



BEFORE APPELLATE BENCH NO. I

In the matter of

Appeals No. 25, 26, 27 & 30 of 2004

Date of Impugned Order August 13, 2004

Date of Hearing October 14, 2004

Present:

1. Mr. Asim M. Khan, Advocate for Appellants in appeals No. 25, 26, 27 of 2004
2. Mr. Naeem Rafi for Rafi Securities Pvt. Ltd
3. Mr. Rashid Safdar Paracha, Director for Director (SMD)



Appeal No.25/2004

Khalid Ahmed KhanAppellant

Versus

1. Malik Rafi Private Ltd.
2. Liaqat s/o Ghulam Hussain
3. Director (Securities Market Division) SEC.....Respondents

Appeal No.26/2004

Zulfiqar H. Siddiqui.....Appellant

Versus

1. Malik Rafi Private Ltd.
2. Liaqat s/o Ghulam Hussain
3. Director (Securities Market Division) SEC.....Respondents

Appeal No.27/2004

Muhammad NajamuddinAppellant

Versus

1. Malik Rafi Private Ltd.
2. Liaqat s/o Ghulam Hussain
3. Director (Securities Market Division) SEC.....Respondents

Appeal No.30/2004

Rafi Securities Pvt. Ltd
formerly known as Malik Rafi Private Ltd.Appellant

Versus

1. Zulfiqar H. Siddiqui
2. Khalid Ahmed Khan
3. Muhammad Najamuddin
4. Director (Securities Market Division) SEC.....Respondents



ORDER

1. Appeals No. 25, 26, 27, & 30 of 2004 were filed before the Appellate Bench under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 by the parties mentioned in the title above. All appeals stem from a single order dated 13-08-2004 passed by Director (Securities Market) in the matter of complaints filed by Khalid A. Khan, Zulfiqar H. Siddiqui and Muhammad Najamuddin (the appellants in appeals No. 25, 26, 27) against Rafi Securities Pvt. Ltd formerly known as Malik Rafi Pvt. Ltd (the appellant in appeal No.30). We therefore intend to dispose of all these appeals through this single order.

2. Detailed facts of the three complaints received by the Commission are stated in the impugned order dated 13-08-2004 passed by the Director (SM), therefore we need not reproduce the same here. Briefly, all three complainants (Khalid A. Khan, Zulfiqar H. Siddiqui and Muhammad Najamuddin) had alleged in their complaints that they had been dealing with Rafi Securities through one Mr. Liaqat who was an agent of the former. They stated that their accounts had been misappropriated and they had suffered huge losses consequently. Rafi Securities on the other hand contended that Liaqat was not an agent but only a customer of Rafi Securities and therefore it was not responsible for any loss caused to the complainants by Mr. Liaqat. In the impugned order, the Director found that Mr. Liaqat was indeed an agent of Rafi Securities but as the actions done by Mr. Liaqat were outside the scope of his work, Rafi Securities was not liable for his actions. He however, imposed a fine of Rs.50,000/- for each complaint on Rafi Securities under Rule 8(iv) read with Rules A(1) and A(2) of the Brokers & Agents Registration Rules, 2001 for lack of prudence and neglect in his business. All parties consequently appealed the decision of the Director before us.



3. The main argument taken up by the counsel appearing for the complainants (Appellants herein) was that the impugned order was bad in law as it was self contradictory. At one hand it finds that Liaqat was the agent of Rafi Securities, and the evidence on record points to the fact that he had carried out illegal acts and caused loss to the complainants. On the hand, the order finds Rafi Securities innocent and then directs the complainants to seek redress with the civil courts. We find that there is considerable substance in this argument. The impugned order does appear to contradict itself. Besides, we believe that this is an intricate issue which has not been properly investigated. We therefore find it appropriate to remand the case back to the Securities Market Division with directions that this issue may be re-investigated through appointment of an independent outside investigator within 30 days of this order. The Securities Market is further directed to identify the issues involved herein, and formulate detailed Terms of Reference for the investigator, who should present his report within 60 days of the appointment. The appeal is disposed off accordingly.

(ABDUL REHMAN QUERSHI)
Commissioner

(ETRAT H. RIZVI)
Commissioner

Announced in Islamabad on November _____ 2004