



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 27 of 2015

Chief Executive Officer, MRA Securities (Pvt) Limited

...Appellant

Versus

Director/HOD (MSSID), SECP

...Respondent

Date of hearings:

24/08/15 and 16/09/15

Present:

For Appellant:

- i. Mr. Babar Ali Shaikh, Advocate
- ii. Mirza M. Baig, MRA Securities

For Respondent:

- i. Mr. Amir Saleem, Joint Director (SSED-SMD)
- ii. Ms. Tayyaba Nasir, Deputy Director (SSED-SMD)

ORDER

1. This order shall dispose of Appeal No. 27 of 2015 filed by the Appellant under Section 33 of the Securities and Exchange Commission of Pakistan Act 1997 against the order dated 12/02/15 (the Impugned Order) passed by the Respondent.
2. The brief facts of the case are that the Respondent asked the Appellant to provide a copy of Standard Account Opening Form (SAOF) of client bearing the client code 201024 vide letter dated 03/12/14. The Respondent vide letter dated 12/12/14 provided the requisite document. After the examination of SAOF, following deficiencies were noted:
 - The date of opening of account was not filled.



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- Client's trading account and CDC account numbers were missing.
- Particulars of nominee were not filled.
- The SAOF was not witnessed by two individuals along with CNIC numbers and signatures.
- Authorization letter was signed without name and details of person authorized to operate the account was missing.
- The KYC/ CDD form was blank and bears only signature of the client.
- Copy of CNIC of the client was not attested as required under KSE Regulations.

3. A Show Cause Notice (the SCN) was issued to the Appellant as to why action may not be taken in pursuance of Rule 8 of the Brokers and Agents Registration Rules, 2001 (Brokers Rules) and Section 22 of the Securities and Exchange Ordinance 1969 (the Ordinance). The Respondent received reply of the SCN from the Appellant on 27/01/15 wherein it has been stated that ".....During the renovation of our branch some documents have fallen down from filling cabinet in cemented water, therefore, only some SAOF are disfigured. However, we have sent the fresh SAOFs to the concerned clients for refilling. Unfortunately, the client bearing client code "201024" returned fresh form just after signed.....". During the hearing proceedings dated 17/01/15, the Appellant reiterated its stance as explained through the above letter.

4. After the hearing the Respondent held that it was the responsibility of the Appellant to maintain complete and accurate information of its clients at all times, therefore the reason extended by the Appellant regarding the SAOF of client bearing client code 201024 is not tenable. Being dissatisfied with the response of the Appellant, the Respondent in exercise of the power under section 22 of the Ordinance, imposed a penalty of Rs.100,000 (Rupees One Hundred Thousand Only) on the Appellant.

5. The Appellant has preferred the appeal against the Impugned Order and has not taken any specific legal grounds except that after SCN hearing another hearing opportunity was not provided to



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present the disfigured SAOF. The Appellant prayed to waive the penalty imposed due to minor mistake.

6. The Respondent denied and rebutted the facts of the appeal and stated that the Appellant is trying to mislead the honorable Appellate Bench (the Bench) by misstating the proceedings of hearing conducted on 27/01/15, which is an additional offense besides the original violation. The Impugned Order has clearly stated the facts on the basis of which it has been passed. Therefore, it is respectfully prayed that the Impugned Order passed by the Respondent and the penalty imposed therein be upheld and the appeal filed by the Appellant may be dismissed.
7. We have heard the parties at length and perused the relevant record with the assistance of the parties i.e. Appellant and Respondent.
8. During the course of hearing before the Bench, the Appellant presented some SAOF which were allegedly disfigured due to cemented water, however no such record was ever presented during the SCN proceedings before the Respondent. Presentation of such disfigured SAOF creates suspicion regarding genuineness of the document, because if such documents were available and in possession of the Appellant at the time of SCN proceeding then theses should have been produced before the Respondent. In present case the Appellant has not taken any ground to establish that such disfigured SAOF were not in its possession at the time of SCN proceeding, therefore same were not presented to the Respondent and the Appellant, later on acquired disfigured SAOF.
9. As per record there is no evidence that the Appellant has ever asked the Respondent for rehearing of the case to present the disfigured SAOF. Further, the SCN hearing proceeding was conducted on 27/01/ 15 and the Impugned Order was passed on 12/02/15 after laps of fifteen days, which was a reasonable time for Appellant to present disfigured SAOF to substantiate its claim, however the Appellant failed to avail the opportunity, which exhibits that no such record ever existed earlier and later on fake and fabricated record was prepared and presented before the Bench.
10. In view of the above facts, at appeal stage such disfigured SAOF cannot be accepted to substantiate the claim of Appellant, as he failed to bring on record such documents during SCN

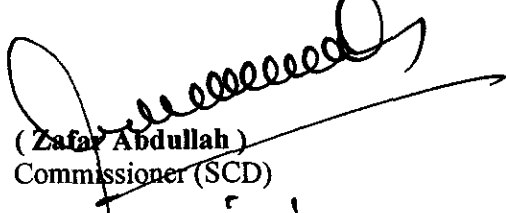
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proceeding before the Respondent. We accede with the Respondent position that the Appellant is trying to mislead the Bench by misstating the facts and evidence presented during the SCN proceedings. In the light of record the Bench is of the considered opinion that the Appellant has failed to exercise due care and diligence in the conduct of business as per law and allowed a client to open account and trade in the market without obtaining complete particulars, thus, the Appellant has failed to abide by applicable rules and regulations by violating the Clause A (2) of Code of Conduct set forth under the Third Schedule of the Broker Rules which in turn is a violation of Rule 12 read with Rule 8 of the Brokers Rules.

11. In view of the aforesaid the Appellant has not only failed to make out its case, rather fake and fabricated documents were produced to support the claim, therefore the Impugned Order dated 12/02/15 is upheld with partial modification in quantum of the fine, which has been enhanced to Rs.150, 000/ (Rupees one hundred and fifty thousand only) and the Appellant is further directed to refrain from such malpractice in future while complying with the requirements of law. The appeal is dismissed.

12. Parties to bear their own cost.


(Zafar Abdullah)
Commissioner (SCD)
Announced on: 06 OCT 2015


(Tahir Mahmood)
Commissioner (CLD)