



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 14 of 2018

Dawood Family Takaful Limited
Mr. Nasir Mahmood- Chief Executive Officer
Mr. Ayaz Dawood- Director
Syed Ishtiaq Hussain-Director
Mr. Rizwan Ahmed Farid-Director
Mr. Asad Muhammad Iqbal- Director
Mr. Ghazanfar-ul-Islam- Director

...Appellants

versus

Commissioner Insurance (SECP), Islamabad

...Respondent

Date of hearing:

March 18, 2024

For the Appellant:

Mr. Hamza Siddiqui (Legal Counsel)
Mr. Naveed Ahmed (Company Representative)

For the Respondents:

1. Mr. Shafique Ur Rehman, Additional Joint Director, Adjudication-I, SECP
2. Mr. Raja Farukh Ahmad, Additional Joint Director, Adjudication-I, SECP

ORDER

1. This Order shall dispose of Appeal No. 14 of 2018 filed by Dawood Family Takaful Limited and its Directors (the Appellants) through Mr. Ghazanfar-ul-Islam under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the "SECP Act"), against the order dated April 9, 2018 (the "Impugned Order"), passed by the Commissioner Insurance (the "Respondent"), for the



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contravention of Regulation 12(1) of Part A of Annexure II of the Securities and Exchange Commission (Insurance) Rules, 2002 (the “Accounting Regulations”) and Regulation 13(1) of the Bancassurance Regulations, 2015 (the “Regulations”), wherein in an aggregate penalty of Rs. 70,000/- was imposed upon the Appellants under Section 156 of the Insurance ordinance (the “Ordinance”).

2. Brief facts of the instant appeal are that the Respondent initiated a thematic review of bancassurance business of Insurers/Takaful operators in order to check compliance of the conduct of business with applicable Regulatory provisions. Accordingly, the information was called from Dawood Family Takaful Limited (the “Company”) and accordingly the Company submitted the required details vide letter and email dated October 16, 2017. In light of the information provided by the Company, it was revealed that the maximum limit of sales and marketing incentives allowed to the Company was breached in the year 2016 in the case of Silk Secure and Silk Education products of the Company (the “Products”), which were being marketed by Silk Bank Ltd.
3. In light of the aforementioned violation the show-cause notice no. ID/Enf/DFTL/2018/13174 dated January 9, 2018 (the SCN) was issued to the Appellants. The Appellants submitted their reply to the SCN on January 30, 2018 and the hearing was scheduled for March 29, 2018, which was attended by the Chief Executive Officer of the Company and other authorised representatives of the Appellants. After examining the submissions and considering the facts, the Respondent, in exercise of powers conferred under Section 156 of the Ordinance, imposed an aggregate penalty of Rs. 70,000/- on the Appellants for the contravention of Regulation 12(1) of the Accounting Regulations and Regulation 13(1) of the Regulations.
4. The Appellants have preferred this appeal *inter alia* on the grounds that in the Impugned Order the Respondent has failed to furnish any rationale for the imposition of a penalty upon the Appellants and that the Appellants have been making the relevant efforts to comply with the laws and regulations. The Appellant argued that a penalty under Section 156 of the Ordinance may only be imposed in the event of a substantial violation of a legal provision, and in particular an intentional one and that a penalty can only be imposed in case there is a breach of any of the Sections of the Ordinance. The Appellant argued that the maximum limit of 5% share of the insurer in the sales and marketing incentives as introduced



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by the Regulations were only to have effect subsequent to January 1, 2016, as provided under Regulation 1(3) of the Regulations and that such an obligation to limit such payments did not exist in 2015. The Appellant further stated that despite transitioning issues faced by the Appellant, leading to allegations of breaching the 5% limit of payments for marketing expenses, the Respondent has erred in overlooking altogether the larger compliance ensured by it of falling within the 55% limit of expenses and commissions. While concluding the arguments, the Appellants stated that it is inconceivable to attribute personal accountability for everyday transactions and dealings within a company directly upon the members of the executive management of the company. In view thereof, it was prayed that the Impugned Order may kindly be set aside.

5. The Respondent while controverting the arguments of the Appellants, *inter alia* contended that the Appellants have no case on merits as the Company had failed to comply with Regulatory requirements as laid down in the Regulations. The Respondent stated that the compliance of the Ordinance, Rules, Regulation, Directives and Circulars is mandatory for every insurer/takaful company and accordingly, the Appellants were required to comply with the requirements as laid down in the aforementioned laws to govern/regulate the Insurance sector in Pakistan. The Respondent further argued that the requirement of 5% share was applicable even prior to the Regulations, through a guideline issued in 2010 namely; the Guidelines for Bancassurance 2010 (the "Guidelines"). Relevant Clause of the Guidelines 7.6 *Sales and Marketing Incentives to Banks: To promote Bancassurance business, an insurer shall be allowed to share with the bank in the costs of sales and marketing incentives. The share of the insurer in such activities shall not exceed 5% of the first policy year collected premium* and the Respondent stated that the referred guideline was issued 5-6 years prior to the Regulations. The Respondent further argued that the Appellant cannot rely upon the reference made to the IAS 37 Provisions, 'Contingent Liabilities and Contingent Assets' as it is clarified that the recording of sales and marketing incentives, which had transpired, do not fall under the aforesaid IAS, rather, the Appellants were required to record the expenses in the same year. The Respondent also argued that compliance with the 55% commission limit in no manner means that other requirements may be ignored or overlooked. While concluding the arguments, the Respondent stated that the representative of the Appellants during the show-cause notice proceedings, admitted the fact that the prescribed limit i.e, 5% of sales and marketing incentives, was breached in the year 2016 and the same was subsequently rectified. The Respondent while concluding



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the arguments, stated that the directors, in addition to the day-to-day running of the Company and management of its business, also have a fiduciary duty towards its customers and the directors are required to be more vigilant and perform duties with due care, hence the Impugned Order should be upheld against the Appellants.

6. The Appellate Bench (the "Bench") has heard the arguments of both the parties and perused the record. The Bench is of the opinion that the Appellants had an obligation to adhere to the relevant provisions of the Ordinance and the Regulations which have to be followed in true letter and spirit. The Bench has noted that the Appellants have breached certain mandatory provisions of the Regulations and the same also been admitted by the Appellants during the show-cause notice proceedings. The Bench is of the view that the maximum limit of sales and marketing incentives allowed to the Company was breached in the year 2016 in case of Silk Secure and Silk Education products of the Company, being marketed by Silk bank Ltd, which is in violation of Regulations 13(1) of the Regulations and the sales and marketing incentive recorded by the company as an expense in the year 2016 included the amount of sales and marketing incentives related to the year 2015 and further that the amount of sales and marketing incentives for the year 2016 was not completely booked by the Company in the year 2016 which is in contravention of Regulations 12(1) of the Accounting Regulations.
7. In view of the foregoing, the Bench finds no reason to interfere with the Impugned Order, therefore, by maintaining the Impugned Order, we hereby **dismiss** this Appeal without any order as to costs.

(Akif Saeed)
Chairman/Commissioner

(Mujtaba Ahmad Lodhi)
Commissioner

Announced on: 01 JUL 2024