



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. III

In the matter of

Appeal No. 01 of 2015

The Asian Mutual Insurance Company (Guarantee) Limited

.... Appellant

Versus

Director (Insurance) Securities and Exchange Commission of Pakistan

.... Respondent

Date of hearing:

30.04.15

Present:

For Appellants:

Irfan Ilyas, FCA, Authorized Representative

For Respondent:

- i. Tariq Hussain, Director (Insurance)
- ii. Obaid ur Rehman, Deputy Director (Insurance)

ORDER

1. This order shall dispose of Appeal No. 01 of 2015 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 by the Asian Mutual Insurance Company (Guarantee) Limited (Appellant) against the order dated 19.12.14 (the Impugned Order) passed by the Respondent.
2. Brief facts of the case are that during the course of onsite inspection, Onsite Inspection Team (the Team) of the Securities and Exchange Commission of Pakistan requested the Appellant to provide various information / documents to the Team,



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however same were not provided as per Respondent contention. On the contrary the Appellant claimed that all the documents / information required by the Respondent was provided.

3. The Respondent issued a Show Cause Notice (SCN) dated June 19, 2014 under Section 59A (3) read with Section 45 and Section 156 of the Insurance Ordinance, 2000 (the Ordinance) to the chief executive and directors of the Appellant. The Appellant submitted written reply and stated that all the required documents were provided to the Team under section 59A (3) and section 45 of the Ordinance. The Appellant further stated that the SCN has not mentioned the specific documents / information which were not provided. The Appellant Representative further claimed that the Appellant is maintaining record appertaining to the years after 2011. The Respondent, being dissatisfied with the reply of the Appellant imposed a penalty of fine of Rs.200,000/- on the Appellant under Section 156 of the Ordinance for the violation of Section 59A (3) and Section 45 of the Ordinance.
4. The Appellant has preferred the instant appeal against the Impugned Order on the following grounds:
 - a. The Order passed by the learned Director, SECP Insurance Division is not a speaking order.
 - b. The order was passed without confronting the specific records/documents which were not furnished.
 - c. The order was passed without establishing the malafide "mens rea" on the part of the management.
5. The Respondent rebutted the grounds of appeal and arguments of the Appellant against the Impugned Order as follows:
 - a. The Impugned Order was passed after considering the facts of the case and inference drawn during the onsite inspection. Further response and



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clarification by the Appellant furnished against the SCN were also addressed in the Impugned Order. Therefore, the Appellant was penalized on the basis of evidence.

- b. The Impugned Order was passed in the light of onsite Inspection Report.
 - c. The misstatements by the Appellant staff members liaising with the inspection Team and various other deficiencies found in the record of the Appellant leads to the establishment of mens rea on part of the Appellant.
6. We have heard the parties at length and perused the relevant record with the assistance of the parties i.e. Appellant and Respondent. The Appellant has objected that the Impugned Order lacks reasoning and proof of *mens rea* on the part of the Appellant. Further objection of the Appellant is that the Impugned Order was passed without confronting the specific records/documents which were not furnished during the onsite inspection.
7. The Respondent produced two Information Request Memorandums (IRM's) No.7 and 8 and copy of Appellant response to these IRM's. The IRM's were issued for the production of different documents pertaining to the years 2010 to 2012. The relevant part of Appellant response to the IRM no.8 is reproduced below:

“we have tried our best to find out any record of stationery for the year 2010 and 2011, it is submitted that it included the order valuable items we lost in a theft incident occurred in the night of 28th Nov, 2011 which included a lot more used and unused stationery”.

The Appellant further admitted that “It is sincerely hoped you will be kind enough to excuse us for being unable to produce the requisite record”.

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The above stated response of the Appellant in reply of IRM no.7 contains admission regarding non-compliance and contents of said reply were never denied by the Appellant, rather it was annexed with the memorandum of appeal as annexure "E", therefore it is the most significant document to determine the fate of the appeal. The Appellant has further taken a specific ground in appeal that "The order was passed without confronting the specific records/documents which were not furnished." However, in the light of above admission it could be observed that Appellant has failed to produce the required documents. The Impugned Order was never passed for non-production of any specific document, rather it was passed under generic provisions related to the non-compliance and failure to ensure the safety of the record. The admission of the Appellant has established the guilt of violation of Section 59A (3) of the Ordinance beyond any doubt.

8. In aforesaid reply the Appellant has admitted that a part of record is missing therefore it cannot be produced. As per law the Appellant was required to maintain proper books and records including registers or record of policies, claims etc. under Section 45 of the Ordinance but it failed to discharge its responsibility. Further, non-production of required documents was attributed to alleged incident of theft, the Appellant produced a document on its letterhead addressed to SHO which contains narration of theft and detail of stolen articles which included record of the Appellant, however it failed to produce the First Information Report (FIR) as the matter was cognizable in nature. The non-registration of cognizable case causes doubt on the occurrence of the theft, however if at all it was happened even then the Appellant cannot escape from its responsibilities envisaged under Section 45 of the Ordinance. As per section 45(6) of the Ordinance it is the responsibility of an insurer to ensure protection of its own record. The plea of theft cannot exonerate the Appellant from the violation of Section 45 and 59 of the Ordinance. Therefore, violation of Section 45 of the Ordinance has been established.

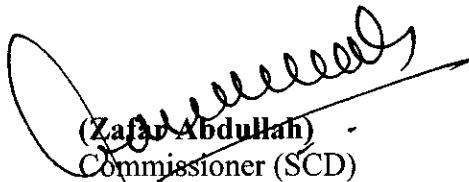


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9. In our view, the Appellant has failed or intentionally avoided to comply with the legal provisions of the Ordinance. As per settled case law (1987 MLD 3039), the legal duty or liability is always required to be discharged by the person responsible under the law and if not complied, the presumption will be that the act was willful. The Appellant stated that phrase “willful” stands for an act which is done with malice and to achieve certain unlawful goals; therefore, it would be appropriate to differentiate between the meanings of this word when used in different contexts. It has been laid down in judgment cited as 1990 CLC 1008 that “the term as used in different statutes and judicial precedents, means deliberate or intentional and not accidental”. In the light of discussion it is evident that when a requirement of a statute has been violated then there is no need to establish malafide or mens rea to prove the non-compliance of the provisions.

10. In view of the above the Impugned Order was passed with due care keeping in view the principle of legal reasoning necessary to establish the guilt and violation of law by the Appellant. Therefore, we find no reason to interfere with the Impugned Order dated 19.12.14 passed by the Respondent. The appeal is dismissed.

11. Parties to bear their own cost.


(Zafar Abdullah)
Commissioner (SCD)


(Tahir Mahmood)
Commissioner (SCD)

Announced on: **12 OCT 2015**