

Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 50 of 2019

Mr. Hassan Farhan Minhas

...Appellant

versus

JS Global Capital (Pvt.) Ltd

...Respondent No.1

Mr. Asif Jalal Bhatti, Executive Director (SMD-PRPD), SECP

...Respondent No.2

Mr. Kamal Ali, Additional Director (SMD-PRPD), SECP

...Respondent No.3

Date of Hearing: 04/11/19

Present:

Appellant:

Mr. Hassan Farhan Minhas

For the Respondent No.1:

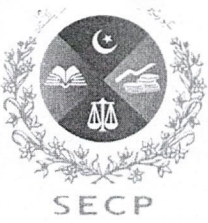
- i. Mr. Kamran Nasir, CEO, JS Global Capital Ltd
- ii. Mr. Junaid Mirza, COO, JS Global Capital Ltd
- iii. Mr. Tanzeel-ur-Rehman, Head of RMC, JS Global Capital Ltd

For the Respondents No.2 & 3:

- i. Mr. Mohammad Arslan Zafar, Joint Director (SMD)
- ii. Ms. Mehwish Naveed, Management Executive (SMD)

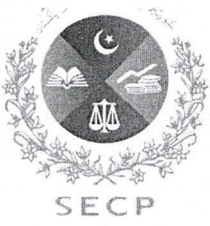
ORDER

1. This Order is passed in the matter of Appeal No. 50 of 2019 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (SECP Act) against the order dated 02/02/17 (the Impugned Order) passed by Executive Director (PRPD-SMD) (the Respondent No.2).



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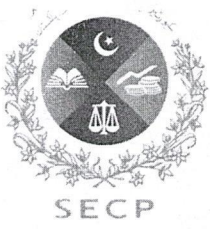
2. The brief facts of the case are that the Commission received a complaint (the Complaint) from Mr. Hassan Farhan Minhas (the Appellant) on behalf of his wife Ms. Maryam Izhar Minhas (the Client) who authorized the Appellant to carry out commodity trades in her account. The Appellant, *inter alia*, alleged in his complaint that the Client opened a commodity trading account with M/s. JS Global Capital (Private) Limited (the Respondent No.1) and that Mr. Rizwan, employee of Respondent No.1, carried out unauthorized trades in the Client's account between October and November, 2013 without possessing the requisite discretionary authority. The Securities and Exchange Commission of Pakistan (the Commission) took up the matter with the Appellant.
3. After examination of the Complaint in light of the response received from Respondent No.1, the Commission served the show cause notice dated 20/07/16 (the SCN) to the Respondent No.1 under section 22 of the Securities and Exchange Ordinance, 1969 (the Ordinance) read with rule 20 of the Commodity Exchange and Futures Contracts Rules, 2005 (the Rules). The Respondent No.1 submitted a detailed response to the SCN on 15/09/16 and hearing in the matter was held on 22/12/16 which was attended by the chief executive of Respondent No.1 and Mr. Rashid Sadiq (the Authorized Representatives) who made their submissions.
4. The Respondent No.2 held that since the alleged transactions occurred more than two years ago, therefore, Respondent No.1 was not required to maintain call records as per Clause 4(I) of the Regulations Governing System Audit of Brokers (the Regulations). The Respondent No.2 further held that in the absence of call records, reliance was placed on an SMS sent by Pakistan Mercantile Exchange (the PMEX) and trade confirmations sent by Respondent No.1 to ascertain whether the Client received information regarding trades executed in his account. Furthermore, the account opening form of the Client was also 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 observed that the Client had also provided a separate undertaking that she will be responsible to timely check trade confirmation emails sent by Respondent No.1 and that Respondent No.1 shall in no manner be liable after sending the trade confirmation email to the Client. Furthermore, Respondent No.2 held that record from PMEX was sought which clearly revealed that PMEX had duly sent information pertaining to the trades executed in the account of the Client through SMS on her mobile phone number and transmission of trade confirmation emails to the Client on her



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email address had been substantiated through the record provided by Respondent No.1. Therefore, keeping in view the fact that there was insufficient evidence to prove the claim of the Appellant regarding unauthorized trading in the account of the Client, the Complaint was dismissed by Respondent No.2.

5. The Appellant preferred the instant appeal on the grounds that the Appellant first filed the Complaint with the Commission vide email dated 16/01/14 which was not acknowledged until 17/03/16 and finally when the Complaint was heard by Respondent No.2, the Respondent No.2 violated the Appellant's rights by not giving an opportunity of hearing to the Appellant. Furthermore, the Appellant argued that the Commission's Officer (the Respondent No.3) conveyed to the Appellant through email that Respondent No.1 had not responded to the SCN and that an ex-parte order will be passed. Subsequently, Respondent No.3 informed the Appellant that Respondent No.1 has requested not to issue an ex-parte order and that Respondent No.1 would like a settlement with the Appellant which never materialized. The Appellant further argued that there was a delay in filing the appeal as he was misguided by the Commission and Respondent No.3 who in particular informed him that he had no legal remedy. Furthermore, the Appellant argued that he wants to claim his due right which is the principal amount of Rs 492,000 lost due to unauthorized trading by Respondent No.1 as well as compensation of Rs 3.5 million for all the expenses and hardship endured by the Appellant.
6. The Respondent No.1 rebutted the arguments of the Appellant on the grounds that the Respondent No.1 is the most compliant brokerage house which maintains the highest standards of corporate governance and has zero tolerance for non-compliance with applicable rules and regulations. The Respondent No.1 further argued that confirmations of all trades executed were sent to the Client both by email and SMS. Furthermore, Respondent No.1 argued that there was no plausible reason for delay in filing of the appeal and that the Appellant was not a party to the show-cause proceedings initiated by the Commission.
7. The Respondents No.2 & 3 rebutted the arguments of the Appellant on the grounds that there was insufficient evidence to prove the claim of the Appellant regarding unauthorized trading in the account of the Client, therefore, the case was closed. Furthermore, the Respondents No.2 & 3 argued that call record was not available after more than two years, therefore, there was no evidence to support the Appellant's claim that unauthorized trading took place in the Client's account.



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Furthermore, the Respondents No.2 and 3 argued that neither Respondent No.3 nor other officials of the Commission misguided the Appellant and he was informed through email dated 23/04/18 about the remedy of filing an appeal with the Appellate Bench of the Commission against the Impugned Order.

8. We have heard the parties and perused the documents provided to us by the parties i.e. the Appellant and the Respondents. We condone the delay in filing of appeal by the Appellant due to the serious nature of the claim and the reasons given by the Appellant demonstrate that the delay was unintentional.
9. We are of the view that the Appellant has provided evidence of the email sent to the Commission to show that he had first filed his Complaint on 16/01/14, however, no record of such email has been found with the Commission. As per the record of the Commission, the Complaint was only filed with the Commission by the Appellant after more than two years on 14/03/16 and was acknowledged on 17/03/16 by Respondent No.3. We are of the view, however, that it is apparent from the email correspondence between the Appellant and Respondent No.1 that the Complaint to Respondent No.1 was acknowledged by them in June, 2015 and, therefore, call record should have been retained by the Respondent No.1 which was before the expiry of the two-year period for retention of such record as per Clause 4(I) of the Regulations. Furthermore, the Appellant, as complainant in the matter, should have been made party to the proceedings by the Respondent No.2 so that he could present his case.
10. In view of the foregoing, the Impugned Order is set aside and the matter is remanded to the Respondent No.2 to give an opportunity of hearing to the Appellant and decide the matter afresh after reviewing the evidence and on merits of the case.
11. The Appeal is disposed of accordingly.

Shaukat Hussain
Commissioner (CCD, Insurance)

Farrukh H. Sabzwari
Commissioner (SCD, AML)

Announced on **31 JAN 2020**