



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH

In the matter of

Appeal No. 72 of 2019

Al-Meezan Investment Management Limited

Appellant

Versus

1. The Commissioner, SCD, SECP
2. Mr. Ghulam Abbas (Complainant)

Respondents

Date of hearing:

June 4, 2020

Present:

For Appellant:

- i. Mr. Salman Iqbal Bawaney (Counsel)
- ii. Ms. Samina Fazal (Counsel)
- iii. Mr. Mohammad Shoaib, CEO
- iv. Mr. Salman Muslim, Head of Internal Audit
- v. Mr. Talha Anwar, Country Head of Sales

For Respondents:

- i. Ms. Amina Aziz, Director, Adjudication-I, SECP
- ii. Ms. Tanzila Nisar Mirza, Additional Director, Adjudication-I, SECP
- iii. Wazir Zada Yasir Almas Khan, Additional Joint Director, SCD, SECP
- iv. Mr. Ghulam Abbas (Complainant) correspondence

ORDER

1. This Order shall dispose of Appeal No. 72 of 2019 filed by M/s. Al-Meezan Investment Management Limited (the Appellant) against the Order dated September 2, 2019 (the Impugned Order) passed by the Commissioner Specialized Companies Division, SECP (the Respondent No. 1) under Section 282J(l) read with Section 282(M)(l) of the Companies Ordinance, 1984 (the Ordinance), for contravention of the Regulation 38(l)(a) and 38(1)(h)(ii), Regulation 66A(c) & (d) of the Non-Banking Finance Companies and Notified Entities Regulations, 2008 (the Regulations).



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2. The brief facts of the case are that Mr. Ghulam Abbas (the Respondent No. 2) approached the Securities and Exchange Commission of Pakistan (the Commission) with his complainant on April 8, 2019, wherein, it was stated that he had invested an amount of Rs.5 million and Rs.1 million in Meezan Islamic Fund (MIF) on June 27, 2016 and February 3, 2017 respectively, however, value of his investment had decreased to Rs.4.575 million by May 7, 2019 (the Complaint). Thereby, the Respondent No. 2 had incurred a loss of approximately Rs.1.4 million. The Commission referred the Complaint to the Appellant, which was responded directly to the Respondent No. 2 vide Appellant's letter dated April 15, 2019. In its response, the Appellant informed the Respondent No. 2 that his investment was made in line with the Risk Profile Form (RPF) filled and signed by him, at the time of investment.
3. The Respondent No. 2 was not satisfied with the Appellant's response; therefore, the Complaint was referred to the Commission's Specialized Companies Division (Supervision & Enforcement Department) on May 15, 2019. Upon scrutiny it was observed that in RPF serious irregularities were committed by the Appellant in terms of age of Respondent No. 2 and in calculation of ideal investment profile of the Respondent No. 2. In result thereof, instead of a balanced fund, a high-risk product was offered to the Respondent No. 2. Therefore, a Show Cause Notice dated July 8, 2019 (the SCN) was issued to the Appellant, which was responded by the Appellant vide a letter dated July 17, 2019. Hearing in the matter was held on July 25, 2019. The Respondent No. 1 being dissatisfied with the response, imposed a fine of Rs. 50,000/- on the Appellant and directed the Appellant to reimburse the loss sustained by the Respondent No. 2 amounting to Rs. 906,840/-.

Appellant's Arguments

4. The Appellant has challenged the Impugned Order *Inter alia* on the grounds that there was no fault whatsoever on part of the Appellant or its sales staff. The Appellant stated that Mr. Shahzeb (Sales Person) and Mr. Muhammad Amjad (Manager) of the Appellant fully explained to the Respondent No. 2, investment synergies, advantages and risk factors involved in investments. The Appellant contended that the Respondent No. 2 himself opted for investment in capital growth units (Type "B" Units) of MIF, which was documented in RPF and Investment Application Forms (IAF), which were signed by the Respondent No. 2. The Appellant stated that in the presence of documentary evidence and signed investment forms, it cannot be assumed that the Respondent No. 2 was pushed by the Appellant's sales staff to invest in fund not suitable for his requirements.



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5. The Appellant has further stated that the Respondent No. 2 is an educated person and served in army as a Major, therefore, he made his own calculated decision to invest in MIF and furthermore, there is no law, which empowers the Appellant to refuse investors' investment in a desired investment product. The Appellant contended that in the presence of a written document, signed and accepted by the Respondent No. 2, no oral evidence is admissible to challenge the validity and contents of the same. The Appellant has stated that its sales staff had never guaranteed rate of return on investment made by the Respondent No. 2.
6. The Appellant further stated that on November 16, 2016, the Respondent No. 2 inquired as to the process of redemption of units of MIF and the Appellant promptly replied to him vide its email of the same day and even mentioned that the redemption amount would be credited to his bank account within two to three workings days, however, the Respondent No. 2 had not redeemed the units of MIF. The Appellant further contended that the Respondent No. 1 failed to appreciate the fact that if the Respondent No. 2 was not satisfied with the services of the Appellant, should have withdrawn his initial investment rather than investing an additional amount of Rs. 1 Million on February 3, 2017.
7. The Appellant denied the findings of the Impugned Order of mis-selling a high-risk fund (MIF), while ignoring that the Respondent No. 2 was a retired individual. The Appellant stated that in the law there is no restriction for a retired army officer of 56 years old to invest in an equity fund. The Appellant contended that even the Offering Document which is approved by the Commission, has no such restriction regarding retired individuals investing in equity funds.
8. The Appellant stated that it has not violated the requirements of the Ordinance and the Regulations and had acted diligently and with full care and caution, however, if an investor prefers a particular choice of investment and subsequently changes his mind, it does not imply that an Appellant had not taken reasonable care to ensure suitability to the scheme. The Appellant stated that proceedings of the SCN and Impugned Order are unlawful because the Respondent No. 2 was not called for hearing by the Respondent No. 1 and if this Appeal is allowed, it will jeopardize the interest of the Appellant and ruin the development and growth of mutual funds industry in Pakistan. The Appellant added that this is also contrary to the provisions of role of the Commission as enshrined in clause f of sub Sections 4 and 20 of the SECP Act, 1997.



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9. The Appellant stated that the Respondent No. 1 has failed to appreciate the fact that the Respondent No. 2 had invested in MIF in June, 2016 and never mentioned about personal needs and commitments and raised this issue vide his email of December 14, 2018 and then through the Complaint.

Respondents' Arguments

10. The Respondent No. 1 has rebutted the grounds of Appeal and stated that to influence investment decision of the investors, it is a practice of the sales agents to highlight the returns without explaining the associated risks and potential downside of investing in mutual funds. The Respondent No. 1 further stated that sales agent should have documented the conversation with the customer (The Respondent No. 2) as abundant caution. The Respondent No. 1 denied the Appellant's assertion that mis-selling was not committed because a number of complaints have been received with regard to mis-selling by the Appellant, and the Appellant has also recently been issued a show cause notice followed by an order in a similar matter. The Respondent No. 1 stated that a retired army officer who was trying to find avenues to invest his lifetime savings cannot be expected to be completely conversant with risks associated with equity mutual funds. It was the responsibility of the sales agent to adequately guide the Respondent No. 2 as to the suitability of the fund, in accordance with his actual risk profile.
11. The Respondent No. 1 stated that the Appellant had ignored the need to carryout adequate customer due diligence and advise the investor according to his risk profile. The Respondent No. 1 stated that even if the customer wanted to invest in a high-risk product, onus of proof whether due diligence was exercised and Respondent No. 2 was advised regarding associated risks, lies upon the Appellant, which was not provided. Furthermore, Respondent No. 1 denied the Appellant's assertion that oral evidence was preferred over the written documents/evidence. Respondent No. 1 stated that the Impugned Order does not imply that there is any limitation or restriction on investment by a retired army official, however, a retired individual looking for avenues to invest his life time savings, having limited resources, should have been dealt with a high level of due diligence. The Respondent No. 1 stated that the Respondent No. 2 was a retired individual with limited resources and purpose of his investment was fulfilment of specific personal needs and commitments, however, the Appellant had failed to offer appropriate investment solution to him.
12. The Respondent No. 2 *inter alia* levelled allegations of fraud and misrepresentation on Appellant and claimed that he had been deprived from his hard-earned money due to the Appellant's inefficiency and



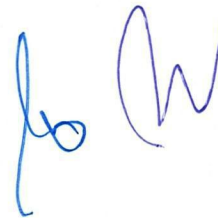
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lack of professionalism. The Respondent No. 2 alleged that Mr. Shahzeb had failed to honor his request to withdraw investment around July, 2017. The Respondent No. 2 stated that on October 18, 2017 he talked to the Appellant's CEO, Mr. Shoaib, who failed to address his grievance. The Respondent No. 2 stated that the Respondent No. 1 has taken a lenient view towards grave violations committed by the Appellant and instead of imposition of the maximum fine, a minimum fine of Rs. 50,000 had been imposed.

13. The Respondent No. 2 stated that he is an educated person but had no expertise to understand the dynamics of mutual funds, therefore, relied upon the Appellant and its sales staff but they committed mis-selling. The Respondent No. 2 stated that the Appellant should ask its sales staff not to predict future return on investment that mislead investors decisions. The Respondent No. 2 stated that the Appellant and its sales staff had not fulfilled verbal commitments regarding guarantee returns. The Respondent No. 2 alleged that Mr. Shahzeb and Mr. Muhammad Amjad are involved in mis-selling and they stopped me from investing in Pakistan National Savings and ensured higher returns on my investment then the Pakistan National Savings. The Respondent No. 2 stated that the Appellant should have invested my investment where they can serve my interest.
14. The Respondent No. 2 stated the Appellate Bench (the Bench) has failed to decide this Appeal within 45 days, as required under Rule 17(3) of the SECP Appellate Bench Rules, 2003, therefore, favored the Appellant. The Respondent No. 2 prayed to modify the Impugned Order and ask the Appellant to refund his entire investment with optimal return of 22% per year. The Respondent No. 2 further requested to order the Appellant to compensate for the financial and mental agony suffered by him.
15. The Respondent No. 2 prayed to proceed against the Appellant and its senior management under the other provisions of the laws governed by the Commission and general penal laws. The Respondent No. 2 stated that he is a retired person and object of his investment was to arrange funds for his personal needs and commitments, however, due to unethical and unprofessional conduct of the Appellant and its sales staff, his investment objective has been defeated.

Analysis of Parties Arguments by the Appellate Bench

16. The Bench has heard the parties and perused the record. The Appellant's representative reiterated the grounds of Appeal, whereas, the Respondent No. 1 prayed to dismiss the Appeal and reiterated the findings of the Impugned Order. The Respondent No. 2 reiterated his rebuttal arguments and stated that RPF and IAF were signed by him, however, the said Forms were filled by the Appellant's sales staff.
17. The Bench is of the view that the purpose of the RPF is to determine the suitability of a person for certain investments, however, the Appellant has failed to proceed in a required manner and in result thereof, the Respondent No. 2 was admitted to high risk equity fund (MIF). The Bench has observed that at the time of initial investment, the Respondent No. 2 was 56 years old (as per the RPF), however, the Appellant had recorded an incorrect age of the Respondent No. 2 and placed him under the age bracket of '40-50' in the RPF, hence, instead of a score of '2', he was assigned a score of '3'. The Bench has also reviewed the contents of Annexure "B" (RPF) of the Appeal and observed that irrespective of incorrect entry of age, the Respondent's No. 2 overall score was 32, therefore, he should had been offered a balanced fund, however, contrary to the calculations of the overall score of RPF, the Respondent No. 2 was admitted in the aggressive equity fund. The Bench has noticed that a minimum RPF score of 33 was required to be admitted in the aggressive equity fund, therefore, the record is clear that the Appellant had failed to proceed in accordance with the overall score of the Respondent No. 2, hence, committed mis-selling.
18. The Bench endorse the Appellant's stance that there is no specific law requiring it to refuse investment priority of the investor, however, the Appellant had ignored the object of RPF and failed to ensure correct and appropriate entries in RPF. The Bench has no doubt that the Appellant had failed to understand the object of RPF and admitted the Respondent's No. 2 investment in MIF. The Bench is of the view that RPF was not a mere formality rather it was a key document to determine the investment tolerance level of Respondent No. 2, however, the Appellant's sales staff had committed serious irregularities which are considered as mis-selling. The sanctity of the RPF cannot be undermined and it appears to the Bench that the Appellant also has no mechanism to check and verify the accuracy and suitability of data provided by the sales staff to avoid incidents of mis-selling. The Bench endorse Respondent's





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No.1 assertion that if Respondent No. 2 desired to invest in a high-risk product, then, this fact should have been incorporated in RPF, however, the Appellant had failed to exercise due diligence in this regard. The Bench has also observed that the Appellant has failed to provide any documentary evidence that it had conveyed possible risks regarding investment in MIF to the Respondent No. 2.

19. The Bench has examined the record, which shows that the Respondent No. 2 invested Rs. five million in MIF on June 27, 2016, and thereafter from September 2016 he continuously raised concerns over the performance of MIF. The Bench has perused the record which revealed that on November 16, 2016 investment redemption procedure was communicated to the Respondent No. 2 by Mr. Muhammad Shahzaib, via email. However, the Bench noted that instead of proceeding with the redemption procedure, the Respondent No. 2 further invested one million in MIF on February 3, 2017. The Bench is of the view that if Respondent No. 2 was not satisfied with the performance of the Appellant since September 2016 then he should not have made any further investment. Therefore, to decide this Appeal, the Bench will consider only such facts, which emerged on or before November 16, 2016 (the date redemption procedure of investment was communicated to the Respondent No. 2 by the Appellant's representative). The Bench has no doubt that Respondent No. 2 has sustained a loss due to mis-selling and the Appellant had failed to carry out risk profiling of the Respondent No. 2 in a required manner, which resulted in mis-selling. However, the Respondent No. 2 also failed to proceed in a vigilant manner and left RPF columns unchecked, while investing in MIF. The RPF should have been filled by the Respondent No. 2, however, he failed to discharge his responsibility, which resulted in mis-selling by the Appellant.

20. The Bench reject the Appellant's plea that investment in MIF was a calculated decision of Respondent No. 2. The Bench has perused Annexure "B" (RPF) of the Appeal, which shows that while answering the question regarding "level of knowledge of investment and financial markets", Respondent No. 2 had stated that he has "basic" knowledge. Therefore, we have no doubt that it was not a decision of Respondent No. 2 rather he was pushed by the Appellant's sales staff towards aggressive equity investment opportunity, without intimating him associated risks. The Bench also reject the Appellant's plea that the Impugned Order was passed on the basis of oral evidence and written evidence was not considered. As a matter of fact, Respondent No. 1 had passed the Impugned Order on the basis of the RPF, which is a written document/Form, therefore, the Impugned Order was passed after considering all facts and documentary record. The Bench is of the view that the Appellant had not acted in the best



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interest of Respondent No. 2 and failed to ensure reasonable care regarding suitability of investment product offered to Respondent No. 2.

21. The Bench has also perused the written comments of Respondent No. 2 wherein, he has levelled allegation of fraud and misrepresentation against the Appellant, however, we find no substance in such allegations. On the other hand, the Bench has no doubt that by admitting investment of the Respondent No. 2 in the aggressive equity fund, the Appellant had committed mis-selling. The Respondent No. 2 has prayed to enhance the quantum of fine and compensation, however, the Bench find no reason to interfere with the findings of the Impugned Order. As per the facts of the case findings of the Impugned Order with regard to fine and compensation are adequate and appropriate.
22. The Bench cannot accept Respondent's No.2 assertion that he relied upon verbal commitments of the Appellant and its sales staff, regarding higher rate of return on investments. The Bench believes that it appears from the aforestated assertion that Respondent No. 2 had also not acted vigilantly to protect his own interest and relied upon alleged verbal commitments of guaranteed high profits.
23. The Bench is of the view that to protect the growth of mutual funds or other regulated activities, the Commission cannot overlook the violations committed by the regulatees and especially when cases of investor exploitations by the regulatees are evident. The Bench is of the view that as per the requirements of the Securities and Exchange Commission of Pakistan Act, 1997, the Commission has the responsibility to protect both, whether it is a regulated entity or the investor, therefore, we hereby reject the Appellant's plea that dismissal of this Appeal will jeopardize the interest of the Appellant and ruin the development and growth of mutual funds industry in Pakistan.
24. The Bench is of the view that the Respondent No. 1 presumption regarding possible objective of investment i.e. "personal needs or commitments" is not admissible because the Respondent No. 2 had failed to substantiate this claim through any corroborative documentary evidence. Furthermore, the Respondent No. 2 prayer to proceed against the Appellant or its senior management under the laws governed by the Commission or under other penal laws is not tenable because proceeding of the Impugned Order and this Appeal are subject to the allegations contained in the SCN. Furthermore, we reiterate the analysis contained in para 19



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of this order that if the Respondent No. 2 was not satisfied with the services of the Appellant, then he should not have made any further investment.

25. The Bench reject Respondent's No. 2 objection that the Bench has favored the Appellant and failed to decide this Appeal within forty-five days, as required under the that Rule 17(3) of the Securities and Exchange Commission of Pakistan (Appellate Bench Procedure) Rules, 2003, because the time limit provided under the aforesaid Rule is not mandatory, rather it is directory in nature and is subject to procedural possibilities and requirements, including removal of deficiencies, availability of parties and the Bench.

26. In view of the forgoing, we hereby dismiss this Appeal, without any order as to cost.

(Shauzab Ali)

Commissioner (SMD)

(Shaukat Hussain)

Commissioner (Insurance, C&CD)

Announced on: **27 AUG 2020**