



# Securities and Exchange Commission of Pakistan

## BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 10 of 2022

M/s. AKD Securities Limited

...Appellant

Versus

Director/HOD, Adjudication-1, SECP, Islamabad

...Respondent

**Date of hearing:**

May 25, 2023

**Present:**

For the Appellants:

1. Mr. Muhammad Farid Alam, Chief Executive Officer
2. Mr. Naveed Anjum, Head of Compliance
3. Mr. Mudassir Ijaz, Manager Compliance

For the Respondent:

1. Mr. Muhammad Faisal, Assistant Director, Adjudication-I, SECP
2. Mr. Hammad Ahmed, Management Executive, Adjudication-I, SECP

## **ORDER**

1. This Order shall dispose of Appeal No. 10 of 2022 filed by M/s. AKD Securities Limited (the "Appellant") through Mr. Ilyas Haji Ahmed (the Company Secretary of M/s. AKD Securities)



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under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the Order dated July 30, 2021 (the “Impugned Order”) passed by the Director, Head of Department, Adjudication-I SECP, (the “Respondent”) under Section 40A of the SECP Act read with the Securities and Exchange Commission of Pakistan (Anti Money Laundering and Countering Financing of Terrorism) Regulations, 2018 (the “Regulations”).

2. The brief facts of the case are that the review of the Appellant was conducted by the Securities and Exchange Commission of Pakistan (the “Commission”) to ascertain compliance with the requirements of the Regulations. The following non-compliances of the Regulations were observed during the review;
  - a. In violation of regulation 13(1) and 14 (3) of the Regulations where the Appellant failed to monitor the all business relations with customers on an ongoing basis to ensure that the transactions are consistent with the Appellant’s knowledge of the customer. Furthermore, the Appellant was required to pay special attention to all complex and all unusual patterns of transactions, which have no apparent and economic lawful purpose. It transpired that the Appellant badly failed to comply the Regulations as the identified customer was marked as a “Housewife” with the source of fund of “savings and inheritance” and her experience in stocks was mentioned as “novice” with an expected daily trade volume of 3k to 5k shares. However, the transactions made from the account do not match the said available information. Moreover, the Appellant failed to provide any evidence which justifies that the unusual pattern of transactions was duly examined.
  - b. In violation of Regulation 6(3)(c) of the Regulations where the Appellant failed to perform Customer Due Diligence (CDD) by monitoring accounts/transactions on an ongoing basis to take prompt action whenever there is any material departure from usual and expected activity through regular matching with information already available with it.
  - c. In violation of Regulation 6(10) of the Regulations the Appellant failed to conduct the due diligence on existing relations at an appropriate time considering when it had previously been done to ascertain the beneficial ownership.



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3. In view of the abovementioned violations the Show-Cause Notice dated April 16, 2021 (the "SCN") was issued to the Appellant. The hearing was fixed on June 04, 2021 which was attended by the authorized representatives of the Appellant wherein they reiterated the arguments submitted in response to the SCN vide letter dated December 21, 2020. The Respondent concluded the SCN proceedings and imposed a penalty of Rs. 100,000/- on the Appellant on account of contraventions of regulations 13(1), 14(3), 6(3)(c), and 6(10) of the Regulations.
  
4. The Appellant has preferred this appeal *inter alia* on the grounds that the customer's trading transactions were regularly monitored on the basis of trading limits which are assigned as per the client's financial profile/source of funds, and further information was sought periodically as and when needed to substantiate their trading activities and account size, and her financial and risk profile were updated accordingly. The Appellant stated that the client has submitted the wealth statements to the Appellant as filed with FBR. The Appellant submitted that the client's trading transactions and account size (Rs. 843.89M) always remained within the range of her documented financial profile (Rs. 963.65M), hence no non-compliance of regulation 13(1) on the part of the Appellant is made. With respect to regulation 14(3), it is submitted by the Appellant that the CDD was conducted at the time of account opening and at subsequent times on an ongoing basis. The Appellant stated that on the basis of evidence received and information obtained during the due diligence, all trading activities of the client were found consistent with the history, pattern, and level of income which leads the Appellant to believe that no suspicion remained to be reported as STR under regulation 14(3). The Appellant further stated that, the customer is the beneficial and absolute owner of her trading account since she owns all the assets in her name, therefore, there is no violation of regulations 6 (3)(c) and 6(10). It is also submitted by the Appellant that it is trite law that any levy of penalty for contravention needs to be levied where '*mens rea*' i.e. wilful default on the part of the contravening party is established. The Appellant pleaded that they tried to comply with all the requirements, however, if any inadvertence has come about, the same is an honest mistake on part of the Appellant and cannot be deemed as wilful default. The Appellant further stated that the Impugned Order has no reference to establish malafide intent on the part of the Appellant, therefore, by considering these circumstances a lenient view may be taken by waiving the penalty.



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5. The Respondent rebutted the grounds of Appeals and put forth the arguments that during the review, violations of the Regulations have been observed. The Respondent stated that the customer was specified as a 'housewife'; with the source of fund of "*savings and inheritance*" and her experience in stocks was mentioned as "*novice*" with an expected daily trade volume of *3k to 5k* shares. The Respondent further submitted that a copy of the tax return was provided in respect of the said client, however, the Appellant failed to explain as to what analysis was carried out after receiving the tax return (which is not the only document to justify the KYC/CDD profile of the client), in order to justify the profile of the client with unusual trading pattern. The Respondent contended that the Appellant failed to update the KYC/CDD profile of the client subsequent to the receipt of the tax return from the client, therefore, the transactions made from the account do not match the investor's profile as provided by the Appellant. It was further submitted by the Respondent that the Appellant failed to provide any evidence that unusual patterns of transactions executed in the trading account of the identified client were duly examined to know the background and the findings were never recorded in writing as required under the law. The Respondent further submitted that the Appellant has failed to monitor the accounts/transactions on an ongoing basis and update the customer profile based on unusual and unexpected activities which did not correspond to the record profile.
  
6. The Appellate Bench (the "Bench") has heard the arguments of both parties and perused the record. The Bench is of the view that the Appellant was required to comply with the applicable requirements of the Regulations in true letter and spirit. The arguments made by the Appellant that the Appellant has not done anything with intention and there is no *mens rea* involved has no standing. The Appellant should have been vigilant enough to follow the Regulations. The novice status of the customer does not match the unusual transactions pattern of the customer's profile. Moreover, the main contention of the Appellant that by obtaining the tax return/wealth statement of the client, the Appellant has rightly determined the profile of the client in compliance of the Regulations is not tenable because the Appellant erred in its determination of the profile maintained with the Appellant as the same does not correspond with the trading pattern of the client. The Appellant failed to update the customer profile and report the transaction based on unusual and unexpected activities; the same being in violation of the Regulations. Thus, the Bench has no doubt that the Appellant has failed to maintain the record as required under the law.



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7. In view of the foregoing, we find no reason to interfere with the merits of the Impugned Order, therefore, by maintaining the Impugned Order, we hereby dismiss this Appeal without any order as to costs.

(Abdul Rehman Warraich)

Commissioner

(Akif Saeed)

Chairman/Commissioner

Announced on: **25 AUG 2023**