



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 09 of 2021

First National Equities Limited

...Appellant

Versus

Executive Director, Adjudication – 1

...Respondent

Date of hearing:

17th October, 2024

Present:

For the Appellant:

Mr. Arslan Tahir (Company Secretary)

For the Respondent:

1. Mahboob Ahmed (Additional Director)
2. Muhammad Anwar Hashmi (Additional Joint Director)

ORDER

1. This Order shall dispose of Appeal No. 09 of 2021 filed by First National Equities Limited (the "Appellant") through its Company Secretary Mr. Arslan Tahir (the "Authorized Representative") under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (the "SECP Act") against the Order dated November 18th, 2020 (the "Impugned

Arslan Tahir *Muhammad Anwar Hashmi*



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Order”) passed by the Executive Director/Head of Department Adjudication-I (the “Respondent”) under Section 40A of the Securities and Exchange Commission of Pakistan Act, 1997 (“Act”).

2. The brief facts of the case are that the Appellant is a Trading Rights Entitlement Certificate holder of the Pakistan Stock Exchange Limited (the “PSX”). An Inspection was initiated vide notice dated March 13th, 2020 with the scope to review and check compliance with respect to the Anti Money Laundering and Countering Financing of Terrorism Regulations, 2018 (“AML Regulations”). The Inspection revealed multiple instances of non-compliance by the Appellant with various provisions of the AML Regulations, i.e., Regulations 4(a), 13(3), 13(7), 18(a), 18(c)(v), 9(4)(a)(b), 9(4)(a)(c), 6(4), Annexure-I (note i) of 6(4), 13(1), 6(3)(a) and 6(3)(c). In light of these violations, a Show-Cause Notice dated July 29th, 2020 (the “SCN”), was issued to the Appellant. The Appellant responded to the notice vide letter dated August 26th, 2020. The matter was heard by the Executive Director/HOD, Adjudication on September 20th, 2020. Upon reviewing the submissions and considering the facts, the Respondent established that the Appellant had failed to update its database, ensure on-going monitoring, provide monthly compliance reports, and conduct Enhanced Due Diligence (“EDD”) and Customer Due Diligence (“CDD”) as required. Consequently, the Respondent, in exercise of powers conferred under Section 40A of the Act imposed a penalty of Rs.475,000/- on the Appellant for the aforementioned contraventions of the AML Regulations.
3. The Appellant filed this Appeal on several grounds, including the assertion that the Impugned Order lacks a proper appreciation of facts and law. The Authorized Representative for the Appellant contended that the Impugned Order penalized the Appellant without acknowledging the fact that the Inspection was initiated on March 13th, 2020 and due to the COVID’19 pandemic a lockdown was imposed on the entire country on March 18th, 2020 and that during the audit period the Appellant had limited access to the physical records due to COVID-19 restrictions and ‘work-from-home’ policy. The Authorized Representative contended that the compliance department had not only already provided the screening evidence but also ensured that the relevant screening evidence for the respective client was attached to the account opening form along with other necessary documents to initiate the account opening process. The Authorized Representative also contended that the Respondent had asked the Appellant to provide the database for

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beneficial owners which was duly provided in soft-form on a compact disc due to its large size. Furthermore, the Authorized Representative submitted that the monthly compliance reports were regularly submitted to the Board of Directors (“BOD”), although they could not be shown during the audit due to limited access to physical records. The Authorized Representative stated that all details pertaining to the occupation and the source of income for its respective clients had been provided earlier and contended that NADRA, as per their policy, had not been providing the *Verisys* facility to the stock brokers. The Authorized Representative also highlighted that Ms. Khalida Habib, Executive Director SECP wrote a letter to the Director General of NADRA to resolve the said issue. Furthermore, the Authorized Representative contended that one of the Appellant’s clients had just started working and the salary slip was provided during the on-going monitoring, however, the details of the said client could not be updated due to COVID-19. The Authorized Representative admitted the Appellant’s failure to provide the evidential details regarding the source of income and identification of beneficial ownership for another one of its clients due to COVID-19. The Appellant noted that many clients who opened accounts prior to the inspection failed to cooperate despite repeated reminders, and the lapse by such non-cooperative clients had been unfairly attributed to the Appellant. On the basis of these contentions the Appellant requested the Appellate Bench (“the Bench”) to set aside the Impugned Order and accord any other relief that the Honourable Appellate Bench deemed fit and appropriate, taking into consideration the aforementioned contextual factors.

4. The Respondent countered the grounds of the Appeal and proffered arguments. The Respondent, in response to the Appellant’s contention, emphasized that the Impugned Order was not only issued in strict accordance to the law but also after thorough consideration of the facts presented in this case. The Respondent began by submitting that, at the time of the inspection, the Appellant's records were not properly maintained. and that, with its large customer base, was required to update its information concerning customers, authorized persons, nominees, beneficial owners, and trustees. Furthermore, the Respondent submitted that the SCN was issued on the basis of the findings of the inspection as the Appellant had failed to provide the inspection team with copies of monthly compliance reports submitted to the BOD. The Respondent stated that although the Appellant subsequently provided the copies of the compliance reports dated January 2nd, 2020, February 3rd, 2020, and March 2nd, 2020, but such subsequent compliance cannot exonerate the Appellant from the violations observed during the inspection period. The

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Respondent, however, contended noted that the Appellant did provide a letter dated February 17th, 2020 written by the Compliance Officer to the Executive Director seeking approval for the continuation of accounts for the purpose of Enhanced Due Diligence (“EDD”).

5. The Respondent further emphasized that the Appellant did not provide bank statements of a few customers to the inspection team. The Appellant also failed to provide supporting documents for various customer accounts with CDC. The Appellant had not devised or implemented any mechanism to identify cases for enhanced due diligence. The Appellant’s stance regarding the non-availability of NADRA Verisys facility was untenable, as the AML Regulations were promulgated in 2018, and despite a lapse of two years, the Appellant failed to comply with its requirements. Besides there were other lapses. The occupation of a client was mentioned as a “student” in the account opened on 22 April, 2015, whereas, the documents revealed that the account holder was a bank manager. The due diligence process for obtaining and recording information regarding the beneficial ownership of the accounts was also lacking.
6. The Bench has heard the arguments of both the parties and perused the record. The Bench is of the opinion that the Appellant failed to comply with the AML Regulations in many respects. The Appellant has not provided adequate justification for the failure to maintain the record properly and ensure on-going monitoring. The Appellant’s failure to provide the required documentation during the inspection period, including records of beneficial ownership, sources of income, and updates to client information, constitutes significant violations. The Bench finds no reason to interfere with the merits of the Impugned Order. In view thereof, the Appeal is dismissed without any order as to cost.
7. In view of the foregoing, the Bench, considers it justified to uphold the penalty of Rs. 475,000/-. The instant Appeal is dismissed on above terms without any order as to costs.

(Abdul Rehman Warraich)

Commissioner

(Mujtaba Ahmad Lodhi)

Commissioner

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