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SECP
INSURANCE DIVISION
Islamabad

Before Hasnat Ahmad, Director (Insurance)

In the matter of

Crescent Star Insurance Company Limited

Show Cause Notice No. and Issue ID/Enf/CrescentStar/2017/10498 Dated
August 4, 2017

Date of Hearing: October 6, 2017

Attended By:

1. Mr. Zeeshan Abdullah
Advocate High Court
Authorized Representative
2. Mr. Tanveer Ahmed
Group Resident Director
M/s. Crescent Star Insurance Company
Limited

Date of Order: October 30, 2017

ORDER

Under Section 61 read with Section 156 of the Insurance Ordinance, 2000

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This Order shall dispose of the proceedings initiated against M/s. Crescent Star Insurance Company Limited (the "Company"), its Chief Executive and Directors for alleged contravention of Section 61 of the Insurance Ordinance, 2000 (the Ordinance). The Company, its Chief Executive and Directors shall be collectively referred to as the "Respondents" hereinafter.

2. The Commission vide email dated June 7, 2017 advised the Company to submit its comments in the matter of complaint lodged by Ms. Raksahnda Javed Malik (the "Complainant").

3. It was observed that no reply was received from the Company despite issuance of three reminders to the Company dated June 13, 2017, June 19, 2017 and June 23, 2017.

Handwritten initials/signature



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4. Further, upon persistent failure to furnish the requisite information/comments, the Company vide letter dated July 11, 2017 was directed under Section 61 of the Ordinance to provide information/comments in the matter of the aforesaid complaint. The Company again failed to respond to the direction given under Section 61 of the Ordinance.

5. In view of the above, it appeared that the Company and its Board of Directors violated the provisions of Section 61 of the Ordinance.

6. Section 61 of the Ordinance states that:

"Power of Commission to call for information and access.- (1) The Commission may by notice in writing direct any insurer to supply the Commission, within such period as the notice may specify, with any information relating to its insurance business which the Commission may reasonably require.

(2) The Commission may direct that any information supplied under subsection (1) shall be certified by the principal officer of the insurer, by an independent auditor or in the case of a life insurer by the insurer's appointed actuary.

(3) The Commission may by notice in writing direct the chief executive or principal officer of the insurer to discuss with the Commission any matter pertaining to the business or management of the insurer.

(4) The Commission may by notice in writing require the insurer to allow any officers of the Commission nominated for the purpose to observe, for such period as the Commission may specify, the manner in which the affairs of the insurer or of any of its offices or branches are being conducted."

7. Therefore, a Show Cause Notice (SCN) ID/Enf/CrescentStar/2017/10498 dated August 4, 2017 was issued to the Respondents, calling upon them to show cause as to why the fine as provided under Section 156 of the Ordinance should not be imposed on them for the aforementioned alleged contraventions of the law.

8. The Respondents vide letter dated August 8, 2017 submitted their comments, which are reproduced hereunder:

"we refer to your letter dated August 04, 2017 and confirm that cheque has been delivered to insured"

9. In order to provide the Respondents an opportunity of hearing, the Commission vide letter dated August 30, 2017 bearing no. ID/Enf/CrescentStar/2017/10909 scheduled the hearing on September 14, 2017.

10. The Respondents, through Mr. Zeeshan Abdullah from M/s Rabbani & Ansari advocates (hereinafter referred to as the "Authorized Representative") requested to reschedule the hearing proposed to be held on September 14, 2017 and

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September 28, 2017. Therefore, the hearing was rescheduled for October 6, 2017, vide letter No. ID/Enf/CrescentStar/2017/12097 dated September 28, 2017.

11. The hearing of October 6, 2017 was held at Head Office of the Commission in Islamabad connected via video link with SECP's Karachi Office where Mr. Zeeshan Abdullah from M/s Rabbani & Ansari advocates, and Mr. Tanveer Ahmed Group Resident Director of the Company attended the hearing as Authorized Representatives, representing the Respondents before the Commission in the instant matter.

12. Brief proceedings of the hearing of October 6, 2017 are as under:

- i. The Authorized Representative stated that the Company has paid the claim to the Complainant.
- ii. The Authorized Representative explained that Ms. Raksahnda Javed Malik's complaint was forwarded to the Company through an email. The Company arranged to make payment of the claim amounting to Rs. 14,000/-, for which the Company dispatched a cheque for the said amount at the given address of the Complainant. However, the cheque could not be delivered to the Complainant due to her incomplete mailing address. After exchange of emails with the Complainant, payment of the said cheque was stopped and another cheque was issued/dispatched to the Complainant.
- iii. The Authorized Representative was of the view that the information required by the Commission, as to whether the complaint has been resolved or not, does not fall under the ambit of Section 61 read with Section 2(xxvii) of the Ordinance. He emphasized that the Commission under this provision of the Ordinance, can only direct the insurer to supply the information relating to insurance business, which the Commission may reasonably require. Whereas, as per the term "insurance" defined in the Ordinance, it is the business of entering into and carrying out policies or contracts, where an insurer, in consideration of premium, promises to make payment on the happening of the event specified in the contract. Therefore, penal provision under Section 156 of the Ordinance is not attracted under the instant matter.
- iv. Upon receiving the complaint, the Company arranged to make payment to the Complainant. However, the payment was delayed due to her incomplete address. This factual position is substantiated from the emails exchanged between the Complainant and the Company. Therefore, the un-intentional or non-deliberate omission to furnish such information to the Commission may be condoned in the larger interest of justice, particularly keeping in view of the fact that the matter was resolved by the Company as per the direction issued by the Commission. He requested the Commission to take a lenient view in the matter.



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13. The Respondents have submitted / argued that the information required by the Commission regarding a complaint of an insurance policyholder does not fall under the ambit of Section 61 read with Section 2(xxvii) of the Ordinance. I am of the view that the information sought by the Commission was related to the insurance business i.e. the business of entering into and carrying out policies or contracts, where an insurer, in consideration of premium, promises to make payment on the happening of the event specified in the contract. Therefore, the Commission may direct the insurer to supply the information regarding a complaint of an insurance policyholder. Therefore, submission/argument of the Respondents in this regard is not tenable.

14. Although, the complaint was resolved, the Respondents failed to submit information to the Commission despite issuance of multiple letters / reminders and subsequent direction dated July 11, 2017 under Section 61 of the Ordinance until date of the Show Cause Notice.

15. 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 default of Section 61 of the Ordinance is established. Therefore, the fine as provided under Section 156 of the Ordinance can be imposed onto the Respondents i.e. the Company, its CEO and Directors.

16. Section 156 of the Ordinance of 2000 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."

17. However, before proceeding further, I find it relevant to discuss the duties of the Directors who are, 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. 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, the Directors were required to ensure compliance with provisions of the Ordinance. Furthermore, the Directors should have responded to the directions issued to the Company under Section 61 of the Ordinance. The Directors are supposed to be well aware of their legal obligations in connection with the aforesaid statutory requirement of Section 61 of the Ordinance.

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SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Insurance Division

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18. In exercise of the power conferred on me under Section 156 of the Ordinance read with S.R.O. 750(I)/2017 dated August 2, 2017, I, instead of imposing the maximum fine as provided under the said provisions, impose a fine of Rs. 50,000/- (Fifty Thousand Only) on the Company due to the default of Section 61 of the Ordinance, as mentioned in the above paras hereof. The Respondents are hereby warned to ensure full compliance with the Ordinance, rules, regulations and directives of the Commission in future.

19. Hence, the Company is hereby directed to deposit the applicable fine in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with MCB Bank Limited within thirty (30) days from the date of this Order and furnish receipted vouchers issued in the name of the Commission for information and record.

20. 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.


Hasnat Ahmad
Director

