



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH

In the matter of

Appeal No. 38 of 2019

Fortune Securities Limited

Appellant

Versus

The Commissioner, (SMD), SECP, Islamabad.

Respondent

Date of hearing:

November 28, 2019

Present:

For Appellant:

- i. Mr. Abdul Wahab, Compliance Officer
- ii. Mr. Anis Ur Rahman, CEO
- iii. Mr. Fazal Mehmood Malik, COO

For Respondent:

- i. Ms. Amina Aziz, Director (SMD), SECP
- ii. Ms. Mehwish Naveed, Management Executive (SMD), SECP

ORDER

1. This Order shall dispose of Appeal No. 38 of 2019 filed by Fortune Securities Limited (the Appellant) against the Order dated June 3, 2019 (the Impugned Order) passed by the Commissioner, SMD (the Respondent) under Section 40A of the Securities and Exchange Commission of Pakistan Act, 1997 read with Section 150 the Securities Act, 2015. *(The Appellant is a public limited company, however, due to an inadvertent mistake, in the Impugned Order, it had been mentioned as a private limited company.)*



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2. The brief facts of the case are that that the Appellant is a Trading Rights Entitlement Certificate holder of the Pakistan Stock Exchange Limited (the PSX) and licensed as a securities broker under the Securities Act, 2015. The Joint Inspection Team of PSX, Central Depository Company and National Clearing Company of Pakistan Limited conducted an inspection (the Inspection) of the Appellant to assess its compliance with the regulatory requirements contained in Securities and Exchange Commission of Pakistan (Anti Money Laundering and Countering Financing of Terrorism) Regulations, 2018 (the Regulations). The Inspection, *inter alia*, revealed the following:
 - i. The Appellant had not adequately established beneficial ownership of its corporate clients.
 - ii. The Appellant had failed to perform CDD of eleven of its clients (out of a sample of 27) by not obtaining basic information including source of funds prior to opening of the account.
3. In view of the violations highlighted during the Inspection, the Respondent issued a Show Cause Notice dated May 2, 2019 (the SCN) to the Appellant. The Appellant submitted a written reply to the SCN on May 9, 2019 and hearing in the matter was held on May 9, 2019. In terms of powers conferred under section 40A of the Act, a penalty of Rs. 200,000/- (Rupees two hundred fifty thousand) under section 40A of the Act was imposed by the Respondent.
4. The Appellant has challenged the Impugned Order *Inter alia* on the grounds that trading account of the corporate client was opened in 2016, however, financial statements were not submitted, therefore, trading through said account was never allowed. The Appellant further submitted that after promulgation of the Regulations, the corporate client was asked to provide information about the beneficial ownership but the requisite information was not provided within the stipulated time, therefore, the trading account was closed. The Appellant further stated that after the promulgation of the Regulations KYC/CDD exercise was initiated for all clients (new & old). The Appellant contended that old clients and inactive accounts were not reachable, therefore, due to deadline for submitting the information, all untraceable clients were classified as high risk, however, now, KYC/CDD of all clients is almost complete.
5. The Respondent has rebutted the grounds of Appeal and stated that the account of the corporate client was opened in 2016 whereas, the Appellant asked for relevant details of beneficial ownership nine months after promulgation of the Regulations. The Respondent stated that the requirement to establish beneficial ownership is not new, as it existed under the



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KYC & CDD Guidelines of 2012. The Respondent contended that the Appellant had failed to perform KYC/CDD of two clients and provided unsigned forms. The Respondent stated that regulatory requirements relating to KYC/CDD and Anti-money laundering were implemented since the 2012, therefore, the Regulations cannot be termed as a new set of requirements.

6. The Bench has heard the parties and perused the record. The Appellant's representative reiterated the grounds of Appeal and contended that inspection/review was carried out before the issuance of AML guidelines 2018, therefore, sufficient time was not provided to understand and comply with the requirements of the Regulations. Whereas the Respondent's representative rebutted such grounds and argued that the violated requirements of the Regulations were also part of the 2012 regulatory framework, therefore, the Respondent cannot take the plea that requirements of the Regulations were significantly different and sufficient time was not provided for compliance .
7. The Bench has carefully gone through the contents of the Impugned Order and other relevant record, which revealed that the Appellant had violated the requirements of Regulation 6 and 7 of the Regulations though the Respondent had not specifically mentioned the aforesaid provisions in the Impugned Order. The Bench is of the view that the violated provisions should have been mentioned in the Impugned Order. However, not mentioning specific provisions do not vitiate the proceedings when, otherwise violations were duly mentioned and established.
8. The Bench has examined the arguments of the parties and found that the Appellant's assertions are insignificant to distort the findings of the Impugned Order because the requirements contained under the Regulations were not new, rather these were introduced in 2012 by the Karachi Stock Exchange (presently PSX), with the approval of the Commission, through regulation 4.18 of the Rule Book (current Regulation 4.17). The Bench is of the view that these requirements were made mandatory for the securities brokers to formulate and implement an effective KYC and CDD policy in accordance with the KYC and CDD guidelines issued by the Karachi Stock Exchange in 2012. The Bench has compared the requirements of the regulatory framework of 2012 with the Regulations and SECP's AML guidelines 2018, and observes that they do not reflect any material difference. Therefore, the Bench has no doubt to hold that the Regulations had not introduced any significantly new regulatory requirements, rather prior regulatory requirements had been streamlined. The Bench has observed that even prior to the promulgation of the Regulations, the Appellant was required to have

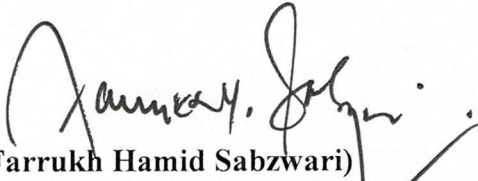


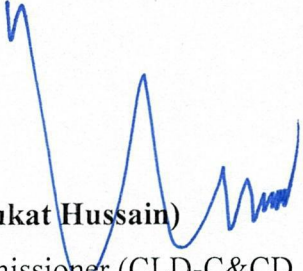
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customer identification, CDD and beneficial ownership under the previous regulatory legal framework but the Appellant had failed to comply with the applicable requirements.

9. The Bench has observed that the Appellant had never operated the trading account of the corporate client due to non-submission of certain documents and signature of only two clients were missing from KYC/CDD forms. The Bench is of the view that violations against the Appellant are established, however, keeping in view the facts and circumstances of the case we are of the view that quantum of penalty is much higher than the scale of non-compliances. Therefore, while maintaining the verdict of the Impugned Order, we hereby reduce the penalty of fine from Rupees 200,000/- to Rupees 100,000/- and direct the Appellant to comply with the regulatory and statutory requirements in letter and spirit, to avoid strict penal action in future.

10. The Appeal is disposed of accordingly, without any order as to cost.


(Farrukh Hamid Sabzwari)
Commissioner (SCD, AML)


(Shaukat Hussain)
Commissioner (CLD-C&CD, Insurance)

Announced on: 01 JAN 2020