



BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 5 of 2005

Honorary Capt. (Retd) Noor Ahmed

House No.452, Street 11

Sector - I, AECHS

RawalpindiAppellant

Versus

1. Aly Osman, Joint Director (Securities Market Division) SEC

2. Hameed Shahid

Member, Islamabad Stock Exchange (G) Ltd.

Room No. 306, Anees Plaza

Blue Area IslamabadRespondents

Date of Impugned Order

18 March, 2005

Date of Hearing

29 June, 2005

Present:

1. Appellant for himself

2. Mr. Murtaza Abbas Deputy Director for Respondent No.1

3. Respondent No. 2 for himself



ORDER

1. This order will dispose off the present appeal No. 5 of 2005 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 by Honorary Capt. (Retd) Noor Ahmed (the 'Appellant') against the order dated 18-03-2005 ('Impugned Order') passed by Mr. Aly Osman, Joint Director (Securities Market Division).

2. Brief facts of the case are that the Appellant had filed a complaint dated 23-10-2003 with the Commission against Mr. Hameed Shahid, member of the Islamabad Stock Exchange (G) Ltd. (Respondent No.2) herein. In his complaint, the Appellant had alleged that he was holding certain shares with Respondent No.2 on 21-01-2003. On 22-01-2003 he offloaded his holding position and asked the Respondent No.2 to place his shares delivery in badla against the debit balance in his account. On 23-01-2003 he did not visit the brokerage house of Respondent No.2. When he went there at 0935 hours on 24-01-2003, he was informed that his holding positions including the deliveries had been disposed off. He contended that his shares had been sold by Respondent No.2 without his authority. In his complaint, the Appellant claimed the following shares at the rates mentioned below as on 29-11-2004:

	Name	Quantity	Rate	Amount
i.	FJFC	4000	Rs.24.95	Rs.99,800/-
ii.	KESC	5000	Rs.7.95	Rs.39,750/-
iii.	Fauji Cement	1500	Rs.15.05	Rs.22,575/-
	Total Amount			Rs.162,125/-



3. The complaint was taken up with Respondent No.2 by the Commission, who informed that the position of Appellant's account at close on 21-01-2003 was in debit of Rs.41,447.50 and he was requested to pay the amount and also deposit the margin, which the Appellant failed to do. The Appellant sold some of his positions on 22-01-2003 but still a debit of Rs.15,668.50 existed in his account for which several requests were made to the Appellant. However, the Appellant did not clear the debit. On 23-01-2003 Respondent No.2 tried to contact the Appellant several times and also left messages but no response was received. Consequently, the Appellant's position was sold in accordance with the terms and conditions of the account stated in the account opening form and the regulations of the Islamabad Stock Exchange.

4. The Joint Director (SMD) after hearing both parties rejected the complaint filed by the Appellant vide the Impugned Order. Not being satisfied with the order, the Appellant has preferred this appeal before the Appellate Bench. The appeal was fixed on 29-06-2005 when the Appellant appeared for himself. He stated that his shares had been sold by Respondent No.2 without authority. He contended that nobody from the Respondent office had tried to contact him and seek his permission before selling his shares. He further stated that his shares had been sold within 5 minutes of the opening of the market due to which he had suffered a loss. If the shares had been sold later in the day, they would have fetched a better price. Also, had he been told he would have settled his debit position and saved his shares. He said since he had not visited Respondents office on 23-01-2003 he was not aware of the position of his account for that day. He contended that Respondent No.2 had misused the provision in the account opening form to sell his share and the Respondent was required to give him reasonable time to clear the dues before selling the shares. He further contended that he had instructed Respondent No.2 to keep all his shares in badla and if he had followed his instructions, the Appellant's account would have been in credit and not debit and there would be no need to sell his shares. He argued that Joint Director (SM) had failed to appreciate the position and prayed that the Impugned Order be set aside.



5. Respondent No.2 appearing for himself contended that the Appellant was well aware of the debit position in his account and he had been requested to clear his dues. On 23-01-2003 several attempts were made to contact him but to no avail. He stated that his office had left a message at Appellant's home but he did not make any contact. After waiting all day, the FJFC shares were sold within last 5 minutes of closing of market on 23-01-2003. He informed the Bench that on morning of 24-01-2003 the price of FJFC share had fallen and it had been put on the lower circuit breaker. In that sense, the decision of Respondent No.2 to sell the shares on 23-01-2003 had been to the advantage of the Appellant. He further clarified that he could not have placed all the shares of the Appellant in badla as requested by him, as he did not have enough security to cover that. He stated that he was authorized under the terms and conditions of the account opening form to sell the shares to clear the dues, which he did. He prayed that the appeal of the Appellant be rejected and the Impugned Order be upheld.

6. We have heard the parties in detail. The main contention of the Appellant is that his shares were sold without his authority by Respondent No.2. He has further contended that his Fauji Cement and KESC shares were sold too early in the morning of 24-01-2003 which resulted in loss to him. His third contention is that all his shares were not kept in badla as instructed by him. However, we are not convinced on any of these contentions. The Appellant has not denied that there was a debit balance in his account. We asked him during the hearing if there was any legal bar on the Respondent No.2 selling his shares to clear his dues. Of course the Appellant could not point to any such restriction. Clause 8 of the account opening form clearly authorizes the broker to sell the shares to clear his dues. As stated by Respondent No.2, he waited all day on 23-01-2003 before selling some of his shares to settle the position. The Appellant has himself admitted that he did not visit the brokerage house of Respondent No.2 that day. We also cannot accept the contention that the shares which were sold on 24-01-2003 were sold too early in the morning. Stock trading is a risky business where the price of the



shares keeps changing all day long. There is no way to predict whether the price of the share would rise or fall. It is quite possible that the price of the share belonging to the Appellant may have fallen during the day. We therefore do not find merit in the argument that the shares were sold at the wrong time. On the third issue also the Respondent has given a valid reason for not having kept all the shares of the Appellant in badla. If there was not enough security to secure the badla position of the Appellant, the Respondent No.2 could not have been expected to follow the instruction given by Appellant. For the above reasons, we find no merit in the appeal which is dismissed accordingly.

(ETRAT H. RIZVI)
Commissioner

(SALMAN ALI SHAIKH)
Commissioner

Announced in Islamabad on July 6, 2005