



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. III

In the matter of

Appeal No. 94 of 2016

State Life Insurance Corporation of Pakistan

...Appellant

Versus

1. Commissioner (Insurance), Securities and Exchange Commission of Pakistan
2. Director (Insurance), Securities and Exchange Commission of Pakistan
3. Prof. (Retd.) Syed Aijaz Ali Shah ...Respondents

Date of Hearing: 17/02/17

Present:

For the Appellants:

- (1) Mr. Waqas Asad Sheikh, Advocate

For the Respondent No.3:

- 1) Mr. Ghulam Asghar Pathan, Advocate

For the Respondents 1 & 2

- 2) Mr. Ali Azeem Ikram, Executive Director (Insurance)
- 3) Mr. Hasnat Ahmad, Director (Insurance)

ORDER

1. This Order is passed in the matter of Appeal No.94 of 2016 filed under section 33 of the Securities and Exchange Commission of Pakistan (Commission) Act, 1997 (SECP



Securities and Exchange Commission of Pakistan

Act) against the order (Impugned Order) dated 24/10/16 passed by the Respondent No.1.

2. The brief facts of the case are that Syed Aijaz Ali Shah (Respondent No.3) obtained an insurance policy from M/s. State Life Insurance Corporation Limited (the Appellant) in the month of December, 2004 for a period of 10 years. As per the illustration provided to the Respondent No.3, cash surrender values were shown as Rs 948,875/- at the end of the 9th year and Rs. 1,840,000/- at the end of 10th year of the underlying insurance policy. However, the Respondent No.3 was paid an amount of Rs 1,144,000/- upon maturity i.e. at the end of the term of the said policy. The Respondent No.3 being aggrieved by the short term payment in maturity proceeds, approached the Commission for seeking relief in accordance with provisions of the law. The Appellant vide its letter dated 09/12/15 admitted that the high projected values showing abnormally high bonuses' value at the 10th year was a result of an initial teething problem in programming and the same was rectified once detected. The Respondent No.3 relied upon the said illustration, which forms part of the insurance contract, and, therefore, continued to make premium payments to the Appellant till maturity of the insurance policy. Accordingly, it appeared to the Commission that the Appellant misled the Respondent No.3 through deceptive illustration which not only breached the trust of the Respondent No.3 but also caused financial loss to him. In this regard, the Appellant was advised by the Commission vide letter dated 30/12/15 to make compensation of Rs 696,000/- to the Respondent No.3 on account of loss suffered by the Respondent No.3 as a result of his reliance on the deceptive and misleading illustration. However, the Appellant preferred an appeal before the Honourable Appellate Bench against the Commission's letter dated 30/12/15. The Honourable Appellate Bench vide its order dated 22/06/16 remanded the case to Director Insurance (Respondent No.2) and directed to provide adequate an opportunity of hearing to both parties before final adjudication and address the issue as per his jurisdiction. The S.R.O. No. 122(I)/2016 dated 26/02/16 was referred to by the Respondent No.2 so as to ascertain his jurisdiction/power in terms of the powers delegated by the Commission to the Commissioner and officers prior to adjudicating the Appellant and hearing the parties



Securities and Exchange Commission of Pakistan

in the instant matter. It was observed that the powers to adjudicate under section 76(5) of the Insurance Ordinance, 2000 (Ordinance) had been delegated to the Commissioner (Insurance) (Respondent No.1) as per the said notification and accordingly, the instant matter did not fall under the jurisdiction of Respondent No. 2 as per the said notification.

3. Show Cause Notice dated 02/08/16 (SCN) was issued to the Appellant and its Board of Directors (through the Company Secretary) by the Respondent No.1, thereby calling upon them to show cause as to why punitive action may not be taken against them in terms of section 76(5) and/or section 156 of the Ordinance and as to why the direction may not be given under section 60 of the Ordinance for the alleged contravention of section 11(1)(f) & h, section 12(4) and section 76 of the Ordinance. Thereafter, the Company Secretary, vide his letter dated 08/08/16 stated that the SCN has been forwarded to the Board of Directors of the Appellant and the Chairperson has directed the Executive Director (Legal Affairs) to reply to the SCN. Subsequently, in response to the SCN, Mr. Waqas Asad Sheikh, Advocate High Court, (Counsel), while acting on behalf of the Appellants, provided response to the said SCN vide letter dated 16/08/16. Hearing in the matter was held on 05/09/16 and the said hearing was attended by Mr. Ifitikhar Ahmed, Divisional Head (Policyholder Services) of the Appellant, Mr. Manzoor Ali, Assistant General Manager (Legal Affairs) of the Appellant and the Counsel. Another hearing was held on 26/09/16 in which Respondent No.3 was also present and attended the hearing through video link.
4. The Respondent No.1 after carefully examining and giving due consideration to the written and verbal submissions of the Appellants took the view that the default of section 76, section 11(1)(f) & h and section 12(4) of the Ordinance is established. Therefore, the fine/penalty as provided under sections 76(5) and 156 of the Insurance Ordinance can be imposed onto the Appellant and/or its Directors, and/or the Commission may also issue direction under section 60 of the Insurance Ordinance. Furthermore, as per section 77 of the Ordinance, ambiguity caused in the insurance



Securities and Exchange Commission of Pakistan

contract should be construed in favour of the policyholder. However, instead of imposing penalty under sections 76(5) and 156 of the Ordinance, the Respondent No.1 in exercise of the power conferred under section 60 of the Ordinance read with S.R.O. 122(I)/2016 dated 12/02/16, issued direction to the Appellant to settle grievances of the policyholder and be careful in future of any such misleading or deceptive conduct towards its policyholders.

5. The Appellant preferred the instant appeal on the following grounds:
 - a) The Respondent No.1 has passed the Impugned Order dated 24/10/16 on the basis of misapplication of the law. The Appellant has been found guilty of misleading and deceptive conduct, however, bare reading of section 76(2) of the Ordinance shows that it is beyond comprehension how an error caused inadvertently as a result of malfunction of a software program can be construed as misleading or deceptive conduct. In order for the instant matter to be construed a case of misleading and deceptive conduct, it is necessary that the element of the willfulness and malafide intention must be present, however, in the instant matter, the Appellant being the largest life insurance corporation of Pakistan since 1972 did not have malafide intention and it is pertinent to mention that the decision to pay an amount in excess of Rs.1,144,000 as claimed by the Respondent No.3 would be detrimental to the interest of other policy holders of the Appellant.
 - b) The Respondent No.1 has erred in exercising his jurisdiction and wrongly took cognizance of a matter over which he has no jurisdiction. The powers of the Commission are enumerated in section 20 of the SECP Act and from the bare reading of the said section, it is apparent that the Commission is not empowered to adjudicate in disputes of insurer and policy-holders. The Respondent No.3 has approached the wrong forum, i.e. Commission for settlement of dispute, whereas as per the law, the Respondent No.1 should have directed the Respondent No.3 to approach the Insurance Tribunal in accordance with section 115 of the Ordinance.
 - c) The Commission being an apex regulator is bound to act within the parameters as defined in section 20 of the SECP Act, 1997 and Ordinance, however, the Respondent



Securities and Exchange Commission of Pakistan

No.1 has acted in excess of his jurisdiction. Public functionaries are required to pass order in accordance with the law and required to provide independent reasoning as mandated by section 24A of the General Clauses Act, 1897.

- d) The dispute between the Appellant and the Respondent No.3 requires recording of evidence for purposes of determining the liability, therefore, the proper forum is the Insurance Tribunal. It is abundantly clear that section 60 of the Ordinance can only be invoked in situations which are otherwise not provided in the Ordinance, however, in the instant matter, there is absolutely no justification for relying on section 60 of the Ordinance. Section 11 of the Ordinance can also be invoked only in situations which are not specifically covered in the Ordinance, whereas, in the instant matter, the powers and jurisdiction of the Insurance Ordinance are adequately defined. Reliance is placed upon two documents (the Referred Documents). The first document is a complaint filing procedure provided at an investor education website named "Jamapunji" (<http://jamapunji.pk/protect-yourself/complaint-lodging-process>), whereas, the other document is Circular no. 5 of 2016 dated 26/01/16 issued by Respondent No.1 whereby, the insurers were asked to display the names of insurance disputes resolution forums i.e. Federal Insurance Ombudsman and Small Dispute Resolution Committees on their websites and premises. In view of relevant laws and the Referred Documents, Respondent No.3 was required to lodge a complaint with the Insurance Tribunal, Federal Insurance Ombudsman or Small Dispute Resolution Committees therefore, taking cognizance of the instant matter by the Respondent No.1 is illegal.

6. The Respondents No.1 and 2 rebutted the arguments of the Appellants as follows:

- a) The Respondent No.1 has passed the Impugned Order under lawful jurisdiction while invoking the appropriate provisions of the law. The Appellant has taken the plea in total disregard to the provisions of section 76(1) and 76(3) of the Ordinance. All of the provisions under section 76 of the Ordinance are clear and unambiguous. Section 76(1) and 76(3) of the Ordinance provides that the insurer may not engage in any kind of conduct which is misleading or deceptive or is likely to mislead or deceive. The malfunction of a software program or an error cannot be looked at in isolation as the



Securities and Exchange Commission of Pakistan

Appellant subsequently gave a misleading and deceptive illustration which can always drive and impact the decision of an insurance policy holder i.e. whether to purchase policy or otherwise. All of the provisions under section 76 of the Ordinance are clear and unambiguous.

- b) The relevant powers of the Ordinance were duly delegated to Respondent No.1 vide S.R.O. 122(1)/2016 dated 12/02/16. The policyholder disputes are not dealt with by the insurance tribunals only, as in addition to the mandate given to the Commission to protect the interests of the insurance policy holders, there are two other external forums which the Ordinance has provided i.e. the small dispute resolution committees and the Federal Insurance Ombudsman. The powers and jurisdiction of the Insurance Tribunals should not be read in isolation.
- c) The Respondent No.1 has not acted in excess of his jurisdiction. The Respondent No.1 acted in accordance with the provisions of the law and due process of adjudication was also followed in letter and spirit, after which the order dated 24/10/16 was passed which was speaking and deliberated on the facts and findings of the matter at hand.
- d) The Appellant violated section 11(1)(f) & h and section 12(4) and section 76 of the Ordinance 2000. Therefore, section 60 of the Ordinance, 2000 was invoked and direction was issued after default was established. The Impugned Order passed by Respondent No.1 is a speaking order. As regards to independent findings, it should be noted that the Appellant in their reply dated 09/12/15 admitted that the high projected values showing abnormally high bonuses' value at the 10th year was a result of an initial teething problem in programming and the same was rectified once detected.

7. The Respondent No.3 rebutted the arguments of the Appellant as follows:

- a) The Respondent No.1 has applied the law as it was required to be applied. The Appellant admits from day one since the dispute arose between the Appellant and Respondent No.3 that the source of fault rests with the Appellant, namely the computer error. The Respondent No.3 was induced to get into the contract of purchasing policy which became deceptive and misleading in terms of section 76 of the Ordinance as it was done so without getting the prior express approval of Respondent No.3. The



Securities and Exchange Commission of Pakistan

Appellant's silence in regard to providing no explanation does make it clear that the Respondent No.1 was right to decide in favour of Respondent No.3.

- b) There was an error of Appellant's computer program and not of Respondent No.3's understanding of the policy, therefore, the burden of proof shifted to the Appellant to show what measures were taken by the Appellant in order to correct their mistake. The Appellants failed to defend their position which is on record of the proceedings.
- c) The Respondent No.1 has acted lawfully and according to the powers devolved to them by the order made on 30/10/16. Furthermore, the power prescribed in section 20 of the SECP Act, 1997 are sufficient to state that the instant situation is one of the situations the Commission can take cognizance of.
- d) Section 115 of the Ordinance does not create a bar for the Respondent No.3 to approach an alternative forum that is the Commission for the recovery of amount and redressal of his grievance. In the instant case, the Respondent No.3 approached the correct forum because the documents on which the Respondent No.3 relied are admitted by the Appellant and are not challenged at any forum to be forged or otherwise. The Respondent No.1 has acted lawfully and has assumed jurisdiction of the matter correctly as it was reasonable for the Commission to direct order against the Appellant and secure the interest of the Respondent No. 3. The gross failure to address the administrative default does not only provide enough justification for relying on section 60 of the Ordinance but also enables the Respondent No.1 and Respondent No.2 to take cognizance of the matter. Furthermore, it would be unreasonable for the Appellant to state that the Respondents 1 and 2 have wrongly invoked the said section. The remaining amount of Rs 6,96,000 must be recovered from the Appellant and the appeal should be dismissed.

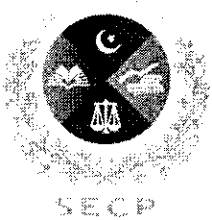
8. We have heard the parties i.e. the Appellant and the Respondents. The Appellant has argued that it is beyond comprehension how an error caused inadvertently as a result of malfunction of a software program can be construed as misleading or deceptive conduct and there must be an element of malafide intent for one to be guilty. The Respondents No.1 and 2 argued that Section 76(1) and 76(3) of the Insurance



Securities and Exchange Commission of Pakistan

Ordinance provides that the insurer may not engage in any kind of conduct which is misleading or deceptive or is likely to mislead or deceive. The Respondent No. 3 has argued that there was an error of Appellant's computer program, therefore, the burden of proof shifted to the Appellant to show what measures were taken by the Appellant in order to correct their mistake.

9. Section 60 of the Ordinance provides that, *"The Commission may, if it believes on reasonable grounds that an insurer registered under this Ordinance has failed, or is about to fail, to comply with the conditions of registration set out in section 11, issue to the insurer such directions, not otherwise provided for in this Ordinance, as it believes on reasonable grounds to be necessary to protect the interests of the policy holders of the insurer."* Section 76(1) of the Insurance Ordinance provides, *"An insurer shall not, in the course of its business as an insurer, engage in conduct that is misleading or deceptive or is likely to mislead or deceive."* Section 76(4) of the Ordinance further provides, *"Where a policy holder has relied upon any representations by an insurer or by an agent of an insurer which are incorrect in any material particular, inasmuch as it has the effect of misleading or deceiving the policy holder in entering into a policy, the policy holder shall be entitled to obtain compensation from the insurer for any loss suffered."* We are of the view that the Respondents Nos. 1 and 2 were fully empowered in terms of section 60 of the Ordinance to issue Direction to the Appellant as the Appellant had engaged in conduct which was misleading to the Respondent No.3 in terms of section 76 of the Ordinance. Furthermore, section 115 of the Ordinance only provides that, *"The holder of a policy of insurance issued by an insurer in respect of insurance business transacted in Pakistan after the commencement of this Ordinance shall have the right, notwithstanding anything to the contrary contained in the policy or in any agreement relating thereto... to sue for any relief in respect of the policy in any Tribunal; and if the suit is brought in Pakistan any question of law arising in connection with any such policy shall be determined according to the law in force in Pakistan."* In the instant case, the Appellant could approach the tribunal, however, section 115 of the Ordinance



Securities and Exchange Commission of Pakistan

does not bar the Respondent No. 3 from approaching the Commission for redressal of its grievances.

10. The Respondent No.3 had been misled by the Appellant in terms of section 76 of the Ordinance who relied on the illustration given by the Appellant and continued to make premium payments until maturity of the policy. The Appellate Bench has gathered the following figures from the record:-

Respondent No.2 obtained the Policy for ten years	December, 2004
Annual Premium	Rs 107,000/-(total premium paid Rs.1,070,000/-).
Cash surrender value upon maturity of policy in Illustration	1,840,000
Actual Cash surrender value received upon maturity of policy	Rs.1,144,000/-
Difference B/w Cash Surrender Value of Illustration and Actual Cash Surrender value Received	Rs.1,840,000/- 1,144,000 = 696,000

11. The Appellate Bench accepts the plea of Appellant that the illustration provided to the Respondent No.3 (depicting the high cash surrender value of 1,144,000 was the result of computer software error and it was provided to the Respondent No.2 after the purchase of the policy. However, this plea is inconsequential because in view of Section 45 of the Ordinance read with Section 11(1)(f) and Section 12(1)(a) & (e) and Section 12(4) of the Ordinance, the Appellant was required to maintain adequate internal controls across all its systems and processes but it had failed to do so .

12. The Respondents were not required to establish malafide intention and willful default to prove the misleading and deceptive conduct of the Appellant under Section 76 of the Ordinance. Therefore, Appellant's plea in this regard cannot be acceded to. Even

Appellate Bench No. 11



Securities and Exchange Commission of Pakistan

otherwise, the conduct of Appellant is self-explanatory and speaks about the malafide intention and willful default because after the detection of computer software error, the Appellant never informed the Respondent No.3 that the provided cash surrender value in the illustration was caused due to computer software error. Furthermore, the Appellant has also not communicated the new cash surrender value to the Respondent No.3, which is sufficient to prove the malafide intention of the Appellant and willful default. In result, thereof, the Respondent No. 3 continued to pay the annual premium of the policy for ten years, which eventually led the Respondent No. 3 to suffer the loss on maturity. Moreover, it is sufficient for the Respondents 1 and 2 to show that the Appellant had engaged in conduct which was likely to mislead the Respondent No.3 as a policyholder. The Appellant had also not informed the Respondent No.3 about the changed cash surrender value because there was apprehension that he may take a decision to discontinue/withdraw the policy. The Appellant is the largest public sector life insurance entity in Pakistan, therefore, it is expected that the conduct of such a huge entity must be in accordance with the law and the interest of policyholders. The case in hand is a classic example of breach of trust and this act of the Appellant can hamper the confidence of existing and potential policyholders.

13. The Bench has also examined the documents referred and presented during the hearing. One document is a webpage of Jamapunji website which lays down the procedure of filing of a complaint with the complaint cell of the concerned insurer and thereafter with the Commission, if the complaint is not addressed by the insurer within reasonable time. We have gone through the relevant laws and found nothing which makes the above stated procedure mandatory for the policyholder or the Commission, therefore, a webpage containing the procedure to file complaints, cannot override the express provisions of relevant laws. Furthermore, the documents relied upon itself, does not make it mandatory for the policyholder to file a complaint with the complaint cell of the insurer, prior to approaching the Commission. We were also given Circular No. 5 of 2016 dated by 26/01/16, wherein, it is stated that, "*to address the complaints of maladministration on part of the insurers, the Office of Federal Insurance Ombudsman*



Securities and Exchange Commission of Pakistan

was established pursuant to section 125 of the Insurance Ordinance. The Commission has also constituted three Small Disputes Resolution Committees (SDRC) at Islamabad, Lahore and Karachi under section 117 of the Ordinance with a view to expeditiously resolve the grievances pertaining to the claims within the prescribed pecuniary limits defined in SDRC (Constitution and Procedure) Rules, 2015. However, there is an immense need to enhance awareness among the policyholders about availability of these forums for prompt and effective resolution of their grievances as the Commission has notices a growing number of policy holders' complaints against insurers." It is pertinent to note that the said section as well as the Circular do not bar the Respondent No.3 from lodging a complaint with the Commission or for the Respondents No. 1 and 2 to take appropriate regulatory action against the Appellants for violating provisions of the Ordinance. Section 20(4)(s) of the SECP Act provides, *"ensuring and monitoring compliance by insurers, insurance surveyors and insurance intermediaries of all laws, rules and regulations pertaining to insurance for the time being in force."* The Respondents No.1 and 2, therefore, are fully competent to take cognizance of the complaint lodged by the Respondent No.3 in terms of section 20(4)(s) of the SECP Act.

14. It is also important to mention here that another Appellate Bench Appeal No. 58 of 2016 (the Other Appeal) with similar facts is pending adjudication before this Bench. These two appeals have evolved a suspicion in our minds that possibly, there would be numerous policyholders, who have suffered agony at the behest of the Appellant. The matter in hand and in the Other Appeal pertains to year 2004, therefore, we direct the Respondent No.1 to initiate a forensic audit with respect to policies sold.

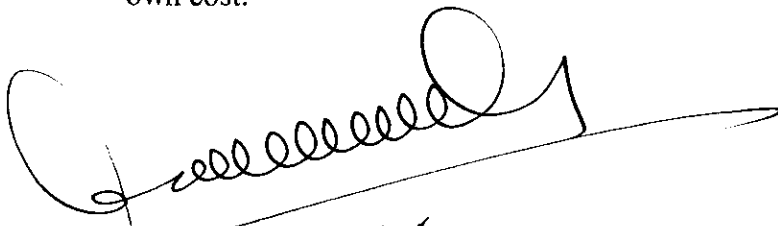
15. The available record is sufficient to prove that the Appellant has violated the relevant provisions of law. The Appellant's deceptive and misleading conduct has infringed the rights of Respondent No.3 and it has not come to the Bench with clean hands, therefore, the Appellant is not entitled for any leniency. In view of the above circumstances, it has been established that the Respondent No.3 was entitled to receive Rs. 1,840,000/-




Securities and Exchange Commission of Pakistan

at the time of maturity of policy however, the Appellant paid only 1,144,000, meaning thereby, the Respondent No.3 has sustained a loss of Rs. 696,000. Therefore, we hereby, modify the Impugned Order and direct the Appellant to compensate the loss of Rs 696,000 suffered by the Respondent No.3 and pay a fine of Rs.1,392,000/- under Sections 76(4) & 76(5) of the Ordinance respectively. The Appellant has also failed to maintain adequate internal controls and systems, therefore, under Section 156 of the Ordinance we also impose a fine of Rs. One Million on the Appellant. The Appellant is directed to deposit the amount of fine in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with MCB Bank Limited within 30 days and furnish the challan to the Respondent No.1, as evidence of deposit of fine.

16. In view of the above, we hereby dismiss the appeal accordingly. Parties to bear their own cost.



(Zafar Abdullah)
Commissioner (SCD)



(Tahir Mahmood)
Commissioner (C&CD-CLD)

Announced on: 04 APR 2017