



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 66 of 2019

First National Equities Limited

...Appellant

Versus

Commissioner (SMD)

...Respondent

Date of hearing:

17th October, 2024

Present:

For the Appellant:

Mr. Arslan Tahir (Company Secretary)

For the Respondent:

1. Mahboob Ahmed (Additional Director, Adjudication-I, SECP)
2. Muhammad Faisal (Assistant Director Adjudication-I, SECP)
3. Zenia Rahat (Management Trainee Adjudication-I, SECP)

ORDER

1. This Order shall dispose of Appeal No. 66 of 2019 filed by First National Equities Limited (the Appellant) through its Company Secretary Mr. Arslan Tahir (the Authorized Representative) under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the Order dated August 01, 2019 (the Impugned Order) passed by the Commissioner (SMD) (the Respondent) under Section 40A of the Securities and Exchange Commission of Pakistan Act, 1997.
2. The brief facts of the case are that the Appellant is a trading rights entitlement certificate holder of the Pakistan Stock Exchange Limited. A thematic review (Review) was initiated under clause 19(e)



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of the Joint Inspection Regulations, 2015 with the scope to review and check compliance with respect to the Anti- Money Laundering and Countering Financing of Terrorism Regulations, 2018 (AML Regulations). The Review revealed a number of instances the Appellant had failed to comply with the applicable provisions, i.e., Regulation 6(3), 6(4), 11(2) and 13 of the AML Regulations. In light of these violations, a Show-Cause Notice dated 17th June, 2019 (the SCN), was issued to the Appellant. After examining the submissions and considering the facts it was established that the Appellant had not only failed to maintain a formal mechanism for ongoing monitoring of the clients, but also failed to conform to the 'Know Your Customer' guidelines and provide any written justifications as evidence for classifying the low risk clients. Subsequently, the Respondent, in exercise of powers conferred under Section 40A of the Act, imposed a penalty of Rs. 200,000/- on the Appellant for the aforementioned contraventions of the AML Regulations.

3. The Appellant filed this Appeal on several grounds, including the assertion that the Impugned Order lacks a proper appreciation of facts and law. The Authorized Representative argued that the Impugned Order penalized the Appellant despite that the noted discrepancies had been addressed by the Appellant and the documentary evidence for which was duly provided thereof to the Respondent. The Authorized Representative submitted before the Bench that the Respondent's observation regarding the lack of an efficient mechanism for on-going monitoring is incorrect because there was a set mechanism for due diligence, but another software was also being procured to ensure efficiency, therefore, requirements of Regulation 13 of the AML Regulations were duly met. Moreover, the Authorized Representative contended that the AML Regulations do not prescribe any specific set mechanism for on-going monitoring, and since the Appellant's policy had already been accepted as compliant with the AML Regulations, the Respondent could not deem it non-compliant. Furthermore, the Authorized Representative submitted that there may be some procedural lapses by the Respondent, however, instead of imposition of a penalty, the Respondent could have issued instructions for modifications. The Authorized Representative argued that in Para 7 (b) of the Impugned Order the Respondent has held that the Appellant has adopted a detective-based approach for ongoing monitoring, therefore, the said acknowledgment in fact vindicates the Appellant's stance that there was already a set mechanism of ongoing monitoring functional at the Appellant's premises.
4. The Authorized Representative proceeded with his submissions by addressing the Respondent's observations pertaining to Know Your Customer/Customer Due Diligence (KYC/CDD) discrepancies. The Authorized Representative stated that observations made by the Respondent in para 7 (c) of the Impugned Order, are factually incorrect as the evidence of compliance was provided, however, since the hearing was conducted through video conference at Lahore, it appears



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that all evidence was not sent to Islamabad which is now annexed with this Appeal to demonstrate that requirements of Regulation 6(3) of the AML Regulations were duly met.

5. The Authorized Representative contended that the alleged violation pertaining to the Appellant's failure to provide evidence for its low-risk clients was unfounded, since the Respondent had already acknowledged the Appellant's AML policy as compliant with the AML Regulations, and hence, anything done in accordance therewith cannot be questioned. The Authorized Representative argued that the Appellant has duly complied with the requirements of Regulation 11(2) of the AML Regulations. The Appellant and the Authorized Representative prayed that in view of the above grounds, the be *set aside*.
6. The Respondent countered the grounds of the Appeal and proffered arguments. The Respondent, in response to the Appellant's contention, emphasized that the Impugned Order was not only issued in strict accordance with the law but also after thorough consideration of the facts presented in this case. The Respondent stated that the Appellant failed to present any evidence that at the time of Review, the Appellant was compliant. The Respondent argued that documents and information presented by the Appellant during the SCN proceedings were duly reviewed by the Respondent, however, such information and documents had no substance to rebut the alleged violations, therefore, the same was not considered. The Respondent stated that ongoing monitoring mechanism followed by the Appellant was manual, hence, cannot be considered as a formal procedure of ongoing monitoring of its clients, therefore, violation of Regulation 13 of the AML Regulation was established.
7. The Respondent stated that the Appellant failed to carry out KYC/CDD as per the requirements contained under the AML Regulations. The Respondent further stated that the Appellant failed to provide evidence of KYC/CDD in case of a change of address of two of its clients and the authorized persons. Moreover, the Respondent furthered that the Appellant did not conduct enhanced due diligence for Politically Exposed Persons ("PEPs"). Additionally, the Respondent also submitted before the Bench that the Appellant had failed to provide evidence of KYC for authorized persons and five other joint account holders. The Respondent furthered with his submissions by highlighting that the Appellant had failed to provide evidence that it had performed KYC for four of its corporate clients. Furthermore, the Respondent also submitted that the Appellant did not provide evidence relating to proof of beneficial ownership for eight clients and closure of CDC sub-accounts for three clients and proof of employment. The Respondent also highlighted that the Appellant had failed to provide any evidence of blocking accounts due to non-compliance with the Standardized Account Opening Form (SAOF), therefore, violation of Regulation 6(3) of the AML Regulations was



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established. And lastly, the Respondent contended that the Appellant had failed to provide written justification for its low-risk clients, as required under Regulation 11(2) of the AML Regulations.

8. The Bench has heard the arguments of both parties and perused the record. The Bench is of the view that the Appellant was obligated to fully comply with the relevant AML Regulations, however, it failed to do so. The Bench has noted that at the time of Review, the Appellant had no ongoing monitoring mechanism to ensure compliance with the AML Regulations, therefore, such non-compliance has compromised the requirements contained under the AML Regulations. The Bench has further noted that by ignoring the KYC/CDD requirements, the Appellant has also undermined the sanctity of the AML Regulations. In view thereof, the Bench has no doubt that the Appellant's failure to ensure adequate ongoing monitoring mechanism and adherence to KYC/CDD requirements, has serious consequences, therefore, the Bench finds no reason to interfere with the merits of the Impugned Order.

9. In view of the foregoing, we hereby dismiss this Appeals without any order as to costs.

(Abdul Rehman Warraich)

Commissioner

(Mujtaba Ahmad Lodhi)

Commissioner

Announced On: 31 JAN 2025