

**SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN**  
NIC Building, Jinnah Avenue, Blue Area, Islamabad.

**BEFORE THE COMMISSIONER (SECURITIES MARKET)**

Mr. Salahuddin Khawaja

... Complainant

**Versus**

Ch. Anwar-ul-Haq

... Respondent

Date of Hearing: April 17, 2002

Present at the Hearing:

i.	Mr. Salahuddin Khawaja	.....	Complainant
ii.	Muhammad Shahzad Siddiq	.....	Counsel for the Complainant
iii.	Ch. Anwar-ul-Haq	.....	Respondent
iv.	Mr. Nisar Zaidi	.....	Representing the Respondent
v.	Mr. Tariq Aziz	.....	Counsel for the Respondent
vi.	Mr. Ahmed Noman	.....	Representing ISE
vii.	Mr. Waris Niazi	.....	Representing ISE

To assist the Commissioner (SM):

i.	Syed Aamir Masood	.....	Director (S-III)
ii.	Ms. Sumbul Naved Qureshi	.....	Junior Executive (SM)
iii.	Ms. Asma Tayyiba	.....	Junior Executive (SM)

**ORDER**

1. This matter arises out of a complaint (the “Complaint”) filed with the Securities and Exchange Commission of Pakistan (the “Commission”) by Mr. Salahuddin Khawaja (the “Complainant”) against Chaudhary Anwar-ul-Haq (the “Respondent”), Member Islamabad Stock Exchange (ISE).

2. The Complainant in his Complaint alleged that he has been trading in the Stock Exchange for quite some time and during that period he met with the Respondent and Mr.

Nisar Zaidi (Mr. Zaidi), in the Stock Exchange at that time. The Complainant further alleged that the above said persons persuaded him to invest with them, on the plea that they are experts having considerable experience in the Stock Exchange business therefore they could invest the Complainant's money in a schematic manner so as to earn considerable amounts of profits thereon for him.

3. The Complainant gave Rs.70,000/- to the Respondent on 08-01-01 for the trading in shares. The Respondent issued a receipt No. 105 against the said payment received in favor of the Complainant. It was added that following the first payment of Rs.70,000/- he further deposited Rs.2,00,000/- with the Respondent on 26-01-01 and a receipt No.118 was provided to him against the said payment by the Respondent.

4. He demanded some money from the Respondent out of his total invested amount, against which a cheque of Rs.100,000/- dated 07-02-01 was issued to him by the Respondent. Furthermore, the Respondent approached the Complainant on 21-02-01 and requested for a loan. The Complainant on request of the Respondent extended a loan of US \$ 2,100/- to the Complainant on the same day. The Complainant went on to say that he was also assured by the Respondent that the said amount would be paid back to him in US Dollars. The Respondent issued a receipt No. 144 against the said amount / loan in favor of the Complainant.

5. The Complainant also alleged that after a lapse of quite some time of making investment with the Respondent, he demanded profit on his investment from the Respondent. The Complainant was told by the Respondent that the Complainant could receive profits on his investment after the interval of every 3 months. When the Complainant contacted the Respondent after 3 months, the Respondent delayed the matter on one pretext or the other and no profit was received by the Complainant. The Respondent has not returned the amount invested by the Complainant and that the Respondent is not in contact with him.

6. The Complainant has lodged a claim for recovery of Rs.1,70,000/- and US \$ 2,100/-.

7. The Complaint was forwarded to the Respondent for his comments, in reply to which he communicated his stance to the Commission vide letter dated 10-01-02. In the said letter it was stated that the Complaint is fabricated and baseless. The Respondent counter alleged that the Complainant opened a trading account No.40010049 with him on 08-01-01 and deposited Rs.70,000/- with the Respondent and started trading in PTCL shares in his trading account. It was further added that the Complainant assured the Respondent that in case of any short fall in security margins, he would clear the shortfall on a regular basis. The Respondent explained the trading pattern of the Complainant, that on 17-01-01 the Complainant bought 70,000 shares of PTCL and 20,000 shares of ICI against the security margin of Rs.70,000/-. By 26-01-01 debit balance of Rs,55,870/- was accumulated in the Complainant's trading account. The Complainant deposited Rs.2,00,000/- with him to clear up his debit balance as stated above and the remaining amount of Rs.1,44,130/- was kept as a balance / margin for further trading. In the

meantime, before the Complainant started trading with his balance amount, the Complainant requested the Respondent to refund Rs.100,000/- as he was in urgent need of the same. The Respondent refunded Rs.100,000/- to the Complainant from his balance amount of Rs.1,44,130/- vide cheque No.27667122. The Complainant assured the Respondent that he would again deposit the amount refunded, within a day or two.

8. The Respondent further alleged that on 09-02-02 the Complainant had 52,000 shares of PTCL and 25,000 shares of ICI in his account and the Complainant increased his position to 1,45,000 PTCL shares till 20-02-01.

9. The Respondent also alleged that due to a sharp decrease in the share prices of PTCL during that time (From February 2001) and the debit balance in the Complainant's account started increasing. The Respondent taking into consideration an increasing debit balance in the Complainant's account requested him to clear his debit balance. The Complainant was clarified by the Respondent that if the debit balance is not cleared by him, his position would be squared-up by the Respondent. On receiving this warning, the Complainant deposited US \$ 2,100 with him as a security margin, which were subsequently sold by the Respondent and the proceeds thereof were adjusted against the Complainant's debit balance, after which the Complainant's debit balance decreased to Rs.60,198/-.

10. It was added that on 2-3-2001 after the security margin of US \$ 2,100 was adjusted against the Complainant's debit balance, the Complainant's position was as follows:

- 1,45,000 shares of PTCL
- 25,000 shares of ICI
- Debit Balance of Rs.60,198/-

11. The Complainant didn't reduce the position taken by him due to which his debit balance kept on increasing. By the end of March 2001 the debit balance in the Complainant's account had risen to Rs.3,79,463/- which further increased to Rs.4,41,943/- on 4-5-2001 resulting from the rolling over of his position.

12. The Respondent alleged that due to continuous debit balance in the Complainant's account, 45,000 shares out of his total 1,45,000 PTCL shares were sold on 11-5-2001 @ Rs.17.50 per share. ISE was duly informed about the same. Taking into consideration the continuous falling trend in the share prices of PTCL, the Respondent squared up the Complainant's position on 26-7-2001 and after selling the Complainant's remaining 1,00,000 shares of PTCL, the debit balance of Rs.8,73,123/- accrued in the Complainant's account. ISE was informed about the squaring-up of the Complainant's position by the Respondent on 26-07-01.

13. The Respondent has further alleged that the Complainant has to pay a debit balance of Rs.8,73,123/- to the Respondent. The Respondent has been continuously trying to recover the said debit balance but the Complainant has failed to make the requisite payment to him. The Respondent has also filed an application with Senior

Superintendent of Police, Islamabad on 25-9-2001 for the recovery of the said amount and has also filed a complaint with Army Monitoring Team and Director FIA. The Respondent requested the Commission for the appropriate actions to be taken so that the Respondent could recover his payment from the Complainant.

14. ISE vide their letter dated 6-2-2002 informed the Commission that the Complainant had refused ISE to provide any information/ documents on the plea that he would submit the same with the Commission as he wanted his Complaint to be adjudicated upon by the same.

15. I have heard the parties on 17-4-2002 and perused the entire record on the case file. In my opinion the controversy between the parties can be condensed to the following four points:

- i. Whether the investment made by the Complainant with the Respondent was pursuant to the understanding between the parties, that the Respondent would make fixed profit payments to the Complainant on his investment?
- ii. Whether the transactions executed in the Complainant's trading account were not in the Complainant's knowledge and whether the Respondent was not authorized to execute the same in the Complainant's trading account?
- iii. Whether the complainant's claim for the recovery of his total investment made with the Respondent is justifiable, in particular, the claim for US \$ 2,100 given to the Respondent as a loan?
- iv. To what extent the Respondent should be held accountable for the negligence in performing his duties as a Member of ISE?

16. Regarding the first controversy, first sentence of the Complaint is stated as follows:

گزارش ہے ساکل اسلام آباد شاخ ایچ بی سی میں کافی عرصہ سے شیئرز کی خرید و فروخت کا کاروبار کر رہا ہے۔

The Complainant while explaining his previous trading experience in Stock Market, stated in the hearing that he had already lost almost Rs.40,000,000/- (Rs.40 million) in the Stock Market. Taking this statement into consideration and the Complainant's previous trading experience there remains no doubt in my mind that he must have been aware of the fact that accepting deposits against fixed returns comes under the banking

activities and does not come under the scope of a business as a Member of a Stock Exchange.

Secondly, the Complainant deposited Rs.70,000/- with the Respondent on 8-1-2001 and the copy of the ledger statement containing various transactions of PTCL shares, executed on that day, duly initialed by the Complainant have been provided to the Commission by the Respondent. The said ledger statement was produced before the Complainant in the hearing and the Complainant didn't dispute his initials on the said ledger statements. This clearly shows that there was no understanding between both the parties with regard to the investment made by the Complainant on fixed returns and in fact, actual sale/ purchase was executed in the Complainant's trading account.

Furthermore, there was an Investor Brokerage Agreement signed between the Complainant and the Respondent, which is not disputed by either party. Extracts from the said agreement are stated hereunder for reference:

“The following Agreement has been concluded between Salahuddin Khawaja and Ch. Anwar-ul-Haq, Member ISE, hereinafter referred to as investor for the purpose of carrying out purchase/ sale transactions in shares of companies listed on either of three stock exchanges in Pakistan”.

Considering the above I have no doubt in my mind that the trading account of the Complainant was opened with the Respondent for the trading (Sale/Purchase) of shares and not for the fixed returns on the investment made by the Complainant. Therefore, Complainant's allegation that the Respondent promised him fixed deposits on his investment is ill founded and baseless.

17. With regard to the second controversy, extracts from the Complaint are produced as under:

اس سلسلہ میں سائل کی ملاقات چوہدری انوار الحق، ٹارزیدی و فیصل وغیرہ سے ہوئی جو اسلام آباد سٹاک ایکسچینج میں شیئرز کا کاروبار کرتے تھے۔ مجھے مذکورہ دونوں آدمیوں نے کہا کہ ہمارا اس فیلڈ میں کافی تجربہ ہے اور اپنی ماہرانہ پالیسیوں کو استعمال کرتے ہوئے تمہاری رقم کو بہتر طور پر انویسٹ کر سکتے ہیں اور مجھے کہا کہ ہم تمہیں تمہاری رقم پر کافی منافع کما کر دے سکتے ہیں۔  
ان کی باتوں پر یقین کرتے ہوئے میں نے شیئرز کے کاروبار کے لئے ان کو 70000 روپے بڑی رسید نمبر 105 مورخہ 8-1-2001 دیئے۔

This statement shows that the Complainant did authorize the Respondent to execute trades in his account on his behalf. Then the question arises that, whether the verbal authorization given by the Complainant to the Respondent to execute transactions in his trading account on his behalf had any other conditions attached therewith, as well?

In this regard, the Complainant admitted during the course of hearing that the Respondent was verbally authorized to trade in the Complainant's account on his behalf; however, the losses have accrued in his account as a result of unauthorized trading executed by the Respondent.

As the authorization given by the Complainant to the Respondent in this situation is verbal, therefore, I have carefully examined the trading pattern in the Complainant's account and other relevant documentary evidence and circumstances.

18. The Respondent produced various ledger statements that were duly signed/initialed by the Complainant showing the Complainant's consent in the execution of those trades. The Complainant started trading with the Respondent on 8-01-2001. Ledger statements containing transactions executed from 8-01-2001 to 12-01-2001 have been signed by the Complainant. Next trading period, trades of which were acknowledged by the Complainant is from 29-01-2001 to 6-02-2001. The ledger statement till 6-02-2001 is showing a net debit balance of Rs.14,41,762/- which means that the said debit balance was in the knowledge of the Complainant, and the transaction, which resulted in a debit balance, were executed with the Complainant's consent. However, in the hearing, the Complainant stated that he had never been informed about the debit balance in his trading account by the Respondent. This contradictory attitude shows a *mala fide* on part of the Complainant.

19. Secondly, the said ledger statement covering the trading period 29-01-2001 to 6-02-2001 signed by the Complainant also shows that the Complainant acknowledged the transactions executed during that period as well as the balance carried forward from the previous trading period. Therefore, I have no doubt in my mind that the trading period from 17-01-2001 to 26-01-2001 for which the Complainant didn't sign any ledger statement or didn't receive any trade confirmations were in his knowledge and executed with his consent. The Complainant didn't dispute the balance brought forward from that period as a starting balance in the ledger statement covering the period 17-01-2001 to 26-01-2001(which was duly signed by the Complainant).

20. From 7-02-2001 onwards the continuous trading pattern was that the last transaction on each day used to be a sale transaction which used to reduce the debit balance of the day to some extent and some times to a considerable amount. However, reduction of debit balance of Rs.1,92,078/- to Rs.60,198/- after adjusting the debit balance with a cash receipt from the Complainant shows that the Complainant was aware of his debit balance against which he made some payment to the Respondent. Another vital point in this context is that the last ledger statement signed/initialed by the Complainant contains the transaction which resulted in a debit balance of Rs.14,41,762/- which was in any way known to the Complainant.

21. Rs.1,31,880/- were obtained by the Respondent by converting US \$ 2,100/- in Pakistani Rupees, which were given to the Respondent by the Complainant. The Complainant in the hearing alleged that the said amount was given by the Complainant to the Respondent as a loan. However, a receipt provided by the respondent against the

same does not mention that the said amount was given by the Complainant to the Respondent as a loan. The Respondent is also denying the said allegation made by the Complainant which can be justified from a fact that the said amount is appearing on the Complainant's ledger statement and inflow of the said amount in the Complainant's trading account is decreasing the debit balance in his account.

22. If trading pattern after the receipt of the said amount from the Complainant is closely observed, it is evident that the Respondent didn't allow any purchase transaction to the Complainant and apart from few sale transactions. All the remaining transactions are the Badla Transactions. This means that the debit in the Complainant's Account was increasing due to heavy badla charges levied on the badla transactions of the Complainant in his trading account.

23. From the ledger statement it is also evident that finally on 26-07-2001 the Respondent squared-up the Complainant's position by selling his 1,00,000 shares of PTCL. After the execution of the said transaction the Complainant's debit balance was decreased from Rs.2,410,123/- to Rs.8,73,123/-. According to the ledger statement the Complainant has to pay a debit balance of Rs.8,73,123/- to the Respondent.

24. Examination of the Complainant's trading pattern in his trading account with the Respondent clearly shows that the Complainant had given an unconditional verbal authority to the Respondent to execute trades in the Complainant's account on his behalf which was duly endorsed by the Complainant from his actions and further trading decisions. Furthermore, it also transpires that all the transactions executed in the Complainant's trading account were in the Complainant's knowledge.

25. Therefore the Complainant's allegation that the transactions executed in the Complainant's trading account were not in the Complainant's knowledge and that the Respondent was not authorized to execute the same in the Complainant's trading account is ill founded and baseless.

26. Regarding the third controversy between the parties I am very clear in my mind that the claim lodged by the Complainant for the recovery of his total investment made with the Respondent is not justified due to the following reasons:

- i. Allegation made by the Complainant against the Respondent, that the investment was made with the Respondent on the basis of fixed returns, has already been proved incorrect and is set aside. Therefore, even after the execution of certain trades duly acknowledged by the Complainant, claim for full amount invested with the Respondent is unfounded.
- ii. The fact that the Complainant acknowledged his trading through the Respondent till 6-02-2001 cannot be denied. According to the ledger statement, the Complainant acknowledged his debit balance of Rs.14,41,762/- against his investment of Rs.1,70,000/-. Even if the Complainant does not acknowledge his remaining trading with the Respondent which resulted in a debit balance of

Rs.8,73,123/- the Complainant didn't deny his initials/ signatures on the ledger statements in which he acknowledged his debit balance of Rs.14,41,762/-.

- iii. Although the amount of Rs.1,31,880/- which was obtained by the Respondent after converting US \$ 2,100/- given to him by the Complainant in Pakistani Rupees, is appearing in the Complainant's ledger statement, even then if it is considered as a loan the Commission does not enjoy jurisdiction for the recovery of loan.

27. In view of the foregoing reasons, I have come to the conclusion that the Complainant's claim filed against the Respondent is unfounded and is set aside.

28. However, while considering the fourth controversy between the parties, I have found the following instances of negligence in performance of the duties on part of the Respondent:

- i. The Respondent failed to provide trade confirmations to the Complainant on regular basis. However, as there have certain ledger statements being provided to the Commission, which are duly signed by the Complainant, a lenient view has been taken towards this issue, but the Respondent being in such a responsible position, acting as a Member of ISE can't be held unaccountable.

In view of the foregoing, the Respondent has committed violation of Rule 4(4) of the Securities and Exchange Rules, 1971 which requires the brokers to deliver a trade confirmation to the client within 24 hours of a trade having been executed. Therefore, I invoke section 22 of the Securities and Exchange Ordinance, 1969 and impose the penalty of Rs.50,000/- on the Respondent with a direction to deposit the said amount in the collection account of the Securities and Exchange Commission of Pakistan within 14-days of the date of this Order, failing which appropriate action under law would be taken against the Respondent.

**(SHAHID GHAFAR)**

Commissioner (Securities Market)

Islamabad,

29-07-2002