



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 05 of 2024

Topline Securities Limited

...Appellant

Versus

Additional Director/HOW -Adjudication Department I, SECP

...Respondent

Date of hearing:

June 06, 2024

Present:

For the Appellant:

1. Mr. Muhammad Sohail, CEO
2. Mr. Khalid Mehmood, CFO
3. Mr. Sarfraz Ahmed, Advocate

For the Respondent:

1. Mr. Mahboob Ahmad, Additional Director, Adjudication Division, SECP
2. Ms. Asima Wajid, Additional Joint Director, Adjudication Division, SECP

ORDER

1. This order shall dispose of Appeal No. 05 of 2024 filed by M/s. Topline Securities Limited (the "Appellant") under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the order dated November 30, 2023 (the "Impugned Order") passed by the Additional Director/HOW, Adjudication Department-I, SECP under Regulation 31 of the Securities and Exchange Commission of Pakistan (Anti Money Laundering and Countering Financing of Terrorism) Regulations, 2020 (the "AML Regulations") read with Rules 4(1)(a) and 6(1) of the



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AML/CFT Sanctions Rules, 2020 (the “AML Rules”) and Section 6(A)(2)(h) of the Anti-Money Laundering Act, 2010 (the “AML Act”).

2. The brief facts of the case are that the Appellant is a member of the Pakistan Mercantile Exchange (“PMEX”) and licensed by the Securities and Exchange Commission of Pakistan (the “Commission”), as a future securities broker. The review of the Company was carried out for the period July 01, 2021 to June 30, 2022 (the “Review Period”) by the Inspection Team of PMEX to examine compliance with respect to certain provisions stipulated under the AML Regulations. The review revealed non-compliance of Regulation 9 and 25(1)(a) of the AML Regulations. Therefore, for these contraventions a show-cause notice dated July 24, 2023 was issued to the Appellant and the Respondent after considering the submissions of the Appellant rendered in the hearing, a penalty of Rs. 20,000/- was imposed on the Appellant vide the Impugned Order for contravention of Regulation 9 and Clause (o) of Note (i) to Annex-I of the AML Regulations. The Appellant was further advised to ensure meticulous compliance with all applicable laws including the AML Regulations and the Act in letter and spirit in the future.
3. The Appellant has challenged the Impugned Order, *inter alia*, on the grounds that out of the Appellant's several thousands of customers, reliance on merely two instances for imposing penalty for alleged non-compliance of Regulation 9 of the AML Regulations, is unjustified and arbitrary. The Appellant argued that the currently applicable AML Regulations were issued on September 28, 2020 and the accounts of the said two customers were opened in the year 2018. The Appellant stated that in 2018 it was required to comply with Securities and Exchange Commission of Pakistan (Anti-Money Laundering and Countering Financing of Terrorism) Regulations, 2018, which did not require obtaining documentary evidence related to source of income at the time of account opening. The Appellant submitted that the said two instances, as relied upon by the learned Respondent, were also categorized as ‘medium’ and ‘low-risk’ customers and the Appellant had provided documentary evidence for source of income of the said two individuals to the Inspection Team. The Appellant further argued that the Respondent should have considered the materiality of the alleged violation while imposing the penalty. The Appellant further submitted that there has neither been any intention nor any logical reason for the Appellant to contravene the AML Regulations, therefore the imposition of penalty on the Appellant is not justified and is liable to be set aside.



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4. The Respondent has rebutted the grounds of the Appeal and presented arguments in support of their stance. It was contended by the Respondent that the Impugned Order quite fairly analyzes the submissions of the Appellant, and evidence available on the record. The Appellant argued that regulated persons are mandated under the AML/CFT framework to ensure meticulous compliance and implementation of the pronounced requirements unequivocally on all of their customers and even when 'low risk' is identified, Simplified Due Diligence is mandated. The Respondent pleaded that considering the breadth of the established violations, the Respondent has only fairly imposed an aggregate penalty of Rs. 20,000/- on the Appellant, while the penal provisions of AML/CFT Sanctions Rules, as invoked under the instant proceedings, prescribe a maximum penalty of Rs.100 million per violation. The Respondent stated that the Appellate failed to establish that requisite reliable and independent documentary evidence was obtained as proof of funds in the two instances. The Respondent further argued that the premise of establishing a 'guilty intent' is necessitated only in adjudicatory cases of criminal nature. The Respondent also placed reliance on the Order passed by the Appellate Bench of the Commission in Appeal No. 8 of 2012 *i.e. Zephyr Textiles Mills Limited vs Head of Department (Enforcement)*. The Respondent reiterated that the penalty was imposed after consideration of the facts of the case and on the basis of established non-compliances of the AML Regulations at the time of the Inspection, therefore, the imposition of the penalty through the Impugned Order has been imposed in accordance with the law.

5. The Appellate Bench (the "Bench") has heard the arguments of both the parties and perused the record. The Bench is of the opinion that the Appellant had an obligation to strictly adhere to the relevant requirements of the AML Regulations in all cases, which should have been followed by the Appellant in true letter and spirit. In this particular case, the Appellant failed to demonstrate that requisite reliable and independent documentary evidence was obtained regarding the client's source of income/earnings in the highlighted instances to ensure compliance with Regulation 9 of the AML Regulations. The Bench is of the view that the AML Regulations had not introduced new regulatory requirements, rather prior regulatory requirements has been streamlined by considering public interest and the country's international commitments. Regulated individuals are expected to be highly vigilant in adhering to AML laws and should not seek excuses to evade compliance.



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6. In view of the foregoing, we find no reason to interfere with the merits of the Impugned Order, therefore, by maintaining the Impugned Order, we hereby **dismiss** this Appeal without any order as to cost.

(Abdul Rehman Warraich)
Commissioner

(Mujtaba Ahmad Lodhi)
Commissioner

Announced on: **04 SEP 2024**