



BEFORE APPELLATE BENCH NO.I

In the matter of

Appeal No. 17 of 2004

Mian Khalid Bashir
Member Lahore Stock Exchange
7-B/III, Aziz Avenue
Gulberg V, LahoreAppellant

Versus

1. Mr. Imtiaz Haider, Director (Securities Market Division) SEC
2. Lahore Stock Exchange (G) Ltd.
LSE Building,
19, Khayaban-e-Aiwan-e-Iqbal
Lahore
3. Ayesha Imtiaz
C/o National Feeds
171 Shadman II, Lahore.....Respondents

Dates of Hearing

07-09-2004 & 10-09-2004

Present:

Asad Ullah Javed, Advocate for the Appellant
Mr. Imtiaz Haider, Director (SEC) for himself
Mr. Aamir Zareef Khan for Respondents No. 2
Mr. Imtiaz Ahmed for Respondents No. 3



ORDER

1. This order will dispose off the present appeal No. 17 of 2004 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 by Mian Khalid Bashir, member Lahore Stock Exchange (G) Ltd. (the 'Appellant') against the order dated 07-05-2004 ('Impugned Order') passed by Mr. Imtiaz Haider Joint Director (Securities Market Division) as he was then.

2. Brief facts of the case are that Ms. Ayesha Imtiaz, Respondent No.3 filed a complaint dated 13-08-2003 with the Securities & Exchange Commission of Pakistan against the Appellant. She claimed that she was the holder of 1000 shares of Dhan Fibers, 100 shares of Maple Leaf, 625 shares of Quice Food Industries and 150 shares of Tawakal Garments, which were handed over to the Appellant for sale in 1997. She claimed that the Appellant sold her shares but did not give her the sale proceeds. In 1999, she filed a complaint with Lahore Stock Exchange (G) Ltd. ('LSE'), but nothing came out of that complaint. The Commission sent the complaint received from Respondent No.3 to LSE for its comments. LSE responded by saying that the Appellant had filed a civil suit for rendition of account and the court had granted a permanent injunction in the case with directions to LSE not to proceed with the matter. Joint Director (Securities Market) thereafter took up the matter and provided an opportunity of hearing to the parties. During the hearing before the Joint Director, the Appellant took the stance that his agents used to run his brokerage house and they absconded with all the relevant record. He stated that there was no other means of verifying the claim of the complainant. His assertions were rejected by the Joint Director and he ordered the Appellant to return either the shares claimed by the complainant or an amount equivalent to the value of the shares as on 30-10-97. Being aggrieved with the findings of the Joint Director, the Appellant has challenged the impugned order before us in appeal.



3. Mr. Asad Ullah Javed, Advocate appearing for the Appellant contended that the claim filed by the complainant was of a civil nature and therefore the Commission did not have the jurisdiction to adjudicate upon the matter. He claimed that such matters were the subject matter for civil courts and not the Commission. In support of his argument, he referred to case law cited at 2003 CLD 293. Mr. Javed asserted that the complainant had three years limitation to file her civil claim, which she failed to do and therefore was now barred from raising her claim. He further argued that Joint Director (Securities Market) did not have the jurisdiction to pass the impugned order as the powers of the Commission had been delegated to the Commissioner and Executive Director. He contended that Part VIII of the Securities & Exchange Commission of Pakistan Act, 1997 provided the procedure for inquiry and investigation, which had not been followed in the appointment of LSE inquire in the present matter. Mr. Javed further asserted that it had been assumed by the Joint Director in the impugned order that the Appellant had the record to verify the claim of the complainant which he did not. And it was precisely for this reason that the Appellant had filed the suit for rendition of account.

4. Mr. Imtiaz Haider appearing for himself contended that the Commission had ample powers to adjudicate upon the complaint. He stated that one of the primary goals of the Commission is the protection of investors. He referred to the preamble of the Securities and Exchange Ordinance, 1969 ("the Ordinance") and section 20(6)(b) of the Securities and Exchange Commission of Pakistan Act, 1997 ("the Act") which obliges the SEC to protect the interest of the investors. He stated that the regulatory powers of the SEC are encompassed in section 20 of the Act in particular, section 20(6)(g) of the Act, which authorizes the Commission, to take whatever action it can take and is necessary, in order to enforce and give effect to the Act and the Ordinance or any other law.



5. Mr. Haider further stated that the civil suit does not restrict or restrain the Commission from taking any action against the Appellant as the Commission and Respondent No.3 were never made parties to the civil suit. Also, the civil suit has been lodged against the agents for the rendition of the Accounts and the suit does not absolve the Appellant from his liabilities as a member of LSE. He contended that according to S.R.O. 205(I)/2004 dated 19/04/2004 the powers of adjudication were delegated to the different officers of the Securities Market Division whereby, he was given the powers to dispose off investor complaints relating to the LSE. So the contention of the Appellant that the powers were vested with the Commissioner or the Executive Director is irrelevant. He affirmed that during the hearing before him, the Appellant had stated that the claim filed by the complainant could not be verified due to the fact that his agents had absconded with all the record. This, he argued was not a valid reason to reject the claim as the Appellant was responsible for the actions of his agents. Besides the claims of other investors had been settled by the Appellant in spite of lack of record and there was no reason to single out the Appellant.

6. Mr. Aamir Zareef Khan who appeared for the Lahore Stock Exchange supported the findings in the Impugned Order and the arguments presented on behalf of the Director (Securities Market). He was asked to confirm the veracity of the documents filed by the complainant, in particular the statement of account which confirmed the transactions claimed by the complainant, which he did. He confirmed that the ledger statement was signed by the authorized agent of the Appellant which proves that the Appellant had disposed off 500 shares of Maple Leaf. He argued that the Appellant could not challenge the competence of receipt No.535 dated 30-10-1997 on the ground that the said receipt was not issued by his brokerage firm. He prayed that the appeal filed by the Appellant should be dismissed and the impugned order should be upheld.

7. We have heard all the parties and also perused the record. The prime argument of the Appellant for rejecting the claim filed by the complainant is that there is no



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record to verify the veracity of the claim. He claims that his agents had fled with all the record of his brokerage firm. In our view, this reasoning is untenable and unacceptable. The Appellant had admittedly allowed his agents to run his entire business and was unaware of their dealings. The Appellant as a principal is therefore fully responsible for the actions of his agents and cannot now plead innocence on the basis of his differences with his agents. The claim of the complainant cannot be rejected on the ground that the Appellant's agents have run away with his record. That is a matter between the Appellant and his agents and he has rightly filed a suit against his agents before the court of law. In the presence of the ledger statement which is verifiable, there is no reason to reject the claim of the complainant on the ground as stated above.

8. As for the Appellant's contention that the complaint filed by the complainant is a civil matter and should be referred to the civil court, we believe that it is only an attempt on part of the Appellant to avoid his obligation. This is a straight forward case, where the Appellant's brokerage firm sold shares belonging to the complainant and then failed to hand over the sale proceeds to the owner. As has been rightly pointed out by the Director, the Commission is fully competent to regulate the business of stock exchanges and its members and brokers under law and to protect the interest of the investors. Further, S.R.O. 205(I)/2004 dated 19/04/2004 gives the powers of adjudication to Director (SM) and he was competent to pass the impugned order. For reasons stated above, we dismiss the appeal filed by the Appellant. This appeal is disposed off accordingly.

(ABDUL REHMAN QUERSHI)
Commissioner

(ETRAT H. RIZVI)
Commissioner

Announced in Islamabad on November _____ 2004