

Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 46 of 2020

Hassan Farhan Minhas

...Appellant

Versus

i. JS Global Capital Limited

...Respondent No.1

ii. Shauzab Ali, Commissioner (Securities Market Division)

...Respondent No.2

Date of Hearing: 24/09/20

Present:

For the Appellant

Mr. Hassan Farhan Minhas

For the Respondent No.1:

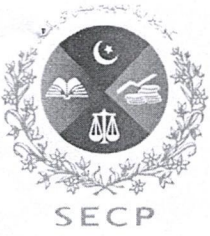
- i. Mr. Kamran Nasir, CEO, JS Global Capital Ltd.
- ii. Mr. Junaid Mirza, COO, JS Global Capital Ltd.
- iii. Mr. Tanzeel ur Rehman, Head of RMC, JS Global Capital Ltd.

For the Respondent No.2

- i. Mr. Osman Syed, Joint Director (Adjudication-1)
- ii. Mr. Muhammad Akram, Assistant Director (Adjudication-1)

ORDER

1. This Order is passed in Appeal No.46 of 2020 filed under section 33 of the Securities and Exchange Commission of Pakistan Commission Act, 1997 against the order dated 13/04/2020



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(the Impugned Order) passed by the Commissioner (the Securities Market Division) (the Respondent No.2).

2. The brief facts of the case are that the Securities and Exchange Commission of Pakistan (the Commission) received a complaint from Mr. Hassan Farhan Minhas (the Appellant) on behalf of his spouse Ms. Maryam Izhar Minhas (the Client) who authorized the Appellant to carry out commodity trades in her account. The Appellant, *inter alia*, alleged in his complaint that the Client opened a commodity trading account with M/s. JS Global Capital Ltd., (the Respondent No.1) and that Mr. Rizwan, employee of the Respondent No.1 carried out unauthorized trades in the Client's account between October and November, 2013 without possessing the requisite discretionary authority.
3. The Commission took up the matter with Respondent No.1. After examination of the complaint in light of the response received from Respondent No.1, show-cause notice dated 20/07/16 (the SCN) was issued to Respondent No.1. The hearing in the matter was held on 22/12/16 which was attended by Mr. Kamran Nasir, Chief Executive Officer of the Respondent No.1 and Mr. Rashid Sadiq, Consultant of the Respondent No.1 as its representatives. The complaint was dismissed by the Executive Director of the department of Respondent No.2 vide its Order dated 02/02/17 considering the fact that there was insufficient evidence to prove the claim of the Client. The Appellant preferred the appeal before the Appellate Bench against the Order dated 02/02/17. The Appellate Bench vide its Order dated 31/01/2020 set aside the Order dated 02/02/17 and remanded back the matter to give an opportunity of hearing to the Appellant and decide the matter afresh after reviewing the evidence and on merits of the case. Consequently, the Appellant and Respondent No.1 were accorded an opportunity of personal hearing on 11/03/2020. The said hearing was attended by Mr. Kamran Nasir (Chief Executive Officer) and Mr. Tanzeel Ur Rehman (Head Risk & Compliance) as Authorised Representatives of the Respondent No.1, whereas, the Appellant represented the Client.
4. The Respondent No.2 held that in the absence of call records, reliance has to be placed on text messages sent by the Pakistan Mercantile Exchange (the PMEX) and trade confirmations sent by Respondent No.1 in order to ascertain whether the Client received information regarding trades executed in her account. Respondent No.2 held that the account opening form of the



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Client was examined which revealed that the Client had provided her mobile phone number and email for communication of the trades executed in her account. Furthermore, Respondent No.2 held that the Client had also provided a separate undertaking to this effect stating that she will be responsible to timely check her trade confirmation emails sent by Respondent No.1, and Respondent No.1 shall in no manner be liable for that trade after that. In this regard, record from PMEX had been sought which clearly revealed that PMEX had duly sent the information pertaining to the trades executed in the account of the Client through the text message on her mobile phone number. Furthermore, Respondent No.2 held that transmission of trade confirmation emails to the Client on her email address has been substantiated through the record provided by Respondent No.1 and PMEX. Therefore, keeping in view the fact that there is insufficient evidence to prove the claim of the Appellant regarding unauthorized trading in the account of the Client, Respondent No.2 held that no action is warranted against Respondent No.1. Furthermore, the Appellant was advised by Respondent No.2 to restrain himself from any ex-parte communication with the adjudicating authority in future.

5. The Appellant preferred the instant appeal *inter alia* on the grounds that Respondent No.2 did not consider all the documents which were presented during the hearing. The Appellant at the hearing further argued that on one occasion trading took place on a gazetted holiday and trade confirmation report was sent after 4 days of the transaction which proves unauthorized trading took place. The Appellant argued that the Impugned Order, therefore, may be set aside.
6. The Respondent No.1 rebutted the arguments of the Appellant *inter alia* on the grounds that the Appellate Bench had accepted the earlier appeal of the Appellant and set aside the Order dated 02/02/17 and remanded the matter to the department of Respondent No.2 to rehear the matter vide Order dated 31/01/20. In this respect, Respondent No.1 argued that the matter has been reviewed again by Respondent No.2 and the complaint was rejected vide the Impugned Order. Therefore, there is no cause for the instant appeal when the matter has already been reviewed and there is nothing new left for discussion and review.
7. The Respondent No.2 rebutted the arguments of the Appellant *inter alia* on the grounds that there was insufficient evidence to prove unauthorized trading in the Client's account and the

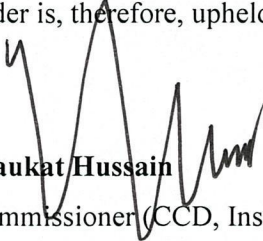


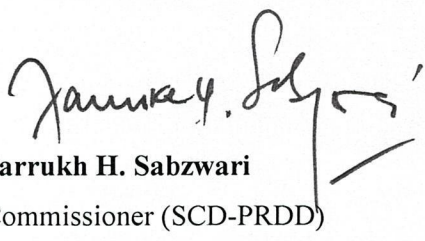
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Impugned Order, therefore, may be upheld in its entirety for the reasons mentioned in the Impugned Order.

8. We have heard the parties i.e. the Appellant and the Respondents. We had remanded the matter to the department of Respondent No.2 vide Appellate Bench Order dated 31/01/20 to give an opportunity of hearing to the Appellant and to look into the matter afresh and decide if there is any evidence which supports the Appellant's claim that there was unauthorized trading in the Client's account. Respondent No.2 has, once again, established through the Impugned Order that the Client was fully aware of all trading which was taking place in her account and there is no evidence to support the Appellant's claim. We are of the view that the Appellant has presented no new or reliable evidence that the Client was not timely informed of the transactions or that unauthorized trading had taken place in her account at any point during the trading period. Therefore, the Appellant's claim of unauthorized trading is without any merits whatsoever. However, on compassionate and humanitarian grounds, we had requested the Appellant and Respondent No.1 to reach an amicable settlement in the matter if possible. The Respondent No.1 had made an offer to the Appellant but we have been informed by both parties that no settlement could be reached.

9. In view of the foregoing, we see no reason to interfere with the Impugned Order. The Impugned Order is, therefore, upheld with no order as to costs.


Shaukat Hussain
Commissioner (CCD, Insurance)


Farrukh H. Sabzwari
Commissioner (SCD-PRDD)

Announced on: **24 FEB 2021**