



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 16 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. 16 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

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(the “Impugned Order”), passed by the Commissioner Insurance (the Respondent), for the contravention of Section 12(4) and Section 93 of the Insurance Ordinance 2000 (the Ordinance), wherein an aggregate penalty of Rs. 70,000/- was imposed upon the Appellants under Section 156 of 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. The Appellants were advised to submit the statement of policies in respect of which notices under Section 93 of the Ordinance were issued to the policy holders of Dawood Family Takaful Limited (the Company). After perusal of the information provided, it transpired that the Appellant did not provide the dates of notices issued to the policy holders under Section 93 of the Ordinance and instead provided a note at the end of the statement, wherein, the procedure adopted by the company in case of default by the policy holder was explained. The Respondent further observed that the Company was not sending notices as provided under Section 93 of the Ordinance to the policy holders. As per record, the notices issued to the policy holders were mere intimation notices and the Company instead of communicating forfeiture options to the policy holders under section 93(3) and 93(4) of the Ordinance, simply resorted to sending policies to the automatic non-forfeiture option (the ANF options), treating them as lapsed.
3. In light of the aforementioned violation a show-cause notice no. ID/Enf/DFTL/2018/13175 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 a penalty of Rs. 70,000/- on the Appellants for the contravention of Section 93 of the Ordinance.
4. The Appellants have preferred this appeal *inter alia* on the grounds that the Impugned order is without factual and legal basis and has been passed without taking into consideration the submissions of the

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Appellants and evidence presented in support of their submissions. The Appellants while arguing the appeal contended that the policy holders were duly informed about the ANF options under sub-sections 4(a) and 4(b) of Section 93 at the inception of their Takaful certificate. The Appellants further stated that the policy holder is not only given the choice to select their preferred ANF option, but they were also empowered to change their selected preference for ANF choice at any time during the life of the certificate, or even subsequent to a default. The Appellants further argued that the prohibition of automatic lapse is fully adhered to by the Company as multiple opportunities and options were not only provided to the policy holders to continue their policies but the same was also communicated at every stage during the policy itself. The Appellants, while concluding the arguments, stated that in the Impugned order the Respondent did not give any consideration to the fact that the Appellants in good faith, offered to improve the contents of the notice under Section 93 of the Ordinance. In view thereof, it was prayed that the Impugned order may kindly be *set aside*.

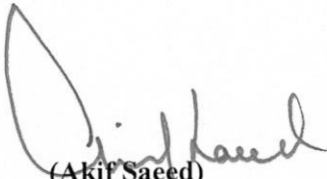
5. The Respondent while controverting the arguments of the Appellants, stated that the Appellants have no case on merits as the Company had failed to comply with requirements laid down in Section 93 of the Ordinance in case of a default in payment of premium by the policy holder. The Respondent stated that the review of the notices sent to policy holders under Section 93 of the Ordinance revealed that such notices were merely intimation notices informing the policy holders about the status of their policies and that the Appellants instead of communication of forfeiture options to policy holders under Section 93(3) and 93(4) of the Ordinance, resorted to sending the policies to the automatic non-forfeiture option, stating that the policies were treated as lapsed. The Respondent stated that the Appellants stance that it has provided the ANF options to the certificate holder at the inception of policy and while signing the proposal Form is contrary to the spirit of Section 93 of the Ordinance. The Respondent submitted, that as per law, the Company was required to provide any of the two options laid out in Section 93(4) of the Ordinance, where the policyholder fails to pay a premium within due date and the insurer is required to give notice to the policy holder before the expiry of three months from the date on which that premium is due. The Respondent while concluding the arguments, contended that the penalty has been rightly imposed upon the Appellants as rights of the policy holders have been breached due to the defective compliance of the requirements contained under Section 93 of the Ordinance.

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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 which have to be followed by the Appellants in true letter and spirit. The Bench is of the view that the Appellants’ contention regarding improvement of the contents of the notice under Section 93 of the Ordinance for future transactions is an afterthought, which may not be considered to exonerate the Appellants from the consequences of past violations. The Bench, after perusal of the record, along with the Appeal, has further observed that the notices attached with the appeal are of the year 2018, whereas, the alleged violations pertain to the year 2017. Therefore, the evidence of compliance provided by the Appellants is not relevant to the facts of the instant appeal. The Bench cannot rely upon the evidence submitted by the Appellants as it is not from the relevant year.
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: 03 JUN 2024