



BEFORE RE-CONSTITUTED APPELLATE BENCH NO. I

In the matter of

Appeal No. 41 of 2006

Muhammad ZubairAppellant

Versus

1. Karachi Stock Exchange (G) Limited
2. M.A Lodhi
Managing Director
Karachi Stock Exchange (G) Ltd
3. Munir Ahmed Khanani
Member
Karachi Stock Exchange (G) Ltd
4. Imtiaz Haider
Director ICW (Securities Market Division)
SECPRespondents

Date of Hearing

3 October, 2006

Present:

1. Appellant for himself
2. Abdul Jabbar Lodhi for Respondents No.1 and 2
3. Munir Ahmed Khanani for himself
4. Murtaza Abbas, Deputy Director SECP for Respondent No. 4



ORDER

1. This order will dispose of appeal No. 41 of 2006 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 by Muhammad Zubair against the order dated 07-04-2006 ("Impugned Order") passed by Mr. Imtiaz Haider Director (Securities Market Division).

2. The brief facts of the case are that Muhammad Zubair (the "Appellant") filed a complaint on 09-12-2003 with the Securities & Exchange Commission of Pakistan against Munir Ahmed Khanani, member and broker of Karachi Stock Exchange ("KSE"). In his complaint, the Appellant stated that he was maintaining a trading account No. TO1 and CDC sub-account No. 12149 with Munir Khanani for about one year. The Appellant stated in his complaint that on 08-12-2003 he received the CDC account statement from Munir Khanani which had been forged, as many shares belonging to him were missing from his CDC account. The Commission forwarded the Appellant's complaint to KSE on 18-12-2003 for resolution and arbitration, if necessary. Apparently, KSE forwarded the complaint to Munir Khanani for his comments, which were received on 26-12-2003. Munir Ahmed Khanani alleged that due to non-availability of COT/badla financing for TRG, BOSI, Lucky shares at the relevant time, the Appellant had been selling his shares from time to time to bring his debit balance down. The Appellant, on the other hand alleged that he had never availed badla financing for his purchases and had been taking deliveries of his shares. He further alleged that the shares of BOSI and Lucky Cement were sold without his consent by



Munir Khanani. On request of the Commission, the Appellant applied for arbitration under the KSE regulations and KSE was directed by the Commission to provide full assistance to the Appellant.

3. Unfortunately however, the arbitration did not take place as the Commission was told by KSE that under the regulations, the panel of arbitrators was to include outside directors who were not available at the time. Due to this inordinate delay by the KSE, the Commission decided to hear the matter itself.

4. During the hearing before the Director (ICW), the Appellant alleged that the following shares were sold by Munir Ahmed Khanani without his consent for which he did not get any sale proceed or benefit at all.

| Company | Share Quantity |
|--------------|----------------|
| General Tire | 12,000 |
| Lucky Cement | 15,000 |
| BOSI CAR | 19,500 |
| Indus Motors | 500 |

5. Director (ICW) asked Munir Khanani to provide Customer Business Activity Report, CDC Activity Report Statement and Statement of Account. After analyzing the record and hearing the parties, Director (ICW) came to the conclusion that all transactions were duly executed by Munir Ahmed Khanani and the movement of the disputed shares was clearly reflected in the statements provided by the broker. He therefore, rejected the complaint of the Appellant vide the Impugned Order. The Appellant preferred this appeal against the Impugned Order. The hearing in this appeal was attended by the parties mentioned above. During the hearing, the Appellant and the respondents reiterated their arguments presented before the Director.



6. We have heard the parties and also examined the Impugned Order which relies on the movement of the disputed shares as given by the various statements produced by Mr. Munir Khanani. However, we have noticed that there are certain contradictions in the record of movement of shares produced by these statements. For instance, on Page 4, Para 15 of the Impugned Order, in case of Lucky Cement shares, it is said that the Appellant's shareholding position on 23-09-2003 was Nil. However, it then goes on to state that three days later, on 26-09-2003 vide Account Voucher No. TS022213, 15,000 Lucky Cement shares were sold from the Appellant's account. It is obvious, that unless the Appellant was indulging in short selling, which is not alleged, he could not have sold 15,000 shares on 26-09-2003 when on 23-09-2003 he did not have any shares in his account. In our view, this matter has not been investigated properly.

7. During the hearing, Mr. Munir Ahmed Khanani as well as the Appellant stated that they would be willing to have this dispute properly re-investigated. Accordingly, we therefore hold that this matter may be re-investigated so as to remove any doubts. This investigation should be carried out by an investigator to be appointed by KSE not later than 15 days from date of this order. The investigator should complete the investigation and submit its report to the Securities Market Division of the Commission not later than 45 days from the date of his appointment. The Securities Market Division should thereafter take appropriate and necessary action on the report within 30 days from the submission of the report.

8. In the end, we would also like to show our disappointment at the apparent lack of interest shown by KSE which is the Front Line Regulator. The inordinate delay, in fact, failure of KSE in solving this dispute is



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unjustifiable. KSE is directed to strictly comply with the time schedule provided above for completing this investigation.

The appeal is disposed off.

(SALMAN ALI SHAIKH)
Commissioner

(RASHID I. MALIK)
Commissioner

Announced in Islamabad on 2 November 2006