



**BEFORE APPELLATE BENCH NO. III**

In the matter of

**Appeal No. 71 of 2006**

Muhammad Nadeem Abdul Ghaffar  
Member Karachi Stock Exchange  
412-413 Stock Exchange Building  
Stock Exchange Road,  
Karachi..... Appellant

Versus

1. Director (S.M.D)  
Securities and Exchange Commission of Pakistan  
NIC Building Jinnah Avenue, Islamabad. .... Respondent No 1
2. Ali Haider Shah Gillani  
G-004, Chappal Super Luxury Apartment  
Block-13, Gulistan-e-Jauhur, Karachi. . .... Respondent No 2

Date of Impugned Order ..... July 26, 2006  
U/S 33 of the SEC Act, 1997.

Date of Hearing ..... March 16, 2007

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**Present:**

For the Appellant:

Qazi Anwer Kamal, Advocate

For the Respondent:

1. Director (SMD)
2. Ali Haider Shah Gillani



## ORDER

1. This order will dispose of appeal No. 71 of 2006 filed under section 33 of the Securities and Exchange Commission of Pakistan Act, 1997 by Mr. Nadeem Abdul Ghaffar against the order dated 26-07-2006 ("Impugned Order") passed by Director, Securities Market Division (SMD).
2. Brief facts of the case are that a complaint was filed with the Commission by Mr. Wasi Haider Shah Gillani (now deceased) (the "Complainant") against Mr. Nadeem Abdul Ghaffar (the "Appellant") Member Karachi Stock Exchange (G) Limited and his two agents namely Mr. Mehboob and Mr. Rehman. The Complainant was an investor in the securities market and had been trading through the Appellant. He alleged that since 20-01-2003, the Appellant despite his repeated request did not follow his instructions to supply the copies of account statements, CDC statements and transaction reports. Moreover, the Appellant made un-authorized transactions and his life savings have been withheld.
3. The complaint was initially heard on 19-01-2004 and 27-04-2004 and vide order dated 15-05-2004, the then Director (SMD) rejected the complaint. Being aggrieved by the said order, the Complainant filed an appeal before the Appellate Bench of the Commission. The Appellant Bench remanded the case back to Director SMD with an instruction to conduct a proper investigation in the matter. In compliance of the order of the Appellant Bench an inquiry was conducted and the inquiry report highlighted the following four issues:



- i. Whether or not the Complainant had placed orders to transact in his account?
  - ii. Whether or not the Respondent (Appellant herein) had obtained approval from the Complainant to sell shares from his CDC account?
  - iii. Allegations of the Complainant regarding involvement of Mr. Mehboob and Mr. Rehman?
  - iv. Validity of the claims submitted by the Complainant?
4. The inquiry report concluded that the Appellant failed to provide any documentary evidence to establish that the Complainant had placed orders for execution of trades. The Appellant failed to comply with rule 4 of the Securities and Exchange Commission Rules 1971 and Code of Conduct provided under the Third Schedule of the Broker and Agents Registration Rules, 2001 wherein the Appellant was required to maintain written confirmation of executed transaction and an Order Register, in respect of the transactions in dispute. The inquiry report also recorded its doubts on the Appellant's assertion that he does not know any person with the name of "Rehman".
5. Both the parties were given a chance to file comments on the issue wise findings of the inquiry report and a further opportunity was granted for hearing on 04-05-06 by Director (SMD). The matter was finally disposed of by Director (SMD) vide the Impugned Order in which he held that the Appellant failed to produce copy of Order Register and proof of transmission of trade



confirmation and rejected his plea that the Complainant had given him the authority to move shares from his account without notice. The Director SMD held that provisions of the sub account opening form cannot override the provisions of Section 24(1) of the Central Depository Act, 1997, which provides that

*“(1) The participant shall not handle or authorize or permit any handling of book-entry securities entered in the sub-accounts maintained under his account without authority of the sub-account holder.”*

6. The Director held that the authorization given by the Complainant to the Appellant under the account opening form was for settlement purposes only and not for dealing in shares otherwise. Through the Impugned Order, the Appellant was ordered to return to the Complainant’s legal heirs (unfortunately the Complainant died during the pendency of the proceedings) total securities of 49,063 (as per details in para 6 of the Impugned Order) amounting to Rs.520,660/. The Appellant was further directed to pay to the legal heirs an amount of Rs.170, 715/ (as being claim of cash balance of Rs.79, 660/- and deduction of loss of Rs.91, 055/-)
7. The Impugned order was assailed by the Appellant in the present appeal on the ground that it is arbitrary, oppressive and without any justification. The Appellant has also taken the ground that the impugned order was passed on the basis of inquiry report without application of mind. The Appellant also re-asserted the arguments presented before the Director (SMD). In support of the appeal the Appellant filed written arguments on



the direction of the Bench. In the written arguments for the first time, the Appellant contended that he maintained computer record of transactions which contained more than 80% requirement of order register in form of CD carrying complete details of Order No, Ticket No, Company name, Quantity, Client code and time of every transaction required to be maintained under Rule 4(1) of the Securities and Exchange Rules 1971, which was neither considered by the inquiry officer nor by the Respondent No 1.

8. In response to these arguments, the representative of Director (SMD) argued that ample opportunity was provided to the Appellant to present his case before the Investigation Officer (IO) and Director SMD. He further asserted that the Complainant was never provided with any receipt, trade confirmation, trade activity reports, ledger report etc. as alleged by the Appellant.
9. We have carefully gone through the appeal, inquiry report and the impugned order passed by the Respondent. We have also taken into consideration the written arguments filed by the appellant with considerable delay. The basic issue which need to be decided in this dispute is whether or not the Appellant, who is a broker, had the authority to sell the securities lying in the Complainant's account in order to settle amounts due to him or to cover the market losses.
10. It is an accepted position that all brokers obtain the authority of their clients through the Account Opening Form, to settle any dues remaining in the account of the client by selling the securities. In this case too, the broker had obtained this authority under the terms and conditions of the Account Opening Form and is relying on this authority as a defence for selling the securities of the Complainant. However, it is a very clear



position that such authority is only for the purposes of settlement of dues and not otherwise. And such authority can only be exercised after the client has been given due notice to settle the outstanding dues remaining in his account and the client fails to settle the said dues within a reasonable time.

11. In this case, the findings of the inquiry officer as well as of Director (SMD) in the Impugned Order are that the Appellant failed to provide any notice to the Complainant and/or seek his instructions before dealing in the securities lying in his account. The Appellant failed to comply with the provisions of Rule 4(1) and 4(4) of the Securities and Exchange Rules 1971. The Appellant violated the provisions of the said rules by not seeking instructions, failed to record the transactions and did not provide the confirmation slip with necessary information to the Complainant. The plea in the written arguments that Appellant provided CD containing all the requisite information to the inquiry officer and the Director SMD is not tenable as neither the fact of providing the CD was established nor its contents were proved. The contention of the Appellant that proper hearing was not afforded is also without merit and cannot be accepted as the record depicts clearly that ample opportunity was provided to both the parties. As to the allegation that the order was passed on the basis of inquiry report alone, it transpires from the record that parties were allowed to file comments and an opportunity of hearing was awarded. Thereafter, Director (SMD) in Para 12 of the Impugned Order has given a detail account of misdoings of the Appellant. The Director (SMD) has fully deliberated on the inquiry report and has given the findings on all issues including the application of clause 1 of CDC sub account form by holding that the clause is only applicable for "Settlement Purposes" and any other sale would amount to violation of section 24 of the CDC Act 1997. As to



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the question of any amount validly due to the appellant, the appellant can only claim settlement of dues after satisfying the claim of the complainant.

12. We agree with the findings of Director (SMD). The Impugned Order is upheld and the appeal is dismissed.

**(RAZI-UR-RAHMAN KHAN)**  
Chairman

**(SALMAN ALI SHAIKH)**  
Commissioner

**Announced on : 6-3-08**