



# Securities and Exchange Commission of Pakistan

## **BEFORE APPELLATE BENCH NO. I**

In the matter of

**Appeal No. 31,32 & 33 of 2006**

1. Mr. Muhammad Najam-ud-din deceased through legal heirs;
  - a) Ms. Yasmeen Najam
  - b) Mr. Danish Hassan Siddiqui
  - c) Mr. Tabish Hassan Siddiqui
  - d) Ms. Binish Hassan Siddiqui
2. Mr. Khalid Ahmed Khan
3. Mr. Zulfiqar H. Siddique

.... Appellants

Versus

1. Malik Rafi (Pvt) ltd
2. Mr. Liaqat
3. Director (SMD)

Securities and Exchange Commission of Pakistan

NIC Building, Jinnah Avenue, Blue Area, Islamabad

.... Respondents

**Date of hearings:**

07.03.07, 18.02.10, 01.03.10, 04.07.11,  
22.03.12, 18.09.12, 07.12.12, 09.02.13,  
08.01.15, 19.02.15, 14.05.15 and 16.09.15

**Present:**

**For Appellants:**

Nemo/Written Submissions



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## For Respondents:

1. Mr. Ahmed Masood -Advocate
2. Mr. Naeem Rafi-CEO  
(On behalf of Respondent No.1)
3. Mr. Nasir Askar, Director (LCID-SMD)
4. Ms.Asima Wajid, Deputy Director(LCID-SMD)  
(On behalf of Respondent No.3)

## ORDER

1. This single consolidated order shall dispose of Appeal No. 31,32 and 33 of 2006 filed by the Appellants under Section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 (SECP Act) against the order dated 24/02/06 (Impugned Order) passed by the Respondent No.3.
2. Brief facts of the case are that three different complaints against Malik Rafi (Pvt) Ltd. (Respondent No. 1) were filed by Muhammad Najmuddin (Appellant No.1), Mr. Khalid Ahmed Khan (Appellant No. 2) and Mr. Zulfiqar Hussain Siddiqui (Appellant No.3). The Commissioner (SM) after hearing the Appellants passed an order dated 17/01/02 under section 29, 32, 20(4) (o) of the SECP Act read with section 21 of Securities and Exchange Ordinance 1969 (the Ordinance) and appointed Mr. Maqbool Ahmed of Zahid Jamil & Co to investigate the following:
  - a. Inspect and identify all the relevant issues raised in the respective complaints and verify through evidence the legitimacy of the same.
  - b. Inspect and identify all the relevant issues raised by the Respondent (presently Respondent 1) and verify through evidence the legitimacy of the same.



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- c. Identify, through evidence, violations of any applicable laws which include but is not limited to the SECP Act, the Ordinance, the Central Depositories Act, 1997 and all rules and regulations made thereunder.
3. Thereafter, Mr. Maqbool Ahmed submitted the report on 10/07/02 (Investigation Report 1). Subsequently, numerous hearings were conducted in the matter and complaints of the Appellants were dismissed vide an order dated 13/8/04 passed by Director (SM). However it was challenged by the Appellants before the Appellate Bench (the Bench). The Bench remanded the case vide order dated 04/11/04 to the Respondent No.3 with the direction to re-investigate the case through an independent investigator. Therefore Mr. Fazal Ghafoor, Chief Internal Audit of Central Depository Company of Pakistan (CDC) was appointed as independent investigating officer in the matter. The investigation officer submitted a detailed report dated 31/3/05 (Investigation Report 2).
4. The Respondent No. 3 after hearing the parties and being dissatisfied with the merits, dismissed the complaints vide Impugned Order dated 24/02/06. It was held in the Impugned Order that the Respondent No.2 never remained agent duly recognized by the exchange and this fact can be verified from the exchange. Therefore, the Respondent No. 2 had no express or implied authority to act on behalf of the Respondent No.1. The Appellant No. 1 also admitted that he was having acquaintance with Respondent No.2 (Mr. Liaqat) even before becoming a client at the Respondent No.1 and it was Respondent No.2 who persuaded him to start business with the Respondent No.1. It is important to note that the Appellants are close relatives and they never asked the Respondent No.1 about the status of Respondent No.2 whether he was agent of the Respondent No.1 or not and they themselves assumed at their own that Respondent No.2 is agent of Respondent No.1. In the circumstances, Respondent No.2 cannot be treated as agent of Respondent No.1 rather he was representing the Appellants to operate their accounts as he used to bring Cheques from the Appellants and providing statements to them. The Appellants also failed to establish and support their claims against the Respondent No.1.

Appellate Bench



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5. The Appellants have preferred the instant appeal against the Impugned Order and raised generic sort of legal grounds including misinterpretation of law and facts, misreading and non-reading of evidence etc.
6. The Respondents denied and rebutted the grounds of appeals and prayed to dismiss the appeals while considering the arguments and grounds stated in the Impugned Order.
7. We have heard the parties at length and perused the relevant record with the assistance of the parties.
8. As per the record there is no direct or corroborative indirect evidence (circumstantial evidence) to establish the alleged relationship of agency between Respondent No.1 and Respondent No.2. However, on the contrary there is sufficient evidence on record and same has been established through two independent inquiries that Respondent No.2 was in fact the agent of Appellants and he was authorized to trade and deal on their behalf. Further, the investigation reports exonerated the Respondent No.1 from any violation of the applicable securities laws, therefore cannot be held liable to compensate the Appellants.
9. The relationship between the Appellants and Respondent No.2 is also admitted by the Appellant No.1 and 3 that they had prior acquaintance with Respondent No.2 and all the investments were made on behest of Respondent No.2. Appellant No.3 further stated that the Respondent No.2 got him convinced to trade in securities and therefore, he opened the account with the Respondent No.1 and operated through the Respondent No.2 who represented himself to be an agent of the Respondent No.1. It is important to note that Appellants are close relatives and they have made investments through the Respondent No.2 who allegedly introduced himself as the agent of Respondent No.1. However Appellants never asked the Respondent No.1 to confirm the status of Respondent No.2 whether he was agent or not. In the circumstances, Respondent No.2 cannot be declared expressly or impliedly as an agent of the Respondent No.1, rather he was representing the Appellants to operate their accounts as he used to bring Cheques from the Appellants and

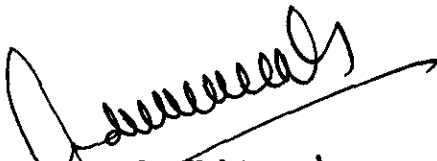


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providing statements to them. Further the Appellants also failed to establish their claims during the two inquiry proceeding and before the Respondent No.3. In this scenario such lack of documentation on part of the Appellants is result of blind trust on Respondent No.2. This Bench has gone through the record minutely, however found no evidence to prove the claims of Appellants. However the Appellants may proceed against the Respondent No. 2 for recovery proceeding under Civil law or prosecution under relevant provisions of Criminal law, as this matter does not fall under the regulatory ambit of Securities and Exchange Commission of Pakistan.

10. In the light of above stated facts which came on record through pleadings and oral submissions made before the Bench by the parties, the Appellants have failed to make out their case. In view of the aforesaid, there being no reason to interfere with the Impugned Order dated 24/02/06 passed by the Respondent No.3, therefore appeal is dismissed.

11. Parties to bear their own cost.

  
(Zafar Abdullah)  
Commissioner (SCD)

  
(Tahir Mahmood)  
Commissioner (CLD)

Announced on: 06 OCT 2015