

Appellate Bench Orders

Before Appellate Bench No.1

October 28, 2002

Before Appellate Bench No. 1

In the Matter of

Appeal No. 61 of 2002

Mr. Munir Khalid, Member,
Karachi Stock Exchange
(Guarantee) Limited, Karachi

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Appellant

Versus

1. Commissioner (Securities Market), Securities and Exchange Commission of Pakistan, Islamabad.
2. Central Depository Company of Pakistan Limited, Karachi.
3. Karachi Stock Exchange (Guarantee) Limited, Karachi.
4. Mr. Abdul Razzaq Marfani
5. Mr. Rafiq Chaudhary
6. Mr. Naveed Alam
7. Mr. Sajid Farooq
8. Mr. Saeed Malik
9. Mr. Maqsood Ahmed Mughal

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Respondent

Date of Hearing of appeal

October 21, 2002

Present:

For the Appellant

1. Mr. Salim Thepdawala, Advocate
2. Mr. Munir Khalid

For the Respondent

1. Syed Aamir Masood, Director, SEC
2. Mr. M. Omair Yousuf Farooqi
3. Mr. Abdul Jabbar Lodhi
4. Mr. Muhammad Rafiq Chaudhry
5. Mr. Abdul Razzaq Marfani
6. Mr. Maqsood Ahmed Mughal

Order

This is an appeal under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 against the Order dated August 9, 2002 (the "impugned order") passed by the learned Commissioner (Securities Market). The Appellant had also moved an application for the interim relief but since it could not be fixed for hearing at an early date, both the petitions were taken up on the date of hearing fixed on October 21, 2002.

2. The brief facts of the case are that the Respondent Nos. 4 to 9 traded in the shares of various companies through one Mr. Zahid Iqbal, who they believed to be the agent of the Appellant. The Respondents Nos. 4 to 9 being deceived by Mr. Zahid Iqbal for his fraudulent dealings filed complaints with the Respondent No. 3 i.e. the Karachi Stock Exchange (Guarantee) Limited during the period from December, 2001 to February, 2002. Meanwhile the said Mr. Zahid Iqbal was found absconder. The Respondent No. 6 also lodged his complaint with CDC on December 12, 2001 to the effect that his CDC sub-account No. 692 was moved without his explicit authority. As a result of the enquiry carried out by CDC, it was discovered that the Appellant had no authorization from 45 clients allowing certain transactions including pledge of securities to take place. The CDC's enquiry also revealed that the said 45 clients were trading through Mr. Shahid Moeez and Mr. Zahid Iqbal. Furthermore, the CDC's enquiry also revealed that shares of 34 clients were being maintained in Mr. Zahid Iqbal's own account without authorization. Accordingly the CDC held the Appellant responsible for violating of section 24 of the Central Depository Act, 1997 and converted the Appellant's participant accounts to that of an ordinary account holder as penalty for the said violation. The Appellant has applied for proceedings before the disciplinary tribunal under CDC Regulation No. 14.5.A.4 which is pending for adjudication. The Appellant produced evidences of having resolved/settled the claims of Respondents Nos. 5, 6 & 8 and was prepared to settle the claims of the remaining respondents if supported by verifiable evidence or a direct or indirect entry in Appellants record. The representative for Respondent No. 1 maintained that the mere fact that the transactions for the sale/purchase were executed from the Karachi Automated Trade System terminal of the Appellant was a sufficient proof of an implicit agency arrangement between Mr. Zahid Iqbal and the Appellant, which attracts Rule 17 of the Brokers and Agents Registration Rules, 2001. Therefore, the Appellant's membership suspension for a period of 90 days was justified in accordance with Rule 8 of the Brokers and Agents Registration Rules, 2001 read with section 7(d) of the Securities and Exchange Ordinance, 1969 for violations of Rule A(1), (2), B(1), (4) & (6) of the Third Schedule of the Brokers and Agents Registration Rules, 2001. The Appellant took the following grounds for seeking a relief: -

i) That the Appellant had already suffered a punishment for the same offense when CDC converted the status of Appellant from a participant to an ordinary account holder on March 18, 2002 and that the Appellant has applied for proceedings before the disciplinary tribunal under CDC Regulation No. 14.5A.4.

ii) That Mr. Zahid Iqbal was not his agent. As a matter of fact he was an authorised agent/representative of Respondents Nos. 4 to 9.

iii) That the Appellant has already resolved/settled the dispute with Mr. Rafiq Chaudhry (Respondent No. 5), Mr. Naveed Alam (Respondent No. 6) and Mr. Saeed Malik (Respondent No. 8).

iv) That the Respondent No. 9 has not done any transaction directly or indirectly with the Appellant.

v) That the claim of Respondent No. 4, Mr. Abdul Razzaq Marfani was pending before the arbitration of Karachi Stock Exchange, the Respondent No. 3.

vi) That the Respondent No. 7, namely Mr. Sajid Farooq had no dealing with the Appellant directly but the dealing, if any, took place with the Appellant, the same was through his duly authorised attorney Mr. Zahid Iqbal. Further, the Respondent No. 7 never appears before the Respondent No. 1 to pursue his claim.

vii) That the Appellant was prepared to settle the claims of Respondents Nos. 4, 7 and 9 provided their claims are supported by verifiable evidence or a direct or indirect entry in the Appellant's record.

3. We have heard the arguments of the parties present and the material placed before us as well as the impugned order whose operating paragraph is reproduced under:

"I am also deeply concerned over the facts stated in the order of the CDC dated 18 March, 2002 as it amply exhibits the Respondent's use of various unregistered agents handling a multitude of clients' accounts to the detriment of such clients. I am, therefore, of the considered view that the Respondent's membership must be suspended for a period of 90 days in accordance with Rule 8 of the Brokers and Agents Registration Rules, 2001 read with Section 7(d) of the Securities and Exchange Ordinance, 1969 for the violations of Rules A(1), (2), B(1), (4) and (6) of the Third Schedule of the Brokers and Agents Registration Rules, 2001. It is also observed that, even though the CDC has taken serious action against the Respondent vide their order dated 18-03-2002, the KSE has failed to investigate the matter despite numerous complaints having been lodged against the Respondent. This clearly depicts the lack of coordination between CDC and KSE as well as the KSE's failure to act in its capacity as a front line regulator. The suspension as aforesaid shall not effect the settlement of all trades executed up to and on the day of this order in the ready market/COT market in future contracts market and the management of the Exchange will take appropriate steps to handle these trades to ensure smooth settlement at the clearinghouse. The KSE shall also investigate the business activities of the Respondent and point out any and all violations of the KSE Rules and Regulations, the Securities and Exchange Ordinance, 1969 and rules made thereunder with particular attention to verifying the claims of all the complainants of the Respondent (which include those who traded directly or through the unregistered

agents of the Respondent). The said report shall be submitted within 60 days of the passing of this order without fail. The CDC is also directed to provide every possible assistance to KSE in this regard."

4. Based on the above we have arrived at the following conclusions: -

a) Grounds of CDC's order dated March 18, 2002 are totally different from the grounds forming the basis of the order of the learned Commissioner dated August 9, 2002. The CDC's investigation and orders were based on the use various unregistered agents by the Appellant whereas the order by the learned Commissioner is prompted by the specific complaints filed by the Respondents Nos. 4 to 9.

b) Mr. Zahid Iqbal has been executing the orders for sale and purchase of his clients/principals through the KAT of the Appellant and thus he can't be absolved of the responsibilities of the trades executed by Mr. Zahid Iqbal through his terminal.

c) The Appellant has already settled the claims of the Respondents Nos. 5, 6 & 8 whose acknowledgements are available on record. Accordingly the claims of these Respondents stand settled.

d) As the Appellant has undertaken to settle the claims of the Respondents Nos. 4, 7 & 9, the bench directs the KSE to verify the claims of the said Respondents in the light of the following guidelines: -

i) The Respondents have done transactions through the Appellant directly or indirectly;

ii) The claims of the Respondents are supported by a verifiable evidence satisfactory to the KSE;

iii) That the Respondents have pursued their case himself or through a person authorised in this behalf.

5. We have noted the indifferent attitude of the KSE, which was required to submit a report within 60 days of the date of the order by the learned Commissioner without fail. For this lack of compliance on the part of KSE, we warn them to be compliant with the instructions/directives issued by the Commission in future. As regards the verification of the claims of Respondents Nos. 4, 7 & 9, the Karachi Stock Exchange was ordered after the hearing on October 21, 2002 to complete the verification and advise their findings to the Appellant and the said

Respondents within a maximum period of 10 working days from the date of hearing (both days inclusive). Accordingly the suspension of the Appellant's membership shall be vacated on the 11th (working) day of hearing date i.e. Friday, November 4, 2002 or the settlement of the claims of the Respondents Nos. 4, 7 & 9 whichever is later. The CDC is also directed to provide every possible assistance to KSE in its endeavors to verify the claims of the Respondents. The Appellant has applied for proceedings before the disciplinary tribunal under CDC Regulations for restoration of its participant account. Pending the finalisation by the disciplinary tribunal; the Appellant's trades shall be closely monitored by the KSE.

6. In the light of the above, the appeal is disposed of accordingly.

(Etrat H. Rizvi)
Commissioner (Insurance and Information
Technology)

(Abdul Rehman Qureshi)
Commissioner (Enforcement and Monitoring)

Announced : October 28, 2002