



Securities and Exchange Commission of Pakistan

BEFORE APPELLATE BENCH NO. I

In the matter of

Appeal No. 13 of 2010

Lahore Stock Exchange (Guarantee) Limited
through its Managing Director

...Appellant

Versus

Director [ICW], Securities Market Division

...Respondent

Date of Hearing

16/01/15

ORDER

Present:

For the Appellant

1. Mr. M. Asim Aziz (Advocate)

Respondent

1. Mr. Tahir Mahmood Kiani, Deputy Director (SMD)



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1. This order is in appeal No. 13 of 2010 filed under section 33 of the Securities and Exchange Commission of Pakistan (the "Commission") Act, 1997 ("SECP Act") against the order (the "Impugned Order") dated 02/02/10 passed by the Respondent.
2. The brief facts of the case are that Lahore Stock Exchange (Guarantee) Limited had forwarded and recommended registration of M/s Universal Equities (Pvt) Ltd (the UEL) as broker vide letter No. LSE 2013 dated 21/05/09 under the Broker and Agents Registration Rules 2001 (the "Rules") to the Commission. The Respondent was asked vide letter dated 29/05/09 to seek clarification from the member regarding non submission of application for renewal and the Appellant was also asked to inform as to when the trading terminal was switched off after the expiry of the certificate of registration. No response was received from the Appellant thereafter another reminder dated 15/06/09 was issued. The Respondent vide letter no.20883 dated 18/06/09 intimated that the terminal of the UEL was switched off on 16/06/09. The certificate of registration as a broker was granted to UEL under Rule 5 of the Rules by the Commission on 24/07/07. The said certificate of registration was valid for one year under Rule 5(2) of the Rules and accordingly expired on 23/07/08. UEL failed to apply for renewal of the said certificate of registration on or before the above-mentioned date. However, an application dated 21/05/09 for grant of fresh certificate of registration to UEL was duly forwarded by the Appellant. It has, therefore, transpired that UEL was allowed trading by the Appellant without renewal of its registration in violation of regulation 6.1.1 and 6.1.2 of Unified Trading Systems Regulations ("UTS regulations") and section 5A of the Securities and Exchange Ordinance, 1969 (the "Ordinance").
3. Show Cause Notice dated 17/11/09 (SCN") was issued to the Appellant. Hearing on the matter was held on 10/12/09. Mr. Abid Aziz Sheikh, Advocate Supreme Court of Pakistan and Mr. Ahmed Hasan Khan, Chief Regulatory Officer ("Representatives")



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appeared on behalf of the Appellants and made submissions already mentioned in its written reply submitted earlier through.

4. The Respondent dissatisfied with the response of the Appellant held that the Honourable Appellate Bench order of the Commission vide appeal No. 11 of 2003, it had held that “no broker can do trading after the expiry date of certificate of registration.” Therefore, a penalty of Rs. 1,000,000 was imposed on the Appellant under section 22 of the Ordinance.
5. The Appellant has preferred the instant appeal against the Impugned Order. The Appellant argued that when the registration was not renewed, it is deemed to have been refused under rule 5 of the Brokers and Agents Registration Rules, 2001 (the “Rules”), however, no intimation whatsoever was sent by the Commission to LSE that UEL’s registration has not been renewed, therefore, it should not deal in securities as broker under rule 6 of the Rules and its trading terminal be switched off. In the absence of such intimation, by the Commission, no action was taken by LSE in the matter and the contravention of the Rules by LSE was not willful. UEL submitted its broker registration application to LSE on 21/05/09, which was forwarded to the Commission under Rule 3(4) of the Rules on same day on 21/05/09. The Commission neither rejected nor allowed the broker registration application but sent a letter dated 29/05/09 and directed LSE to seek explanation from the member for non-submission of broker registration application before 24/07/09. LSE in compliance, forwarded the Commission’s letter dated 29/05/09 to UEL vide letter dated 01/06/09 as a show cause notice before taking adverse action against UEL. Thereafter, LSE waited for UEL’s reply to the Commission’s letter or instructions from the Commission on broker registration application before taking further action in the matter. The Commission, vide letter dated 15/06/09 intimated to LSE, upon which the terminal of UEL was switched off on 16/06/09.



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6. The Respondent argued that the Appellant being a front line regulator is required to give recommendation to the Respondent at the time of renewal/registration. Without recommendation of the exchanges as provided in Form A of First Schedule of the Rules, no application in this regard is entertained by the Respondent. As per arrangement envisaged under the Rules, all the registration application and subsequent renewals are to be routed through respective stock exchanges. This ensures that stock exchanges as front line regulator are aware with respect to registration, renewal and expiry of a broker. In the instant case, the Appellant should have taken notice in May 2008 when no renewal application was received from UEL and their trading terminal was operational without registration. The Appellant should have taken steps to monitor compliance with its regulations. With regard to the intimation of the Respondent regarding refusal of registration of UEL, it was not a matter of renewal of registration of UEL. In the instant case, UEL did not apply for renewal of registration but traded in securities during 10 months after expiry of registration. Therefore, the Respondent's intimation of refusal of registration to UEL under rule 5(3) of the Rules does not arise. The correspondence referred by the Appellant is irrelevant as the said correspondence was in relation to renewal of their registration on time and non-submission of application for renewal. The Appellant was responsible to act in accordance with UTS Regulations and should have disallowed trading when registration of a brokerage house expired, which, in the instant case, the Appellant failed to do so.

7. We have heard the arguments. Rule 5, 7 of the Rules, Regulation 6.1.1 of UTS and sections, 5(A) and 22 of the Ordinance are reproduced for ease of reference:

Certificate of registration - (1) The Commission, if it is satisfied that the applicant is eligible for registration as a broker, and that it shall be in the interest of the stock market to do so, may grant certificate of registration to the applicant in Form B as set out in the First Schedule.

(2) The certificate of registration of a broker shall be valid for one year.



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(3) *The Commission shall send an intimation of registration under sub-rule 1) to the concerned stock exchange or stock exchanges.*

(4) *No application made under sub-rule (1) of rule 3 shall be refused except after giving an applicant a reasonable opportunity of being heard.*

(5) *In case the Commission refuses the grant of certificate of registration on to an applicant after providing an opportunity of being heard under sub rule (4), the decision shall be communicated to the applicant as well as the concerned stock exchange within fourteen days of the last hearing .ven to the application, stating therein the grounds for refusal.*

(6) *Applicant aggrieved by the decision of the Commission under sub-rule (5) may apply, within a period of thirty days from the date of receipt of such intimation, to the Commission for review of its decision.*

7. Renewal of registration - (1) *The certificate of registration shall be renewable on payment of fee as prescribed in the Second Schedule.*

(2) *Requirements of these rules as applicable to initial registration shall also apply to renewal of the registration.*

Regulation 6.1.1 of UTS

1. *A member shall become eligible to trade on UTS if he (i)is registered as a broker. The registration of a member as broker is governed under "the Brokers and Agents Registration Rules 2001".*

5A. Brokers or agents not to engage in business without registration.- *No person shall act as broker or agent to deal in the business of effecting transactions in securities unless he is registered with the Commission in such manner, on payment o such fees and charges and on such conditions as may be prescribed.*

22. Penalty for certain refusal or failure - (1) *If any person-*

(a) *refuses or fails to furnish any document, paper or information which he is required to furnish by or under this Ordinance; or*

(b) *refuses or fails to comply with any order or direction of the [Commission] made or issued under this Ordinance; or*

(c) *contravenes or otherwise fails to comply with the provisions of this Ordinance or any rules or regulations made thereunder;*
the [Commission] may, if it is satisfied after giving the person an opportunity of being heard that the refusal, failure or contravention was willful pay to the [Commission] by way of penalty such sum not exceeding [fifty million] rupees as may be specified in the



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order and, in the case of a continuing default, a further sum calculated at the rate of [two hundred] thousand rupees for every day after the issue of such order during which the refusal, failure or contravention continues.

(2) Any sum directed to be paid under sub-section (1) shall be recoverable as an arrear of land revenue.

(3) No prosecution for an offence against this Ordinance shall be instituted in respect of the same facts on which a penalty has been imposed under this section.

Emphasis Added

The Appellant has argued that no intimation was provided by the Respondent on expiry of the registration of UEL. Moreover, the Appellant was awaiting a confirmation from the Respondent that the registration of UEL has not been renewed so they could take further action and switch off the terminal of UEL. The Appellant has also referred to the letter from the Respondent dated 29/05/09 in support of their contention. The Respondent's contention is that Appellant was responsible to ensure validity of UEL registration and it was not the responsibility of the Respondent to notify them. In the instant case, Rule 5 and 7 of the Rules are not relevant to the facts as UEL's registration had expired w.e.f. 24/07/08 and UEL had not applied for renewal of registration to the Commission. In the event, UEL had applied to the Commission for renewal of registration under Rule 7 of the Rules; the Respondent should have then notified the decision to the Appellant. Furthermore, we have reviewed the letter of the Respondent to the Appellant dated 29/05/09 in which the Respondent has stated that the said Certificate of Registration has expired w.e.f. from 24/07/08 and further the Appellant was asked to inform the Respondent, "...as to when the trading terminal of member was switched off after expiry of Certificate of Registration." This correspondence gives the Appellant a clear position of the facts that the licence of UEL had not been renewed until that time. However, the Appellant continued to allow UEL to trade until 16/06/09 after receiving the letter from the Respondent dated 15/06/09 which only was a reminder sent to the Appellant and refers to their stance made earlier in their letter dated 29/05/09 mentioned above. Therefore, we are of the view that the Appellant was primarily responsible to monitor the activities of its broker i.e. UEL and should not have allowed trading



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without renewal of its registration in violation of its UTS Regulations and section 5(A) of the Ordinance.

In view of the foregoing, we see no reason to interfere with the Impugned Order. The appeal is dismissed with no order as to costs.

(Fida Hussain Samoo)
Commissioner (Insurance)

(Tahir Mahmood)
Commissioner (CLD)

Announced on: **06 FEB 2015**