

Appellate Bench Orders
Order in the matter of Appeal No. 24 of 2001

January 23, 2002

Before Appellate Bench No. 1

In the Matter of

Appeal No. 24 of 2001

Mr. Muhammad

Ali.....

Appellant

VERSUS

Mr Shahid Ghaffar,

Commissioner (Securities Market)

Securities and Exchange Commission of Pakistan

Islamabad.

.....Respondent

No. 1

M/s Prudential Securities LimitedRespondent

No. 2

Date of impugned order: *23rd October, 2001*

Date of hearing: *27th December, 2002*

Present:

1. Mr. Muhammad Ali

.....Appellant in person

2. Mr. Anwar-ul-Haq, Advocate

3. Mr. Rashid Zeb Khan, Advocate.....On
behalf of the Appellant

4. Syed Aamir Masood, Director (CEL)
Securities and Exchange Commission of Pakistan
Islamabad.....
...On behalf of Respondent No.1

5. Ms. Sumbul Naved Qureshi, Junior Executive
Securities and Exchange Commission of Pakistan
Islamabad.

6. S. Saqib Hasan Rizvi.....On behalf
of Respondent No.2

Order

This is an appeal against the order (impugned order) dated 23 October 2001 passed by the Commissioner (Securities Market) of the Commission.

2. The appeal came up for hearing on 27 December, 2001. Mr. Anwar-ul-Haq, Advocate along with Mr. Rashid Zeb Khan, Advocate appeared on behalf of the Appellant. Respondent No.1 was represented by Syed Aamir Masood, Director of the Securities Market Division of the Commission. Respondent No.2 was represented by Mr. S. Saqib Hasan Rizvi, Officiating Incharge of M/s Prudential Securities Limited at their Islamabad Office.

3. 3. During the course of the hearing, the Appellant's counsel made the following submissions: -

- a.) **that** the Respondent No.2 has violated para 7(a)(i) of the Respondent No. 2's customer agreement form, Rule 4 of the Securities and Exchange Rules, 1971("Rules") and Section 16 of the Securities and Exchange Ordinance, 1969 ("Ordinance");
- b.) **that** although the Appellant executed Respondent No.2's pre-printed account opening form for sub-account in Central Depository Company (CDC), customer agreement and account opening form for individuals, the latter failed to provide receipt for opening of the CDC sub-account despite numerous requests made by the Appellant;
- c.) **that** the Commissioner recorded his disappointment for non-submission of receipt for opening CDC account in page 5 of the impugned order wherein he "*advised the representative of KSE that the KSE should properly monitor the practices and workings of its member in this regard;*"
- d.) **that** the Appellant's counsel submitted that the Commissioner did not confirm whether any sub-account was opened in Appellant's name with CDC;
- e.) **that** CDC's letter dated 7th November, 2001 addressed to the Appellant, obtained after the impugned order, confirms that no sub-account was opened in his name;
- f.) **that** the impugned order of the learned Commissioner was passed on the basis of incorrect and misleading statement of Respondent No.2, as recorded at the last para of page 5 thereof: "*Upon questioning the Respondent, the Respondent replied that the sub-account was opened with the CDC but that the receipt of the same was not provided;*"
- g.) **that** validity of the transaction conducted by Respondent No.2 and, in particular, the sale of 5,000 shares of Engro Chemical and 15,000 shares of Dewan Salman is questionable and that he was never

informed about the alleged debit balance created against him prior to a notice dated 14th December, 2000 from the Respondent no. 2;

h.) **that** trade confirmation transactions memos forwarded by Respondent No.2 were not authentic since they were not signed and stamped as required under section 4 of Rules.

4. The Respondent No.1 contended that inquiry with respect to sub account with CDC was not made because the Appellant did not dispute the signing of the form that refers to both sub account and group account. Respondent No. 1 further submitted that the documents available on record reveal that the Appellant's transactions were routed through Respondent no. 2's group account with the CDC and Respondent no. 2 allocated account no 145 to him in his account books. He further denied that the sale of shares of Engro Chemicals and Salman Dewan were unauthorized or that the debit balance was deliberately created against the Appellant.

5. The customer agreement clearly spells out, vide clause (7)(A)(iii) read with clause (9)(i) and (9)(ii), that the Respondent No.2 was unconditionally authorized (a) to move his shares/securities from the client's sub account/group account from time to time with an unfettered right to dispose them off at any time without any notice to the Appellant (client) and to apply the net proceeds thereof towards the adjustment of the client's outstanding that may be due from the client, directly or indirectly to the Respondent no.2 (PSL), including under normal settlement as well as against all client's losses and the client shall continue to be liable for any shortfalls and (b) to freeze or to move the shares in Appellant's sub-account/group account without notice. Perhaps, therefore, the observation of the Commissioner ensues: "*the Respondent was well within its right to sell the said share of the complainant in lieu of payment.*" It, therefore, appears that the sale of 5,000 shares of Engro Chemical and 15,000 shares of Dewan Salman by the Respondent No.2 was in accordance with the established norms between a member and client.

6. The Appellant raised the objection that the sale of 15,000 shares of Dewan Salman was made by the Respondent no. 2 to offset the debit balance created against him. The Appellant maintains that he was never informed regarding such debit balance prior to the notice date 14 December, 2000 served to him by Respondent No.2 for the payment of the alleged amount Rs.7,51,551/-. However, the Appellant does not dispute his initials on the computer-generated daily client register indicating these transactions, thereby implying that the transaction was executed under his instruction and with his knowledge. The examination of record further reveals that the Appellant has been allowed debit balancing from time to time. Thus, the Appellant has failed to substantiate any contravention of section 16 of the Ordinance. Further, not providing sale/purchase bills to the Appellant, as required under 7A(i) of the customer agreement, does not affect the transactions entered into on the Appellant's behalf since the Appellant had signified his knowledge of the same by initialing the computer-generated daily client register. Rule 4 of the Securities and Exchange Rules, 1971, relied upon by the Appellant, does not require that member signs or stamps the trade confirmation slips. Since the Respondent No. 2 was not required to give any notice for squaring up the position of the Appellant, the question of alleged forged receipts of such notices is irrelevant. It, therefore, appears that the debit balance is in accordance with the established relationship between the parties.

7. After carefully hearing the parties, considering their respective pleadings and examining the documents available on record as elaborated in the preceding paras, we find no merit in the Appeal. Accordingly, the Appeal is dismissed.

Announced : 23 January, 2002

(N.K. SHAHANI)

Commissioner

(Insurance and Information Technology)

(ABDUL REHMAN QURESHI)

Commissioner

(Enforcement & Monitoring)