



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 33 of 2022

AKD Securities Limited

...Appellant

versus

Director/HOD, Adjudication Department-I, SECP

...Respondent

Date of hearing:

March 13, 2025

Present:

For the Appellants:

1. Mr. Zafar Ahmed
2. Mr. Danish Aziz
3. Mr. Atta-ur-Rehman
4. Mr. Muhammad Farid Alam

For the Respondent:

1. Mr. Mubasher Saeed Saddozai, Executive Director, Adjudication, SECP
2. Mr. Mahboob Ahmad, Additional Director, Adjudication-I, SECP
3. Mr. Muhammad Akram Farooka, Assistant Director, Adjudication-I, SECP

ORDER

1. This Order shall dispose of Appeal No. 33 of 2024 filed by AKD Securities Limited (the Appellant) against the Order dated April 28, 2021 (Impugned Order) passed by the

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Director/Head of Department, Adjudication-I (the Respondent) under section 40A of the Securities and Exchange Commission of Pakistan Act, 1997 (the Act).

2. The brief facts of the case are that the Appellant is a Trading Rights Entitlement Certificate (TREC) holder of the Pakistan Stock Exchange Limited (PSX) and is licensed as a securities broker. A review was conducted by the Securities and Exchange Commission of Pakistan (the Commission) to assess the Appellant's compliance with Anti-Money Laundering and Countering Financing of Terrorism Regulations, 2018 (AML Regulations). Pursuant to the said review, the Respondent, vide letter dated December 11, 2020, advised the Appellant to furnish comments on the highlighted instances of non-compliance by December 16, 2020. The Appellant submitted its reply on December 22, 2020. Upon consideration of the review findings, the Respondent issued a Show-Cause Notice (SCN) dated April 26, 2021 and called upon the Appellant to submit a written reply within 14 days. The Appellant submitted a point-wise reply dated June 25, 2021, denying any willful contravention of the AML Regulations and asserted that due diligence was conducted and suspicious transactions were reported to the Financial Monitoring Unit (FMU). A hearing was conducted on June 28, 2021 wherein the Appellant's Chief Executive Officer and Compliance Officers reiterated the written submissions and were subsequently directed to furnish relevant documentary evidence. The required documents were submitted via email dated June 29, 2021.
3. Upon examining the record and submissions, the Respondent found the Appellant to be non-compliant with Regulations 6(3)(a), 6(3)(c), 6(4), 13(1), 13(2), and 13(3) of the AML Regulations, including failure to identify beneficial owners, inadequacy of customer due diligence, and lack of proper monitoring and documentation. Consequently, the Respondent in exercise of powers conferred under section 40A of the Act, imposed a penalty of Rs. 300,000/- on the Respondent.
4. The Appellant has preferred this Appeal, *inter alia*, on the grounds that it has not wilfully or negligently violated the provisions of the AML Regulations. The Appellant submitted that it

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had conducted customer due diligence (CDD) at the time of account opening in accordance with the prescribed procedures and had taken all reasonable steps to ensure compliance with the applicable regulatory framework.

5. The Appellant further contended that it had regularly monitored the trading activity of its clients in light of their declared financial profiles, and that investment limits were accordingly assigned. The Appellant argued that where inconsistencies were noted, further information was sought from the clients, and in certain cases, the accounts were flagged, suspended, and reported to the (FMU) as suspicious transactions. The Appellant maintained that this showed the operation of an active internal control system for identifying and reporting atypical transactions. The Appellant further submitted that in cases where documentation was deemed insufficient by the review team, the clients had been followed-up multiple times but failed to timely submit the required documents due to personal constraints and in such cases, the Appellant emphasized that it acted in good faith and applied internal escalation measures, including suspension of trading accounts with pending verifications.
6. The Appellant further argued that for older accounts opened prior to the promulgation of the AML Regulations or KYC/CDD Guidelines (i.e., pre-2012), it had made best efforts to retrospectively collect, verify, and update customer information as required under the current regulatory regime. The Appellant contended that historical absence of documents for legacy clients could not amount to regulatory breach, particularly when no such requirements were legally in force at the time of account opening. The Appellant further submitted that no mala fide intent or gross negligence could be attributed, as evident from the fact that suspicious transactions were proactively reported to FMU and remedial measures were taken without delay. The Appellant argued that this demonstrated its bona fide intent and commitment to regulatory compliance.
7. The Appellant further submitted that the Respondent ought to have taken a lenient view in the matter, keeping in view the procedural steps already taken, the voluntary disclosures made, and



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the absence of any prior regulatory violation or penalty of similar nature. The imposition of penalty was, therefore, argued to be excessive and without due appreciation of the mitigating circumstances.

8. In response to the submissions of the Appellant, the Respondent, *inter alia*, contended that the Impugned Order and the proceedings were conducted strictly in accordance with law, after affording the Appellant ample opportunity of being heard both in writing and through personal representation. The Respondent submitted that the review process revealed material non-compliances on the part of the Appellant with various provisions of the AML Regulations which were adequately substantiated and remained unrefuted during the course of proceedings. The Respondent further contended that in three instances, the Appellant failed to identify the actual beneficial owners and did not conduct appropriate due diligence or ongoing monitoring of customer transactions. The Respondent further submitted that the mismatch between the declared financial profiles of certain clients and the actual volume of their trading and cash transactions was not denied by the Appellant and stood established on record. The Respondent argued that such failure amounted to clear contraventions of Regulations 6(3)(a), 6(3)(c), 13(1), 13(2), and 13(3) of the AML Regulations.
9. The Respondent further submitted that in five distinct cases, the Appellant failed to maintain adequate documentary evidence reflecting the occupation and source of income of the clients. The Respondent argued that in some cases, occupation was either not declared or declared ambiguously as “other”, and no supporting documents were maintained by the Appellant at the time of review. The Respondent emphasized that mere reliance on wealth statements or tax returns filed post facto could not substitute real-time due diligence as required under Regulations 6(3)(c) and 6(4) of the AML Regulations.
10. The Respondent argued that the obligation to conduct proper KYC/CDD and ongoing monitoring was a continuing one, and that reliance on outdated or partial records was insufficient under the law. The Respondent also contended that the Appellant’s own compliance



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officer had acknowledged the inability to justify certain suspicious transactions, which were thereafter reported to the FMU. This, according to the Respondent, further affirmed that due diligence procedures had not been robust enough to pre-empt or prevent such lapses.

11. The contention of the Appellant that the absence of *mens rea* precluded the imposition of penalty was strongly refuted by the Respondent. The Respondent submitted that the proceedings under Section 40A of the SECP Act, 1997 were civil and regulatory in nature and did not require the establishment of *mens rea*. The Respondent placed reliance on the judgment of the Appellate Bench SECP in *Zephyr Textiles Mills Limited v. Head of Department (Enforcement)*, wherein it was held that *mens rea* is not essential in proceedings for breach of civil obligations under a regulatory statute. The Respondent finally submitted that the penalty imposed was proportionate and justified in view of the gravity of non-compliance and the nature of regulatory breach.
12. The Bench has considered the arguments advanced by both parties and examined the record placed before it. The Bench notes that the Appellant has not disputed it failed to maintain adequate documentation in several instances regarding the identification of beneficial owners, verification of occupation, and source of income of clients, as required under Regulations 6(3)(a), 6(3)(c), 6(4), 13(1), 13(2), and 13(3) of the AML Regulations, 2018. The Bench further notes that the Appellant's explanation that subsequent submission of wealth statements or tax returns should cure such deficiencies does not satisfy the regulatory requirement for proactive and ongoing due diligence.
13. The Bench finds no merit in the Appellant's reliance on the principle of *mens rea*, as the proceedings under Section 40A of the SECP Act, 1997 are civil and regulatory in nature. The Bench holds that it is rightly pointed out by the Respondent, and as held in *Zephyr Textiles Mills Ltd. v. HOD (Enforcement)*, penalties for breach of civil obligations do not require proof of intent. The Bench further notes that the Impugned Order demonstrates that due process was followed, the Appellant was heard, and the findings were duly supported by evidence.





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14. In view of the foregoing analysis, the Bench is of the considered view that the Appellant is in contravention of the mandatory provisions of the AML Regulations, as held in the Impugned Order. However, the Bench also takes note of the remedial actions undertaken by the Appellant, including the suspension of suspicious accounts, reporting to the FMU, and subsequent submission of certain documentary evidence. These steps reflect a degree of regulatory awareness and post-incident cooperation.
15. Consequently, in the interest of justice and equity, the Bench, while maintaining the finding of non-compliances, deems it appropriate to exercise its discretion in revising the quantum of the penalty imposed. The penalty is hereby reduced to Rs. 200,000/- (Rupees Two Hundred Thousand Only). The Appellant is further directed to ensure strict and continuous adherence to the requirements prescribed under the AML Regulations, with particular emphasis on customer due diligence and record maintenance. The Appeal stands disposed of with no order as to costs.

(Abdul Rehman Warraich)
Commissioner

(Mujtaba Ahmed Lodhi)
Commissioner

Announced on:

05 MAY 2025