AUTORITÉ DES MARCHÉS FINANCIERS

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In a management mandate, clients may not base their claims on the fact that they have not given any instructions

Retail investors can decide to be independent and manage their securities portfolio themselves. In this case, they should be able to understand the meaning of the different types of orders that exist (e.g. "market order", "limit order" etc.) and to react to market fluctuations.

They may also opt for a discretionary mandate. In this case, their portfolio is entrusted to a specialist who will make investment decisions based on the objectives and risk level defined in advance by the investor, among other things.

As we will be seeing in this month's case, disputes may occur if investors are not financially savvy enough to understand why the order that they have given has not been executed and why some orders are executed without any instructions on their part.

The facts

Mrs. C. was unhappy with her bank's response to her complaints and contacted me regarding two disputes:

On the one hand, the shares of a company in her securities account had not been sold in accordance with her instructions, i.e. at a price exceeding €70.

On the other, securities in her equity savings plan had been sold without any instructions from her.

Investigation

I contacted Mrs. C.'s bank which provided me with its observations and a certain number of documents.

— Regarding the non-execution of an order on Mrs. C.'s securities account:

The bank confirmed to me that in February 2017, Mrs. C. had informed it that she wished to sell her 1,816 shares in company A, which she held directly in her securities account.

It therefore sold 816 shares of company A in April 2017 since Mrs. C. had given an order at a price limited at €73.20.

The bank also added that on 24 April 2017, Mrs. C. had signed a limit order at €70 for the remaining 1,000 shares. However, this limit was never reached again.

In the light of the information provided by Mrs. C., I observed that having inherited shares of company A valued at €70.01 per share at the time of the inheritance, she had expressed the wish to sell her shares for not less than €70 in order not to make any losses.

However, it first appeared to me, in the light of the information provided by the bank, that Mrs. C. had given an initial order by telephone to sell 816 shares in company A, at the limit price of €73.20, on 3 April 2017, which was executed and is not disputed.

Then, Mrs. C. gave a second order by telephone on 24 April 2017 for 1,000 shares of company A "at a limit price" of €70.

However, after examining the history of the A share price over the period under review, I observed that this €70 limit had never been reached.

— Regarding the execution of the order on Mrs. C.'s equity savings plan without any specific instructions from her:

The bank told me that Mrs. C. had an equity savings plan under a management mandate signed on 24 March 2017. It explained that the transactions carried out on the equity savings plan were therefore made within the framework of this management mandate.

First, I indicated to Mrs. C. that she had signed a management mandate on 24 March 2017 and that, consequently, her bank could not be blamed for having sold her securities without specific instructions from her.

This is because, under a management mandate, the client may not interfere with the management carried out by the agent, who takes all decisions relating to the management of the account at its sole discretion.

After reading all the documents provided by Mrs. C., it became apparent that her objection was actually about the fact that her equity savings plan had not provided the expected return. It was this lack of return that had led Mrs. C. to question the investments made by the bank.

Recommendation

- Regarding the non-execution of an order on Mrs. C.'s securities account:

Since the limit set by Mrs. C. was never reached, the bank could not be blamed for the non-execution of this order.

Consequently, since I had no evidence that Mrs. C. had given another order for these 1,000 shares that could have been executed, and even if I could understand her disappointment with the drop in the price of her shares, I could not conclude that the bank had not followed her instruction.

- Regarding the execution of the order on Mrs. C.'s equity savings plan without any specific instructions from her:

I informed the investor that, within the framework of the powers conferred by the mandate, the agent had full powers of action and decision, provided that it adhered to the management objectives set.

I also reminded Mrs. C. that a portfolio management mandate only entails an obligation of means for the bank, in the absence of a guarantee of performance. This meant that the agent undertakes to make the necessary efforts to achieve the desired objective. The burden of proving that there had been a deficit of means was upon the principal, and therefore Mrs. C.

In the light of the information indicated in her investor profile provided to me by the bank, it appeared to me that she wanted to preserve and pass on her assets as well as increase the value of her capital, that her investment horizon was more than five years and that she was prepared to accept a high level of risk.

Furthermore, it should be remembered that the mere fact that a loss has been incurred on a portfolio or that the expected return has not been achieved is not sufficient to establish a breach of duty by the bank.

Thus, in this case, as I had no evidence of a breach of an obligation of means on the part of the bank, I was unable to grant Mrs. C.'s request.

Lessons to be learned

This month's case gives me the opportunity to highlight two lessons for retail investors:

Regarding stock market orders:

The fact that you mention your wish to sell securities during a meeting with your advisor cannot be considered an order. To qualify as an "order", an instruction must be precise and include the following information: name and ISIN code of the financial instrument; quantity of securities or amount to be traded; validity period; direction of the order (buy or sell); type of order (market, best limit, limit, etc.).

Investors must also make sure that they have understood the type of order chosen. For limit orders, if the limit is set too high (sell) or too low (buy), the order may never be executed.

Regarding management mandates:

The management mandate is a contract whereby an investor (the principal) empowers a manager (the agent) to manage a portfolio of financial instruments. The bank must first assess the investor's knowledge and experience, investment objectives, financial situation, risk tolerance, etc.

The principle of a management mandate is that the principal does not intervene in the management that they have entrusted to the agent. An investor cannot therefore validly claim that securities have been sold or purchased without instructions from him or her.

Moreover, the mere fact that losses have been incurred on a portfolio is not sufficient to engage the liability of the bank (even more so when the level of risk chosen by the saver is high) and demand the reimbursement of the losses. In addition, the quality of the management of a portfolio must be assessed in its entirety and over the recommended period.

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