



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. III

In the matter of

Appeal No. 38 of 2015

M/s KHZ Associates (Pvt.) Ltd

....Appellant

Versus

Executive Director, Insurance Division, Securities and
Exchange Commission of Pakistan

....Respondent

Date of Hearing 11/11/15

Present:

For the Appellant:

Mr. Sana Ullah Brohi, Advocate High Court

For the Respondent:

- (i) Mr. Tariq Bakhtawar, Director (Insurance)
- (ii) Mr. Shahid Javed, Deputy Director (Insurance)

ORDER

1. This order is in appeal No.38 of 2015 filed under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order dated 18/09/12 (Impugned Order) passed by the Respondent. The appeal was filed with the Appellate Bench more than three years after the passing of the Impugned Order. The Appellant's Legal Counsel made an application for condonation of delay vide letter dated 10/09/15 which was accepted by the Appellate Bench and, thereafter, the appeal was registered.

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2. Brief facts of the case are that the insurance surveyors license of M/s KHZ Associates (Private) Ltd (Appellant) was renewed vide License bearing serial no.3320, to act as an insurance surveyor for Fire, Marine and Motor classes, for a period of one year starting from 05/05/11 to 04/05/12, under Section 112 of the Insurance Ordinance, 2000 (Ordinance). The Respondent vide letter dated 27/01/12 to the Appellant inquired whether they have issued any survey reports in respect of Miscellaneous class after 08/12/11, and requested the Appellant to furnish all such reports. In response the Appellant vide their letter dated 31/01/12 stated that they have not issued any survey report in respect of Miscellaneous class. However, the Appellant again requested the Respondent to provide a copy of any such survey report. When no response was received from Appellant, the Respondent provided the Appellant copy of a survey report vide letter dated 06/02/12. In response to the Respondent's letter dated 06/02/12, M/s Nauman Law Associates (Advisor of Appellant) vide letter dated 24/02/12 confirmed that Mr. Khalid Mahmud, Chief Executive of the Appellant had signed the survey report for crop claims. The Advisor also admitted on behalf of the Appellant that Insurance Rules, 2002 (Rules) have been violated by the Appellant/Authorised Surveying Officer (ASO). The Advisor further stated that "the pending cases which are allotted to the company before 10/02/2012 will be finalized and report will be issued to the concerned insurance companies."
3. The Appellant vide letter dated 16/03/12 informed that they have not conducted any fresh surveys of "Life Stock or Crops" after 08/10/11 and have only concluded the cases allotted to the Appellant before 08/10/11. The Appellant, however, vide the same letter submitted copies of Seven survey reports issued in respect of Crops claims, which were surveyed before 08/10/11 and finalized subsequently. Examination of the survey reports submitted by the Appellant revealed that the survey reports, which were issued on 12/01/12, contained some misleading text, i.e. "We the undersigned, holding valid Insurance Survey Licence..."



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4. The Respondent vide email dated 30/03/12 requested all the insurers to provide complete details of the surveys in respect of the miscellaneous class after 08/08/11. Upon receipt of the responses from various insurers, it was revealed that M/s Alfalah Insurance Company Limited had appointed the Appellant for conducting thirteen (13) surveys and issuing survey reports in respect of the Miscellaneous class after 08/08/11. In view of the above, the Appellant had contravened the provisions of section 111 and section 112(3) of the Ordinance by issuing survey reports in respect of the Miscellaneous (Agri) class for which the Appellant have not been registered as Authorised Surveying Officer (ASO).
5. Show Cause Notice dated 22/06/12 (SCN) under Section 111 read with Section 112(3) and Section 112(6) of the Ordinance was issued to the directors and Chief Executive of the Appellant. The Appellant submitted response to the SCN vide letter dated 01/07/12. Hearing in the matter was held on 24/07/12 and was attended by Mr. Khalid Mahmud, Chief Executive Officer of the Appellant, on behalf of all the directors of Appellant.
6. The Respondent held that the default of section 111 read with section 112(3)(c) of the Ordinance was established which has been accepted by the Appellant. Further, it had been established that the Appellant had contravened the provisions of the Ordinance i.e. in 2011 and 2012 by:
 - a) Conducting surveys in Miscellaneous (Crop Loss and/or Others) class of business for which neither they had the license nor were they Authorized Surveying Officers.
 - b) Submitting false and misleading declaration to the Commission along with their renewal application vide their letter of 17/04/12 that they have complied with the provisions of the Ordinance and Rules during the preceding 12 months.
7. The Respondent in exercise of the power conferred under Section 112(6) of the Ordinance imposed a penalty on the Appellant by cancelling the insurance surveying



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license of the Appellant with effect from 03/10/12, in line with the notice period of at least two weeks as stipulated under Section 112(6) of the Ordinance.

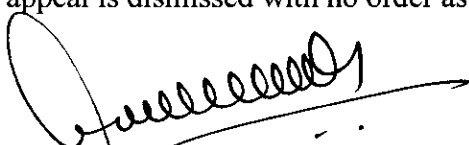
8. The Appellant has preferred the instant appeal against the Impugned Order on the grounds that the Appellant had suffered financial loss and sufficient punishment for more than three years as a result of the Impugned Order. Therefore, if any inadvertent mistake had been committed, the Appellate Bench is requested to review the Impugned Order on sympathetic grounds. The Appellant had been in business for more than three decades and enjoyed a good reputation in the business community. The enquiries were made against a complaint filed by a person namely Lubna Malik whose particulars were never verified by the Respondent. There was no deliberate violation of rules and regulations by the Appellant. The Supreme Court of Pakistan has held in various decisions that orders shall be passed applying judicious mind and any order passed on the basis of fictitious complaint is without lawful authority and, therefore, null and void.
9. The Respondent rebutted the arguments of the Appellant by stating that the Appellant issued reports on Miscellaneous (Agri) class for which the Appellant was not authorized. It was one of the mandatory conditions of the license that the survey reports should be issued by a person registered under section 113 of the Ordinance as laid down under section 112(3) of the same Ordinance. Therefore, any reports issued by the licensee for which he was not registered then such a licensee (Appellant) would be deemed to have contravened the mandatory conditions of its license in terms of section 112 of the Ordinance. Further, the Appellant submitted a false and misleading declaration with their renewal application that they have complied with the provisions of the Ordinance and Rules during the preceding 12 months. The Appellant, therefore, is liable to be penalized under section 112(6) of the Ordinance.
10. We have heard the parties i.e. the Appellant and the Respondent. The argument of Appellant that they have already suffered as a result of the penalty is not a basis for



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taking a lenient view on the matter. Further, the Appellant has accepted the default and not made any convincing arguments which have any correlation with the issues in the instant case. We concur with the Respondent that the Appellant had contravened the provisions of section 111 and section 112(3) of the Ordinance by issuing survey reports in respect of the Miscellaneous (Agri) class for which the Appellant was not registered. Further, the Appellant submitted false declaration that they have complied with the Ordinance and Rules with their renewal application. The Appellant has not stated any credible reasons why such a violation was committed and whether compliance will be ensured in future.

11. In view of the foregoing, we see no reason to interfere with the Impugned Order. The appeal is dismissed with no order as to costs.


(Zafar Abdullah)
Commissioner (SCD)


(Tahir Mahmood)
Commissioner (CLD)

Announced on: **30 NOV 2015**