

Before Commissioner (SMD)

In the matter of Show Cause Notice issued M/S. Sheikh Muhammad Shabbir

Dates of Hearing

September 29, 2020

Order-Redacted Version

Order dated April 6, 2021 was passed by Commissioner (SMD) in the matter of M/S. Sheikh Muhammad Shabbir. Relevant details are given as hereunder:

Nature	Details
1. Date of Action	Show cause notice dated July 09, 2019.
2. Name of Respondent	Sheikh Muhammad Shabbir (the "Respondent")
3. Nature of Offence	Alleged contraventions of <u>Section 94 & 104 of the Futures Market Act, 2016 (the "Act")</u> and <u>Section 22 of the Securities & Exchange Ordinance, 1969 (Now Repealed) (the "Ordinance")</u> .
4. Action Taken	<p>Key findings were reported in the following manner:</p> <p>I have examined the written reply as well as oral submissions of the Respondent and its Authorized Representatives. In this regard, I observe that</p> <p>i. The Respondent was working as a broker of PMEX in his personal capacity and not as a corporate entity. He has closed his business operations and is no more involved in any regulated activity.</p> <p>ii. Defaults attributed to the Respondent, were in context of contravention of regulatory provisions as a broker of PMEX, on the allegations by 9 complainants/claimants mentioned in SCN.</p> <p>iii. Here it is important to determine that whether the claimant is bonafide customer of the Respondent. In this regard, reliance is made on Section 2(14) of Futures Market Act 2016 which states as follows:</p> <p>"customer" means a person on whose behalf a regulated person carries on any regulated activity and includes any person commonly known as an investor;</p> <p>a. Since individuals reflected on serial no I and 6 namely, Al and SAM, didn't opened any account with Respondent to avail</p>

	<p>their services in context of regulated activity, they can't be termed as its customers. Further, the above referred individuals never handed over their money to the Respondent in context of regulated activity. Section 2(16) of Futures Market Act 2016 defines Customer money as follows: "customer money " means money of any currency that, in the course of carrying on his regulated activity, a regulated person holds or receives on behalf of a customer, or which he owes to a customer;</p> <p>b. The individual reflected on serial no 2 namely FI is also not a bonafide customer of the Respondent as he has no account with the Respondent to avail its services in context of regulated activity. Furthermore, as per the agreement dated June 6, 2017, produced during the hearing the FI declared that the allegation/claim was made on the basis of misunderstanding.</p> <p>c. Furthermore, though individual reflected on serial no 5, namely; MMJ opened his account with the Respondent to avail its services in context of regulated activity, thus was a customer of the Respondent but at the same time he never handed over "customer money" to the Respondent. Therefore, Respondent was never in possession</p> <p>d. Three individuals reflected on serial no 3 are a member of one family consisting of father and sons. AAB (father) had no account with Respondent to avail its services in context of regulated activity, so can't be termed as customer of Respondent. Further, AAB also not handed over his money to the Respondent in context of regulated activity. The said individual filed a FIR against M Khurram Shabbir S/o Respondent on alleging that he was co-partner of Abdur Rehman. In that regard, Islamabad High Court upheld the acquittal of Mr. Khurram Shabbir. Moreover, act/dealing, if any, by Mr. Khurram Shabbir, cannot be attributed towards regulated activity of Respondent or make someone customer of the Respondent.</p> <p>e. The other two individuals reflected on serial no 3, namely; SAB and FAB (sons) were bonafide customers of the Respondent and were maintaining account no TRD. Both admitted in their respective amount withdrawal request for withdrawal of funds lying in their accounts, admitted that they have seen their account statements and have found no discrepancy in it. They further acknowledged that all the transactions reported to them were correct and accurate.</p> <p>f. The individual at serial no 7 namely; MAC, in his amount withdrawal request dated June 9, 2017 admitted that he has seen his account statement and has found no discrepancy in it.</p>
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	<p>He further acknowledged that all the transactions reported to him were correct and accurate and he discharges Respondent or its employees from all liability associated with him or his account. Moreover, an Affidavit dated June 9, 2017 reiterated the same and declared that he has received Rs 750,700/- from the</p> <p>Respondent, vide cheque no. 1645253592 against his trading account TRD 1832027 as full and final settlement with respect to its account and the Respondent.</p> <p>Furthermore, in "Deed of indemnity and acknowledgment of document executed and delivered" dated June 9, 2017 the said individual/complainant declared that all amount authorized and received, if any, from time to time from his friends or acquaintances in the name of Respondent, is solely on his responsibility and Respondent is not responsible in any manner. In the said deed, he indemnified the Respondent against any third-party payments. Thus, the Respondent is not liable to any "customer money" with regards to MAC.</p> <p>Here, it is pertinent to note that, the individual at serial no 7, admitted in this statement to investigation officer(s) that he along with Abdur Rehman and another person namely Mr. Talal incorporated a Company namely ATM Consultants (Pvt) Limited to provide investment advisory services to investors. In the said statement, MAC admitted that he was acting as a proxy for some of his friends and family members. It appears that ATM Consultant (Pvt) Limited was being used as a vehicle to allure general public/investors to invest in local/foreign brokerage through an unregulated manner, which is against the provisions of Future Market Act in specific and law of the land in general. The involvement of MAC along with Abdur Rehman in ATM Consultant (Pvt) Limited makes him a dubious character.</p> <p>iv. Respondent's internal controls were deficient as in normal course of business, Respondent should not have ignored the authorization of one person i.e. Abdur Rehman by multiple/different customers for trading in their respective accounts.</p> <p>v. In context of allegations of depriving general public from their funds through employment of deceptive devices through course of business which operated as fraud and/or deception and criminal breach of trust, Commission has already referred the matter NAB, which is looking into the matter in details.</p> <p>In view of the foregoing, available record and submission made by the Authorized Representatives, contraventions of the provisions alleged in the SCN cannot be attributed towards the</p>
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	Respondent. Therefore, in terms of powers conferred under section 94 and section 104 of the Act as well as section 22 of the Ordinance (Now Repealed), I hereby conclude this case without an adverse Order against the Respondent.
5. Penalty Imposed	No Adverse Order
6. Current Status of Order	No Appeal has been filed by the respondents.