



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH

In the matter of

Appeal No. 48 of 2020

M/s. HBL Asset Management Limited

Appellant

Versus

1. The Executive Director (Adjudication-1), SECP
2. The Commissioner (SCD), SECP
3. Mrs. Anila Raja (Complainant)

Respondents

Date of hearing:

November 19, 2020

Present:

For Appellant:

- i. Mr. Salman Iqbal Bawaney (Counsel)
- ii. Ms. Samina Fazal (Counsel)
- iii. Mr. Noman Qurban, CFO & Company Secretary,
- iv. Mr. Moiz Abdul Majeed, Manager Compliance

For Respondent Nos.1 and 2:

- i. Ms. Tanzila Nisar Mirza, Additional Director, Adjudication-I, SECP
- ii. Mr. Ahmad Abdul Moiz Khawaja, Deputy Director (SCD-PRDD)

For Respondent No. 3:

Ms. Anila Raja (Complainant)

Appellate Bench

Appeal No. 48 of 2020

Page 1 of 16



Securities and Exchange Commission of Pakistan

ORDER

1. This Order shall dispose of Appeal No. 48 of 2020 filed by M/s. HBL Asset Management Limited (the Appellant) against the Order dated February 27, 2020 (the Impugned Order) passed by the Executive Director, Adjudication-1 (Respondent No.1) under Section 282J(1) of the Companies Ordinance, 1984 (the Ordinance) read with Section 282M(1) of the Ordinance for violation of the Regulation 38(1)(a) and Regulation 66A (c) and (d) of the Non-Banking Finance Companies and Notified Entities Regulations, 2008 (the Regulations).
2. The brief facts of the case are that Respondent No.1 received a complaint (the Complaint) lodged by Mrs. Anila Raja (Respondent No.3) on Prime Minister's Delivery Unit (PMDU) against the Appellant on September 17, 2019. In the Complaint, Respondent No.3 stated that;
 - i. Respondent No.3 invested Rs. 4 million on February 14, 2017 in HBL Multi Asset Fund (MAF) and Rs. 1.2 million in HBL Stock Market Fund (SMF) on August 18, 2017 (Total investment (Rs. 5.2 million);
 - ii. Respondent No.3 stated that the Appellant's sales representative (Sales Representative) ensured 17% quarterly profit with protection of principal investment, provided she would not withdraw any amount before a period of two years;
 - iii. Respondent No.3 stated that the Sales Representative made her sign various blank conversion and redemption forms;
 - iv. Respondent No.3 stated that up till November 2018 she received quarterly payment of profit;
 - v. Respondent No.3 stated that the Sales Representative never explained meaning of "redemption" appearing in monthly statements;
 - vi. Respondent No.3 stated that in February 2019 quarterly payment of profit was not received and the Sales Representative also failed to receive her calls. Respondent No.3 stated that she called Appellant's Karachi office and came to know that Sales Representative had resigned and the Appellant had assigned new facilitation officer (Facilitation Officer). Respondent No.3 stated that Facilitation Officer informed her that she had receiving quarterly payments of profit from her principal investment.

Appellate Bench

Appeal No. 48 of 2020

Page 2 of 16



Securities and Exchange Commission of Pakistan

- vii. Respondent No. 3 stated that she had been defrauded by the Appellant's employee because she invested in principal protected mutual fund.
 - viii. Respondent No.3 stated out of total investment of Rs. 5.2 million, Rs. 4.41 million had been redeemed by her and sustained a loss of Rs. 0.79 million.
3. The Appellant vide email dated September 26, 2019 had denied the allegation contained in the Complainant and stated that loss suffered by Respondent No.3 was because of underperformance of the capital market.
4. The examination of Complaint and relevant customer's documentation revealed following violations/non-compliances;
- i. As per Risk Profile Assessment Questionnaire (RAQ), Respondent's No.3 risk profile score (the Score) was negative eleven (-11), therefore, investment in HBL Money Market Fund/HBL Islamic Money Fund were suitable for her, however, while ignoring her Score, she was recommended for HBL Multi Asset Fund and HBL Stock Market Fund, which were risky allocations and bear chance of capital loss.
 - ii. The quarterly payments were made through redemption of units, which depleted the principal investment, however, Respondent No.3 was under the impression that these payments were made from the profit earned on her investment.
 - iii. The Appellant had ignored the Score of Respondent No.3 and admitted her investments in high risk funds, which caused significant loss to her. Therefore, the Appellant failed to take reasonable care to ensure suitability of schemes offered to Respondent No.3, hence violated Regulation 66(A)(d) of the Regulations.
 - iv. False statement regarding quarterly payments and crediting such payments form principal amount, blank redemption/conversion forms shows that the Appellant had committed mis-selling of Collective Investment Schemes (CIS), hence violated Regulation 66A(c) of the Regulations.

Appellate Bench

Appeal No. 48 of 2020

Page 3 of 16



Securities and Exchange Commission of Pakistan

5. In view of above, a show-cause notice dated November 14, 2019 (the SCN) was issued to the Appellant. The Appellant submitted reply of the SCN vide letter dated September 25, 2019. Hearing in the matter was held on January 17, 2020. Respondent No.1 imposed, a penalty of Rs. 600,000/- (Rupees six hundred thousand) on the Appellant and referred the matter of loss recovery to the Supervision and Enforcement Department of SCD to issue direction under Section 282D for recovery of loss sustained by Respondent No.3.

Appellant's Arguments

6. The Appellant has challenged the Impugned Order Inter alia on the grounds that Respondent No.1 had no jurisdiction to refer the matter of loss compensation to SCD-S&ED because it was beyond the scope of the SCN. The Appellant further stated that Section 282D of the Ordinance does not empower the Commission to issue specific direction for recovery of loss suffered by Respondent No. 3 because such like directions would be detrimental to the interest and growth of the industry. The Appellant submitted that powers under Section 282D had not been delegated to Respondent No. 1.
7. The Appellant stated that the Commission has duty to protect both i.e. investors and industry (AMCs), however, in this case allegation of investor (Respondent No.3) had been assumed truthful without any evidence, inquiry and sworn affidavit. The Appellant stated that without any evidence, Respondent No. 1 had accepted the Appellant's stance that the Sales Representative had assured quarterly profit and principal protection. The Appellant stated that while ignoring the academic back ground of Respondent No.3, Respondent No.1 has wrongly held that she had limited knowledge of capital market.
8. The Appellant stated that while redeeming investment, Respondent No.3 alleged vide letter dated February 22, 2019, that the Sales Representative had committed forgery whereas, in the Complaint, Respondent No.3 alleged that the Sales Representative had obtained blank signed redemption forms from her. The Appellant stated that Respondent No. 3 has changed her stance from allegation forgery to use of blank redemption forms by Sales Representative because comparison of earlier signed redemption forms and redemption form submitted on February 22, 2019, could have negated allegation of forgery.

Appellate Bench

Appeal No. 48 of 2020

Page 4 of 16



Securities and Exchange Commission of Pakistan

9. The Appellant stated that without prejudice to the preceding submission, this seems to be the case of some private understanding between the Sales Representative and Respondent No.3, therefore, the Appellant is not liable for any mutual unlawful and unethical private dealings. The Appellant stated that Respondent No.3 was fully aware of the status of her investment as she admittedly received account statements, which were never questioned by her. The Appellant vehemently denied that Mr. Saeem Khan or line manager had ever said to Respondent No.3 that she had been cheated.
10. The Appellant stated that the Complaint was filed on September 17, 2019 i.e. long after the redemption of investment on February 22, 2019 and receipt of the payment of redemption on February 29, 2019, therefore, in view of the cardinal maxim of equity and principle of law i.e. "delay defeats equity", Respondent No.1 was not authorized to proceed with the Complaint. The Appellant denied the Respondent No 1 assertion regarding filing of complaint without considering time limitation to file such complaint.
11. The Appellant stated that the Account Opening Form, Risk Assessment Form, Investment Form, Conversion Forms, Redemption Forms signed by Respondent No.3 are binding upon her. The Appellant further stated that according to Articles 70 and 72 of the Qanun-e-Shahdat Order, 1984, no oral evidence is admissible to challenge the validity and contents of the written documents. The Appellant further submitted that in view of the principles of Estoppel as contained in Article 114 of the Qanun-e-Shahdat Order, 1984, Respondent No.3 is legally estopped from challenging her own decision of investment.
12. The Appellant stated that as per the Investment Form dated August 18, 2017, Respondent No.3 categorically disagreed with the investment strategies proposed by the Appellant and chose her own investment strategies i.e. to invest in HBL Multi-Asset Fund and HBL Stock Fund, it is therefore incorrect that the Appellant failed to take reasonable care while admitting investment.
13. The Appellant stated that Respondent No. 1 had failed to establish as to how language and content of risk disclosures forms were not adequate. The Appellant further stated that there is no standard sales pitch which offers fixed quarterly returns and neither any fixed



Securities and Exchange Commission of Pakistan

quarterly returns were ever committed or paid to Respondent No.3. The Appellant also denied the Appellant's observation that the Sales Representative was not equipped with complete information pertaining to the products offered to Respondent No.3.

14. The Appellant stated that the language of the disclaimer contained in Para 3(7) of the Declaration on the Investment Form, the Risk Disclaimers contained in Clauses 2.7, 2.9, 9 and 9.3 of the Offering Documents of the Funds and the relevant Forms were duly approved by the Commission which a layman can even comprehend. The Appellant denied the observation made in the Impugned Order that the Appellant's management had failed to demonstrate seriousness towards the incident of mis-selling and had no mechanism to control occurrence of mis-selling.
15. The Appellant stated that the 48 minute WhatsApp recording was neither referred in the SCN nor was provided to the Appellant, however, Respondent No.1 had considered it important evidence. The Appellant stated that Respondent No. 1 imposed the penalty on the Appellant without any underlying evidence, therefore, the Impugned Order is liable to be set-aside. The Appellant stated it had not violated Regulations 38(1)(a), 66A(c) & (d) of the Regulations.

Respondent No.1 Arguments

16. Respondent No.1 stated that the Impugned Order has not issued any direction under Section 282D of the Ordinance, rather the SCD-S&ED has been asked to issue direction to the Appellant for compensation of loss suffered by Respondent No. 3. Respondent No.1 stated that the Impugned Order had been passed as per available record and evidence. Respondent No.3 had provided necessary evidence to substantiate her stance which included an audio WhatsApp chat file with the Sales Representative in which he had elaborated the 17% quarterly profit, in addition to the verbal conversation of the Facilitation Officer wherein he accepted that Respondent No. 3 had become a victim of mis-selling.

Appellate Bench

Appeal No. 48 of 2020

Page 6 of 16



Securities and Exchange Commission of Pakistan

17. Respondent No.1 stated that although the word “forgery” has been used in February 22, 2019 letter, however, contents of the letter clearly indicate that Respondent No.3 alleged that she had been defrauded as she was not aware that she had been receiving the quarterly payments from her own capital. Respondent No.1 stated that the word “forgery” has been used to imply that the Sales Representative had defrauded by using the signed forms to redeem her capital to make quarterly payment of profit. Respondent No.1 stated that payment of quarterly payment by redemption of capital was done by the Sales Representative without knowledge of Respondent No.3.
18. Respondent No. 1 stated that as per the Regulations, the Appellant is responsible for the acts and omissions of all persons to whom it may delegate any of its functions as managers, therefore, the Appellant cannot defray its responsibility. Respondent No.1 further stated that the Appellant has not provided any proof to substantiate the allegation of private dealing between Respondent No.3 and the Sales Representative.
19. Respondent No.1 stated that Respondent No.3 was receiving monthly statements, however, she was unable to comprehend the meaning of redemptions appearing in her statement and upon enquiry the Sales Representative had not explained the nature of the transactions on the premise that it was beyond her comprehension. Respondent No.1 stated the Appellant has ignored the fact that the options selected by Respondent No. 3 was that “I cannot bear any capital loss”.
20. Respondent No.1 stated that an investor does indeed have a right to complain about any concern with regard to his/her investment whenever he/she realizes about unfair treatment. Respondent No.1 stated that Respondent No. 3 timely filed the Complaint, therefore, it cannot be treated as time-barred. Respondent No.1 stated that sufficient evidence is available, including recorded conversations of Respondent No. 3 with the Facilitation Officer, who admitted that the she had suffered loss due to mis-selling of the product by the Sales Representative. Respondent No.1 stated that being educated or being an employee of a school does not imply that the she was necessarily aware of the dynamics of the mutual funds and their associated risks.



Securities and Exchange Commission of Pakistan

21. Respondent No.1 stated that the investment plan offered to Respondent No.3 had not been assessed correctly and review of the risk assessment questionnaire revealed the she was allocated a score of -11, which was appropriate for the low risk investment plan. Respondent No.1 further stated that Respondent No.3 had clearly selected options in the questionnaire that she was not willing to bear risks and capital loss in her investment. Respondent No.1 submitted that the Sales Representative had recommended to invest in high risk funds contrary to her risk profile.
22. Respondent No.1 stated that risk disclosure forms are not clear, and without proper guidance investors cannot be expected to understand the dynamics of mutual funds/plans or the associated risks. Respondent No.1 stated that the risk factors associated with the offered funds were concealed by the Sales Representative so that he may make commission on the investment. Respondent No.1 stated that offering documents were approved by Respondent No.1 on the basis of its language and content. However, it is for the Appellant to demonstrate that efforts are made by the sales teams to explain the products to the customers by giving out brochures/offering documents or elaborately explaining the terms and conditions or the disclaimers. Respondent No.1 submitted that the SCN was issued to communicate the non-compliances. Respondent No.1 stated that the Impugned Order was based on the facts, circumstances and available evidence on record, therefore, the Appellant has misunderstood that Impugned Order has been passed only on the basis of WhatsApp recording.

Respondent No.3 Arguments

23. Respondent No. 3 stated that the Impugned Order cannot be termed as illegal or unlawful because it will provide a mechanism to the aggrieved investors for redressal of their complaints. Respondent No. 3 stated that at the appellate stage the Appellant cannot raise objection on Respondent's No.1 jurisdiction and this matter should have been agitated before Respondent No.1 during the SCN proceedings. Respondent No.3 stated that the Impugned Order has been passed on sound grounds and evidence.

24. Respondent No.3 stated that the Sales Representative obtained signed redemption forms for transfer of funds from one fund to another because he was of the view that it is the Appellant's requirement and Respondent No.3 cannot be approached every other day. Respondent No.3 stated that the Facilitation Officer informed her that quarterly payments were being made for principal amount and account was in deficit by 2.4 million rupees, hence, she had been defrauded. Respondent No.3 stated that she was not informed regarding any loss otherwise she would have withdrawn the investment. Respondent No.3 stated that upon discovery of fraud she immediately withdrew her investment.
25. Respondent No.3 stated that on the one hand the Appellant claims that Respondent No.3 had invested as per her own choice, therefore, the Appellant or its employees are not responsible for loss, whereas on the contrary, the Sales Representative has been made a scapegoat by calming that he and Respondent No.3 were involved in private dealings. Respondent No. 3 stated that the audio recording of the Facilitation Officer regarding fraud and mis-selling is on record.
26. Respondent No.3 stated that upon realization of fraud and misrepresentation, she approached the Appellant without any delay but her grievances remained unaddressed and in consequence whereof, she was forced to approach the Commission, hence the Appellant's assertion that the Complaint being attracted by laches is of no legal worth. Respondent No.3 further stated that no period of limitation is prescribed by law to file a complaint. Moreover, if the Limitation Act is applied, a claim for recovery of money can be brought within three years. Respondent No.3 stated that sufficient evidence was provided to Respondent No.1 regarding fraud and mis-selling committed by the Appellant and its employee. Respondent No.3 stated that she holds academic qualifications in English language, therefore, she could never be in a position to understand different banking or investment terms.
27. Respondent No.3 stated that the Appellant has referred the signed documents but did not refer to the questionnaire answered by her, wherein she categorically mentioned the level of risk agreed to be undertaken, as well as the risk score assessed thereupon. Respondent No.3 submitted that if the selection regarding investment therein was contradictory to the



Securities and Exchange Commission of Pakistan

risk level agreed, then no investment should have been made or the same was to be conveyed to the investor i.e., Respondent No.3. Respondent No. 3 stated that refunding a large portion of her invested money after every quarter till the completion of term, is sufficient to establish *malafide* and malpractice on the part of the Appellant and its employee. Respondent No.3 stated that the case laws referred in the instant para pertain to cases with different facts and have no bearings on the instant case.

28. Respondent No. 3 stated that the Sales Representative assured 17% quarterly profit and protection of principal amount and all calculation were shared through WhatsApp messages. Respondent No.3 further stated that she categorically mentioned in the RAQ that she cannot bear a capital loss, however, this aspect was not considered while admitting the investment in high risk funds. Respondent No.3 stated that she was completely in the dark regarding investment options and their consequences, and was only told and assured by the Sales Representative that 17 % quarterly profit will be paid while the principal amount is completely secure, however, the Appellant and its employee invested her amount in derogation to her Score and was not informed about the actual and factual position.
29. Respondent No.3 stated that upon perusal of the forms containing the disclaimer, are in such a minute font size which are hardly noticeable and the language does not convey the gravity of risks attached. Respondent No.3 stated that the Appellant's employee indulged in fraud, misrepresentation and cheated her for two years, therefore, this case is a classic example of persons employed by the Appellant to run its business through looting its customers and bringing them to misery and agony by way of depriving them from their hard-earned money.
30. Respondent No.3 stated that the Appellant had knowledge regarding the contents and existence of the WhatsApp recording because prior to filing of the Complaint, it was the Appellant who was approached by Respondent No.3 with all the material including recording as well as the WhatsApp message but it was of no avail. Respondent No.3 stated that if the Appellant desired to get copy of recordings as well as the WhatsApp message it could have asked during SCN proceedings, however, no such demand was raised. Respondent No. 3 stated that the Impugned Order is based upon cogent and sound reasoning, which doesn't call for interference by the Bench.



Securities and Exchange Commission of Pakistan

Appellate Bench's Analysis and Decision

31. The Bench has heard the parties and perused the record. The Appellant's representative reiterated the grounds of Appeal, whereas, the representatives of Respondents No. 1 and 2 prayed to dismiss the Appeal and reiterated the findings of the Impugned Order. Respondent No. 3 also reiterated rebuttal arguments and prayed to dismiss this Appeal.
32. The Bench is of the view that under Section 282D of the Ordinance, the Commission has power to issue general or specific directions to ensure public interest and to prevent NBFCs or notified entities to conduct their business in a manner determining the interest of a shareholder or a unit holder. The Bench is of the view that in this case, the Appellant had acted against the interest of the investor (Respondent No.3), therefore, the Commission has directed the Appellant to make good the loss suffered by Respondent No. 3. The Bench find it appropriate to clarify here that the Impugned Order has not issued any direction under Section 282D of the Ordinance, rather SCD-S&ED has been asked to issue direction, therefore, we direct the SCD-S&ED to ensure due process of law, while proceeding under Section 282D of the Ordinance.
33. The Bench is of the view that the Respondent has acted in accordance with law and took the cognizance of wrongdoing committed by the Appellant, therefore, we reject the Appellant's pleas that while protecting the investor's interest, rights of the Appellant have been compromised. The Bench is of the view that in the instant case the investor's (Respondent No.3) financial interest has been abused by the Appellant and its employee (the Sales Representative), therefore, the Respondent has passed the Impugned Order.
34. The Bench is of the view that the irrespective of Respondent's.No.3 shifting allegation from forgery and use blank signed redemption, we have no doubt that an investor has been deprived of her hard-earned savings and her own money was returned to her on account of quarterly payment of profit. In our view, whether there was forgery or use of blank redemption forms, in both scenarios Respondent No.3 has been defrauded and the Appellant had failed to resolve her valid Complaint. The Bench is of the view that the

Appellate Bench

Appeal No. 48 of 2020

Page 11 of 16



Securities and Exchange Commission of Pakistan

Appellant should have resolved Respondent's No.3 complaint in a reasonable manner, however, it failed to do so.

35. The Bench is astonished that by alleging private dealing between Respondent No.3 and the Sales Representative, the Appellant has tried to marginalize the investor's interest, who lost her investment due to a compromised mechanism of investors' protection. The Bench is of the view that by alleging private dealing between Respondent No.3 and the Sales Representative, the Appellant has implicitly admitted lack of a mechanism to place checks and balances over the activities of its sales representative.
36. The Bench is of the view that upon discovery of fraud, Respondent No. 3 had redeemed her investment, however, the Appellant had not proceeded to resolve her grievances, therefore, she filed the Complaint through PMDU and accordingly Respondent No.1 proceeded in accordance with law. In the circumstances, the Bench has no doubt that Respondent No.3 has acted vigilantly, therefore, law and equity were applied to resolve her Complaint. The Bench is of the view that the maxim "delay defeats equity", is not applicable in this case, however, facts of the case establish that the Appellant's conduct should have been dealt in accordance with the maxim, "He who seeks equity, must come with clean hands" OR "One who seeks equity, must do equity".
37. The Bench is of the view that Respondent No.3 had no academic qualification or professional experience regarding mutual funds or investments, therefore, we cannot expect that she had a complete understanding about the dynamics of mutual funds and its associated risks.
38. The Bench is of the view that contrary to the Score, investment of Respondent No.3 was admitted in high risk funds, which is sufficient to establish mis-selling. Furthermore, we believe that payment of quarterly payments of profit to Respondent No.3 from her invested capital has made it clear that Respondent No.3 had been defrauded because in the RAQ, the Respondent No.3 categorically mentioned that she will not bear any capital loss. Furthermore, we are of the view that payment of quarterly profit through redemption of units of investment is also against the concept of investment. The Bench is astonished that

Appellate Bench

Appeal No. 48 of 2020

Page 12 of 16



Securities and Exchange Commission of Pakistan

quarterly payment of profits was being made to Respondent No.3 from her invested capital, however, the Appellant had failed to take notice of such an illegal act executed under its control and authority. The Bench is of the view that if the capital was not generating profits then the Appellant should have noticed as to how, quarterly payments of profits were being made to the Respondent No. 3. In the circumstances, we have no doubt that the Appellant had failed to stop a serious breach of duties and to protect the investor's interest. The Bench is of the view that payments of quarterly profits by redeeming units of investment made by Respondent No.3 is evidence of fraud and reflect that the Appellant had no mechanism to check and put compliance control on the sales representatives' activities.

39. The Bench is of the view that the Appellant cannot shift consequences of mis-selling on the pretext that disclaimers were approved by the Commission. We are of the view that in compliance of regulatory approvals, the Commission has approved different forms containing disclaimers or warnings, however, while executing such forms, it was the responsibility of the Appellant and its sales representatives to narrate them to the investors in simple language. Therefore, we believe that the Appellant and its sales representatives had failed to convey the risks associated with high risk funds and deprived Respondent No.3 from her investment.
40. The Bench has perused the Impugned Order, therefore, the Appellant's plea that it is based upon WhatsApp messages and recording is factually incorrect. In our view, the Impugned Order is based on independent and incriminating evidence which includes, admission of Respondent's No.3 investment in funds, which were contrary to her Score, payment of quarterly profits by redeeming Respondent's No.3 investment units and erosion of capital despite the precondition that the capital will always remain intact. The Bench is of the view that every contract is binding upon parties unless obtained through fraud or misrepresentation and in this case the Appellant's and its employee's mis-representation is apparent. In this case, facts and circumstances are sufficient to prove that mis-selling and fraud had been committed, therefore, the Appellant's stance that oral evidence has been preferred over written documents is not tenable.

Appellate Bench

Appeal No. 48 of 2020

Page 13 of 16

41. The Bench has no doubt that Regulation 38 (1)(a) of the Regulations has been violated by the Appellant because the Appellant and its employee has not acted in good faith and admitted investment of Respondent No.3 just to gain business and commission for itself and its employee whereas, Respondent No.3 has suffered loss. The Appellant and its employee have also violated the requirements of Regulation 66A(c) and (d) because Respondent No.3 should have been considered for a low-risk fund, however, the investment was made in high risk funds, therefore, mis-selling is established beyond any doubt. Furthermore, we are of the view that by ensuring 17% quarterly return on investment, the Appellant and its employee had committed a fraudulent act. The Bench is of the view that Respondent No.3 was also not properly guided and informed regarding the associated investment risks as well and material facts regarding redemption of units and payments of quarterly profits. The Bench is of the view that the Appellant had failed to ensure that offered funds were suitable for Respondent No.3.
42. The Bench is of the view that the purpose of the RAQ is to determine the suitability of a person for investment in a certain fund, however, the Appellant has failed to proceed in a required manner and in result thereof, Respondent's No. 3 investment was admitted in high risk funds i.e. MAF and SMF. The Bench has observed that as per RAQ, Respondent No.3 had negative eleven (-11) Score, therefore low risk funds were suitable for her, however, contrary to the calculation of the Score of RAQ, investment of Respondent No. 3 was admitted in the in above-mentioned high-risk funds. The Bench is of the view that the record is clear that the Appellant had failed to proceed in accordance with the Score of RAQ.
43. The Bench endorses the Appellant's stance that there is no specific law requiring it to refuse investment priority of the investor, however, the Appellant had ignored the object of the RAQ. The Bench has no doubt that the Appellant had failed to understand the object of the RAQ and admitted Respondent's No. 3 investment in MAF and SMF. The Bench is of the view that RAQ was not a mere formality, rather it was a key document to determine the investment tolerance level of Respondent No. 3. The Bench is of the view that, sanctity of the RAQ cannot be undermined and it appears that the Appellant has no mechanism to



Securities and Exchange Commission of Pakistan

verify whether the data provided by Sales Representative commensurate with the investor's tolerance level/Score or not.

44. The Bench is of the view that if Respondent No.3 had decided to invest in MAF and SMF, which were contrary to the Score recommendation of the RAQ, then the Sales Representative should have expressly mentioned this fact in the RAQ, however, he had failed to exercise due diligence in this regard. The Bench reject the Appellant's plea that investment in MAF and SMF was the decision of Respondent No. 3 and she ignored suitable low risk fund recommendation of the Sales Representative. The Bench has perused Annexure "III" (RAQ) at page 99 of the Appeal, however, we are unable to perceive as to which fund was recommended by the Sales Representative and which fund was preferred by Respondent No.3. The Bench has perused the "recommended Strategy" of the RAQ at page 101 of the Appeal, which reveals that "HBL Multi Asset Fund" was selected through "tick mark". The Bench is of the view that "recommended Strategy" implies that MAF was recommended by the Sales Representative because recommendations always come from experts/sellers and in this case experts /sellers were the Appellant and the Sales Representative. The Bench has no doubt that MAF and SMF was recommended by the Sales Representative, therefore, the Appellant's assertion that high risk funds were selected by Respondent No.3 is incorrect. The Bench has also noted that in the "Consent" section of RAQ, Respondent No.3 apparently disagreed with the strategy proposed by the Sales Representative, therefore, investment of Respondent No.3 should not have been admitted in MAF and SMF. The Bench has further perused the RAQ, which shows that while answering question 5, Respondent No. 3 categorically stated that "I cannot bear any capital loss", however, it is evident that the Appellant and its Sales Representative had deliberately ignored the conditions and in result thereof, Respondent No.3 lost a considerable part of her capital. The Bench is of the view that the Appellant had not acted in the best interest of Respondent No. 3 and failed to ensure reasonable care regarding suitability of investment fund offered to her. The Bench has no doubt that by placing the investment of Respondent No. 3 in high risk funds, the Appellant had committed mis-selling and failed to save her from the loss of capital.

Appellate Bench

Appeal No. 48 of 2020

Page 15 of 16



Securities and Exchange Commission of Pakistan

45. The Bench is of the view that in order to protect the growth of mutual funds or other regulated activities, the Commission cannot overlook the violations committed by the regulatees especially where it concerns cases of investor exploitation. The Bench is of the view that as per the Securities and Exchange Commission of Pakistan Act, 1997, the Commission has the responsibility to protect both, whether it is a regulated entity or the investor, therefore, we hereby reject the Appellant's plea that dismissal of this Appeal will jeopardize the interest of the Appellant and halt the development and growth of mutual funds industry in Pakistan.
46. The Bench is of the view that by referring the matter of loss recovery to SCD-S&ED, Respondent No.1 committed no mistake as the jurisdiction to initiate action under Section 282D is vested with SCD-S&ED.
47. In view of the forgoing, we find no reason to interfere with the Impugned Order, therefore, we hereby dismiss this Appeal, without any order as to cost.

(Shauzab Ali)

Commissioner (SMD)

(Shaukat Hussain)

Commissioner (Insurance, C&CD)

Announced on: **05 JAN 2021**