

## Appellate Bench Orders

### Before Appellate Bench No. 1

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*December 16, 2002*

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### Before Appellate Bench No. 1

Mr. Munir Hassan Khan ..... Appellant

Versus

1. Mr. Shahid Ghaffar, Commissioner  
(Securities Market)

2. Mr. Shahid Aziz,  
Ex-Manager, Salim Chamdia Securities.

3. M/s. Salim Chamdia Securities, Member –  
Karachi Stock Exchange

4. Managing Director –  
Karachi Stock Exchange ..... Respondent

In the matter of an Appeal filed under section 33 of the Securities and Exchange  
Commission of Pakistan Act, 1997, against the Order dated 19-09-2002 passed by  
the Commissioner (Securities Market)

**Date of Hearing** November 20, 2002

#### **Present:**

##### For the Appellant

i. Mr. Munir Hassan Khan ..... Appellant  
ii. Mr. Rafiullah Khan, Advocate ..... Counsel for the  
Appellant

##### For the Respondent

i. Mr. Younus Mohiuddin ..... Representing  
Respondent No.2 & 3  
ii. Mr. Abdul Jabbar Lodhi ..... Representing  
Respondent No.4  
iii. Syed Aamir Masood, Director (SM-III) ..... Representing  
Respondent No.1  
iv. Mr. Ikram Ul-Haq  
Joint Director (Law/SM)  
v. Ms. Sumbul Naved Qureshi,

Order

1. The matter before us arises out of the Appeal filed by the Appellant against the Order dated 19.9.2002 (the "Impugned Order") passed by the learned Commissioner (Securities Market).
2. The Appellant has alleged that Respondent No.2 who was the Manager of the Islamabad branch office of Respondent No.3, induced him to open a trading account with the Respondent No.3. After opening the said account, he deposited an amount of Rs.2,30,300/- over the period of time, with the Respondent No.3 through the Respondent No.2. Acknowledgements in respect of the amounts received were duly issued by the Respondent No.2 on behalf of the Respondent No.3. The Appellant further stated that he was assured by the Respondent No.2 that profit on the amount invested with the Respondent No.3 would be higher than the prevailing return being offered by the banks. The Appellant further added that he was under the impression that the investment made with respondent No.3 was an investment bearing a fixed return. However, after some time, the Appellant demanded back his total investment but the Respondent No.2 failed to refund the Appellant's deposits made with the Respondent No. 3. The Appellant further alleged that he never gave any authorization to the Respondent No.2 or to any other person to trade in his account on his behalf and the Respondent No.2 has been trading in the Appellant's account without any lawful authority. The Appellant had signed the blank account opening form, which was unlawfully filled in by the Respondent No.2 afterwards. The Appellant intimated that the Respondent No.2 used to demand cash or open cheques from him against his trading account maintained with the Respondent No.3. The Appellant further informed that the Respondent No.2 and 3 failed to provide trade confirmation slips to the Appellant, in contravention of Rule 4 (4) of the Securities and Exchange Rules 1997 (the "Rules").
3. The Appellant also alleged that Respondent No.1 had personal relationship with the Respondent No.2, therefore, the order passed by Respondent No.1 was biased against the Appellant.
4. The Respondent No.3 asserted that all the trades of the Appellant were executed through their group account, as the Appellant had not opened a CDC sub-account in his name. The Respondent No.3 duly acknowledged having received all the payments made by the Appellant including Rs. 6,000/-, in addition to the amounts mentioned by the Appellant in his claim. The entire amount, as claimed by the Appellant was duly credited in his ledger account by the Respondent No.3. It was stressed upon by the Respondent No.3 that the Appellant himself used to deposit amounts in cash with the Respondent No.2 on his own will, as the following statement was clearly mentioned on the receipts as follows:

*"This receipt is valid for A/C payees cheques. No responsibility of cash payment is accepted".*

Therefore the Appellant was well aware of the fact that the Respondent No.3 would not be held responsible for any payments made in cash or through open cheques and that the payments had to be made by "A/c Payee only" cheques and that any other mode of payment would be entirely at the risk of the client and not of

the broker. Nevertheless, all the payments made by the Appellant are appearing in the Appellant's ledger statements maintained by Respondent No.3 and there is no dispute on the receipt of the same between the parties.

5. The Respondent No.3 further argued that the sequence of payments made by the Appellant after certain intervals clearly shows that he was aware of his debit balances accrued due to his trading and was making payments against the same. The statements made by the Appellant are self-contradictory as on the one hand, the Appellant is alleging unauthorized transactions in his account, but on the other hand he is disputing that no trade confirmations have been provided to him under the Rules. The above-mentioned contradictory statements and the action of the Appellant clearly show that he was well aware that some trading activity was going in his account on his behalf.

6. The Appellant strongly contended that the agreement signed between the Respondent No.3 and himself is void and is illegal document which can not be enforced as no date of opening of the trading account was mentioned thereon.

7. The Respondent No.3 and the Respondent No.1 argued that undated agreements are enforceable if the date of the same has no significant role to play in the enforcement of the agreement and in particular, if the actions of both the parties are in line with the terms of the agreement. Therefore it was argued that affixing of the date on the form was not the responsibility of the Respondent No.2. The Appellant should have taken due care in filling up the form and if he signed the blank form the responsibility lies with him of its consequences. However, as the date of the opening of an account did not affect the claim made by the Appellant or the stance taken by the Respondent No.3, the dispute on this account is immaterial. It was argued that the Appellant has no dispute on the receipts issued to him against the payments he made to the Respondent No.3, therefore it may be assumed that the activity in his account started when he made the first payment to the Respondent No.3 and a proper receipt was issued against the same.

8. Mr. Ikram-ul-Haq appearing on behalf of Respondent No.1 argued that ambiguities in agreement can also be removed by considering the subsequent actions/ behaviors of the parties. Therefore, as far as the date of agreement is concerned, it can be very well concluded that the execution of agreements between Respondent No.3 and the Appellant started on the date when the Appellant made first payment, after signing the agreement and received a receipt for the same from Respondent No.3.

9. The Appellant denied that he used to clear his debit balance from time to time. It was also asserted by the Appellant that he didn't receive any profit or sale proceeds from the sale of his shares.

10. Representative of the Respondent No.1 took serious note of the allegation made by the Appellant that the 'Impugned Order' was a biased as the Respondent No.1 had personal relationship with the Respondent No.2. It was explained that all the parties were heard at length and the record was thoroughly perused by the Respondent No.1 before deciding the case. The Impugned Order is a speaking order based on facts, merits of the case and in accordance with law. Secondly, the Appellant failed to prove any bias, which is a major requirement under the law.

11. In order to elucidate upon the self-contradictory statements made by the Appellant during the hearing, he was asked to explain that whether he was raising the allegation that the agreement for opening the account with Respondent No.3 was not enforceable as it was undated, or that he deposited the money with the Respondent No.3 on the understanding of receiving fixed return, or that he was never provided with the trade confirmation slips against the trades executed in his account.

12. After perusing the record and hearing all the parties at length, we have observed that the Appellant signed the account opening form with the Respondent No.3, which was specifically aimed at opening the trading account with the Respondent No.3. It does not talk about any investment made on fixed return and does not mention any rate of return allegedly promised by the Respondent No. 2 and 3. Similarly, the Appellant has failed to provide any proof or documentary evidence in support of his allegation that he deposited the money with the Respondent No.3 through the Respondent No.2 on the terms of fixed return. This allegation made by the Appellant has no merits and is therefore dismissed.

13. As far as the Appellant's allegation of the account opening agreement being void and non-enforceable is concerned, we are of the view that as argued by Syed Aamir Masood and Mr. Ikram-ul-Haq, on behalf of the Respondent No. 1, enforceability of the contract may be determined by the subsequent behavior of the parties. After the execution of the first transaction both the parties were bound by the terms and conditions of the agreement and since the Appellant continued paying different amounts to the Respondent No.3 which decreased the debit balances in his ledger statement confirms that the parties were doing business in line with terms of the said agreement. Therefore, absence of the date on the Account opening form becomes irrelevant. The Appellant is an educated professional and seems to be conversant with matters relating to the Securities Market. It was, therefore, his responsibility to carefully read the contract to ensure his comprehension of all its terms and conditions. The signatures of the Appellant on the contract are a clear indication of his agreement with the terms and conditions of the deed. Even if it is assumed for the sake of argument that the Appellant was not aware of some of the terms of the agreement, it is our considered opinion that it is responsibility of the investor to be aware of the important terms and conditions of any contract that bears his signatures. This allegation made by the Appellant is therefore set aside, being without any force.

14. As far as the Appellant's allegation of bias against him is concerned, we have no doubt in our minds that the 'Impugned Order' is a speaking order passed after thoroughly perusing the record, hearing all the concerned parties and strictly in accordance with law. Besides, the Appellant has failed to prove the bias against the Respondent No.1 as required under the law. Therefore, Appellant's said allegation, being frivolous, is also rejected.

15. In the light of the above and keeping in view all the relevant facts, documents and relevant laws, the impugned order passed by learned Commissioner (SM) is upheld and the Appeal is dismissed.

**( ETRAT H. RIZVI )**

Commissioner (Insurance and Information  
Technology)

**(Abdul Rehman Qureshi)**

Commissioner (Enforcement and Monitoring)

Islamabad

Announced: December 16, 2002