

**Appellate Bench Orders**  
**Order in the matter Appeal No. 29 of 2001**

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*March 18, 2002*

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**Before Appellate Bench No. 1**

**In the Matter of**

**Appeal No. 29 of 2001**

Mr. Ishtiaq Khan s/o Janas

Khan.....

.....Appellant

**VERSUS**

M/s. Y. S. Securities (Private) Limited .....

.....Respondent

Impugned Order passed by:      Mr. Shahid Ghaffar, Commissioner, Securities Market

Date of impugned order:          *23<sup>rd</sup> October 2001*

Date of hearing:                  *14<sup>th</sup> February, 2002*

***Present:***

**For the Appellant:**

1. Mr. Gul Hussain Jadoon, Advocate
2. Mr. Muhammad Suleman

**For the Respondent:**

3. Mr. Asadullah Javed, Advocate

**For the Commission:**

4. Syed Aamir Masood, Director (SM)
5. Ms. Sumbul Naveed Qureshi, Junior Executive (SM)

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**Order**

This is an appeal dated 23 November, 2001 filed by the Appellant, Mr. Ishtiaq, on 26 November, 2001 against the order (impugned order) passed on 23rd October, 2001 by Mr. Shahid Ghaffar, Commissioner, Securities Market (SM) Division of the Commission.

2. The brief facts of the case are that the Appellant filed a complaint dated 26 February, 2001 disputing certain transactions carried out during the period from 19 to 22 February, 2001 through the Respondent, a member of the Lahore Stock Exchange (LSE).

3. The appeal came up for hearing on 30 January, 2002. Mr. Gul Hussain Jadoon, Advocate appeared on behalf of the Appellant alongwith Mr. Muhammad Suleman, representative of the Appellant. Mr. Asad Ullah Javeid, Advocate represented Respondent No.1. Syed Aamir Masood, Director, (SM) alongwith Ms. Sumbal Naveed Qureshi, Junior Executive (SM) appeared on behalf of the Commissioner (SM).

4. Mr. Gul Hussain Jadoon, Advocate representing the Appellant submitted that when certain entries made on 21 February, 2001 in his ledger account held with the Respondent came to his knowledge through an intimation received on 22 February, 2001, he immediately returned the same with instructions for correction of the disputed entries; an agent of the Respondent received the said written communication from the Appellant; no trade confirmations were forwarded to him as required by Rule 4(4) of the Securities and Exchange Rules, 1971 (1971 Rules); all these transactions were carried out fraudulently and in absentia, since the Appellant was present at Swabi, for which an acknowledged copy of an application to Swabi Police Station, Tehsil & District Swabi and copy of his affidavit, authenticated by a notary public at Swabi, in respect of his missing National Identity Card were furnished; an agent of the Respondent received the said written communication from the Appellant; since the pre-printed account opening form places the sole responsibility on the investor to obtain trade confirmations, a position contrary to Rule 4(4) *ibid*, the said contract is liable to be declared as an invalid contract; in support of this argument, counsel relied on PLD 76 LHR 1192 and PLD 1961 Dacca 536.

5. The counsel for the Respondent rejected the assertions presented by the Appellant's counsel and submitted that all transactions were conducted by the Respondent on the instructions of the Appellant, who disputed those positions where loss accrued and, in order to avoid drastic losses, squaring up was done by the Respondent in consonance with the contract between the parties thereto; as regards furnishing trade confirmations, the counsel for the Respondent stated that the Appellant was orally informed. He stated that his client's have instructed him not to own the intimation of 22 February, 2001 reflecting transactions executed on the previous day, which the Respondent is said to have received and returned.

6. 6. After hearing the counsels of both parties, we examined the documents placed on record. By a letter No. DIP/SECP/001 dated 30 March, 2001 of Mr. Gulfam Ahmed Khan Sherwani, Chief Executive, Y. S. Securities & Services (Private) Limited, Lahore addressed to the Deputy Director (SM) of the Commission, the Respondent listed the Appellant's holding of 76,200 shares on Friday, 16 February 2001 that was carried forward (COT) to the next clearing commencing Monday, 19 February, 2000, when holdings were enhanced to 87,600 shares. The Respondent explains that *'as the market was sliding down very speedily and all the investors are facing heavy loss, due to misbehaviour of stocks, Mr. Ishtiaq also faced heavy loss. We asked Mr. Ishtiaq to give more security in any shape as required, but he did not arrange it. Finding no other way on 21/02/2001, at last we were forced to square up his holding as well as deposits in accordance with the terms and conditions laid in the new Account opening form (copy enclosed).'* The letter also encloses the *'accounts ledger....'* and copy of letter sent by the Respondent to the Lahore Stock Exchange (LSE) in respect of *'this*

*fact of running this client with debit balance of Rs. 23,434/=.* Copies of the account opening form, sixteen ledger sheets for the period from 1/07/2000 to 21/02/2001 bearing 'code: 010 – Ishtiaq' and copy of Respondent's letter dated 27 February, 2001 addressed to the Secretary, LSE in addition to a photocopy of the Appellant's NIC bearing no. 602-90-410385 have been attached to the letter. The Appellant showed us the trades struck off by him in the intimation of 22 February, 2001 that details transactions purportedly made by the Respondent, which his counsel vehemently denies as being under instructions not to own them. Apparently, these transactions datelined 21 February, 2001 appear to be entries as itemised in the above table, squaring up the Appellant's positions. Further a scrutiny of the sixteen ledger sheets, attached to the letter, also itemises these transactions. These ledger sheets are computer-generated print outs that bear the corporate broker's Islamabad office in the title of the first page with '*Date: 28/3/2001 (18:14 PM)*' on the top right hand on each of Pages 1 to 16, thereby indicating that these sheets were printed at 6:14 p.m. on 28 March, 2001 at the Islamabad Branch of the Respondent i.e. two days before they formed part of the Respondent's letter. It is, therefore, abundantly clear that the Respondent has made these entries, contrary to assertion of his counsel.

7. The ten-column ledger sheets include the date, number, rate, share and value in respect of each of the trades executed in addition to cash paid in or drawn by the Appellant and the running debit/ credit balance. Cash received of Rs. 15,000/= has been credited on 17 November, 2000 as the first entry before three other bought/sold trades in Engro Chemical on the same date and, since the account opening form attached to the aforementioned letter bears the same date, it appears that the Appellant commenced trading with the Respondent from this date i.e. Friday, 17 November, 2000. Thereafter, the ledger account details trades executed in the subsequent thirteen weekly clearing periods to Friday, 16 February, 2001 prior to '*squaring up*' in the week from 19 to 23 February, 2001 by the Respondent, entries of which have been detailed on the page 16 i.e. the last page. In this way, the entries in the ledger account indicate trades executed in fifteen clearing periods commencing from week ending Friday, 17 November, 2000 (week 1) to week ending Friday, 23 February, 2001 (week 15). The transactions for the clearing period commencing Monday, 19 February, 2001, appearing on page 16 of the aforementioned ledger account sheet, records twenty-six trades comprising six purchase transactions on 19 February, 2001, three purchase and two sale transactions on 20 February, 2001 and fifteen sale transactions on 21 February, 2001. The ledger account sheet recognizes COT long positions by credit entries made on Friday at the end of the weekly clearing period and corresponding debit entries at the commencement of trading on the following Monday. While the ledger account sheet reflects entries whereby the Appellant appears to have held 70,700 shares carried over from the previous clearing period comprising 25,700 Adamjee Insurance, 15,00 Ibrahim Fibre and 30,000 PSO, it does not indicate COT position of 5,500 Engro Chemical, contrary to the assertions made in the letter. By three sale entries bearing TRA reference number 1196, 1197 & 1198 made on Friday, 16 February, 2001 and four purchase entries bearing TRA reference numbers 1199, 1200, 1205 & 1206 made on 19 February, 2001 on pages 15 & 16 of the ledger account sheets, the Appellant appears to have held 70,700 shares carried over from the previous clearing period comprising 25,700 Adamjee Insurance, 15,000 Ibrahim Fibre and 30,000 PSO; these were subsequently squared up on 21st and sale entries have been recorded bearing TRA reference numbers 1244, 1249(part of), 1245, 1246, 1247(part of) & 1248. An entry for purchase of 5,500 Engro Chemical shares has been made on 20th bearing TRA reference number 1223; sale of 11,000 Engro Chemical shares have been made by eight TRA entries bearing reference

number 1250 to 1257 on 21st resulting in an excess sale of 5,500 Engro Chemical shares. It appears, therefore, that the Respondent sold these 5,500 Engro Chemical shares held by him as security deposit as stated in paragraph 1 of the letter.

8. In addition to the Appellant's 30,000 PSO shares carried over from the previous clearing and sold on 21st to square up his positions, the ledger account sheets record additional PSO purchases, first on the 19th by 5,100 shares, then on 20th by 6,300 shares, enhancing his position by 11,400 PSO shares. Of these 1,800 PSO shares were sold on the same day; the balance 9,600 PSO shares, together with 30,000 PSO shares carried over from the previous clearing, were then sold the next day, on the 21st, in two trades: one for 15,000 PSO and the other 24,600 PSO. Sale of 25,900 Adamjee Insurance shares, made by four TRA entries bearing reference number 1245, 1246, 1247 & 1247(again) on 21 February, 2001, appear to include 25,700 Adamjee Insurance shares carried over from the previous clearing and 200 Adamjee Insurance shares held as security deposit, as indicated in paragraph 1 of the letter. According to the Respondent, in paragraph 1 of the letter, the Appellant's held 76,200 shares on '16/02/01 and carry forward to the next clearing started from 19/02/2001' that comprises '30,000 PSO, 25,700 Adamji Ins, 15,000 Ibrahim Fibers and 5,500 Engro Chemicals' and further, 'on 19/02/2001 during the next clearing the quantity of holding was raised....' to 87,600 shares comprising '41,400 PSO, 25,700 Adamjee Ins, 15,000 Ibrahim Fibers and 5,500 Engro Chemicals.' In other words, the Respondent maintains that additional purchases of 11,400 shares were made despite the assertions in the letter that, after squaring the carry over positions, the Appellant's 'deposit i.e. 5,500 Engro Chemicals and 200 shares of Adamji were disposed off in accordance with the undertaking of Mr. Ishtiaq given on the account opening form just to adjust his account against losses.' It is abundantly clear that these assertions run contrary to the entries in the ledger account sheets. While the carry over positions held were 70,700 shares, not 76,200 shares, the additional purchases made on the 19 & 20 February, 2001 were 16,900 not 11,400, before the Respondent proceeded to square up the Appellant's holdings of 70,700 shares, carried over from the previous clearing period; subsequently, the sales of 93,300 shares were made that included 5,700 shares held as security deposit. Table 1 hereunder analyses these transactions, as recorded on page 16 of the ledger account sheet maintained by the Respondent, for week commencing Monday, 19 February, 2001.

**TABLE 1:** ANALYSIS OF TRADES EXECUTED in week commencing Monday, 19 February, 2001 per page 16 of ledger sheet:

Date	Purchase	Sale	Share	Rate	P O S I T I O N				
					COT	PSO (new)	Engro (new)	Deposit sold	Total
19 <sup>th</sup>	5,500		Adamjee Insurance	77.43	5,500				
19 <sup>th</sup>	20,200		Adamjee Insurance	77.42	20,200				
19 <sup>th</sup>	15,000		Ibrahim Fibres	20.61	15,000				
19 <sup>th</sup>	30,000		Pakistan State Oil	159.19	30,000				
									<b>70,700</b>
19 <sup>th</sup>	5,000		Pakistan State	158.70		5,000			

			Oil						
19 <sup>th</sup>	100		Pakistan State Oil	155.55		100			
									<b>75,800</b>
20 <sup>th</sup>	1,300		Pakistan State Oil	154.70		1,300			
20 <sup>th</sup>	5,000		Pakistan State Oil	154.10		5,000			
20 <sup>th</sup>	5,500		Engro Chemical	82.15			5,500		
	<i>87,600</i>				<i>70,700</i>	<i>11,400</i>	<i>5,500</i>		<b>87,600</b>
20 <sup>th</sup>		(1,300)	Pakistan State Oil	154.93		(1,300)			
20 <sup>th</sup>		(500)	Pakistan State Oil	154.43		(500)			
	<i>87,600</i>	<i>(1,800)</i>			<i>70,700</i>	<i>9,600</i>	<i>5,500</i>		<b>85,800</b>
21 <sup>st</sup>		(100)	Adamjee Insurance	74.78	(100)				
21 <sup>st</sup>		(2,000)	Adamjee Insurance	74.73	(2,000)				
21 <sup>st</sup>		(23,600)	Adamjee Insurance	74.68	(23,600)				
21 <sup>st</sup>		(200)	Adamjee Insurance	74.55				(200)	
21 <sup>st</sup>		(100)	Engro Chemical	80.65			(100)		
21 <sup>st</sup>		(2,500)	Engro Chemical	79.80			(2,500)		
21 <sup>st</sup>		(500)	Engro Chemical	79.90			(500)		
21 <sup>st</sup>		(2,400)	Engro Chemical	79.75			(2,400)		
21 <sup>st</sup>		(2,000)	Engro Chemical	80.75				(2,000)	
21 <sup>st</sup>		(1,000)	Engro Chemical	80.75				(1,000)	
21 <sup>st</sup>		(900)	Engro Chemical	80.25				(900)	
21 <sup>st</sup>		(1,600)	Engro Chemical	79.70				(1,600)	
21 <sup>st</sup>		(15,000)	Ibrahim Fibres	18.94	(15,000)				
21 <sup>st</sup>		(15,000)	Pakistan State Oil	149.38	(15,000)				
21 <sup>st</sup>		(24,600)	Pakistan State Oil	145.88	(15,000)	(9,600)			
	<b>87,600</b>	<b>(93,300)</b>			COT squared up	additional purchases squared up	(5,700)	<b>(5,700)</b>	

9. The ledger account sheets record three credit and ten debit transactions, aggregating Rs. 125,000/= and Rs. 318,500/= respectively, which appear to be moneys paid in and paid out, making a net withdrawal of Rs. 193,500/= by the Appellant, as listed in Table 2 hereunder. If, from this amount of Rs. 193,500/= withdrawn by the investor, the debit balance of Rs. 23,434/=-, corroborated in both the letter and the ledger account sheets, at the end of the day after squaring up positions on 21 February, 2001, is deducted, the resultant amount, i.e. Rs. 170,066/=-, reflects the balance of all trades entered into or net gain on trading that accrued to the Appellant. Similarly, if to the credit balance of Rs. 76,377/= in favour of the Appellant investor on Friday, 16 February, 2001, per page 16 of the ledger account sheet, the net withdrawal of Rs. 193,500/= is added, the resultant amount, i.e. Rs. 269,877/= reflects the net gain of all transactions till that date. These profit calculations do not include the value of shares held by him, the purchase entries of which appear as debits in the ledger account sheets. In other words, there was a profit that accrued to the Appellant, prior to the week commencing Monday, 19 February, 2001, when the Respondent proceeded to square up the Appellant's positions and sell shares held as security deposits by him, and a further profit equal to the value of shares held by the Respondent, purchases of which having been duly debited.

**TABLE 2:** NET VALUE OF TRADES – start to squaring up - in Rupees:

Week#	Week Ending: Friday	Balance per ledger: Debit/(Credit)	Withdrawals/ (Deposits)	Non trading entries: Deficit/(Surplus) 3 minus 4	Shares held not carried over: (excludes Bal_Qty column) Long/(Short)
(1)	(2)	(3)	(4)	(5)	(6)
1	17 November, 2000	(13,940.00)	(15,000.00)	1,060.00	0
2	24 November, 2000	(301,805.00)	(15,000.00)	(286,805.00)	(2,000)
3	1 December, 2000	(103,155.00)	(125,000.00)	21,845.00	0
4	8 December, 2000	(136,285.00)	(125,000.00)	(11,285.00)	0
5	15 December, 2000	(874,413.00)	(35,000.00)	(839,413.00)	(5,000)
6	22 December, 2000	1,423,247.00	15,000.00	1,408,247.00	37,500
7	29 December, 2000	1,674,472.00	17,000.00	1,657,472.00	50,000
8	5 January, 2001	(101,563.00)	21,000.00	(122,563.00)	2,500
9	12 January, 2001	(76,888.00)	61,000.00	(137,888.00)	2,700
10	19 January, 2001	(116,714.00)	61,000.00	(177,714.00)	2,700
11	26 January, 2001	(2,836.00)	176,000.00	(178,836.00)	2,700
12	2 February, 2001	(121,075.00)	178,500.00	(299,575.00)	2,700

13	9 February, 2001	10,204.00	178,500.00	(168,296.00)	5,700
14	16 February, 2001	(76,377.00)	193,500.00	(269,877.00)	5,700
15	23 February, 2001	23,434.00	193,500.00	(170,066.00)	Nil

10. Despite the profits, reflected in the ledger account sheets at the commencement of trading on Monday, 19 February, 2001 the Respondent proceeded to square up positions on Wednesday, 21 February, 2001, by asserting: *'as the market was sliding down very speedily and all the investors are facing heavy loss, due to misbehaviour of stocks, Mr. Ishtiaq also faced heavy loss. We asked Mr. Ishtiaq to give more security in any shape as required, but he did not arrange it. Finding no other way on 21/02/2001, at last we were forced to square up his holding as well as deposits in accordance with the terms and conditions laid in the new Account opening form (copy enclosed).'* These reasons are not supported by the documentary evidence available, summarised in Table 2 above, which clearly do not reflect any losses up to Friday, 16 February, 2001, before he proceeded to square up nor, for that matter, even after all squaring up transactions that including shares held as security deposit, were completed on Wednesday, 21 February, 2001, the balance gain being Rs. 170,066/=. Further, if positions were to be squared up due to, as the stockbroker maintains, a bearish spell, there was no plausible trading strategy for him to allow additional purchases to have been made on the Monday and Tuesday before squaring up his client's account on the Wednesday, in the crucial week commencing Monday, 19 February, 2001.

11. The agreement between the parties specifies the trading levels for share prices of: up to Rs. 20/=, from Rs. 50/= to Rs. 70/= and over Rs. 70/=, the required deposit is determined @ Rs. 4/=, Rs. 6/= and Rs. 15/= per share respectively. Therefore the 76,200 shares, carried over on Friday, 16 February, 2001, as stated in the letter, comprised 61,200 and 15,000 shares that required the amount of deposit to be calculated @ Rs. 4/= and Rs. 15/= respectively, making Rs. 978,000/= in all. However, the value of shares held as deposit comprising 5,500 Engro and 200 Adamjee Insurance, per Table 1 above, are estimated at about Rs. 456,000/= at the close price on Friday, 16 February, 2001, thereby resulting in a shortfall of Rs. 522,000/= or 53.4%. Therefore, the Respondent-stockbroker executed trades on behalf of the Appellant and allowed the same to be carried over on Friday, 16 February, 2001, i.e. immediately prior to the week commencing Monday, 19 February, 2001, without ensuring the availability of the specified security deposit in the Appellant-client's account in disregard of the arrangement between the parties, thereby acting in manner that lacked adherence to financial prudence and discipline. Further, deliberately allowing additional purchases to be made by the Respondent, ignoring their authenticity or otherwise, resulted in over exposure and exacerbated the ensuing losses.

12. The Respondent allowed positions of the Appellant to be built up in excess of the deposits held by him. By the stockbroker allowing trading levels beyond the deposits envisaged in the conditions laid down in the agreement with his client, he caused losses in the bearish spell that ensued which, according to him, justified squaring up all positions and even sale of the shares held in security deposit. This was not the situation as analysed earlier as there were no losses in the Appellant-client's account. By the Respondent justifying squaring up positions by relying on the representation by the Appellant, to deposit certain ICI shares held with Saleem



Chamdia's brokerage house towards increase in the latter's security deposit with him, indicates that he acted in a rash, reckless and impulsive manner. The Respondent-stockbroker's actions to square up positions and sell shares held as security deposit are clearly not supported by the reasons stated by him. The Respondent has, therefore, displayed lack of financial discipline and prudence.

13. The agreement between the parties also specifies the level of loss limit of Rs.3.50, 5.25 and 14.00 per share at which the positions are required to be automatically squared up for share prices of: up to Rs. 20/=, from Rs. 50/= to Rs. 70/= and over Rs. 70/= per share respectively. None of these positions were carrying the specified levels of losses required to trigger an automatic squaring up; yet, according to the Respondent-broker, positions were squared up by to avoid systemic risk. It is, therefore, clear that such squaring up was resorted to by the Respondent-broker to his own advantage vis-à-vis his overall position with the clearing-house of the Exchange at the cost of, and to the detriment of, the Appellant.

14. According to the pre-printed account opening form obtained by the Respondent-broker from the Appellant-client, the broker was required to limit the losses in the client's account to twenty percent (20 %) of the value of deposit held by him. As indicated in Table 2 herein, there were no losses in the client's account: neither at the close of business on Friday, 16 February, 2001 nor, for that matter, even after squaring up all positions and sale of shares held in security deposit on Wednesday, 21 February, 2001. By squaring up positions, the Respondent-broker has clearly violated this condition laid down in his own pre-printed account opening form.

15. In our view the Respondent has acted in a culpable manner. He flouted the agreement between the parties, firstly by allowing trading levels beyond the available deposits and secondly, by squaring up positions and disposing off deposits, which was clearly not in accordance with the arrangement between the parties, viz. the Respondent-stockbroker and his client, i.e. the Appellant before us. Even assuming that the Appellant was present at the Respondent's brokerage house on the 19th and 20th of February, 2001 and had instructed the purchases on those dates, the Respondent allowed the Appellant to increase his positions with deposits lower than that which was required by their agreement and, therefore, acted to his own advantage at consequent losses to the Appellant by making sale and purchase of the Appellant's securities. Moreover, whether the Appellant was present or not on the decisive dates, the Respondent failed to provide trade confirmations as required under Rule 4(4) of the 1971 Rules.

16. We are, therefore, of the opinion that the Respondent has conducted himself in a manner contrary to the ethical standards expected of a capital market participant. Each stockbroker must be perceived to follow an ethical code built on the pledge: *"my word is my bond,"* conduct himself beyond reprove and admonish in dealing with all and sundry, even more so with his clientele.

17. Accordingly, the Respondent is hereby directed to restore the Appellant's position subsisting at the close of business on Friday, 16 February, 2001 by compensating him to match the level of profit then attained and reimbursing the value of the shares held as deposit at that time within a period of fourteen days from the date of this order. Further, In view of the fact that the Respondent-broker has made false statements especially with respect to the losses in the account of the Appellant; has violated Rule 4(4) of the Securities and Exchange Rules, 1971 by not providing

the requisite trade confirmations; has caused drastic losses to the Appellant; and has acted to his own advantage. By doing so, he has rendered himself answerable to actions under Sections 17 & 18 of Securities and Exchange Ordinance, 1969 by the concerned Division, which is hereby directed to initiate proceedings under the relevant provisions of law. The Appeal stands so disposed off.

**Announced :** 18 March, 2002

**( N.K. SHAHANI )**

Commissioner  
(Insurance and Information Technology)

**( ABDUL REHMAN QURESHI )**

Commissioner  
(Enforcement & Monitoring)