons to be learned.

First, as case law regularly demonstrates, the distinctive feature of civil liability is that it restores the balance as precisely as possible and puts the victim – here, the client – in the situation he or she would have been in had the prejudicial act not occurred (in this case, order execution). In this particular case, Ms S ought to have remained in possession of her shares unless the minimum price she had specified was reached. This is what the financial institution offered to do, at its own expense.

The second lesson is that it is necessary to set a limit date when placing trade orders; if not, an order is usually valid only for the trading day on which it is placed. Be that as it may, some financial institutions provide for a longer period in their account agreements. Investors should therefore check this point.

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