



SECP  
INSURANCE DIVISION  
Islamabad

Before Tahir Mahmood, Commissioner (Insurance)

*In the matter of*

Askari General Insurance Company Limited

Show Cause Notice No. and Issue Date: ID/Enf/Askari/2018/14431 dated  
April 11, 2018

Date of Hearing: October 11, 2018

Attended By: 1. Mr. Faizan Zafar  
Company Secretary  
Askari General Insurance Company  
Limited

2. Mr. Anwar Ahmed Malik  
Compliance Officer  
Askari General Insurance Company  
Limited

Date of Order: October 17, 2018

**ORDER**

**Under Section 12(1)(a) and Section 76 read with Section 156 of the Insurance Ordinance, 2000**

.....

This Order shall dispose of the proceedings initiated against M/s. Askari General Insurance Company Limited (the "Company"), its Chief Executive and Directors for alleged contravention of Section 12(1)(a) and Section 76 of Insurance Ordinance, 2000 (the "Ordinance"). The Company and its Directors shall be collectively referred to as the "Respondents" hereinafter.

2. The Company is registered under the Ordinance to carry on the business of non-life insurance in Pakistan.

3. While deciding the complaint lodged by Mr. Javed Khan (the "Complainant") against the Company, the honorable Federal Insurance Ombudsman (FIO), in his Order dated February 23, 2018, recommended to take action against the Company for its wrong doings. The claim amounting to Rs. 11.851 million was lodged by the Complainant on account of loss caused by fire at three (3) storied jewelers shop in Shabqadar, District Charsadda (KPK) on March 5, 2014, that was insured with the Company with sum assured of Rs. 13.590 million.



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4. Para 5 of the Order stated that the Company appointed two Surveyors, namely M/s Joseph Lobo (Pvt.) Limited (1<sup>st</sup> Surveyor) and M/s. G.M. Awan Associates (Pvt.) Limited (2<sup>nd</sup> Surveyor) on March 6, 2014 and March 7, 2014, respectively, who conducted the survey to assess the subject loss. Few days before repudiation of the claim, Mr. Saeed of 1<sup>st</sup> Surveyor and Mr. Athar Alam (HOD-Claims) from the Company met the Complainant at the Company's office at Rawalpindi, and tried to persuade him to accept the claim to the extent of Rs. 1.322 million as assessed by both the Surveyors. But the Complainant refused to accept the proposed amount being unfair.

5. Paras 5, 10 & 26 of the FIO explained that the Company repudiated the claim on the plea of fraudulent misrepresentation of the facts. The Company contended that the claim was bogus, fictitious and fraudulent, as the Complainant had presented fake and forged receipts of items damaged by fire. Moreover, the Company stated that the claim was massively exaggerated, as size of the shop was too small to justify such a big claim. This was contrary to the declarations made by the Company at the time of selling of the policy that three (3) storied shop premises was big enough for sum assured of Rs. 13.590 million. But when it came to indemnification, the claim was found to be too big by the Company. As per order of the FIO, this was a deceptive market conduct of the Company in terms of Section 76(1) of the Ordinance.

6. As per Paras 15, 16 & 17 of the Order, the Company contended that the complaint was hit by the time limit of three months as prescribed in clause 10 of the terms and conditions of the fire policy. However, this self-serving provision in the terms and conditions of fire policy of the Company was neither consistent with the provisions of Section 129(2) of the Ordinance nor with Section 86 of the Limitation Act. 1908. Besides, this time barred condition was deceptive in nature, the Company was under obligation to explain critical conditions to the prospective policyholder. However, the Company could not provide any evidence that the Complainant was ever briefed about this provision. Therefore, insertion of this condition in the terms and conditions without carefully considering the provisions of the Limitation Act 1908, was clear violation of Section 76(2) of the Ordinance.

7. It transpired from the details provided in the Order that in the case of claim on account of loss caused by fire of entire stock of machinery, equipment, dyes, fixtures, fittings, and wherewithal thereto at shop of the Complainant, the Company engaged in a conduct that was misleading and deceptive. This conduct of the Company was in contravention of the provisions of Section 12(1)(a) and Section 76 of the Ordinance.

8. In view of the above, it appeared to the Commission that the Company failed to meet the mandatory requirements of Section 12(1)(a) and Section 76 of the Ordinance.

9. Section 12(1)(a) of the Ordinance states that:

**12. Criteria for sound and prudent management.-** (1) For the purposes of this Ordinance, the following shall, without limitation, be recognised as criteria for sound



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and prudent management of an insurer or applicant for registration as a person authorised to carry on insurance business:

(a) the business of the insurer or applicant is carried on with integrity, due care and the professional skills appropriate to the nature and scale of its activities;

10. The provisions of Section 76 of the Ordinance state that:

**76. Insurer not to engage in misleading or deceptive conduct.-** (1) An insurer shall not, in the course of its business as an insurer, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

(2) The inclusion in an insurance policy of unusual terms tending to limit the liability of the insurer, without the express acknowledgement of the policy holder, shall constitute misleading or deceptive conduct.

(3) Nothing contained in sub-section (2) shall be taken as limiting by implication the generality of sub-section (1).

(4) Where a policy holder has relied upon any representations by an insurer or by an agent of an insurer which are incorrect in any material particular, inasmuch as it has the effect of misleading or deceiving the policy holder in entering into a policy, the policy holder shall be entitled to obtain compensation from the insurer for any loss suffered.

(5) 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 subsection and ten million rupees.

11. Accordingly, a Show Cause Notice (SCN) No. ID/Enf/Askari/2018/14431 dated April 11, 2018 was issued to the Respondents, calling upon them to show cause as to why the fine as provided under Sections 76(5) and Section 156 of the Ordinance should not be imposed on them for the aforementioned alleged contraventions of the law.

12. Thereafter, the Company Secretary, Mr. Faizan Zafar submitted reply on behalf of the Respondents, vide letter dated April 23, 2018, which is reproduced hereunder:

".....

This refers to your Show Cause Notice vide ID/ENF/Askari/2018/14431 dated April 11, 2018 (the said "Notice" ) whereby AGICO has been called upon to explain its position on account of not meeting the legal requirements as contained in Section 12 (1) (a) and for violating Section 76 of the Insurance Ordinance 2000.



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*In this respect, as you may kindly be aware that prior to your issuing the said Notice, the Additional Joint Director SECP, had already commenced action on 30-03-2018 at the request of the complainant, which was pursuant to the direction passed by the Hon'ble FIO vide Order dated 23-02-2018. Thus, in the exercise of powers conferred upon the Commission U/S 85 of the Insurance Ordinance, (read with Rule 31 of the Insurance Rules), the SECP, vide its letter no. ID/ENF/Complaints/14448 dated 12-04- 2018 had directed AGICO to appoint, one of the three surveyors as nominated by SECP, for independently conducting another survey and assess the claim and loss of the complainant. In compliance to the foregoing, M/S Sadruddin Associates (Pvt) Ltd Karachi have been appointed and the process for assessing the claim and the loss has also commenced so as to decide the matter in the light thereof as held by the FIO.*

*It may therefore be appreciated that a lot would now depend upon the findings that the above named surveyor would be submitting for deciding the underlying claim of the Complainant. And, it goes without saying that, AGICO shall proceed further as per the outcome of the said survey. Thus, AGICO believes that until then the proceedings by way of issuing said Notice should not have commenced against AGICO.*

*Before making submissions, it would be relevant to give a brief background of the matter so as to appraise you of the actual position. As required by insured Mr. Javed, the AGICO had issued a Fire insurance Policy in favor of Javed Jewellers effective from 20-01-2014 to 19-01-2015 i.e. for the period of one year. Copy of the Fire Policy with its terms and conditions is enclosed as Annex-A & B.*

*Unfortunately, fire incident took place on 05-03-2014 i.e. almost within a period of 2 months of issuing the policy. On submission of claim dated 05-03-2014, AGICO appointed two/joint surveyors namely Joseph Lobo Pvt Ltd & M/S Gul Muhammad Associates. Who carried out the detailed survey and submitted their joint report dated 29-10-2015, wherein, they determined the actual loss caused amounting to Rs. 1,322,005/-. Copy of the said survey report is enclosed as Annex-C.*

*On the submission of survey report and going examining the claim under the policy terms, the Company/underwriter came to the conclusion that the insured is not within his rights and entitled to claim loss for the following reasons;*

- iii. He submitted bogus/fictitious receipts and*
- iv. Committed violation of Clause 10 of the Policy Terms which reads as under;*

*"If the claim be in any respect fraudulent, or if any false declaration be made of used in support thereof, or if any fraudulent means or devices are used by the insured or anyone acting on his behalf to obtain any benefit under this policy or if the loss or damages be caused by the willful act, or with the connivance of the insured or if the claim be made and rejected and an action or suit be not commenced within three months after such rejection, or in case of an arbitration taking place in pursuance of the 15<sup>th</sup> condition of this policy within three months after the arbitrators or umpire shall have made their award, all benefits under this policy shall be forfeited."*





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*In the present matter the insured while submitting its claim not only made concealment of the facts but also submitted bogus/fictitious receipts. Copies of receipts are enclosed as Annex-D & DL.*

*Consequently, the AGICO repudiated the claim through a letter dated 09-11-2015. Thereafter, the claimant/insured remained silent and after the passage of above two years, he served a notice and then filed complaint before the learned Federal Insurance Ombudsman which was contested by AGICO. Resultantly, we consider that the Federal Insurance Ombudsman did not fully appreciate the legal as well as the grounds and even adverse evidence against insured, passed the Order dated 23-02- 2018, on the basis of which this Show Cause Notice has been issued. Copies of the letter of repudiation of claim and thereafter notice and complaint are enclosed as Annex-E, E1 & E2 respectively.*

*In compliance to the directives of SECP (Insurance Division), AGICO appointed an independent surveyor as mentioned herein above. Copy of the relevant record are enclosed herewith as Annex- F, F1 & F2 respectively.*

*Nevertheless, without prejudice to the foregoing facts, AGICO wishes to make following submissions in reply and response to the said Notice, which is based on the observations made in para 5, 10, 26 and 15, 16, 17 of the FIO's Order dated 23-02- 2018.*

*In this respect, it would be relevant to invite your kind attention towards para 37 of the FIO Order dated 23-02-2018, wherein, no amount had been determined by the FIO and AGICO was advised to settle the claim with the Complainant, within 30 days, for an amount up to a reasonable extent. It also stated that in the event the settlement is not so arrived at, the complainant shall be entitled to approach SECP for seeking the appointment of independent surveyor of excellent professional reputation. And, thus the Order provided that the claim would be decided in accordance with such survey which is now being carried out afresh. It therefore, would become obvious that the matter is yet to be finally decided.*

*It is also observable from para 5 of the FIO Order dated 23-02-2018, as referred in para 6 of the said Notice, that a few days before the repudiation of the claim, the surveyor Mr. Saeed and Mr. Athar Head of Claim of AGICO had persuaded the complainant to accept the offer for RS. 1.322 million as was assessed by both the surveyors. However, no evidence to this effect was ever produced before the FIO which could suggest that the complainant was so persuaded and as to when it happened. Rather it was the complainant who had been trying to influence the surveyors and pressurize AGICO for getting the things done in an unusual manner. It is also to be seen that the claim was repudiated on 09-11-2015 while the joint survey was concluded on 29-10-2015.*

*Likewise, the observation records in para 6 & 7 that the Complainant termed the offer as understated and according to him it was contrary to what was initially promised to him by AGICO at the time of issuance of Fire Insurance Policy. Hence, it may be appreciated that no promise about the amount could be made in advance as it is always subject to performing reciprocal obligations and due observance of the terms & conditions of the policy. AGICO, hence, considers & believes that any act performed by it was in good faith & as per usual norms of recognized practice and there was nothing which could be read as deceptive market conduct or maladministration on the part of AGICO.*



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*Likewise para (8) of the said Notice states that condition set out in the fire policy was inconsistent with the provision of law. However, drawing the conclusion that it's placement as contractual term was a deliberate violation, is too onerous for AGICO and its intention should not be adjudged in this manner.*

*It may therefore, be appreciated that obligations undertaken by AGICO, in the Fire Insurance Policy under reference were to pay for the losses actually caused to the Policy holder and certainly not what may be simply claimed by the insured in a calculated move on the basis of forged documents and reminding AGICO of the past promises without any evidence.*

*It is hoped that perusal of the explanations given herein and the submissions made by AGICO would make it obvious to form the view by SECP that there is no such act or omission on the part of AGICO, which could validly give rise to a situation of violation or which could constitute to offence of deceptive conduct against AGICO. We would humbly request that the said Notice may kindly be ordered to be withdrawn by holding its submissions, adequately explaining the position.*

*It may also mentioned here that AGICO, is largely sponsored by the Army Welfare Trust and is conscious about its obligations to abide by the law, rules & regulations applicable on AGICO.*

*Keeping in view the foregoing, it is, hoped that your Honor would be pleased to take a lenient view and withdraw the said notice.*

*It would also be appreciated if an opportunity of hearing is also be provided in this regard."*

13. The Commission, vide its notice no. ID/Enf/ Askari/2018/15302 dated June 11, 2018, scheduled the hearing for June 21, 2018 at the Head Office in Islamabad. However, the Company Secretary requested to reschedule the hearing to another date. Considering the request of the Respondents a hearing was rescheduled on October 11, 2018, intimated through letter dated October 4, 2018.

14. Meanwhile, the Company Secretary vide letter dated October 8, 2018 apprised the Commission that ' *the matter in question has already been settled between the Company and M/s Javed Jewellers (Complainant).*'

15. The hearing of October 11, 2018 was attended by Mr. Faizan Zafar, Company Secretary and Mr. Anwar Ahmed Malik, Compliance Officer as Authorized Representatives, representing all the Respondents before the Commission in the instant matter.

16. During the hearing, the Representatives stated that the claim was settled by the Company with the payment of Rs. 2 million to the Complainant. They further maintained that the loss due to terrorism was not covered under the terms & conditions of the policy.



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17. Section 12(1)(a) of the Ordinance requires that the business of the insurer or applicant is carried on with integrity, due care and the professional skills appropriate to the nature and scale of its activities. While, the Surveyor Sadruddin Associates (Pvt) Limited appointed by the Commission for 're-investigation and review of claim assessment' in its report dated June 4, 2018 has highlighted the conduct of the Company. Findings in the Survey Report are given below;

" .....

*We have made enquiries from Underwriters regarding Issuance of Insurance Policy and have observed the following:*

- *No previous Insurance/Coverage history at the subject bazaar or locality of any kind was reported by subject Underwriters. Therefore, the issuance of Policy to a jeweller in subject branch was unprecedented.*
- *The underwriters haven't issued any cover note prior to the issuance of subject insurance policy.*
- *We have not been provided with any Inventory list of Pre Risk Inspection detailing the items and Insurers maintain to have issued the Policy on good faith and on verbal confirmation of Client.*

*After cross checking Policy issuance details, pre-insurance inspection photographs and Post fire pictures of loss, observed as under- (photographs are attached with this report)*

- 1- *Business record was not checked such as register pattern book, pattern dyes of rubber, dyes of iron, purchase invoices, (undocumented business was covered under utmost good faith)*
- 2- *List of inventory of items and proper evaluation of assets was not done prior to underwriting the business.*
- 3- *No furniture, fixture and fittings like glass items were property measured.*
- 4- *The age, make, model and working capacity of machines with purchase receipts were also not examined.*
- 5- *The coverage was issued just to net the premium without due consideration and proper inspection. It appears a case of "Imprudent Underwriting" and underwriters must take stem action against the individuals underwriting the risk in an unprofessional manner.*
- 6- *While going through the policy schedule it revealed that the quantity showed 100 Pola dyes at a fixed rate of Rs.3,000/- the sum insured against the value of 100 Pola dyes comes to Rs.300,000/- instead of Rs.3,000,000/-. The underwriters are advised to check it at their end because as per the joint survey assessment they have physically counted*



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*the iron /pola dyes from the debris / rubber not more than 417 and are still lying in possession of insured instead of 1000 quantity.*

*....."*

18. Furthermore, the Surveyor in its report stated that:

*"It appears that not only the Underwriters have covered the Risk on the principle of Utmost Good faith, they have also acted as Grossly Negligent by not verifying the quantities/cost and quality of proposed items despite becoming aware that huge sums were being reported as price/cost. How could the Pre Insurance Inspectors ignore the Locality of the Risk, its nature, Capacity of the proposed business and quantities/costs reportedly/involved the present cost, new old fashion, out dated dyes and so on...."*

19. The comments of the surveyor in his report indicate that the business of the Company was not being carried with due care and the professional skills required to be demonstrated in the instant case. It is further observed that the claim was lodged with the Company in March 2014 and the same was repudiated in November 2015. The Company failed to communicate decision about the claim within 90 days of submission of documents by the Complainant in violation of Section 118 of the Ordinance. The joint surveyors also violated Section 22(4) of the Insurance Rules, 2002 by not submitting survey report within the period of 90 days. The claim was eventually settled in July 2018 i.e. after appointment of M/s. Sadruddin Associates (Pvt) Ltd. for re-survey and subsequent to the Show Cause Notice dated April 11, 2018.

20. Furthermore, Section 76(4) of the Ordinance states that where a policy holder has relied upon any representations by an insurer or by an agent of an insurer which are incorrect in any material particular, in as much as it has the effect of misleading or deceiving the policy holder in entering into a policy, the policy holder shall be entitled to obtain compensation from the insurer for any loss suffered. In the instant case, the Company covered the risk just to obtain the premium without due consideration and proper inspection. The Company should have assessed the amount prior to issuance of the policy instead of relying on verbal communication with the insured.

21. I have carefully examined and given due consideration to the written and verbal submissions of the Respondents, and have also referred to the provisions of the Ordinance, the Rules made thereunder and/or other legal references. I am of the view that the violations of Section 12(1)(a) and Section 76 of the Ordinance, are clearly established, for which the Respondents may be penalized in terms of Section 76(5) and Section 156 of the Ordinance.

22. 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 subsection and ten million rupees."*





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23. Section 156 of the Ordinance provides that:

*“Penalty for default in complying with, or acting in contravention of this Ordinance.- Except as otherwise provided in this Ordinance, any insurer who makes default in complying with or acts in contravention of any requirement of this Ordinance, or any direction made by the Commission, the Commission shall have the power to impose fine on the insurer, and, where the insurer is a company, any director, or other officer of the company, who is knowingly a party to the default, shall be punishable with fine which may extend to one million rupees and, in the case of a continuing default, with an additional fine which may extend to ten thousand rupees for every day during which the default continues.”*

24. In exercise of the power conferred on me under Section 76(5) and Section 156 of the Ordinance, I, instead of imposing a fine as provided under the said provision, take a lenient view, and warn the Respondents to ensure full compliance with the Ordinance, rules, regulations and directives of the Commission in future.

25. This Order is issued without prejudice to any other action that the Commission may initiate against the Company and / or its management (including the CEO of the Company) in accordance with the law on matters subsequently investigated or otherwise brought to the knowledge of the Commission.

  
Tahir Mahmood  
Commissioner (Insurance)

