



**BEFORE RE-CONSTITUTED APPELLATE BENCH NO. I**

In the matter of

**Appeal No. 36 of 2005**

Tahir Abbas  
House No. 285, 2<sup>nd</sup> Floor,  
Street No. 15, Punjab Colony,  
Khyaban-e-Jami, D.H.A  
Karachi .....Appellant

Versus

1. AMZ Securities (Pvt) Limited  
Saima Trade Towers  
19<sup>th</sup> Floor, Block B,  
I. I Chundrigar Road  
Karachi
2. Director (Securities Market Division) SEC  
.....Respondents

Date of Impugned Order  
2005

July 21,

Date of Hearing  
2005

September 29,

**Present:**

1. Mr. A. M. Shaghil, Advocate and Mr. Tahir Abbas for the Appellant
2. Mr. Shahid Munir and Mr. Nasir J. R. Sheikh for Respondent No. 1
3. Mr. Imtiaz Haider Director (SMD) for Respondent No. 2



## ORDER

1. This order will dispose of appeal No. 36 of 2005 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 by Mr. Tahir Abbas against the order dated 26-07-2004 ("Impugned Order") passed by Mr. Imtiaz Haider Director (Securities Market Division).

2. The brief facts of the case are that Mr. Tahir Abbas (the "Appellant") filed a complaint dated 05-04-2005 with the Securities & Exchange Commission of Pakistan against AMZ Securities (Pvt.) Limited ("AMZ Securities"). In his complaint, the Appellant stated that he was maintaining an account with AMZ Securities since January 2005 for trading in securities. The Appellant alleged that he had sent 4,000 physical shares of Pakistan Petroleum Limited ("disputed shares") on 11-03-2005 through Mr. Shahzad, an employee of AMZ Securities for conversion from physical shares to Central Depository System and subsequent crediting to his CDC sub-account. The Appellant has alleged that these shares were not credited to his account but were sent erroneously to sub-account of Mr. Atif Majeed Shaghil ("Mr. Atif"). The Appellant alleged that despite several requests Mr. Shahzad kept on informing him that he had not received any feedback from the CDC regarding the shares. The Appellant stated that a meeting was held on 05-04-2005 with representatives of AMZ Securities and they admitted their mistake. The Appellant was told that if Mr. Atif, in whose account the Disputed Shares had been wrongfully transferred, confirmed in writing that the Disputed Shares did not belong to him they would be transferred back to the Appellant's account. Mr. Atif did confirm in writing on 05-04-2005, yet the shares were not deposited back into the Appellant's account. The Appellant was subsequently informed that since Mr. Atif's account was in debit, the shares



could not be transferred until after the debit was cleared by him. The Appellant alleged that the shares actually belonged to his friends and they were demanding the price of the Disputed Shares at Rs.320.00 per share, which was the peak price of the disputed shares. The Appellant, in his complaint, demanded the return of the Disputed Shares and the payment of the cost difference in the value of the shares by AMZ Securities.

3. The complaint was heard by Director Securities Market Division (Respondent No. 2 herein) who dismissed it vide his Impugned Order on the following grounds.

(a) That the Appellant and Mr. Atif were close acquaintances and the Appellant had authorized Mr. Atif to operate his account, a fact which was intentionally suppressed in the complaint.

(b) That the Physical Share Receipt Register maintained by AMZ Securities shows the receipt of shares from Mr. Atif.

(c) That AMZ Securities' contention that the Disputed Shares were deposited by Mr. Atif in order to carry out further trades by placing the said shares in margin seems to be supported and corroborated by not only the account statements submitted by AMZ Securities, but by the heavy trading done by Mr. Atif following the deposit of the Disputed Shares.

(d) That Mr. Atif received a statement of his CDC sub-account on 25-03-2005 which showed the Disputed Shares as pending. If Mr. Atif was not the rightful owner, he would have immediately informed AMZ Securities, rather than waiting until 05-04-2005.



(e) That the trail of the Disputed Shares from the available record does not suggest that the shares were placed in Mr. Atif's account due to an error.

4. Not being satisfied with the findings of Director (SMD) in the Impugned Order, the Appellant filed the instant appeal before us. The appeal was heard on 27-09-2005. Mr. Abdul Majeed Shaghil, Advocate appeared for the Appellant. He 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. Mr. Abdul Majeed argued that the Appellant and Mr. Atif were colleagues and Mr. Atif was included as an additional signatory to the Appellant's account as the latter had little knowledge of trading and needed advice from time to time. He claimed that the time-line inconsistencies noted by the Director (SMD) in the Impugned Order were due to typographical errors. The complaint was sent on 05-05-2005 and not 05-04-2005 as erroneously stated by the Appellant and the meeting held on 08-04-2005 was a subsequent meeting and the first meeting took place on 05-04-2005. He pointed out that Mr. Atif had been removed as an additional signatory to the Appellant's account since 22-03-2005, and stated that at no time had these facts been intentionally suppressed by the Appellant.

5. Mr. Abdul Majeed further argued that the procedure for deposit of the Disputed Shares in physical form and their conversion into CDC accounts had been used several times by the Appellant previously, and was a common practice with AMZ Securities. Hence there was no foundation for the argument that the Disputed Shares were correctly transferred into Mr. Atif's account. If it were true then all previous share conversions would also have been deposited in the latter's account. Mr. Abdul Majeed produced copies of transfer deeds and share certificates of different companies which had been



handed over by the Appellant to AMZ Securities for conversion into CDS shares and depositing into his account. All these copies carried the Appellant's initials on right hand top of the copies along with acknowledgment of receipt and date by Mr. Shahzad in his hand. Likewise, Mr. Abdul Majeed also produced copies of transfer deeds and share certificates of the Disputed Shares which also carried the initials and acknowledgement by Mr. Shahzad. Mr. Abdul Majeed argued that this was conclusive evidence of the fact that the Disputed Shares had been handed over to AMZ Securities by the Appellant and not Mr. Atif.

6. Mr. Abdul Majeed, counsel for the Appellant further argued that Director (SMD) had concluded in the Impugned Order that, had AMZ Securities followed the proper legal procedure, the dispute would not have arisen. In other words, AMZ Securities had acted illegally and violated statutory requirements. He contended that the Director had based his decision on typing errors and concealment of alleged relationship between the Appellant and Mr. Atif. However, none of these grounds disprove the Appellant's contention that the Disputed Shares were handed over to AMZ Securities by him for depositing in his own account or for that matter, prove AMZ Securities' contention that the Disputed Shares were handed over by Mr. Atif for depositing in his own account. Mr. Abdul Majeed stated that Director (SMD) further relied on Shares Receipt Register of AMZ Securities to come to the conclusion that the Disputed Shares had been deposited by Mr. Atif and not the Appellant. However, in the absence of the depositor/customer acknowledgement of deposit on the Shares Receipt Register, the same cannot be relied upon as evidence.

7. Mr. Abdul Majeed contended that AMZ Securities had wrongly deposited the Disputed Shares in Mr. Atif's account and after realizing that Mr. Atif's account was in debit, wanted to use the Disputed Shares to settle



his liability. He prayed that the Impugned Order be set aside and AMZ Securities be directed to return the Disputed Shares to the Appellant and also pay the difference in price of the shares prevalent as on 16-03-2005 and the date of order.

8. Mr. Shahid Munir, appearing on behalf of AMZ Securities, reiterated the contentions raised in the earlier hearing before Director (SMD). He stated that the Disputed Shares were deposited by Mr. Atif and not the Appellant, and Mr. Atif had verbally instructed AMZ Securities to convert the shares and deposit them in his account. He further stated that Mr. Atif was one of the persons authorized to operate the Appellant's account which proves that they are close associates. He stated that the Appellant made payment on two occasions for the CDC account of Mr. Atif to AMZ Securities from his bank account maintained with National Bank of Pakistan. He contended that Mr. Atif had suffered heavy losses in his account and had fabricated the plan with the Appellant to save the Disputed Shares from being sold by AMZ Securities to clear his dues. He prayed that the appeal be dismissed and the Impugned Order may be upheld.

9. Mr. Imtiaz Haider, Director (SMD) appearing for himself reiterated his findings in the Impugned Order. He stated that the Appellant had been unable to provide any evidence which conclusively proves that the Disputed Shares were deposited by him rather than by Mr. Atif. Whereas the documents including the Share Deposit Register and the statement of account of Mr. Atif prove that the Disputed Shares had been deposited by Mr. Atif. He contended that the heavy trading done by Mr. Atif after the deposit of the Disputed Shares points towards the fact that Mr. Atif was using them as security for trading purposes. He stated that the Appellant had concealed his relationship with Mr. Atif in his complaint. They had been trading in each other's accounts and had also made payments for each other. He stated that



there were too many inconsistencies and contradictions in the Appellant's statements. He also prayed that the Impugned Order should be upheld and the appeal be dismissed.

10. We have heard the matter in detail and also perused the documents on record. We tend to agree with Director (SMD) that there is insufficient evidence to prove beyond reasonable doubt as to whom the Disputed Shares belong to. The situation as been exacerbated, if not caused by the failure of AMZ Securities to maintain proper record as required under the provisions of law. This fact has also been recorded by Director (SMD) in the Impugned Order. However, after looking at the available evidence and the reasoning on which the Impugned Order is based, we are unable to arrive at the same conclusion as the Director (SMD).

11. Director (SMD) has relied on the Share Certificate Register and the statement of account of Mr. Atif to conclude that these shares were deposited by Mr. Atif and not the Appellant. In our opinion however, these two facts only prove that the Disputed Shares were deposited in Mr. Atif's account and not the identity of the person who deposited them or, the instructions given by that person. The Share Deposit Register of AMZ Securities, in the absence of acknowledgement by the depositor on the said register itself, cannot be relied upon to prove that the Disputed Shares were deposited by Mr. Atif and not by the Appellant. Similarly, the alleged heavy trading done by Mr. Atif after the deposit of the Disputed Shares in his account, or his failure to notify AMZ Securities immediately of the erroneous deposit, cannot be taken as proof that these shares were not erroneously deposited in Mr. Atif's account. It is possible that Mr. Atif was unaware, or for that matter, was being less than honest. However, that should not deprive the true owner of his property. If the Appellant is indeed the person who deposited the Disputed Shares with AMZ Securities, he would certainly be deprived of them. On the other hand,



if AMZ Securities has a claim against Mr. Atif for any dues arising in the latter's account, that claim is not extinguished and the money can still be recovered by AMZ Securities.

12. As opposed to the above, the Appellant has produced before us copies of transfer deeds and share certificates of different companies, including the Disputed Shares, which had been handed over by the Appellant to AMZ Securities for conversion into CDS shares and depositing into his account. All these copies contain the signature and acknowledgement of receipt by Mr. Shahzad, an employee of AMZ Securities. The copies also contain the initials of the Appellant written on the right hand top of the copies allegedly by Mr. Shahzad. This evidence has not been rebutted by AMZ Securities. Their only argument against this evidence is that the Appellant and Mr. Atif are associates and, as Director (SMD) found in the Impugned Order, are intermingled and co-mingled. However, in our view the receipts issued under the signature of AMZ Securities' employee/agent cannot be refuted by simply alleging that there exists a relationship between the Appellant and Mr. Atif. It could have been easily refuted, if AMZ Securities was keeping proper documentation and getting acknowledgement of the depositor on the Share Deposit Register. If AMZ Securities had issued and maintained proper receipts as required under Rule 8(a) of the Securities & Exchange Rules, 1971 to the person depositing the Disputed Shares, this situation would not have arisen. In such a situation, AMZ Securities cannot be allowed to get a benefit by relying on its own wrong. This is a time tested principle of law.

13. AMZ Securities has not provided any evidence to support its contention that the Disputed Shares were deposited by Mr. Atif. When Mr. Atif has himself stated and written to AMZ Securities that the Disputed Shares do not belong to him, then in the absence of any proof, there remains no reason for AMZ Securities to insist that they do belong to him. As stated





above, AMZ Securities will still have a legitimate claim against Mr. Atif for any dues owed by him.

14. This case highlights and reinforces the need for the brokers to maintain proper documentation as required by laws and regulations in order to minimize disputes arising between them and their customers. The brokers also owe a duty of good faith, trust and confidence to its customers. Where they fail to fulfill their statutory and fiduciary duties, the benefit of doubt if any, should go to the customer/investor.

15. For reasons stated above, we accept the appeal. AMZ Securities is directed to credit 4000 shares of Pakistan Petroleum Limited to the Appellant's account within 7 days of the date of this order. There shall be no order with regards to the difference in price of the shares prevalent as on 16-03-2005 and the date of order, or costs as prayed by the Appellant.

15. The appeal is disposed off.

**(SALMAN ALI SHAIKH)**  
Commissioner

**(RASHID I. MALIK)**  
Commissioner

Announced in Islamabad on 5<sup>th</sup> January 2006