



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
APPELLATE BENCH REGISTRY

BEFORE APPELLATE BENCH NO. II

In the matter of

Appeal No. 63 of 2009

Takaful Pakistan Limited Appellant

Versus

Executive Director (Insurance) Respondent

ORDER

Date of hearing 02-03-10

Present:

For the Appellant:

Ashraf Ali Siddiqui
Muhammad Umer
Sameer uddin Ali Khan

Respondent:

Nasreen Rashid,
Executive Director (Insurance)

Departmental representatives:

Tariq Hussain, Director (Insurance)
Muhammad Kashif Siddique, Joint Director (Insurance)



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
APPELLATE BENCH REGISTRY

1. This order shall dispose of appeal No. 63 of 2009 filed under section 33 of the Securities and Exchange Commission of Pakistan (the “Commission”) Act, 1997 against the order dated 09-10-08 (the “Impugned Order”) passed by the Respondent.
2. Inspection of Appellant under section 59A of the Insurance Ordinance, 2000 (the “Ordinance”) was conducted by Insurance Division of the Commission from 06-04-09 to 10-04-09. The inspection was focused on Amaan Travel & Health Takaful Package (the “Package”), a takaful product launched in October 2008 and sold through Travel Agents Association of Pakistan (“TAAP”). The inspection revealed that the Appellant has failed to meet the requirements of the Ordinance and has completely disregarded the interest of the policy holder. The Appellant adopted misleading and deceptive market conduct to sell the Package and has failed to make the necessary disclosures to the policy holder.
3. Show cause notice dated 15-08-09 (“SCN”) under section 76(1), 76(4), 95 and 100 read with section 76(5) of the Ordinance was served on the Chief Executive Officer and directors of the Appellant. Hearing in the SCN was held on 01-09-09. The Respondent was not satisfied with the response of the Appellant and observed that:
 - a) Proper disclosures were not made to the policy holders by the Appellant and complete information of the Package was not shared with the policy holders.
 - b) The Appellant issued an open policy in the name of TAAP, which was the policy holder and the passengers were the beneficiaries. TAAP was selling the policy through travel agents to passengers and charging



**SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
APPELLATE BENCH REGISTRY**

premium from passengers through hidden charges. If the passenger objected or refused to pay, the travel agent would then give the policy on complimentary basis.

- c) The Appellant did not maintain separate record for the cases in which the passenger had paid the premium and other cases where the travel agent had paid the premium.
4. The case of the Appellant was referred by the Respondent to Shariah Board of State Bank of Pakistan to verify the Shariah based non-compliances. The Shariah Board concluded that there was an apparent non-disclosure of the benefits of the Package and also objected to the treatment of the amount collected as premium during the period from October 2008 to March 2009, as the product was under investigation by the Shariah Board and was not accorded approval during the above mentioned period. The Appellant failed to safeguard the interest of the passengers by practicing misleading and deceptive market conduct during the period from October 2008 to September 2009. The Respondent taking a lenient view in light of the recommendation of the Shariah Board passed the Impugned Order and imposed penalty of Rs. 5 million.
5. The Appellant has preferred the instant appeal against the Impugned Order and the Appellant's representative argued that:
- a) The Respondent misunderstood the scheme that is being operated by the Appellant with respect to the Package. Each travel agent has a two week credit line with the airline in which it has to make the payment to the airline for all the tickets that had been issued by the travel agent on behalf of the airline. The travel agent instead of making payment to each airline separately, makes payment to a central body by the name



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
APPELLATE BENCH REGISTRY

of International Air Transport Association (“IATA”), which processes the payment and then remits it to each airline. In order to provide two week credit line IATA requires a financial guarantee from the travel agent in case the travel agent defaults on its obligations. Previously TAAP, which represents more than 300 travel agents in Pakistan, provided a single large bank guarantee to IATA on behalf of its member travel agents. In 2007 IATA changed the rule and since then it does not accept a single guarantee from a central body or organization and requires a separate guarantee from each travel agent. The new arrangement created problem for majority of small agents who could not afford to provide a bank guarantee or an insurance guarantee on their own.

The Appellants introduced the Package which was agreed to by the travel agents under an agreement dated 11-03-09 between the Appellant and TAAP. Each travel agent purchases the Package for each ticket it issues. Thus, the travel agent pays Rs. 600 to the Appellant for each international ticket. At all times the beneficiary of the package are the passengers. It is up to the travel agent to charge a passenger for the benefits of the Package, or to give it for free. As far as the Appellant is concerned, the Appellant issues the policy to the travel agent for the benefit of passengers, for whom the travel agent pays Rs. 600 to the Appellant, hence the travel agent is the policy holder and the beneficiary of the policy is the passenger.

- b) The Respondent observed in the Impugned Order, that the management accepted default of committing non-compliances, therefore, the defaults are established. It was argued that all



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
APPELLATE BENCH REGISTRY

conciliatory actions undertaken by the Appellant were without prejudice to the fact that it had not committed any violation.

- c) The Respondent revoked the Directive, which shows that the Commission was satisfied with the Package and the Appellant did not file reply to the SCN considering that the issue was settled with the revocation of the Directive.
- d) The fine of Rs. 5 million had been imposed pursuant to section 76(5) of the Ordinance. Section 76(5) of the Ordinance states that:

“Notwithstanding the provisions of the foregoing sub-section, the Commission shall also have the power to levy a fine on the insurer which shall be equal to the lesser of twice the loss determined to be suffered by the policy-holder under the foregoing sub-section and ten million rupees”.

The Respondent could not have imposed a fine of Rs. 5 million as the loss suffered by the policy-holder was not calculated. The figure of Rs. 5 million is arbitrarily imposed and should be waived.

6. The Respondent argued that:

- a) Making proper disclosure of the Package to the passengers was the foremost requirement, which was also identified by the Shariah Board. The Package was sold by the Appellant without making any disclosure and in a deceitful way. The passengers were over charged and in case any passenger objected to the charges, the passenger was informed of



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
APPELLATE BENCH REGISTRY

the Package and the amount was deducted from the invoice. In such an eventuality the Package was given on a complimentary basis.

- b) The efforts to mend the ways of the deceptive practice of the Appellant cannot be termed as conciliatory. Time and again the Appellant was asked to undo the irregularities in the Package, however, the Appellant did not pay heed to the directions of the Commission and finally Directive under section 63 of the Ordinance was passed. The defaults were accepted by the Appellant and it cannot be allowed to back track from the admission in the hearings.
- c) The revocation of the Directive was done on the basis of inspection and assurance of the Appellant that it shall make the required disclosures. The revocation of the Directive does not of itself absolve the Appellants from its past malpractices. Further, even after revocation of the Directive, complaints have been received against the Appellant that it has been selling the Package to passengers without making disclosures.
- d) The penalty was rightly imposed.

7. We have heard the parties. The Appellant has gone at length to explain the Package, however, it seems to have ignored the interest of the policy holder. The Ordinance protects the rights of the every policy holder. The preamble of the Ordinance states:



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
APPELLATE BENCH REGISTRY

“An Ordinance to regulate the business of the insurance industry to ensure the protection of the interest of insurance policy holders and to promote sound development of the insurance industry and for matters connected therewith and incidental thereto...”

The Package may turn out to be a very successful product, but unless and until it complies with the requirements of the Ordinance, especially with reference to the interest of policy holders, it cannot be allowed to operate. The Appellant clearly violated section 76 of the Ordinance by engaging in misleading and deceptive marketing of the Package. The Appellant cannot be absolved from its responsibility and ought to have ensured that the Package was fully disclosed to passengers. The Appellant during the period of contravention i.e. October 2008 to September 2009 misled the policy holders and gained a substantial amount and therefore cannot be let scot free. It has also been brought to our attention that the Appellant after revocation of the Directive again started the practice of misleading passengers, which shows that the Appellant paid no attention to the directives of the Commission. We do not agree with the Appellant’s contention that revoking of the Directive under section 63 of the Ordinance absolves the Appellant from its previous conduct.

8. Section 76 (5) of the Ordinance is reproduced as under:

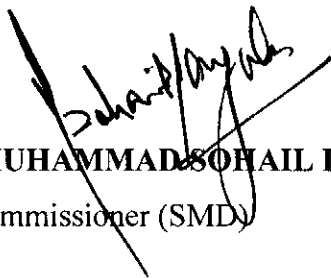
“Notwithstanding the provisions of the foregoing sub-section, the Commission shall also have the power to levy a fine on the insurer which shall be equal to the lesser of twice the loss determined to be suffered by the policy-holder under the foregoing sub-section and ten million rupees”.



**SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
APPELLATE BENCH REGISTRY**

The Respondent has gone on to impose the penalty of Rs. 5 million without ascertaining the loss caused to the policy holder in terms of the above referred section. In absence of the information, we are not in a position to determine whether the fine of Rs. 5 million commensurate with the offence or not.

In view of the above, we uphold the Impugned Order on the merits of the case. The Respondent is directed to re-calculate the fine on the threshold of section 76(5) of the Ordinance and to pass fresh order to that extent.



(MUHAMMAD SOHAIL DAYALA)
Commissioner (SMD)



(S. TARIQ ASAF HUSAIN)
Commissioner (LD)

Announced on: 30.04.10