



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH

In the matter of

Appeal No. 21 of 2020

UBL Fund Management Limited

..... Appellant

versus

1. Ms. Momy Kamal
2. The Securities and Exchange Commission of Pakistan

..... Respondents

Date of hearing:

May 2, 2024

Present:

For the Appellant:

1. Mr. Sahar Iqbal (Counsel)
2. Mr. Yasir Qadri (CEO)
3. Mr. Hadi Hassan Mukhi (Head of Risk & Compliance)

For the Respondents:

1. Mr. Mahboob Ahmed, Additional Director, Adjudication -I, SECP
2. Ms. Asima Wajid, Additional Joint Director (Adjudication-I), SECP

ORDER

1. This Order shall dispose of Appeal No. 21 of 2020 filed by UBL Fund Management Limited (the Appellant) against the Order dated February 12, 2020 (the Impugned Order) passed by the Executive Director, Adjudication Department-I, Adjudication Division, SECP (the Respondent No. 2) under Section 282J(l) read with Section 282(M)(l) of the Companies Ordinance, 1984 (the Ordinance), for contravention of Regulations 66A(c)(i), 66A(c)(iv), 66A(d) and 66A(f) of the Non-Banking Finance Companies and Notified Entities Regulations, 2008 (the Regulations).



Securities and Exchange Commission of Pakistan

2. The brief facts of the case are that Ms. Momy Kamal (Respondent No. 1) lodged a complaint against the Appellant through email dated October 17, 2019. It was stated in the complaint that Respondent No. 1 invested Rs. 700,000/- in Al-Ameen Islamic Active Allocation Plan-VIII (the Plan) in May 2017, however, the entire investment was redeemed in May 2019 due to a loss of principal investment amounting to Rs.134,393/-. In light of the apparent violations of the requirements of the Ordinance and the Regulations, Respondent No. 2 issued a show-cause notice dated November 8, 2019 (the SCN). The Appellant submitted the written reply to the SCN vide letter dated November 18, 2019, whereas, the hearing in the matter was held on January 17, 2020. Respondent No.2 concluded the SCN proceedings and imposed a penalty of Rs. 300,000/- on the Appellant.

3. The Appellant has challenged the Impugned Order *Inter alia* on the grounds that there was no fault whatsoever on the part of the Appellant or its Relationship Manager. The Appellant further stated that through a recorded welcome phone call, risks associated with the Plan were fully communicated to Respondent No. 1 and she never stated that the Relationship Manager had miscommunicated the risks and returns. The Appellant stated that the Respondent No.1 properly signed the initial investment form and account opening forms (AOF) which contained adequate disclosures of investment synergies, advantages and risk factors involved in the investment. The Appellant stated that as per the need assessment section of the AOF, Respondent No. 1's overall score was 16, which was suitable for a "moderate" investment option, therefore, the Plan was opted by Respondent No. 1. The Appellant stated that risk profiling was entirely based on the information provided by Respondent No. 1 and it was performed in line with the legal framework existing at the time of investment, therefore, the Appellant had not violated the requirements of the applicable law. The Appellant stated that Respondent No. 1 also signed an undertaking acknowledging the risks of investment, therefore, in the presence of documentary evidence, recorded call log and signed investment forms, it cannot be assumed that Respondent No. 1 was compelled by the Appellant's Relationship Manager to invest in the Plan unsuitable to her requirements.

4. The Appellant submitted that its efforts to ensure compliance with SECP Circular 23 of 2013 along with Regulations 66A of the Regulations were entirely ignored in the Impugned Order, despite the fact that adequate risk profiling of Respondent No. 1 was carried out before investment. The Appellant stated that the allegation regarding misleading investment and verbal assurances in respect of the



Securities and Exchange Commission of Pakistan

guaranteed returns is without any evidence. The Appellant submitted that imposition of penalties on the Appellant merely on the basis of allegations by the investors will open the floodgates for claims against the asset management companies and all investors will seek to get out of their unprofitable investments by alleging mis-selling.

5. The Appellant stated that the Debit Authority Form, which was also signed by the Appellant as part of the investment procedure, clearly describes and refutes the claim that mutual funds (Plan) are sold as banking products. The Appellant stated that Respondent No. 2 erred in law by not acknowledging and applying the doctrine of "Caveat Emptor" (buyer beware) which requires that Respondent No.1 should have acted with due care while investing in the Plan.
6. The Appellant has further stated that at the relevant time, due to the absence of any mandatory particular risk assessment mechanism, the Appellant prepared its own need/ risk assessment mechanism, therefore, it cannot be alleged that the risk assessment mechanism of the Appellant was inadequate. The Appellant also stated that although it was not required by law, however, risk disclaimers in AOF and initial investment form contained the requirements laid down by the SECP Circular 16 of 2014. Furthermore, the Appellant stated that for the first time, Respondent No. 2 provided risk assessment guidelines vide Circular No. 2 of 2020 dated February 6, 2020, and since then it has been complying with such guidelines. The Appellant also contended that even after receipt of the 'Welcome' phone call which explained all associated risks, Respondent No. 1, had not withdrawn her investment during the cooling-off period as per SECP Direction No. 31 of 2016. The Appellant denied the allegations of mis-selling [Regulation 66A(c)(i)], suitability of the Plan [Regulation 66A(d)], concealment of risk factors [Regulation 66A(c)(iv)], and vague promotional material [Regulation 66A(f)] are baseless and without any proof.
7. Respondent No.2 rebutted the grounds of appeal and stated that the Appellant's relationship manager failed to offer a suitable investment plan to Respondent No.1, therefore, it should not take refuge behind the call log. Respondent No. 2 stated that investors only listen to what the sales representative is pitching and seldom read what is written on the forms, therefore, it was the responsibility of the Appellant to actually make the investors understand what their investment



Securities and Exchange Commission of Pakistan

decision entails and to ensure that they have fully understood the pros and cons of the investment. Respondent No. 2 admitted that although no evidence was provided by Respondent No. 1 regarding mis-selling and guaranteed returns on investment, however, the allegation that sales representative had guaranteed profit and preservation of capital, cannot be completely overlooked. Respondent No.2 contended that as a common phenomenon in the mutual fund industry, some sales agents highlight the returns more without explaining the associated risks and potential downside of investing in mutual funds. Respondent No. 2 stated that the sales representative persuaded the Appellant to sign the relevant forms by concealing the associated risks of investment. Respondent No. 2 further stated that the Impugned Order has been passed after considering the written and oral submissions made by the Appellant in addition to the available documentary evidence.

8. Respondent No. 2 stated that in this case, as per the Appellant's own assessment, Respondent No. 1 was a housewife with basic or no prior experience of equity investments and therefore she could not have been expected to understand the dynamics of mutual funds. Respondent No. 2 stated that although the risk profiling of Respondent No. 1 was based on the information provided, however, it was the Appellant's responsibility to ensure that Respondent No. 1 was well aware that the selected product was not suitable for her. Respondent No. 2 contended that the risk appetite column in the need assessment form had not been allocated a correct score and keeping in view the other considerations/criteria given in the form and scoring given against them, prudence demanded that the risk appetite column be scored as 'low' rather than 'moderate'. Respondent No. 2 further stated that merely incorporating associated risks and disclaimer as per Circular No. 16 of 2014 does not absolve the Appellant from the responsibility unless such facts are effectively communicated to the investor. Furthermore, Respondent No. 2 stated that the Appellant performs a licensed and regulated activity the relationship of the Appellant and its clients is based on trust and clients entrust their funds to the Appellant and their expectation, that the advice given to them and investments made on their behalf are in their best interest. Respondent No. 2 stated that Circular 2 of 2020 merely codifies the implied role of an AMC.
9. Respondent No. 2 stated that the claims of the Appellant that sufficient steps were taken to inform Respondent No. 1 of the risks associated with the investment is not acceptable because as per Appellant's assessment, Respondent No. 1 had no prior experience in equity investments and her



Securities and Exchange Commission of Pakistan

investment knowledge was basic. Respondent No. 2 stated that this fact had been recognized in the Impugned Order that Respondent No. 1 was made aware of the risks associated with the investment, and her decision to remain invested in the respective plan may be considered a weak judgment call. Respondent No. 2 stated that although a moderate risk tolerance level was assigned to Respondent No. 1, whereby capital protection was guaranteed, however, due to aggressive investment in equity, capital investment was eroded.

10. The Appellate Bench (the Bench) has heard the parties and perused the record including the grounds of appeal and Respondent No. 2's written comments. The Bench is of the view that to influence the investment decision of investors, it is a practice of the sales agents to highlight the returns without adequately explaining the associated risks and potential downside of equity investment through mutual funds. After reviewing the record, the Bench found that Respondent No. 1 had made the investment in May 2017 and had received a welcome call informing her of the risks and exposure involved. Despite this, she had proceeded with her investment. The Bench is of the view that, if Respondent No. 1 had been deceived by the Appellant's relationship manager/sales staff, she should have made a wise choice after receiving the welcome call and information about the risks associated with investing in equity, as required by the "Caveat Emptor" (buyer beware) doctrine, which holds Respondent No. 1 responsible for her investment decision. In view thereof, the Bench believes that Respondent No. 1 also failed to proceed vigilantly. The recorded call log between the representative of Appellant and Respondent No. 1 mitigates the assertions made by Respondent No. 1 regarding mis-selling or concealed investment risks, however, this fact does not completely absolve the Appellant.

11. The Bench is of the view that the purpose of the need assessment section of the AOF was to determine the suitability of a person for certain investments, however, the Appellant has failed to proceed in a required manner and in result thereof, a major part of Respondent No. 1's investment was allocated to the high-risk equity fund (average investment in equity funds during the Plan duration remained 66.11%). The Bench has noted that Respondent No. 1 was a housewife and she invested an inherited amount, therefore, for all practical purposes her risk appetite/tolerance level may not be considered as 'moderate', rather the risk tolerance level should have been recorded as 'low'. Notwithstanding hereinbefore, as per the risk assessment



Securities and Exchange Commission of Pakistan

section of the AOF, Respondent No.1, who had been assigned a moderate risk tolerance level, should have been admitted to a capital protection fund and other balanced funds, however, her major investment was made in an equity fund. It is important to note here that in the AOF, the equity investment solution has been provided for a high tolerance level client. The Bench is of the view that regardless of the incorrect risk tolerance level, instead of offering a capital protection fund, she had been admitted to an equity fund.

12. The Bench endorses the Appellant's stance that at the time when Respondent No.1 made the investment there was no specific law requiring it to consider specific risk categorization and the same were introduced vide Circular No. 2 of 2020. However, the Bench is of the view that this is not the case against the Appellant that it failed to follow any specific risk categorization, the case against the Appellant is that it failed to accurately categorize the risk tolerance level of Respondent No.1 as per the given data and information. The Bench does not doubt that the Appellant had failed to understand the object of AOF and admitted the major part of Respondent No. 1's investment in equity fund. The Bench is of the view that AOF was not a mere formality rather it was a key document to determine the investment tolerance level of Respondent No. 1, however, the Appellant's relationship manager/sales staff had committed serious irregularities in this regard. The sanctity of the AOF cannot be undermined and it appears to the Bench that the Appellant also has no mechanism to check and verify the accuracy and suitability of data provided by the relationship manager/sales staff to avoid incidents of incorrect risk categorizations.

13. The Bench is of the view that Respondent No.1 was a housewife, therefore, she cannot be considered a well-informed and vigilant investor who can understand the risk-bearing factors of equity funds. In view thereof, the Bench does not doubt that the Appellant had not acted in the best interest of Respondent No. 1 and failed to ensure reasonable care regarding the suitability of the investment product offered to Respondent No. 1.

14. The Bench rejects the Appellant's plea that any adverse decision in this appeal may undermine the growth of the mutual funds industry in Pakistan. The Bench is of the view that while protecting the growth of mutual funds or other regulated activities, the Securities and



Securities and Exchange Commission of Pakistan

Exchange Commission of Pakistan (the Commission) cannot overlook the violations committed by the regulatees and especially when cases of investor exploitation by the regulatees are evident. The Bench is of the view that as per the requirements of the Securities and Exchange Commission of Pakistan Act, 1997, the Commission has the responsibility to protect both, whether it is a regulated entity or an investor.

15. During the hearing before the Bench, The Appellant's representatives apprised the Bench that without admitting the guilt and on compassionate grounds, the Appellant is ready to compensate the loss suffered by Respondent No.1. Thereafter, the Appellant's representatives vide email dated, shared a compromised deed May 6, 2024 executed between the Appellant and Respondent No. 1 whereby, the Appellant paid the amount of loss suffered by Respondent No.1. through UBL Cheque No. 07813930 dated May 6, 2024.
16. The Bench appreciates the compassionate act of the Appellant and its senior management whereby the loss suffered by Respondent No. 1 has been compensated. Given the foregoing, by converting the penalty into a warning, we hereby dispose of this Appeal, without any order as to cost.

(Abdur Rehman Warriach)

Commissioner

(Akif Saeed)

Chairman/Commissioner

Announced on: 04 JUL 2024