



Securities and Exchange Commission of Pakistan

BEFORE THE APPELLATE BENCH

In the matter of

Appeal No. 73 of 2020

Topline Securities Limited

...Appellant

Versus

Executive Director, 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. 73 of 2020 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 July 09, 2020 (the "Impugned Order") passed by the Executive Director,

[Handwritten signatures]



Securities and Exchange Commission of Pakistan

Adjudication Department I, SECP (the “Respondent”) under Section 40A of the Securities and Exchange Commission of Pakistan Act, 1997 (the “Act”).

2. The brief facts of the case are that the Appellant is a Trading Rights Entitlement Certificate (“TREC”) holder of the Pakistan Stock Exchange (“PSX”) as well as Pakistan Mercantile Exchange (“PMEX”) and licensed as a securities broker under the Securities Act, 2015. The inspection of the Appellant was conducted by the Securities and Exchange Commission of Pakistan (the “Commission”) 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 4(a) and 11(2) of the AML Regulations. Therefore, for these contraventions a show-cause notice dated April 27, 2020 was issued to the Appellant and the Respondent after considering the submissions of the Appellant rendered in the hearing, and a penalty of Rs. 300,000/- was imposed on the Appellant vide the Impugned Order. The Appellant was further advised to examine its AML/CFT policy and procedures to ensure that the requirements contained in the AML Regulations are met 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 and had no intention to commit a breach of law. The Appellant argued that it is following internal standard operating procedures to manage and mitigate the risks of terrorist financing and money laundering and after incurring a huge cost has acquired the software namely; “STOCKXS-AML/CFT Risk Profile”. The Appellant submitted that the said software uses the records available from the UN Security Council (“UNSC”) and National Counter Terrorism Authority (“NACTA”) websites, as a database to screen and conduct customer due diligence and ‘know-your-customer’ compliances against new customers. The Appellant further argued that the finding of the Impugned Order regarding breach of Regulation 4(a) of the AML Regulations is unjustified, as of the Appellant's few thousands of customers, reliance on merely two instances for imposing penalty, where apparently the name of the two individuals were not appearing in the search results of the software, is unjustified and arbitrary. The Appellant stated that the names of two individuals i.e Khan Muhammad and Saleh Muhammad did not appear in the inspection team’s



Securities and Exchange Commission of Pakistan

search because the same were not available on NACTA's websites on January 01, 2020 and for this reason the software did not detect the said names, therefore, in such a case, the Appellant cannot be held responsible if name of a proscribed person who has not been placed on the website of NACTA or UNSC. The Appellant further submitted that with regard to the alleged breach of Regulation 11(2) of the AML Regulations, the Appellant had provided all the documents related to customer due diligence along with justification for categorizing five customers as low risk, therefore imposition of the penalty on the Appellant is not justified and the Impugned Order is 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 in civil cases, violation or non-compliance is not subject to proving intention. The Respondent pleaded that the Appellant's system was unable to trace/check proscribed persons, therefore, non-appearance of the two names in search results depicts that the system deployed by the Appellant lacks functionality to include records based upon SROs communicated to it by the Commission, therefore, default under Regulation 4(a) of the AML Regulations was established. The Respondent argued that the Appellant violated the requirements of Regulation 11(2) of the AML Regulations and had furnished an undated separate sheet wherein justification for categorizing customers as 'low risk' was mentioned, however, the Appellant failed to substantiate the existence of the said evidence at the time of the inspection. The Respondent further argued that the Impugned Order has been passed with cogent reasons and as per the facts and applicable law. The Respondent reiterated that the Appellant was required to strictly follow the requirements of the AML Regulations, however, it failed to do so, therefore, the imposition of the penalty through the Impugned Order has been imposed in accordance with the requirements of the law as prescribed under AML Regulations read with Section 40A of the Act.
5. The Bench has heard the arguments of both the parties and perused the record. The Bench is of the opinion that the Appellant has the responsibility to strictly adhere to the relevant requirements outlined in the AML Regulations and subsequent rectification actions or submission of evidence do not absolve the Appellant from the committed violations. The Bench is of the view that the Appellant remained unable to produce satisfactory evidence before the Respondent for the


Handwritten signatures: A stylized signature on the left and the initials 'ML' on the right.



Securities and Exchange Commission of Pakistan

contravention of Regulations 4(a) 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 is continuously making 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. 150,000/-. 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