



BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 19 of 2004

Naureen Ahsan
d/o Ahsan-ul-Haq
50 Abu Bakar Block
New Garden Town
LahoreAppellant

Versus

1. Director (Securities Market Division) SEC
2. Fidelity Investment Bank Limited
97 Aziz Avenue,
Canal Bank, Lahore
3. Fidelity Securities Limited
97 Aziz Avenue,
Canal Bank,
Lahore.....Respondents

Date of Impugned Order June 07, 2004

Date of Hearing September 7, 2004

Present:

Shezada Mazhar, Advocate for the Appellant

Mr. Imtiaz Haider for Respondent No.1

Mr. Jawad Akhtar for Respondents No. 2 & 3



ORDER

This order will dispose off the present appeal No. 19 of 2004 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 by Ms. Naureen Ahsan against the order dated 07-06-2004 ('Impugned Order') passed by Director (Securities Market Division).

1. Brief facts of the case are that Ms. Naureen Ahsan (the 'Appellant') filed a complaint dated 11-12-2002 with the Securities & Exchange Commission of Pakistan against Fidelity Investment Bank Limited ('FIBL') and Fidelity Securities (Pvt.) Ltd ('FSL'). In her complaint, the Appellant stated that she had opened an account with FIBL in June/July 2000 for trading in securities and had authorized her father, Mr. Ahsan-ul-Haque to operate the account on her behalf. The account was operated on interactive basis by her father through one Mr. Talat Mahmood of FIBL. She alleged that her father stopped operating the account in December 2000 as he had fallen sick and was hospitalized. In January 2001, her father proceeded abroad for medical treatment and returned in June 2001. She alleged that during this period when her father was abroad, no verbal or written orders for trading were placed by her or her father with Mr. Talat Mahmood or any other employee of FIBL. She further stated that she had not authorized Mr. Talat Mahmood or FIBL to operate the account on their own. When her father returned from abroad he was informed by Mr. Talat Mahmood in July 2001 that the account had suffered losses. Further, she alleged that some 16,500 shares of Kohinoor Energy Limited owned by her father were transferred from his account held with a broker named Saad Maniar to her account in FIBL and then sold without any authority from her or her father. She also alleged that in December 2000 her account held with FIBL was illegally and without her authorization transferred to FSL. On 12-



12-2000 she had received a letter from FSL wherein she was requested to provide a new account opening form of FSL as well as an authority letter to transfer her account balance from her FIBL account to an account in FSL. Despite the fact that she had not provided the account opening form or the authority letter to FSL, her account along with her balance was transferred from FIBL to FSL. She alleged that FIBL and Mr. Talat Mahmood had misappropriated her account. She prayed that the balance amount of Rs.48,184.08 in her account as on 21-12-2000 along with 16,500 shares of Kohinoor Energy Ltd. may be reimbursed to her.

2. The Appellant's complaint was heard by Director (Securities Market Division) who dismissed it vide his Impugned Order on the following grounds.

- (a) that the Appellant was fully aware of the transfer of her account from FIBL to FSL as she had based her complaint on a statement of account dated 12-12-2000 generated by FSL, and had also visited FSL office to withdraw money from her account;
- (b) that the Appellant had not suffered any loss as her account had a debit balance of Rs.198/- on 30-06-2001;
- (c) that the Appellant or her father did not have a CDC sub-account with Saad Maniar and that there was no credit of 16,500 shares of Kohinoor Energy Ltd. in the Appellant's sub-account;
- (d) that the Appellant had received trade confirmation slips and had not contested the transactions carried out by FSL, meaning therefore that she had accepted them.

3. Not being satisfied with the findings of the Director in the Impugned Order, the Appellant filed the instant appeal before us. The appeal was heard on 07-09-2004. Mr. Shezada Mazhar, Advocate appearing for the Appellant reiterated the facts of the complaint and contended that the Director had passed a non-judicial order without



considering the facts and the law applicable in the circumstances. He stated that the Appellant's account had been transferred from FIBL to FSL, illegally and without any authorization. Further, Mr. Talat Mahmood or FSL had not been granted the authority by the Appellant or her father to operate the account in her father's absence from the country. He maintained that the illegal transactions carried out by Mr. Talat Mahmood and FSL had caused the Appellant a loss of Rs.48,184.08. He argued that the Director had misdirected himself and had ignored the letter dated 24-06-2002 written by FSL, wherein it was admitted by FSL that the account had been operated by Mr. Talat Mahmood. He further contended that the Director had wrongly concluded that the Appellant or her father had no account with M/s Saad Maniar. He produced before us a statement generated by Saad Maniar of an account held by Mr. Ahsan-ul-Haque, father of the Appellant. He also produced cash receipts issued by Saad Maniar to Mr. Ahsan-ul-Haque. He stated that these documents were not considered by the Director as they were sent to the Director on 07-06-2004 and the Director had by then already issued the Impugned Order which is also dated 07-06-2004.

4. Mr. Javed Akhtar appearing on behalf of FIBL and FSL stated that FSL was a wholly owned subsidiary of FIBL and was incorporated for the purpose of transferring the brokerage business carried out by FIBL to FSL. He stated that the Appellant was fully aware of the transfer of her account from FIBL to FSL as she had withdrawn money from her account after it had been transferred to FSL. Further, she had been receiving confirmation slips generated by FSL all along and had not contested the apparent transfer of her account. He stated that all transactions which took place in the Appellant's account were authorized by her.

5. Mr. Imtiaz Haider, Director (SM) appearing for himself stated that the Appellant had impliedly accepted the transfer of her account from FIBL to FSL as she was aware of the transfer and had not objected to it. He stated that the Appellant had received the statement of her account generated by FSL and had in fact based her claim in the



complaint on the basis of that statement. Further evidence was that she had visited the offices of FSL to withdraw money from her account and had not raised any objection to her account being maintained by FSL. As regards the Appellant's claim that her account had been operated by Mr. Talat Mahmood or FSL in the absence of her father, the Director submitted that there was no means of verifying the claim of the Appellant that neither she nor her father had given any instructions to Mr. Talat Mahmood. He therefore had to rely on the confirmation slips of the transactions which were sent to the Appellant by FSL. He stated that according to the terms of the account opening form, if the Appellant had any objection, she was required to contest the transaction within 48 hours of the receipt of the confirmation slip. As the Appellant had not done so, it was deemed that she had no objection to the transactions. He stated that he had made independent inquiries from the courier as to whether the confirmation slips were delivered at the Appellant's address or not, and it was confirmed that they were. With regards to transfer of Kohinoor Energy Ltd. shares owned by Appellant's father from Saad Maniar to FSL, the Director stated that Central Depository Company (CDC) had confirmed vide letter dated 03-10-2003 that no sub-account was being maintained by the Appellant or her father with Saad Maniar. Further Saad Maniar had also confirmed this fact on inquiry. He contended that no transfer of 16,500 shares of Kohinoor Energy Ltd. took place into the Appellant's account as alleged by the Appellant. The Director stated that there was no evidence to support the claim of the Appellant and he had therefore rejected her complaint.

6. We have heard the matter in quite detail and also perused the documents on record. In our opinion the three issues which need to be decided in this appeal are as follows.

- (a) Whether the transfer of the Appellant's account from FIBL to FSL was authorized? ;



- (b) Whether the transactions conducted in the Appellant's account during her father's absence were authorized? ; and
- (c) Whether shares of Kohinoor Energy Ltd. belonging to Appellant's father were transferred from Saad Maniar to cover the losses which occurred in the Appellant's account held with FSL?

7. On basis of the reasons stated below, we have found the answer to the first two questions in negative and the third in affirmative and therefore set aside the Impugned Order passed by the Director.

8. On the first issue, the transfer of the Appellant's account from FIBL to FSL has been held valid for mainly two reasons. Firstly, that the Appellant had received the confirmation slips from FSL after the transfer of account and had not raised any objection, and secondly that she had visited FSL's office and withdrawn money from her account being held with FSL. We however, are not convinced with either of the two arguments. FIBL and FSL are two separate legal entities and we cannot appreciate how an account along with its balance, could have been transferred without the authority of the account holder. Although, in the letter dated 12-12-2000 the Appellant had been asked by FSL to provide a new account opening form and an authority letter to transfer the account balance, it is clear from the said letter that the account had already been transferred to FSL and the letter was only a formality. And this is the reason why when the Appellant did not respond to the said letter, FSL never bothered to follow it up with the Appellant. Further it shows that FSL was aware of the requirement to obtain proper documents from the account holder. This is a violation on part of both, FIBL which allowed the transfer without proper authority and FSL which maintained and operated an account without proper documentation. Proper documentation of accounts whether it is by financial institutions or brokerage firms is imperative in today's world where illegal businesses and money launderers are playing havoc with the financial sector, and such violations should not be condoned. The rightful thing to do for FIBL and FSL,



when the Appellant had not provided necessary documents, was to suspend the account till the time she complied with the legal requirements.

9. As for the fact that the Appellant visited the office of FSL to withdraw money, we cannot understand how that can be taken to mean that she approved the transfer of account. Had she visited the office to deposit money or pay for her losses if any, then that would have been different. Moreover, from the record which is available before us, it is apparent that the offices of both FIBL and FSL were housed in the same premises. It is therefore, wrong to draw the conclusion that the Appellant was visiting the offices of FSL and not FIBL, and had consequently approved the transfer of her account.

10. With regards to the confirmation slips, the record shows that the person who was actually operating the Appellant's account was her father, and in his absence the confirmation slips may not have meant anything to the Appellant. The Director has found that there was no evidence to rebut the assumption that it was not the Appellant who operated the account in the absence of her father. However, in our opinion, same is true for the inverse. There is no evidence to prove that the Appellant was operating the account and trading on her own. However, whatever evidence is available, points to the fact that the account was operated by the Appellant's father and not herself.

11. On the second issue that whether the transactions conducted in the Appellant's account during her father's absence were authorized or not, again this question has been answered in affirmative by the Director on the basis of the assumption that it must have been the Appellant who operated the account. As stated above, this is just an assumption, and we have not been provided with any evidence which proves this point. In contrast, however the Appellant has placed on record a letter dated 24-06-2002 written by FSL to the Appellant's father in which the chief executive officer of FSL has admitted that Mr. Talat Mahmood had been operating the Appellant's account in the absence of her father. The letter states, "*On inquiring, Mr. Talat Mahmood confirms he was*



advised to look after your account in your absence". In the presence of this admission on part of FSL, this issue could not have been decided by the Director, on the basis of an assumption that the Appellant could have operated the account on her own. Further, although a presumption of approval of transaction is raised by the delivery of confirmation slips to the Appellant's address, however such presumption can only be valid when the maintenance and operation of account itself is valid and legal. We have already found that the transfer of the Appellant's account from FIBL to FSL was unauthorized, therefore this presumption is rebutted. In any case, unauthorized transactions admittedly conducted by FSL in an account which was transferred without authorization from the account holder cannot be condoned on the basis of an assumption raised by a provision in the account opening form. FIBL and FSL are consequently required to reimburse the amount of Rs.48,184.08 to the Appellant.

12. On the third issue as to whether shares of Kohinoor Energy Ltd. belonging to Appellant's father were transferred from Saad Maniar to cover the losses which occurred in the Appellant's account held with FSL, again the Director has found that they were not. He has based his finding on the fact that no sub-account in the name of the Appellant or her father was being maintained with Saad Maniar and the CDC record shows that no transfer of 16,500 Kohinoor Energy Ltd. shares took place to the Appellant's account with FSL. However, the Director again failed to appreciate the admission contained in the letter dated 24-06-2002 written by FSL's chief executive officer to the Appellant's father. In this letter, it is stated;

"We confirm that 13,000 shares of KEL (Kohinoor Energy Ltd.) were transferred from M/s Saad Maniar a broker of LSE to FIBL on May 8, 2000 almost two years back a period during which according to your own admission you had an interaction with your account. These shares formed part of your margin shares in your account. We would like to inform that these shares were transferred from one CDC account to another CDC account only on the action of the transferring CDC member. For transfer of shares to FIBL or FSL, only M/s Saad Maniar could transfer such shares, whether he had your authority or not is of no concern to us. In relation to sale of these shares, we would like to inform you



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that according to the terms of the agreement brokerage if margin fell short then it has to be recouped by the customer forthwith. Likewise in this case the required margin fell short during the clearing dated August 15, 2001. According to the terms of the agreement since you failed to recoup the shortfall, your position was squared and again confirmation slips were sent to Ms. Naureen Ahsan mailing address.”

13. It is clear therefore that Kohinoor Energy Ltd. shares were transferred from Saad Maniar to square the position in the Appellant’s account on 15 August, 2001. It is difficult for us to appreciate that these shares could have belonged to somebody other than the Appellant or her father if they were used by FSL to square the position in the Appellant’s account. Secondly, the Appellant had produced the statement of the account held by the Appellant’s father with Saad Maniar and cash receipts issued by Saad Maniar in her father’s name to rebut the finding of the Director that her father did not have an account with Saad Maniar. In our opinion, the only issue which needs adjudication is that of the remaining 3,500 shares of Kohinoor Energy Ltd. out of the 16,500 shares claimed by the Appellant. Director (SM) is therefore directed to hold an inquiry and give his findings on these remaining shares within 30 days of receipt of this order.

14. Meanwhile, FIBL and FSL are directed to reimburse Rs.48,184.08, and 13,000 shares of Kohinoor Energy Ltd. to the Appellant within 10 days of receipt of this order. This appeal is disposed off accordingly.

(ABDUL REHMAN QUERSHI)
Commissioner

(ETRAT H. RIZVI)
Commissioner

Announced in Islamabad on September _____ 2004