DRN-4831495

Financial Ombudsman Service
for small businesses

The complaint

A company, which I will refer to as T, complains that Rathbones Investment Management Limited failed to properly manage T's portfolio.

One of T's directors, Mr H, complains on its behalf.

What happened

Mr H told us:

- In December 2020, T invested £200,000 with Rathbones. At first the investment did quite well, but it then lost value.
- He does not believe that Rathbones actively managed T's investments during 2022, with the result that its portfolio fell in value from approximate £225,000 in December 2021 to around £187,000 in December 2022.
- In three of the four quarters of 2022, Rathbones made no changes to T's portfolio at all. In September 2022 it made a small sale of around £3,000.
- In addition to his astonishment that there was virtually no review of the portfolio during 2022, during a meeting with Rathbones one of its staff confessed that after reviewing the firm's files some documents relating to T's account were missing.
- In May 2023 he decided to sell the investment, at a small loss of around £5,000.
- Overall, T suffered losses of around £38,000 in 2022 because of Rathbones' lack of management. He expects financial compensation for the firm's lack of active fund management.

Rathbones told us:

- T's portfolio was a General Investment Account, managed to a discretionary mandate with a growth objective and a "level three risk profile" (as defined in the documents in provided to Mr H).
- Mr H had an initial meeting with one of its staff in September 2020. He completed a questionnaire which identified T's risk profile as four on a scale of one to six (with six being highest risk), but after discussion Mr H agreed that the portfolio should be managed "to a risk level three .. at the lower end of [Rathbones'] medium risk range". It told Mr H that that meant the portfolio would have up to a maximum of 60% in direct equities, and a maximum of 75% in what it calls "equity type risk".
- It managed T's portfolio in accordance with the agreed mandate. It acknowledges that the portfolio's performance was disappointing over 2022, but the underperformance was not due to any wrongdoing.

- The war in Ukraine began in February 2022, and this was followed by political instability in the UK. It is not unusual for trading levels to be reduced during such adverse market volatility – and indeed it wrote to Mr H in April 2022 to explain "it is often best to sit tight [and] avoid panic sell[ing]" during such periods. Its investment manager placed only one trade during 2022 as he was waiting for stock values to recover rather than crystallising losses. The discretionary mandate allowed him to make that choice.

- The missing documents Mr H referred to were its "Market Updates and Commentaries" which accompany the quarterly valuations. It believes they were likely to have been sent to Mr H but not saved to its system. In any event, as they were merely market commentaries they would not have had any impact on T's investments.

One of our investigators looked at this complaint, but he did not uphold it. Briefly, he said that he thought Rathbones had done what it had promised to do. He didn't think Rathbones was at fault for the portfolio's poor performance, nor did he think the firm had made an error or acted unfairly.

Rathbones accepted our investigator's opinion, but Mr H did not. He said he believed Rathbones lied about his level of experience in order to justify the choices it made about T's portfolio. He said his memory of the relevant meeting is that he would have just signed the documents passed over to him without having paid much attention to their contents, because he would have assumed that it was just an internal Rathbones' compliance document – he was never given a copy.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, my findings are:

- The agreed mandate was suitable for T, bearing in mind all of its circumstances.

- Rathbones managed T's portfolio in accordance with the agreed mandate.

- Overall, whilst the portfolio performance was disappointing Rathbones did not do anything wrong.

I give more details about my findings below.

Was the mandate suitable?

Rathbones was managing T's portfolio on a discretionary basis, but it didn't have absolute discretion to invest in absolutely anything it pleased. Instead, it agreed a discretionary mandate with Mr H. That mandate was in effect a set of guidelines setting out how Rathbones intended to manage the portfolio. I have first considered whether the mandate was suitable for T, and then gone on to consider whether Rathbones managed the portfolio in accordance with the agreed mandate.

The mandate is a two page document. In summary, it said:

- T had £500,000 in cash, of which Mr H was looking to invest £200,000 “to generate better returns than the returns available on cash deposits in the bank”.

- T’s Rathbones’ portfolio “is considered additional to the day to day finances of [T] and has not been allocated to any specific purpose”.

- The risk questionnaire completed by Mr H “indicated a higher level of knowledge and experience … [Mr H] has been investing for well in excess of ten years”.

- T’s capacity for loss had been categorised as “higher”, in part because “the capital is not required and there is more than sufficient cash to cover between one and two years’ worth of the company’s expenses from the cash reserves. The risk questionnaire also confirmed that the company can bear a capital loss of between 10% and 25% without any material impact to the business”.

- The portfolio’s aim was to “grow its real value with a risk 3 level strategy [defined elsewhere] aiming to achieve an inflation plus 2% return annually”.

- T had a three to five year time horizon.

After considering all of the evidence, my opinion is that the mandate was suitable for T. The evidence suggests that Mr H was in a position to take risks with T’s capital if he wished to do so, and that Mr H was hoping to receive higher returns than the interest T could have earned on cash deposits.

I am mindful that it would have been impossible for Rathbones, or for any other firm, to have managed T’s portfolio without taking any risk at all. The investments Rathbones actually made carried the obvious risk that those investments would fall in value. But if Mr H had chosen to leave T’s portfolio entirely in cash, then T would have been exposed to inflation risk – in other words, to the risk that the purchasing power of T’s money declined over time due to inflation. I see nothing wrong in Rathbones’ recommendation that T should expose some of its capital to investment risk.

I acknowledge that Mr H is concerned that Rathbones “fabricated the 10 years’ experience line to somehow justify their attitude to risk advice”, but in these circumstances I think that is unlikely. Rathbones’ scoring mechanism identified T as a risk profile 4 (taking into account Rathbones’ belief that Mr H had 10 years of investment experience), but after discussion that was moved down to a 3. In any event, there is nothing inherently wrong with a firm managing a portfolio to a medium risk mandate even if that portfolio’s ultimate owner has never had any investment experience at all. I don’t think Rathbones’ needed to rely on Mr H’s apparent investment experience in order to justify the mandate.

Was the portfolio managed in accordance with the mandate?

It is understandable that Mr H is disappointed with the performance of T’s portfolio, given that overall it made a loss whilst it was under Rathbones’ management. But poor performance does not in and of itself suggest that Rathbones has done anything wrong. Of course there are exceptions – for example, if an apparently low risk portfolio were to fall in value by 90% over a matter of days, I would think it obvious that something had gone very wrong. But in this case, I don’t think the performance of T’s portfolio was so poor as to suggest that something must have gone amiss.

Discretionary investment management calls for making decisions based on the information available at the time. Some of those decisions will turn out to be wrong – in the sense that,

with the benefit of hindsight, a different decision would have produced a better result. But that does not make the original decision negligent. Similarly, different investment managers can legitimately hold very different views on a particular stock, sector, or economic situation.

Mr H has suggested that Rathbones' fees are hard to justify given its complete lack of investment management. Rathbones says that it did manage T's portfolio. It says that its decisions not to sell assets were just that – decisions that it actively made – and that it did not simply ignore T's portfolio.

I agree with Rathbones that a decision not to sell an asset is still a decision. An investment manager in Rathbones' position risks criticism if it does not sell an asset that later falls in value. But it also risks being criticised if it sells an asset at a loss and that asset's value then recovers.

In hindsight, it is clear that Mr H expected T's portfolio to be more actively traded, and there does appear to have been a mismatch of expectations between Mr H and Rathbones. Mr H seems both surprised and disappointed that Rathbones did not make more trades during 2022. But I haven't seen anything in Rathbones' documentation to suggest that it told him to expect a certain number of trades per month or per year (other than at the very outset when it told him that fully investing the money he had transferred would take time). I would not expect any investment manager to make changes to a portfolio unless it had a good reason to make to do so; trading in that way would merely increase transaction costs without benefit to the portfolio's owner.

I'm aware that the investment manager initially responsible for T's portfolio retired in mid 2022. But I don't think her retirement led Rathbones to forget about T. It has explained why it chose to retain the vast majority of the portfolio's assets during 2022, and I consider those explanations are reasonable.

Similarly, I am satisfied with Rathbones' explanation about the missing documents. It is unfortunate that Rathbones cannot provide all the copy documents that Mr H has requested, but I don't think the missing documents have caused T to suffer a financial loss.

Looking at the portfolio as a whole, and taking into account the mandate, I don't think Rathbones has done anything wrong.

My final decision

My final decision is that I do not uphold this complaint about Rathbones Investment Management Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or reject my decision before 10 September 2024.

Laura Colman
Ombudsman