



BEFORE RE-CONSTITUTED APPELLATE BENCH NO. I

In the matter of

Appeal No. 44 of 2006

Tahir AbbasAppellant

Versus

1. AMZ Securities (Pvt) Limited
Karachi
2. Director (Securities Market Division) SECRespondents

Present:

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



ORDER

1. This order will dispose of appeal No. 44 of 2006 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 by Mr. Tahir Abbas.

2. The brief facts of the case are that Mr. Tahir Abbas (the “Appellant”) filed a complaint dated 05-04-2005 with the Commission against AMZ Securities (Pvt.) Limited (“AMZ Securities”). 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 (PPL) 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. These shares were not credited to his account but were sent erroneously to sub-account of Mr. Atif Majeed Shaghil. AMZ Securities refused to credit the Appellant’s account and stated that since Mr. Atif’s account was in debit, the shares could not be transferred until after the debit was cleared by him. This complaint was heard by Director (Securities Market Division) (Respondent No. 2 herein) who dismissed it vide his order dated 21-07-2005. Not being satisfied with the findings of Director, the Appellant filed Appeal No.36 of 2005 before the Appellate Bench. The Bench vide its order dated 05-01-2006 accepted the appeal and directed AMZ Securities to credit 4000 shares of PPL to the Appellant’s account within 7 days of the date of the order.



3. While the Appeal No. 36 of 2005 was still pending before the Appellate Bench, the Appellant sent another complaint dated 22-10-2005 alleging that AMZ Securities had frozen his account and refused to provide money from the balance maintained therein, or issue the Account Balance Statement to him. He provided a copy of the letter dated 30-09-2005 written by AMZ Securities to him wherein it stated that in view of the allegations made by him before different forums, including the Appeal No.36/2005, the management of AMZ Securities had decided to discontinue all transactions in his account, and were considering filing suit for damages. The letter further stated that all expenses incurred by AMZ Securities on defending cases before the Commission including legal advice, traveling and daily allowances and waste of professional man hours would be deducted from the Appellant's account. His second complaint was sent to AMZ Securities for their comments by the Securities Market Division of the Commission. In its reply dated 07-11-2005, AMZ Securities alleged that it had received certain monetary claims against the Appellant including one from Mr. Abdul Majeed Shaghil (Appellant's counsel). It further stated that the Appellant had maligned AMZ Securities by making false claims in his earlier appeal No.36/2005. For these reasons they decided to freeze the account. They further relied on the terms and conditions of the Account Opening Form which stated that AMZ Securities had a lien on the clients account for the discharge of any obligations of the client. This second complaint of the Appellant was also rejected by Director (SMD) vide his letter dated 25-04-2006 on the ground that the subject matter of the complaint was sub-judice before the Hon'ble High Court in an appeal (CMA No.8 of 2006) filed by AMZ Securities against the order of the Appellate Bench in appeal No.36/2005. The present appeal has been filed by the Appellant against this decision of Director (SMD).

4. The Appellant, appearing for himself on the date of hearing of appeal, reiterated the facts mentioned above. He stated that AMZ Securities, in



violation of Central Depository Company Regulations 1997, had failed to provide him the holding balance statement of the sub-account as on 10th day of every month. He was provided the statement for the first time on 10-09-2005 on his specific request. This statement showed that 1250 shares of Bank Alfalah, 720 shares of NBP, 451 shares of OGDC and 1000 shares of SSGC were lying in his account. In addition there was a credit balance of Rs.140,981.16 in his account No.127000800. The Appellant requested AMZ Securities to release Rs.100,000/- from the credit balance available in his account, which request was however declined vide letter dated 30-09-2005 mentioned above. He stated that AMZ Securities had no reason or right to freeze his account and it was done with mala fides in order to seek revenge for filing a complaint and the appeal before the Appellate Bench as admitted by AMZ Securities in its letter dated 30-09-2005. He stated that there were no complaints against him for which AMZ Securities could legally freeze his account. He argued that AMZ Securities had frozen the account so as to enable it to make illegal deductions from the account on its own whims and desires as stated in its letter dated 30-09-2005.

5. He challenged AMZ Securities' stance that under the terms and conditions of the Account Opening Form, it had a lien for discharge of obligations and indebtedness, and had a right to transfer shares from and to any other account of the client, including accounts in which client had an interest. He further challenged the legality of the terms and conditions of the Account Opening Form of AMZ Securities stating that these were in violation of Standardized Account Opening Form implemented by Karachi Stock Exchange vide Regulation 74 of General Rules & Regulations of KSE 2004.

6. Mr. Abdul Majeed Shaghil appearing for the Appellant denied that he had any claim against the Appellant as alleged by AMZ Securities in its reply to the Commission. He prayed that the appeal may be accepted and AMZ



Securities may be directed to release the amount lying in the Appellant's account.

7. Mr. Nasir Shaikh appearing on behalf of AMZ Securities (Respondent No.1) stated that the present matter was connected with the appeal pending before the Hon'ble High Court and therefore the Impugned Order was correct. He reiterated the stance taken by AMZ Securities in its letter dated 30-09-2005 to the Appellant that the account had been frozen due to his obligations towards AMZ Securities. He insisted that AMZ Securities had a lien over the account and all expenses including legal expenses incurred by AMZ Securities in defending the complaints and appeals filed by the Appellant and/or the AMZ Securities could be deducted from the balance available in the Appellant's account. He prayed that the appeal may be dismissed and the Impugned Order may be upheld.

8. We have heard the parties and also perused the documents on record. The basic reason for which this second complaint of the Appellant was not entertained by the Securities Market Division was that the matter is connected with the earlier issue decided by the Appellate Bench vide its order dated 05-01-2006 against which an appeal (CMA No.8 of 2006) has been preferred by AMZ Securities before the Hon'ble Sindh High Court. The actual complaint of the Appellant along with all the issues raised therein, were therefore never examined by the Department.

9. We however do not agree with the Department that the issues raised by the Appellant in his second complaint are sub-judice before the Hon'ble High Court. The first complaint of the Appellant, which was decided in his favor by the Appellant Bench in appeal No.36 of 2005, was only restricted to the issue of deposit of 4000 PPL shares belonging to the Appellant in another account. The Appellate Bench decided that this deposit by AMZ Securities



was wrongful and the shares should be returned to the Appellant. We have examined the pleadings and the documents in the appeal (CMA No.8 of 2006) before the High Court. As expected, it is this decision of the Appellate Bench regarding the 4000 PPL shares which is the subject matter of the appeal and AMZ Securities has prayed for setting aside this order. The principle of *Res subjudice* applies to those parallel proceedings where (i) the subject matter; (ii) the cause of action; and (iii) the relief sought, are the same. It is apparent that, except for the parties, none of these issues are the same in these two proceedings. Similarly, therefore, the suspension of the Appellate Bench's order by the Hon'ble High Court neither has any effect on the issue raised by the Appellant in his second complaint, nor bars the Commission from proceedings against AMZ Securities in other matters.

10. For reasons stated above, we accept this appeal, and remand the case back to the Securities Market Division for a decision on the issues raised in the complaint filed by the Appellant. In addition to the above, the Securities Market Division is directed to examine and give its detailed findings on the following issues.

- (i) Whether a broker has a right to 'freeze' the account of a client? If yes, then under what circumstances.
- (ii) Whether a broker has a right to unilaterally settle any complaints received from third parties against its client, by making payments from the client's account?
- (iii) Whether a broker's lien on a client's account, under the terms and conditions of the Account Opening Form, can be extended to other accounts in which the client has an interest? If yes, then what constitutes as client's 'interest' in another account?
- (iv) Whether costs like legal expenses, traveling and daily allowances and waste of professional man hours etc, incurred by



the broker during legal proceedings if any, can be deducted from the client's account under the terms and conditions of the Account Opening Form?

- (v) Whether a broker has a right to insert additional terms and conditions to the Standardized Account Opening Form implemented by Karachi Stock Exchange? If yes, then to what extent?
- (vi) Any violations of the Rules and Regulations committed by AMZ Securities.

11. Securities Market Division is directed to render its findings and dispose of the complaint, no later than 30 days from the date of this order. This appeal is disposed of in the above manner.

(SALMAN ALI SHAIKH)
Commissioner

(RASHID I. MALIK)
Commissioner

Announced in Islamabad on 8th December 2006