



# Securities and Exchange Commission of Pakistan

## BEFORE APPELLATE BENCH NO. III

In the matter of

Appeal No. 70 of 2017

Zarar A. Nasir (Pvt.) Limited

...Appellant

Versus

Commissioner (Insurance),

Securities and Exchange Commission of Pakistan

...Respondent

Date of Hearing 07/06/18

### Present:

#### For the Appellants:

- (i) Mr. Muhammad Nauman Yahya, Advocate High Court
- (ii) Mr. Zarar A. Nasir Khan

#### For the Respondent:

- (i) Mr. Hasnat Khan, Director (Insurance)
- (ii) Mr. M. Mateen Abbasi, Management Executive (Insurance)

## ORDER

1. This Order is passed in the matter of appeal No.70 of 2017 filed under section 33 of the Securities and Exchange Commission of Pakistan (Commission) Act, 1997 (SECP Act) against the order (Impugned Order) dated 13/06/17 passed by the Respondent.



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2. The brief facts of the case are that Zarar A. Nasir (Pvt.) Limited (Appellant) were licensed under the Insurance Ordinance, 2000 (Insurance Ordinance) to conduct survey of non-life classes of business comprising of fire, marine, motor and miscellaneous/MBD classes. The Commission under section 59 of the Insurance Ordinance carried out an investigation of M/s The Pakistan General Insurance Company Limited (Company). As per the investigation report, the Appellant conducted six (6) surveys of bogus claims amounting to Rs 13.45 million and connived with the Company to process such claims and secure related reinsurance recoveries from the PRCL. Therefore, as per the Respondent, conditions prescribed in Rule 47(2) & (4) of the Insurance Rules 2017 (Insurance Rules) with section 112(3)(d) of the Insurance Ordinance, 2000 (Insurance Ordinance) were contravened.
3. Show Cause Notice dated 26/04/17 (SCN) was issued to the Appellant, its Chief Executive and Director by the Respondent whereby it was called upon to explain as to why license of the Appellant may not be cancelled in terms of section 112(6) of the Insurance Ordinance for not complying with the provisions of Rule 47(2) and (4) of the Insurance Rules. Hearing in the matter was held on 18/05/17 and the said hearing was attended by Mr. Zarar A. Nasir Khan, Chief Executive of the Appellant at the Head Office of the Commission where he made his submissions.
4. The Respondent, dissatisfied with the response of the Appellant, held that the investigation team had confirmed that the Appellant conducted six (6) surveys of the claims amounting to Rs 13.45 million and that the Appellant connived with the Company in the process of devising bogus claims and issued fake survey reports which enabled the Company to secure related reinsurance recoveries from PRCL. Furthermore, the Respondent held that the Appellant had confirmed having conducted surveys for the subject fake claims and the Appellant was required to conduct surveys with due diligence and skill, and in good faith and it appeared that surveys were



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conducted in collusion with the Company. Therefore, the Respondent held that the default of section 112(6) of the Insurance Ordinance was established and the Respondent in exercise of the powers conferred under section 112(6) of the Insurance Ordinance read with S.R.O. 122(I)/2016 dated 12/02/16 cancelled the licence of the Appellant as Surveyor and, further, held that the cancellation would take effect two weeks from the date of the Impugned Order.

5. The Appellant preferred the instant appeal on the grounds that the Impugned Order is illegal, void and contrary to law and facts of the case and proper hearing was not given to the Appellant before issuance of the Impugned Order. The Appellant argued that the Appellant is working as insurance surveyor since 1999 and there is not even a single delegation of fraud, misconduct or misrepresentation on part of the Appellant. Furthermore, the Appellant argued that the survey was duly conducted by the Appellant on the basis of documents in accordance with law as provided by the Insurance Ordinance and that every claim has a separate acceptance note and verifications were done on the basis of evidence of photographs/snaps, however, no physical verification took place of the claims. Furthermore, the Appellant argued that licences could not have been cancelled for all classes of business under section 112(6) of the Ordinance and only licence for which a violation had occurred could be cancelled.
6. The Respondent rebutted the arguments of the Appellant on the grounds that the Respondent has passed the Impugned Order while invoking the appropriate provisions of the law i.e. under Rule 47(2) and (4) of Insurance Rules read with section 112(3)(d) and section 112(6) of the Insurance Ordinance. The Respondent argued that the relevant powers of the Insurance Ordinance were duly delegated to the Respondent vide S.R.O. 122(1)/2016 dated 12/02/16 and proper adjudication process was followed. Furthermore, the Respondent argued that investigation under section 59 of the



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Insurance Ordinance revealed that bogus claims amounting to Rs 13.45 million were paid by the Company on the basis of survey reports issued by the Appellant and the Appellant connived with the Company in the process of devising bogus claims and issued fake survey reports which enabled the Company to secure related reinsurance recoveries from PRCL. Furthermore, the Respondent argued that the Appellant was required to conduct surveys with due diligence and skill, and in good faith and the Appellant was required to conduct survey physically and offer its independent opinion, however, it appeared that surveys were conducted in collusion with the Company, therefore, through the Impugned Order, license of the Appellant was cancelled by the Respondent for the violations as stated above. Furthermore, the Respondent argued that fraudulent acts of the Appellant i.e. preparation of fake/bogus survey reports, provide enough grounds to cancel their licences for all classes of business.

7. We have heard the parties. The Appellant has stated that they followed the procedure for verifying claims, however, admitted that physical verification was not carried out. The Respondent has stated that bogus claims were paid by the Company on the basis of survey reports issued by the Appellant. We are of the view that while the Respondent has not been able to show beyond any reasonable doubt that there was connivance on part of the Appellant, however, the Appellant did not exercise due care and diligence to be expected from an insurance surveyor. Rule 47(4) of the Insurance Rules provides that, *“Every survey conducted by, and report given by, an insurance surveyor shall be conducted and given with due diligence and skill, and in good faith and the report shall be finalized as early as possible but within the period of ninety days..”* It is beyond our comprehension that the Appellant has verified the claims without any physical verification whatsoever. The fact that the Appellant has been a surveyor for a very long time has no bearing on this case. The verification of claims cannot be done on the basis of photographs/snaps and acceptance notes. Therefore, to this extent we concur with the Respondent that the Appellant has not able to satisfactorily demonstrate that the verification was done in accordance with relevant laws and rules.



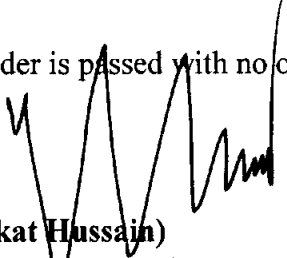
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8. We have also, however, perused the relevant law and observed that rule 41(2) of the Insurance Rules, 2017 amended through S.R.O. 658(1)/2018 states that, *“A licence granted by the Commission under section 112 of the Ordinance shall specify the main class of insurance surveyors for which the licence is granted. Provided that existing licencees as insurance surveyors shall apply for the licence of the main classes referred in sub-rule(1) on the expiry of their valid licence as on the commencement date of this notification. Provided further that the insurance surveyors having licence for the miscellaneous class on the commencement date of this sub-rule shall at the time of renewal of their existing licence be issued a licence of miscellaneous business confirming that the applicant is eligible to undertake all the sub-classes stated at sub-clause (i) to (vii) of clause (d) of sub-rule (1) above...”* The above rule states a licence granted by the Commission shall specify the class or sub-class for which the licence is granted. Furthermore, Section 112(6) of the Ordinance provides that, *“if the Commission believes on reasonable grounds that a licensed surveyor has failed to comply, or has ceased to comply, with a condition of the license, the Commission may by notice to the licensed surveyor of not less than two weeks cancel that license.”*
9. In view of the foregoing, we have observed that the Respondent has not specified in the SCN and Impugned Order which licence has been cancelled for which particular class or classes of business. The Impugned Order is remanded to the Respondent to conduct fresh proceedings including issuance of show cause notice and pass a speaking order within 30 days setting out clearly which violations have occurred in which class or classes or sub-class of business and cancel the licence accordingly in terms of section 112(6) of the Ordinance. Meanwhile, the Respondent must keep strict vigilance on the Appellant pertaining to its business activities and the Appellant is also barred from engaging in any insurance survey in respect of all classes of business until conclusion of the proceedings in the matter.



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10. This order is passed with no order as to costs.

  
(Shaukat Hussain)  
Chairman/Commissioner (CCD-CLD)

  
(Shauzab Ali)  
Commissioner (SCD-S&ED/IE & IR)

Announced on: **19 SEP 2018**