



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN INSURANCE DIVISION

SECRET

[Karachi]

Before Mr. Shahid Nasim, Executive Director (Insurance)

In the matter of

M/s KHZ Associates (Private) Limited

Date of Show-Cause Notice: June 22, 2012
Date of Hearing: July 24, 2012
Attended by: Mr. Khalid Mahmud, Chief Executive Officer
Date of Order: September 18, 2012

ORDER

(Under Section 111 Read with Section 112(3) and Section 112(6) of the Insurance Ordinance, 2000)

This Order shall dispose of the proceedings initiated against M/s KHZ Associates (Private) Limited (hereinafter referred to as "the Company") for making default in complying with the requirements of Section 111 and Section 112(3) of the Insurance Ordinance, 2000 ("the Ordinance").

Background Facts

The relevant facts for the disposal of this case are briefly stated as under:

1. The provisions of Section 111 of the Ordinance states that:

"Subject to sub-section (2), it shall be unlawful for any person to act for remuneration as a surveyor, loss adjuster, or loss assessor (by whatever title called) unless such person is-

- (a) an adjuster of aviation or maritime losses; or*
- (b) a person licensed as a surveyor under this Ordinance."*

2. AND WHEREAS, the conditions of the insurance surveying license are laid down under Section 112(3) of the Ordinance, and Clause (c) of which states that:

"No person shall be entitled to apply for or to hold a licence as a surveyor under this Ordinance unless the following conditions are fulfilled at the date of the application and at all times during which the licence is held:

4th Floor, State Life Building No. 2, Wallace Road, off I.I. Chundrigar Road, Karachi.
Tel: 021-32414204, 021-32410651 Fax: 021-32423248 Website: www.secp.gov.pk



... (c) reports issued in respect of surveys conducted by the person are signed by natural persons, registered under section 113 as authorised surveying officers;
"

3. AND WHEREAS, Sub-Rule 3 of Rule 19 of the Insurance Rules, 2002 illustrates that:

"Every application made under sub-rule (1) and sub-rule (2) shall be accompanied by a declaration by the applicant stating that-

- (a) the information presented in accordance with sub-rule (1) or sub-rule (2), as the case may be, is complete and correct;
- (b) the applicant has complied with the requirements of the Ordinance and rules concerning the required qualifications of an insurance surveyor;
- (c) the applicant is not appointed as an insurance agent of an insurance company;
- (d) the applicant undertakes to comply and, in the case of an existing insurance surveyor, declares that he has during the previous twelve months complied, with the Ordinance and rules concerning the conduct of insurance surveyors;
- (e) the insurance surveyor or, in the case of a body corporate, any director of the body corporate, or officer of the body corporate engaging in the business of insurance surveying or, in the case of a firm, any partner of the firm, or officer of the firm engaging in the business of insurance surveying, is not disqualified from acting as an insurance surveyor by virtue of -
 - (i) being a minor;
 - (ii) having been found of unsound mind by a Court of competent jurisdiction
 - (iii) having been found guilty, within five years preceding the date of the declaration, of criminal misappropriation or criminal breach of trust, cheating or forgery or an abetment of or attempt to commit any such offence by a Court of competent jurisdiction;
 - (iv) having served any custodial sentence imposed by a Court: of competent jurisdiction, ending within five years preceding the date of the declaration;
 - (v) having been found guilty by a Court of competent jurisdiction of any offence involving insurance; or
 - (vi) having been otherwise declared as disqualified by the Insurance Tribunal, other than for a term which had expired prior to the date of the declaration."

4. The insurance surveyors license of the Company was renewed vide License bearing serial no.3320, to act as an insurance surveyor for Fire, Marine

21



and Motor classes, for a period of one year starting from May 5, 2011 to May 4, 2012, under Section 112 of the Insurance Ordinance, 2000.

5. The Commission made an inquiry to the Company vide its letter no. ID/IO.112 (16)/2008/12356 dated January 27, 2012 whether they have issued any survey reports in respect of Miscellaneous class after August 8, 2011, and asked the Company to furnish all such reports.

6. In response to the said letter of the Commission, the Company vide their letter no. KHZ/SECP-SECP/2012 dated January 31, 2012 stated that they have not issued any survey report in respect of Miscellaneous class, however, the Company further stated that if the Commission may provide a copy of any such survey report for their verification.

7. The Commission vide its letter no. ID/IO. (16)/12416 dated February 6, 2012 sent to the Company, the letter no. KHZ/BAL/CROP/2011 dated December 26, 2011 for the verification by the Company, as per their request.

8. In response to the Commission's letter dated February 6, 2012, M/s Nauman Law Associates (the "Advisor") vide their letter dated February 24, 2012, have confirmed that Mr. Khalid Mehmood had signed the survey report for crop claims. The Advisor further admitted on behalf of the Company that the Rules have been violated by the Company/ASO. The Advisor further stated that:

"the pending cases which are allotted to the company before 10/02/2012 will be finalized and report will be issued to the concerned insurance companies."

9. The Company vide their letter no. KHZ/SECP-SECP/2012 dated March 16, 2012 mentioned that they have not conducted any fresh surveys of "Life Stock or Crops" after August 8, 2011, rather they have only concluded the cases allotted to the Company before August 8, 2011. Vide the same letter, the Company has submitted the copies of Seven (07) survey reports issued in respect of Crops claims, which were surveyed before August 8, 2011 and subsequently finalized.

10. Upon examining the survey reports submitted by the Company, it was found that the survey reports, which were issued on January 12, 2012, contained some misleading text, such as:

"We the undersigned, holding valid Insurance Survey Licence..."

11. It appears to the reader of the survey reports that the Company is licensed to carry out surveys and issue survey reports in respect of the Miscellaneous (Agri) class. Hence, it appears that the Company's intent to conduct surveys and issue survey reports to the relevant insurance companies in respect of the Miscellaneous class was obvious.

12. The Commission vide email transmission of March 30, 2012 requested all the insurers to provide complete details of the surveys conducted by the

3



Company in respect of the Miscellaneous class after August 8, 2011. Upon receipt of the responses from various insurers, it was found that M/s Alfalah Insurance Company Limited had appointed the Company for conducting thirteen (13) surveys and issuing survey reports in respect of the Miscellaneous class after August 8, 2011.

13. In the light of the abovementioned paras, it appears that the Company had contravened the provisions of Section 111 and Section 112(3) of the Ordinance by issuing survey reports in respect of the Miscellaneous (Agri) class, for which the Company did not have a registered Authorized Surveying Officer (ASO).

Show-Cause Notice

14. On June 22, 2012, a Show-Cause Notice under Section 111 read with Section 112(3) and Section 112(6) of the Ordinance was served to the Directors and Chief Executive of the Company, whereby the Company was asked to clarify their position as to why the penalty under Section 112(6) of the Ordinance may not be imposed on them for violating the provisions of Section 111 and Section 112(3) of the Ordinance.

Company's Reply

15. The Company, vide their letter of July 1, 2012, responded to the aforesaid Show Cause Notice, wherein the Company stated that they have stopped working, and only pending surveys were being finalized. The Company, vide the same letter, accepted that it is the fault of their Authorized Surveying Officer (ASO).

16. However, in order to provide the Company another opportunity of being heard, the Commission, vide its letter dated July 16, 2012, called upon the Directors and Chief Executive Officer for a hearing in the matter, which was scheduled for July 24, 2012.

Proceedings of the Hearing & Subsequent Developments

17. The said hearing was attended by Mr. Khalid Mahmud, Chief Executive Officer of the Company, on behalf of all the Directors of the Company, which was duly supported by their letter dated July 23, 2012, wherein Ch. Hamid Mahmud, the Director and Mrs. Nusrat Parveen, the Director of the Company had authorized Mr. Khalid to attend the hearing in the matter on behalf of them.

18. Brief proceedings of the hearing are as follows:

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- (a) During the hearing Mr. Khalid admitted that the Company has committed the default, as pointed out by the Commission.
- (b) It was then communicated to the representative of the Company that the Commission had taken the lenient view previously by not imposing any penalty onto the Company for a similar default during the year 2011¹. Further it was also mentioned that it is the responsibility of the management to ensure compliance of the applicable laws.
- (c) Mr. Khalid again informed that their Company has already stopped doing insurance surveying work.
- (d) Mr. Khalid finally requested the Commission to take a lenient view on the assurance that they will ensure compliance of the law in future.
19. Subsequent to the hearing in the matter, M/s Alfalah Insurance Company Limited was asked to provide the case-wise list of appointment of the Company, which was provided by the said insurer vide their email transmission of June 15, 2012. While examining the information provided by the said insurer, it was found that the Company was appointed after August 8, 2011 for conducting surveys in all of the 13 cases of the Miscellaneous class.
20. Following is the summary of appointments in all the 13 cases, as communicated by M/s Alfalah Insurance Company Limited vide their email of June 15, 2012:

S No.	Claim #	Date of Appointment
1	2011HOLSCRD100245	17.09.2011
2	2011HOLSCRD100247	17.09.2011
3	2011HOLSCRD100248	17.09.2011
4	2011HOLSCRD100284	06.10.2011
5	2011HOLSCRD100285	06.10.2011
6	2011HOLSCRD100287	07.10.2011
7	2011HOLSCRD100288	07.10.2011
8	2011HOLSCRD100289	07.10.2011
9	2011HOLSCRD100290	07.10.2011
10	2011HOLSCRD100291	07.10.2011
11	2011HOLSCRD100292	07.10.2011
12	2011HOLSCRD100293	07.10.2011
13	2011HOLSCRD100298	02.11.2011

¹ Company was warned for conducting 249 surveys in Miscellaneous class for which they did not have the license, vide the Commission's Order dated August 8, 2011.

21



21. The information provided by M/s Alfalah Insurance Company Limited vide their email of June 15, 2012 was verified against the survey reports issued by the Company, which were provided by the Company vide their letter no. KHZ/SECP-SECP/2012 dated March 16, 2012, and it was found that the Company was appointed by M/s Alfalah Insurance Company Limited after August 8, 2011 and survey reports were issued by the Company after the said date.

Consideration of the Submission

22. Before proceeding further, I find it relevant to discuss the duties of the Directors. The Directors, in addition to the day to day running of the Company and the management of its business, also have some 'fiduciary' duties i.e. duties held in trust and some wider duties imposed by statute and breach of these statutory duties will be a criminal offence, punishable by fine or imprisonment. Hence the Directors are gauged against a higher standard of accountability which requires them to be vigilant and perform their duties with due care. In the instant case, however, the Directors have failed to perform their duties with due care and prudence.

23. Since, the Directors are supposed to be well aware of their legal obligations in connection with the aforesaid statutory requirements of Section 111 and Section 112(3) of the Ordinance, and since, the Commission had already warned the Company for committing such a default vide the Commission's Order of August 8, 2011 and the Company was appointed and it had conducted surveys even after that Order of the Commission, therefore, it could be legitimately inferred from the aforementioned facts and findings of the case that the default was committed knowingly and willfully.

Conclusion

24. After carefully examining the documents, arguments and studying the facts and findings of the case as mentioned in the above paras of this Order, the default of Section 111 read with Section 112(3)(c) of the Ordinance is established and the Company has also accepted it.

25. It has also been established that the Company has contravened the provisions of the Ordinance for the second time i.e. in 2011 and 2012, by:

- a. Conducting surveys in Miscellaneous (Crop Loss and/or Others) class of business for which neither they had the license nor the Authorized Surveying Officers of the Company had been granted the registration, and

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b. Submitting a false and misleading declaration to the Commission along with their renewal application vide their letter of April 17, 2012 that they have complied with the provisions of the Ordinance and Rules during the preceding 12 months.

26. Therefore, the penalty as provided under Section 112(6) of the Ordinance can be imposed on the Company, which states that:

"If the Commission believes on reasonable grounds that a licensed surveyor has failed to comply, or has ceased to comply, with a condition of his licence, the Commission may by notice to the licensed surveyor of not less than two weeks cancel that licence.

Provided that a licence shall not be cancelled under this sub-section without giving the holder of the licence an opportunity to be heard."

Order

27. In exercise of the power conferred on me under Section 112(6) of the Ordinance, I have decided to cancel the insurance surveying license of the Company with effect from October 3, 2012, in line with the notice period of at least two weeks as stipulated under Section 112(6) of the Ordinance.

28. *M/s. KHZ Associates (Private) Limited* are hereby directed to confirm the compliance of this Order for the information and record of the Commission.

Shahid Nasim
Executive Director