

Appellate Bench Orders

Before Appellate Bench No.1

October 23, 2002

Before Appellate Bench No. 1

In the Matter of

Appeal No. 60 of 2002

Mr. Salah-ud-din Khawaja
House No. 252, Street No. 37,
Sector G-9/1, Islamabad

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Appellant

Versus

1. Chaudhry Anwar-ul-Haq
Member Stock Exchange
Room No. M-22,
Islamabad Stock Exchange
Building
Fazl-ul-Haq Road
Islamabad

House No. 5, F-2
Mirpur
Azad Kashmir

2. Secretary Islamabad Stock
Exchange
Islamabad Stock Exchange
Building
101-E Fazl-ul-Haq Road
Islamabad

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Respondent

Date of Impugned Order

July 29, 2002

Date of Hearing of appeal

October 02, 2002

Present:

For the Appellant

1. Mr. Salah-ud-din Khawaja
2. Mr. Shahzad Siddiqi, Advocate High Court

For the Respondent

1. Mr. Chaudhry Anwar-ul-Haq
2. Mr. Nisar H. Zaidi
3. Mr. Ahmed Noman
4. Mr. Syed Amir Masood, Director (SM)
5. Ms. Sumbul Naveed

Order

The present appeal arises out of the order dated July 29, 2002 (the "impugned Order") passed by Mr. Shahid A. Ghaffar, Commissioner (Securities Market).

2. The Impugned Order was passed pursuant to the complaint filed by Mr. Salahuddin Khawaja ("the Appellant") against Ch. Anwar-ul-Haq, Member, Islamabad Stock Exchange (Respondent No. 1). Whereas the appeal has been made against the Impugned Order of the learned Commissioner (Securities Market), the Appellant has not made the Commissioner (Securities Market) a Respondent in the appeal.

3. Notwithstanding the above deficiency and with a view to dispense justice, the appeal has been admitted which came up for hearing on October 02, 2002. Since paragraphs 1 to 5 of the appeal are already dealt with in before us detail in the Impugned Order, the grounds of appeal are discussed hereunder: -

(a) The Appellant while submitting his arguments quoted clause 3 of Investor Broker Agreement and took the plea that the trade executed through his account was unauthorized. The said clause 3 reads as under:

"The investor will pay at least 50% of the total value of the transactions at time of placing an order for purchase of shares. The balance amount will be paid by the investor at least five days before the clearing date fixed by the respective stock exchange."

(b) The above stated clause regarding the security deposits against trading, basically aims at protecting the Members for the trading risk, which they take on behalf of their clients. If the Members fail to collect appropriate security margin against trading from their clients they may expose themselves to a higher risk because if the client fails to make the requisite payments to the Member that amount is paid by the Member to the clearing house of the respective stock exchange thereby placing the burden on the Member. In view of the above, if the Respondent No. 1 was allowing the Appellant to trade without even collecting appropriate margins from him, he was in fact doing a favour to the Appellant. Therefore, violation of clause 3 of the Investor Broker Agreement does not prove that the trades executed through the Appellant's account were unauthorized trades executed by the Respondent No. 1.

(c) According to paragraph 2 of the grounds of appeal, the Appellant has further stated that the learned Commissioner did not consider the clauses 4,

7, 8, 16 & 17 of the Investor Broker Agreement. The plea taken by him does not appear to be correct, as the relevant clauses have been discussed sufficiently in the Impugned Order. In our view, clause 4 of the Investor Broker Agreement becomes applicable only when physical shares are deposited by the investor with the member. In the instant case, it is an admitted fact that the Appellant did not deposit any physical shares with the Respondent No. 1. Similarly clauses 4 and 7 of the said agreement would apply when there is actual delivery to be made or there are actual sale proceeds that are to be given to the investor. Besides clauses 8 and 16 of the Investor Broker Agreement relate to the requirements of margin, which is to protect the member against the trading risk on behalf of the investor. As regards clause 17 of the Investor Broker Agreement, it provides that in the case of default/delay in payment of margin by the investor, the Member will have absolute right to square up the investor's purchase/sale position at mark spot rate and any liability rising to this action will be settled by the client immediately.

4. In view of the above, it is our considered opinion that the above clauses do not support the grounds of appeal. The Impugned Order is a detailed order and has taken the facts of record and the relevant laws/rules.

5. As regards the penalty of Rs.50,000/- imposed on the Respondent No. 1, we feel it is for the violation of Rule 4(4) of the Securities and Exchange Rules, 1971. The Appellant has acknowledged most transactions executed by Respondent No. 1, and thus violation of Rule 4(4) *ibid* for which a fine has been imposed does not make all the transactions executed in the Appellant's account, illegal or without authorization. It is evident that the transactions were executed with the consent of the Appellant and pursuant to the authority given by him to the Respondent No. 1. Amount of fine was imposed on the Respondent No. 1 pursuant to the relevant laws. Imposition of fine on the Respondent does not mean that the learned Commissioner (Securities Market) had established the Appellant's claim against the Respondent No. 1.

6. In view of the foregoing regulations, facts on the record and arguments put forth by the parties, we see no reason to interfere with the Impugned Order, which is hereby maintained. Accordingly the appeal is dismissed.

(Abdul Rehman Qureshi)
Commissioner (Enforcement)

(Etrat H. Rizvi)
Commissioner (Insurance)

Islamabad

Announced : October 23, 2002