



BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 35 of 2003

Mr. Umar Farooq
House No. 469, Street No. 127,
Sector G-9/3, Islamabad..... Appellant

Versus

1. Salim Chamdia Securities (Private) Limited
Corporate Member
Karachi Stock Exchange (G) Ltd.
152 Head Office
Stock Exchange Building
Karachi
2. Shahid Aziz
House No. 857
Street No. 26, G-9/1
Islamabad
3. Executive Director (Securities Market)
SEC (HQ) Islamabad Respondents

Date of Impugned Order

July 23, 2003

Date of Hearings

October 16 & 20, 2003



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

NIC Building, Jinnah Avenue, Blue Area, Islamabad

Present:

For the Appellant

Mr. Umar Farooq

For Respondent No.1

Mr. Younis Mohiuddin

For Respondent No.2

Nemo

For Respondent No.3

1. Mr. Aly Osman, Joint Director (SMD)
2. Ms. Tehnia Hayat, Junior Executive (SMD)



ORDER

Mr. Umar Farooq has filed the instant appeal No. 35 of 2003 under section 33 of the Securities & Exchange Commission of Pakistan Act, 1997 before this Appellate Bench against an order dated July 23, 2002 (the “Impugned Order”) passed by Executive Director (Securities Market Division).

1. Mr. Umar Farooq (the “Appellant”) had filed a complaint with the Securities & Exchange Commission of Pakistan (“Commission”) against Salim Chamdia Securities (Private) Limited (“Salim Chamdia Securities”), alleging that Mr. Shahid Aziz, Branch Manager of Saleem Chamdia Securities had enticed him to invest his money in the stock market with a promise of 24% fixed annual return. He alleged that he was assured by Saleem Chamdia Securities that there was no chance of losing any money, however out of the total amount of Rs.1,985,000/- invested by the Appellant, he had only received back an amount of Rs.931,606/- from Saleem Chamdia Securities. Executive Director (SMD) provided an opportunity of personal hearing to the parties in the case. In the Impugned Order, she rejected the Appellant’s contention regarding investment at fixed rate and promise of guaranteed profits as the Appellant failed to produce any document to substantiate his plea. However, she directed for a show-cause notice to be issued to Saleem Chamdia Securities for non-compliance with Rule 4(4) of the Securities and Exchange Rules 1971 and the relevant provisions of the Brokers and Agents Registration Rules 2001. Being dissatisfied with the findings of the Executive Director in the Impugned Order, the Appellant preferred the instant appeal before us. The case was initially fixed on 16 October 2003, but was adjourned till 20 October 2003 as the Appellant failed to appear before us.



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2. The Appellant has made Mr. Shahid Aziz, the branch Manager of Salim Chamdia Securities, a respondent in his appeal however, no one appeared on his behalf despite service of notice.
3. At the hearing, the Appellant reiterated that he had invested a total of Rs.1,985,000/-, of which Rs.931,606/- was returned to him and an amount of Rs.1,053,394/- remained outstanding with Saleem Chamdia Securities. He also claimed that he had deposited Rs.275,000/- with Saleem Chamdia Securities, for which he had lost the receipt. He stated that Saleem Chamdia Securities had refused to provide him with another copy of the receipt.
4. The Appellant repeated that he gave his money to Mr. Shahid Aziz, for fixed rate investment and not for trading activity. He stated that Mr. Shahid Aziz had enticed him to invest the money and promised him a fixed rate of return of 24% per annum on his investment. The Appellant alleged that out of the amount of Rs.931,606/- received back by him in return for his investment, Rs.480,000/- was part of the principal sum invested whilst the remaining was the profit made on that investment.
5. He argued that he was never provided any written confirmation or other proof of trading by Salim Chamdia Securities for the alleged trading done in his name. To support his contention, he stated that he did not authorize account No. 65-061 in which the transactions took place. He claimed that, aside from the account opening form, which he signed initially, he signed no other form. The Appellant further argued that the Executive Director (SMD) had failed to provide him any relief despite finding that Salim Chamdia Securities had violated the provisions of Rules 4(4) and 8(g). He prayed that the Impugned Order may be set aside and



Salim Chamdia Securities be directed to pay back the outstanding amount along with interest at bank rate.

6. The Appellant further claimed that Mr. Shahid Aziz had borrowed Canadian \$5,000/- as a loan with the understanding that it would be returned in full at a future date. This was the view he took in his written appeal as well as during the hearing. Subsequently, the Appellant has been changing his stance a number of times and failed to satisfy as to what was the purpose of the loan he had given. Besides, the Appellant was not even aware of the terms of this loan. When asked that in what capacity this loan had been made to Mr. Shahid Aziz, the Appellant stated that he had done so because Mr. Shahid Aziz worked in Saleem Chamdia Securities with whom the Appellant was a client and also because Mr. Shahid Aziz happened to be his neighbour. In order to have documentary proof that the money was given as loan, he said that Mr. Shahid Aziz made out a Saleem Chamdia Securities receipt stating that the Canadian \$5,000/- had been received as 'security'. The Appellant argued that this meant that the money was for personal use, to be shown as 'security' to a foreign embassy for immigration purposes.
7. Mr. Younis Mohiuddin appearing on behalf of Saleem Chamdia Securities stated that the Appellant had invested the money for the purposes of trading in the stock market and that there was no question of guaranteed return on such investment. He contended that the account opening form clearly states that the account was for CDC and Shares Trading purposes. He stated that once an account opening form was signed, further transactions could be conducted at the verbal request of the client. Since the Appellant had requested that his money be invested in the badla transactions, a sub-account was opened in his name to segregate the securities traded in the ready market and those in the badla market. He invited the our attention to a letter dated 16 May 2001 written by the



Appellant to Salim Chamdia Securities, discussing outstanding securities with the CDC. This he argued, would imply that the Appellant was aware of the transactions taking place and accepted the same, thereby ratifying their execution.

8. Mr. Younis Mohiuddin further stated that the amount of Rs.275,000/- allegedly given to Saleem Chamdia Securities had not been received by them and therefore there was no record or copy of receipt of the same, which could be given to the Appellant. Mr. Younis Mohiuddin contended that the Canadian \$5,000 was not given to Saleem Chamdia Securities or Mr. Shahid Aziz as a loan but in fact was deposited as a guarantee against the Appellant's exposure to the stock market. He stated that the word 'security' had been used on the receipt by Saleem Chamdia Securities to mean exactly that. Mr. Aly Osman, Joint Director (SMD) also shared Mr. Younis Mohiuddin's view on this matter. He stated that in the context of this case and circumstances, the word 'security' would mean the security against the exposure that may have reduced the value of the Appellant's portfolio.
9. We have heard all the parties and considered their arguments. There is no document on record, which supports the contention of the Appellant that the money invested by him with Salim Chamdia Securities was for investment for a fixed rate and not for trading in securities. In fact, the ledger statement and purchase and sales bills pertaining to the Appellant account show that he was actively trading in securities through his account. Moreover, the fact that the Appellant was handing over his money to Salim Chamdia Securities on a regular basis without receiving back any profit points to the fact that this was not a fixed return investment. In the first ground in his appeal, the Appellant has himself stated that he was contacted by Mr. Shahid Aziz to '*invest in the stock market as badla investment and shares trading...*' This proves that he was aware that the



investment would be made in the stock market and not on a fixed rate of return. Moreover, the Appellant admits that he signed the account opening form. The form clearly shows that account, which was to be opened, was for trading purposes and not for fixed return investment. The Bench enquired from the Appellant during the proceedings if he could provide any evidence in support of his contention that the money was given by him for a fixed rate of return however he could not produce any evidence. The Bench asked the Appellant to produce any evidence to prove that the amount of Rs.480,00/- received by him from Saleem Chamdia Securities was part of the alleged principal sum invested by him and the remaining pertained to the fixed rate of return. However, the Appellant had no reply. In light of these circumstances we are unable to agree with the contention that the investment had been made on fixed rate of return and that Salim Chamdia Securities be directed to return the money invested by the Appellant. In any case, if indeed the money had been given as a loan by the Appellant on fixed rate of return such matter would fall within the jurisdiction of the Civil Court and not the Commission.

10. As for the Appellant's contention that the Executive Director (SMD) had failed to provide him any relief despite finding that Salim Chamdia Securities had violated the provisions Rules 4(4) and 8(g), it is clear that no such finding has been given by the Executive Director (SMD). She has given a direction in the Impugned Order for a show cause notice to be issued to Saleem Chamdia Securities, which means that this issue is still to be decided. In any case, even if Saleem Chamdia Securities has violated the provisions of Rule 4(4), it does not make all the transactions executed in the Appellant's account, illegal or without authorization.

11. With respect to the alleged loan of Canadian \$5,000 made out to Mr. Shahid Aziz, the rational provided by Mr. Younis Mohiuddin and Mr. Aly Osman makes



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more sense as opposed to the explanation provided by the Appellant. In any case, if we agree with the Appellant that the loan made out was a personal one, this would be a matter of dispute between two individuals and the Appellant may redress his grievances from the Civil Court being jurisdiction in such matters.

In light of the above findings, we find no reason to interfere with the Impugned Order, which is hereby maintained. The appeal is dismissed accordingly.

(ABDUL REHMAN QURESHI)
Commissioner
(Company Law Division)

(ETRAT H. RIZVI)
Commissioner
(Specialized Companies Division)

Islamabad
Announced: October 28, 2003