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Inheritance: an abnormally long execution time may sometimes prove profitable

As mentioned in a previous case in March 2020, when the holder of a personal equity savings plan (PEA) account dies, the institution must close the deceased person's PEA plan immediately and transfer the securities that were held in it to a succession securities account, pending instructions from the heirs. The heirs may choose to hold onto the securities or else prefer to sell them. But, where the heirs decide to sell the securities, the time taken to process their instructions is frequently a subject of dispute, given the divergences in valuation that may result from this. However, as illustrated by the case I describe to you this month, even though a long processing time may be abnormal, it can prove profitable for the heirs.

The facts

In early September 2020, Ms A acting as heir of her deceased father, Mr A, requested the sale of the securities held in her father's PEA plan, opened in the books of the institution X, in a letter accompanied by the death certificate and the contact details of the notary in charge of the succession.

When there was no response to her request, Ms A sent a letter of complaint to institution X so as to retrieve the funds resulting from the sale of the securities.

The notary in question also sent several registered letters and exchanged a large number of emails with institution X, which demanded certain documents of him, even though they had already been duly provided.

It was only on 26 July 2021 that institution X informed Ms A that the securities were in the process of being sold and then, after follow-up correspondence in September, that the PEA plan was in the process of being closed.

However, the funds transfer, issued on 18 November 2021 and mentioned in the reply by institution X, was not sent to the notary in charge of the succession but to another notary's office by mistake, which rejected it.

Meanwhile, the compliance demand sent by the notary in charge of the succession to institution X remained unanswered.

At the end of December 2021, Ms A therefore called on me to intervene to have the funds resulting from the sale transferred to the notary's office in charge of Mr A's estate.

The investigation

For the investigation of this case, I first contacted the institution called into question so that it might inform me of its observations.

However, before I received the observations from this institution, Ms A informed me, by an email dated 7 February 2022, that the funds resulting from the sale had just been paid into the account of the notary's office in charge of Mr A's estate.

Subsequently, the institution wrote back to me. First, it sent me the statement of account at the date of Mr A's death in September 2020. This statement of account showed the ownership of 117 shares valued at €3,676.14 and a cash balance of €41,322.32. The institution noted that the shares were sold in July 2021 for €5,731.24, and this sum of money was added to the cash balance.

Secondly, this institution confirmed to me that it had paid Ms A a total amount of €46,615.59.

Recommendation

After noting that Ms A had not asserted that she had needed to use this cash at any time during the period of processing of her request, I observed that, although the notary's instructions were executed after a time lag, the securities position of €3,673.14 had appreciated by more than €2,000 during the period in question.

I therefore considered that this case had seen a favourable outcome following my intervention, because, in accordance with Ms A's desire to obtain the transfer of the funds resulting from the sale, her request had been met.

I nevertheless emphasised in my opinion that the observed time lag, which the institution itself called “abnormally long”, almost one year for a succession without any complexity, appeared to me extremely regrettable in itself, while noting that no financial loss was to be deplored.

Lessons to be learned

First, it is important to remember a fundamental principle in mediation: the role of the ombudsman is first and foremost the reparation of damage. As a consequence, a mere dysfunction, with no damage, does not justify a compensation proposal. If no human error is involved, I can prompt the firm to improve its procedures, and it can happen that the firm takes the initiative of informing me of such measures.

By the terms of Article 1240 of the French Civil Code, the reparation of damage generally implies a combination of three conditions: a fault, damage and a causal link. If a fault of the institution can possibly be noted, it is possible, justifiably, to investigate the existence of damage in the event of an abnormally long time taken to execute the heirs’ instructions for the sale of a securities portfolio. Remember, too, that it is incumbent on the plaintiff to provide evidence of the existence and amount of the damage they are claiming.

In such a case, two types of damage may possibly be considered:

- Damage resulting from a valuation differential between the date of the request and the date of sale of the securities may be subject to reparation. However, when an abnormally long transfer leads to the observation of a rise in the price of the securities over the period in question, financial damage cannot be compensated, since it is non-existent.
- Compensation could also be considered on the grounds of the loss of opportunity of having the proceeds of the sale within a reasonable period of time. The loss of opportunity is defined as the factual and certain disappearance of a favourable possibility. However, the existence of such a loss of opportunity implies that the plaintiff

provide evidence testifying, in this specific case, to the need or necessity of re-using the cash due to him or her. In any case, the plaintiff must demonstrate the existence of such a loss of opportunity in their request, without which it may be neither established nor compensated.

Finally, I would add that although execution of heirs' instructions for the sale of a securities portfolio may duly require a certain period of time given the verifications that are incumbent on the account-keeper, the latter is nevertheless required to deal with such requests diligently and promptly.

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13 March 2020

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