



**BEFORE APPELLATE BENCH NO.I**

**In the matters of**

**Appeals No. 37 & 46 of 2003**

**Under section 33 of the**  
**Securities & Exchange Commission of Pakistan Act, 1997**

Date of Impugned Order

31-07-2003

Dates of Hearing

30-10-2003, 05-12-2003 & 10-02-2004

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**Appeal No. 37 of 2003**

Salman Services (Pvt.) Ltd  
8<sup>th</sup> Hamilton Court G 1  
Main Clifton Road, Karachi..... Appellant

Versus

Executive Director (Securities Market)  
SEC Islamabad .....Respondent

**Present:**

**For the Appellant**

Mr. Salman Masud

**For the Respondent**

1. Mr. Syed Amir Masood, Director (SM)
2. Mrs. Tehnia Hayat, Junior Executive (SM)



**Appeal No. 46 of 2003**

Muhammad Tariq Dar  
House No.1129, Street 41, G-10/4  
Islamabad..... Appellant

Versus

1. Executive Director (Securities Market)  
SEC Islamabad
2. Salman Services (Pvt.) Ltd  
through Mr. Salman Masud  
Chief Executive  
8<sup>th</sup> Hamilton Court G 1  
Main Clifton Road, Karachi ..... Respondents

**Present:**

**For the Appellant**

Mr. Tariq Dar

**For Respondent No.1**

1. Mr. Syed Amir Masood, Director (SM)
2. Mrs. Tehnia Hayat, Junior Executive (SM)

**For Respondent No.2**

Nemo



## **ORDER**

The Appellants mentioned above have filed appeals No. 37 and 46 of 2003 under section 33 of the Securities & Exchange Commission of Pakistan Act, 1997 before the Appellate Bench against an order dated 31-07-2003 (the “Impugned Order”) passed by Executive Director (SMD). As the matter in both these appeals is interlinked and arises from one order, these appeals are being disposed off through this single order.

1. The facts leading to these appeals are that Mr. Muhammad Tariq Dar filed a complaint dated 22-05-2002 with the Securities & Exchange Commission of Pakistan against Salman Services (Private) Limited (“Salman Services”), alleging that he had been trading with Salman Services since 03-08-2000. He stated that he was defrauded through false paper transactions and no real trading took place in his account. He prayed that his 3700 shares of SSGL, 1250 shares of Ibrahim Fibre, 3500 shares of 21<sup>st</sup> ICP Mutual Fund and 20,000 shares of PTCL as well as Rs.160,000/- paid by him for purchase of 10,000 shares of PTCL may be returned to him. The Executive Director (SMD) heard both the parties and accepting the plea of Mr. Tariq Dar, directed the Karachi Stock Exchange (G) Ltd. vide her Impugned Order to release an amount of Rs.404,000/- to Mr. Tariq Dar, which was deposited by Salman Services with KSE in pursuance of Commissioner (SMD) order dated 03-07-2002. In addition she imposed a fine of Rs.100,000/- for violation of Rule 8(iv) read with clauses A1, A2 and A5 of the 3<sup>d</sup> Schedule of the Brokers & Agents Registration Rules, 2001 read with Rule 8 of the Securities & Exchange Rules, 1971. She also ordered a full audit of the said brokerage house. Being dissatisfied with the findings



of the Executive Director (SMD) in her Impugned Order, both the parties preferred the instant appeals before us.

**Appeal No.37 of 2003**

2. Appeal No.37 of 2003 was filed by Salman Services against the Executive Director (SMD). In their appeal, Salman Services have sought relief against the imposition of fine of Rs,100,000/- and the full audit ordered by Executive Director (SMD) and has not challenged the order pertaining to release of Rs.404,000/- to Mr. Tariq Dar. The case was fixed on October 30, 2003 when Mr. Salman Masud appeared before us on behalf of Salman Services and argued the case.
3. Mr. Salman Masud contended that Mr. Tariq Dar had admittedly been trading through Salman Services' Islamabad office since May 2000 and he had no complaint. Suddenly, after nearly 2 years he started to allege that no trading had taken place at all and that he had been robbed of his money. Mr. Salman Masud asserted that just because trades were not entered in Karachi Automated Trading System (KATS), it does not mean that no trading took place on the directions of Mr. Tariq Dar. He contended that the trade could have been conducted through Mr. Siddique Azad's own account, who was the agent of Salman Services in Islamabad at the time. He alleged that Mr. Tariq Dar and Mr. Azad were associates and Mr. Dar's complaint had been filed in conjunction with Mr. Azad. He blamed Salman Services' misfortune on Mr. Azad, who he claimed had disappeared with all the relevant documents, which could prove the company's innocence. He argued that Salman Services had been in the trading business since 1995 and this kind of thing had never occurred in the past. He stated that 22 complaints had been filed against



Salman Services' Islamabad office and the company had settled 20 out of these 22 complaints to the satisfaction of the Commission. He asserted that this pointed towards the company's credibility and integrity. He argued that the settlement of all these complaints had caused Rs.12 million losses to Salman Services and that it would be unfair to penalize it any further.

4. Mr. Amir Masood, Director (SMD) who appeared on behalf of the Executive Director (SMD), contended that Mr. Azad was admittedly the agent of Salman Services and Salman Services was therefore legally liable for the acts and omissions of its agent. He argued that Salman Services owes a duty to its investors and is required by law to maintain complete books of accounts, which it failed to do. It therefore cannot shift the blame by claiming that its agent had absconded with the records. He stated that ledger statements of Mr. Tariq Dar were generated from Salman Services' computer system, however it failed to show any trail for the relevant transactions. He stated that there were clear and apparent discrepancies between the ledger statement and the KATS report obtained by the Commission, for which no satisfactory explanation has been provided by Salman Services. He argued that all these facts necessitated that a full audit of the brokerage house be carried out.

#### **Appeal No.46 of 2003**

6. Appeal No.46 of 2003 was filed by Mr. Tariq Dar against the Executive Director (SMD) and Salman Services. In his appeal, Mr. Tariq Dar has prayed that the relief provided to him by the Executive Director (SMD) was not proportionate to his claim and that instead of Rs.404,000/-, the actual shares bought on his behalf by Salman Services should be restored to him. In addition, he contended that the Executive Director (SMD) had



failed to adjudicate on his claim of Rs.160,000/- paid by him to Salman Services for purchase of 10,000 shares of PTCL.

7. The case was initially fixed on October 30, 2003 when Mr. Tariq Dar appeared for himself and Mr. Salman Masud appeared on behalf of Salman Services. Mr. Salman Masud however stated that he had only received a hearing notice and had not received a copy of the appeal filed by Mr. Tariq Dar. The Bench directed that a copy of the appeal be provided to Mr. Salman Masud and re-fixed the hearing for 03-12-2003, which was later adjourned to 05-12-2003 due to certain engagements of the Bench. On the date of hearing on 05-12-2003, no one appeared on behalf of Salman Services and instead a letter dated 15-11-2003 written by Mr. Salman Masud was placed before the Bench. In his letter, Mr. Salman Masud had stated that the appeal filed by Mr. Tariq Dar had nothing to do with Salman Services and was a matter between the Commission and Mr. Tariq Dar. He further contended that Mr. Tariq Dar's claim of Rs.160,000/- was non-verifiable as all cash receipts issued by Salman Services' Islamabad office were not accepted by Salman Services as legally valid. He had further stated that no one would be attending the hearing fixed on 05-12-2003 on behalf of Salman Services.
8. Mr. Tariq Dar contended that despite having arrived at the conclusion that his claim has merit and the evidence submitted by him establishes the ownership of the said shares, the Executive Director (SMD) failed to provide him full relief. He argued that instead of value of the shares, the actual shares bought on his behalf should be restored to him. In addition, he stated that he had raised the issue of Rs.160,000/- given to Salman Services for the purchase of 10,000 PTCL shares in his complaint, however the Executive Director (SMD) did not give any ruling on this issue. He



argued that these 10,000 PTCL shares were bought on his behalf by Salman Services and he was provided the cash receipt. He produced the ledger statement evidencing the purchase of the PTCL shares and contended that the actual shares should be restored to him.

9. Mr. Aamir Masood appearing on behalf of the Executive Director (SMD) contended that Mr. Tariq Dar was taking a contradictory stance. At one hand he has argued that no real trading took place and therefore no shares were bought by Salman Services and on the other hand he is praying that the actual shares bought by Salman Services should be restored to him. He stated that the Executive Director had provided adequate relief to Mr. Tariq Dar despite that no element of fraud was discovered in the trading done by Salman Services. He contended that restoration of actual shares would amount to specific performance, which the Commission did not have the power to do so. In addition, as the value of the said shares had increased over the time, restoration would tantamount to granting damages to Mr. Tariq Dar. On the issue of Rs.160,000/- paid by Mr. Dar to Salman Services for purchase of 10,000 PTCL shares, Mr. Aamir after going through papers produced by the Complainant accepted that those may have been overlooked by the Executive Director and these may be considered as valid proof by the Appellate Bench .
10. Considering the relief sought by Mr. Dar against Salman Services, the Bench decided to give Salman Services another opportunity to defend itself despite its letter dated 15-11-2003. The hearing was therefore re-fixed on 14-01-2004 and a hearing notice was issued to Salman Services. The Bench also directed Mr. Dar to present his argument on the issue of specific performance and grant of damages in more detail on next date of hearing. On 14-01-2004, both parties failed to appear before the Bench.





Another opportunity was therefore granted to them and the hearing was fixed on 10-02-2004. On 10-02-2004, Mr. Dar appeared for himself however, Mr. Salman Masud again sent a copy of his earlier letter dated 15-11-2003 stating that this issue did not relate to Salman Services. Mr. Tariq Dar reiterated his earlier arguments on the said date of hearing. However he did not present any arguments on the issue of grant of specific performance.

11. We have heard both the parties and considered their arguments. As far as the issue of imposition of Rs.100,000/- fine and order of full audit of Salman Services is concerned, we have no hesitation in agreeing with the Executive Director. The evidence produced before us and the investigation carried out by the Securities Market Division clearly points to the fact that Salman Services has failed to fulfill the legal requirements laid down by the Securities & Exchange Rules, 1971 and the Broker & Agent Registration Rules, 2001. Resultantly it has caused loss to its investors. It has failed to produce proper documents evidencing or supporting the transactions despite repeated opportunities provided by the Executive Director. Its decision not to contest the release of Rs.404,000/- to Mr. Dar also points towards the lack of proper record and documentation of the transactions. Its effort to shift the blame upon its agent Mr. Azad cannot be accepted as a valid defence as Salman Services is legally liable for the acts and omissions of Mr. Azad. We therefore uphold the imposition of fine of Rs.100,000/- and order for special audit by the Executive Director.
12. As for the appeal filed by Mr. Tariq Dar, he has failed to convince us that the actual shares should be restored to him. Mr. Dar's primary allegation against Salman Service is that no real trading took place in his account. He



# SECURITIES & EXCHANGE COMMISSION OF PAKISTAN

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cannot therefore be allowed to argue that Salman Services should restore those shares to him which according to him, were never bought on his behalf. The amount representing the value of the shares given by him to Salman Services has already been granted to him. As for the amount of Rs.160,000/-, we accept the plea of Mr. Dar as the ledger statement and the cash receipts produced before us prove that the payment was actually made by Mr. Dar. Salman Services is therefore directed to pay Rs.160,000/- to Mr. Dar within 15 days of receipt of this order. The Securities Market Division is instructed to ensure compliance of this order.

The appeal is disposed off accordingly.

**(ABDUL REHMAN QURESHI)**  
**Commissioner (Enforcement)**

**(ETRAT H. RIZVI)**  
**Commissioner (Insurance & SCD)**

Announced in Islamabad on March 22, 2004