



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

## BEFORE THE APPELLATE BENCH

In the matter of

### Appeal No. 73 of 2019

Topline Securities Limited

...Appellant

Versus

Commissioner, Securities Market Division, 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. 73 of 2019 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 September 06, 2019 (the "Impugned Order") passed by the Commissioner, Securities Market Division (the "Respondent") under section 40A of the Securities and Exchange Commission of Pakistan Act, 1997 (the "Act") and Section 150 of the Securities Act, 2015.
2. The brief facts of the case are that the Appellant is a Trading Right Entitlement Certificate ("TREC") holder of the Pakistan Stock Exchange ("PSX") and licensed as a securities broker under

*38*  
*ML*



## SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

the Securities Act, 2015. The follow-up review of the Appellant was conducted under Section 137 of the Securities Act, 2015 to ascertain compliance with requirements contained in the Securities and Exchange Commission of Pakistan (Anti-Money Laundering and Countering Financing of Terrorism) Regulations, 2018 (the "AML Regulations"). The review revealed non-compliance of Regulations 6(2), 6(3), 4(d) and 11(2) of the AML Regulations as well as Circular 10 of 2017. The deficiencies and lapses cast doubts on the authenticity of the company's internal controls, policies and procedures implemented under the AML/CFT Laws. Therefore, for these contraventions a show-cause notice dated June 17, 2019 was issued to the Appellant and the Respondent after considering the submissions of the Appellant rendered in the hearing, a penalty of Rs. 200,000/- was imposed on the Appellant vide the Impugned Order. The Appellant was further advised to enforce the provisions of AML Regulations in letter and spirit.

3. The Appellant has challenged the Impugned Order, *inter alia*, on the grounds that the Appellant has taken all necessary measures to comply with the AML Regulations in a systematic, diligent and prudent manner. The Appellant argued that Section 150 of the Securities Act, 2015 only envisages a penalty where a licensed person is "guilty of misconduct" and there is not a single instance where the Appellant was found guilty of misconduct, therefore the Impugned Order's reliance on Section 150 of the Securities Act, 2015 is beyond the scope of the proceedings. The Appellant further argued that the Appellant provided all the documents related to Customer Due Diligence ("CDD"), which were found satisfactory by the Respondent, however, in case of one client, where he purchased securities worth Rs. 5.03 million, which is not commensurate with his disclosed income, the Respondent did not provide any basis or calculation for the said amount. The Appellant further argued that prior to January, 2019 it has an internal audit department which was subsequently outsourced. The Appellant stated that it also has a software namely; "STOCKXS-AML/CFT Risk Profile" for risk profiling of its customers and the software automatically categorizes the customers in various risk categories and the two clients, as highlighted in the Impugned Order, was categorized by the software as 'low risk'. The Appellant further submitted that there has neither been an intention nor any logical reason for the Appellant to contravene the AML Regulations, and in such circumstances, imposition of penalty on the Appellant is not justified, therefore, liable to be set aside.
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 the evidence available on record. The Respondent admitted the

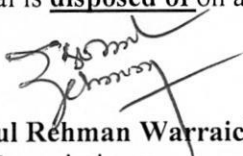
  
M.L.

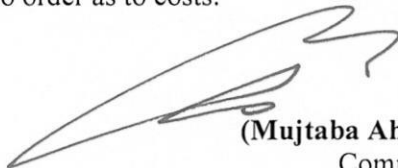


## SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

Appellant's stance to the extent that invoking Section 150 of the Securities Act, 2015 for the above-mentioned contraventions is unjustified, however, argued that the Impugned Order is comprehensive and details factual and legal aspects, explicitly outlining instances of the Appellant's non-compliance of AML Regulations. The Respondent stated that with regard to one client, whose salary slip reflected a monthly income of Rs.66,392 but had purchased securities worth Rs. 5.03 million, the Appellant failed to conduct adequate CDD in terms of Regulation 6(c) of the AML Regulations, hence, found non-compliant. The Respondent pleaded that with regard to the Appellant's failure to record reasons to rate two of its customers as 'low risk', the Appellant submitted KYC/CDD checklists, however, the checklists did not substantiate the reasons for rating such customers as 'low risk'. The Respondent stated that the AML Regulations stipulate that the decision to rate a customer as 'low risk' should be justified in writing, hence, the Appellant failed to follow the prescribed requirement. The Respondent reiterated that the Appellant was found non-compliant with the AML Regulations in the above-mentioned instances that eventually led to the imposition of penalty through the Impugned Order which is justified in the eyes of law.

5. The Bench has heard the arguments of both the parties and perused the record. The Bench is of the opinion that though the Respondent mentioned Section 150 of the Securities Act, 2015 in the Impugned Order, however, penalty was imposed by invoking Section 40A of the Act only. Further, the Bench is of the view that the Appellant has the responsibility to strictly adhere to the relevant requirements outlined in the AML Regulations in its true letter and spirit, however, the Appellant remained unable to produce satisfactory evidence before the Respondent for the contravention of Regulations 6 and 11(2) of the AML Regulations in the highlighted instances, therefore, the penalty was imposed as per the applicable provisions of the law. The Bench has, however, observed that the Appellant has made efforts to ensure compliance and is striving to adhere to the AML Regulations, therefore, the Bench is inclined to take a lenient view with respect to the quantum of penalty imposed on the Appellant.
6. In view of the foregoing, we hereby reduce the penalty amount to Rs. 100,000/-. Accordingly, the Appeal is **disposed of** on above terms with no order as to costs.

  
(Abdul Rehman Warraich)  
Commissioner

  
(Mujtaba Ahmad Lodhi)  
Commissioner

Announced on: 12 JUL 2024