



SECP  
INSURANCE DIVISION  
Islamabad

Before Fida Hussain Samoo, Commissioner (Insurance)

*In the matter of*

State Life Insurance Company Limited

Show Cause Notice Issue Date: June 6, 2016

Date of Hearing: July 27, 2016

Attended By:

1. Mr. Waqas Asad Sheikh  
Advocate High Court  
M/s. W & A Law Associates;
2. Mr. Iftikhar Ahmed  
Divisional Head (Policyholder Services)  
M/s. State Life Insurance Company Limited;
3. Mr. Manzoor Ali  
Assistant General Manager (Legal Affairs)  
M/s. State Life Insurance Company Limited.

Date of Order: August 3, 2016

ORDER

Under Section 76, Section 11(1)(f) & (h) and Section 12(4) Read with Section 60 and Section 156 of the Insurance Ordinance, 2000.

.....

This Order shall dispose of the proceedings initiated against M/s. State Life Insurance Company Limited (the "Company"), for alleged contravention of Section 76, Section 11(1)(f) & (h) and Section 12(4) of the Insurance Ordinance, 2000 (the "Ordinance"). The Company and/or any of its authorized representatives in the instant matter shall be referred to as the "Respondents" hereinafter.

A. Background

2. Ms. Nazir Fatima (the "Complainant") obtained an insurance policy from M/s. State Life Insurance Company Limited (the "Company") in the month of December 2004 with annual premium of Rs.22,188/- for a period of 10 years.



3. As per the illustration provided to the Complainant, cash surrender values were shown as Rs. 460,000/- at the end of 10<sup>th</sup> year. However, the Complainant was paid an amount of Rs.282,194/- upon maturity i.e. at the end of the term of the said policy. The Complainant being aggrieved in the matter approached the Commission for seeking the relief in accordance with provisions of the law.

4. The Company, vide its letter No. PHS/PO/SECP/Enf/4819 dated May 3, 2016 admitted that the high projected values showing abnormally high bonuses value at 10<sup>th</sup> year was a result of an initial teething problem in programming and the same was rectified once detected.

5. The Complainant relied upon the said illustration and made premium payments to the Company till maturity. Accordingly, it appeared to the Commission that the Company misled the Complainant through deceptive illustration which not only breached the trust of the Complainant but also caused financial loss to her.

6. It may be noted that the provisions of Section 76 of the Insurance Ordinance, 2000 (the "Ordinance") prohibit the insurers from engaging in misleading or deceptive conduct, or a conduct which is likely to mislead or deceive. Section 76(1) to (5) of the Ordinance state as follows:

*"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 sub-section and ten million rupees."*

7. And, Section 11(1)(f) & (h) of the Ordinance provides that:



*"Conditions imposed on registered insurers.- (1) An insurer registered under this Ordinance shall at all times ensure that:*

...  
(f) *the insurer meets, and is likely to continue to meet, criteria for sound and prudent management including without limitation those set out in section 12;*

...  
(h) *the insurer is, and is likely to continue to be, able to comply with such other of the provisions of this Ordinance as are applicable to it."*

8. Moreover, the criteria for sound and prudent management in terms of Section 12(4) of the Ordinance stipulate that:

*"(4) The insurer or applicant shall not be regarded as conducting its business in a sound and prudent manner if it fails to conduct its business with due regard to the interests of policy holders and potential policy holders."*

9. Hence, Show Cause Notice bearing number ID/Enf/SLIC/2016/5493 dated June 6, 2016 was issued to the Board of Directors (through Company Secretary) and the Company, thereby calling upon them to show cause as to why punitive action may not be taken against them in terms of Section 156 of the Ordinance and as to why the direction may not be given under Section 60 of the Ordinance for the alleged contravention of Section 76, Section 11(1)(f) & (h) and Section 12(4) of the Ordinance.

10. In response to the said Show Cause Notice, M/s. W&A Law Associates, while acting on behalf of the Respondents duly supported by a power of attorney, provided response to the said Show Cause Notice vide letter dated June 28, 2016, whereby it has been contended that:

- (i) The State Life Insurance is a corporation and not a company;
- (ii) The matter is a dispute between the policyholder and the Company, and that the Commission does not have jurisdiction to entertain the policyholder disputes;
- (iii) The Commission may only exercise those powers which have been specifically assigned to it under the SECP Act, 1997, and SECP Act, 1997 does not assign the Commission with the responsibility to entertain policyholder disputes, and hence, the Show Cause Notice is liable to be set aside;
- (iv) Responding to the allegation leveled through the Show Cause Notice, it was stated that it is imperative to mention that misrepresentation has the following two ingredients:
  - a. Statement must be false; and
  - b. Statement being made was known to be false by the person making it.
- (v) The Company never made any statement intentionally, there was some computer glitch which caused problem in the projected surrender values, and it was neither intentional nor deliberate;



- (vi) The Company can only be accused of misrepresentation or deceptive conduct if proven guilty after due process;
- (vii) Dispute at hand requires recording of evidence and a trial has to be conducted by the competent and proper forum before any decision is made after preponderance of evidence;
- (viii) The forum must be vested with all powers of Civil Court under the Code of Civil Procedure, 1908, however, the Commission does not have powers of Civil Courts in the instant matter, so the Commission is not the proper forum for the instant matter;
- (ix) The Show Cause Notice has been issued prematurely, and hence, the Commission cannot impose penalty on the Company prior to the facts being ascertained by a competent and proper forum, as the penalty can only be imposed once it is established that the policyholder is liable to obtain compensation and the Commission does not have power to grant compensation in the instant matter.

### B. Hearings

11. Thereafter, the Commission, vide its notice no. ID/Enf/SLIC/2016/5960-5961 dated July 12, 2016, scheduled the hearing for July 27, 2016 at 11:30 a.m.

12. The said hearing was attended by Mr. Iftikhar Ahmed, Divisional Head (Policyholder Services) of the Company, Mr. Manzoor Ali, Assistant General Manager (Legal Affairs) of the Company and Mr. Waqas Asad Sheikh, Advocate High Court of M/s. W & A Law Associates.

13. Brief proceedings of the hearing of July 27, 2016 were as follows:

- a. The Respondents briefed about the discrepancy in their computer software which led to certain miscalculations in the illustration;
- b. The Respondents also informed that the Company has revamped the flawed computer software and a new ERP has been procured / obtained by the Company;
- c. It was also informed by the Respondents that the Complainant obtained the insurance policy at the age of 54 years, and the illustration was given to the Complainant after the policy was effected. They further mentioned that the error in the illustration occurred in the calculations of surrender values due to bonuses and that too in the later years down the line of the illustration due to the flawed computer software;
- d. The Respondents were clarified that any post-sale omission is even more severe. Attention was drawn towards provisions of Section 77 of the Ordinance, whereby it has been clearly stated that any ambiguity in a



contract of insurance shall not be capable of being construed in a manner which is contrary to the interest of the policy holder

**C. Issues**

14. In terms of Section 76 read with Section 11(1)(f) & (h) and Section 12(4) of the Ordinance, the Company was at all times required to avoid engaging in a conduct which is misleading and deceptive in nature.

15. As per the illustration provided to the Complainant, cash surrender value at the end of 10<sup>th</sup> year was shown as Rs. 460,000/-. However, the Complainant was paid an amount of Rs. 282,194/- upon maturity i.e. at the end of the term of the said policy. The Complainant, however, relied upon the said illustration which showed high projected values as at the maturity of the insurance policy obtained by the Complainant, and under which impression, he made premium payments to the Company till maturity.

16. In view of the above, the Company appeared to have violated the provisions of Section 76 read with Section 11(1)(f) & (h) and Section 12(4) of the Ordinance.

**D. Summary of arguments and conclusions in respect of each issue**

17. The Respondents, first of all, raised their concern that the Company is a corporation and not a company. In this regard, it may be noted that in exercise of the powers conferred by clause (l) of Article 89 of the Constitution of Islamic Republic of Pakistan, the President of Pakistan promulgated the State Life Insurance Corporation (Re-organization and Conversion) Ordinance, 2016 (Ordinance No. III of 2016) in the month of April 2016, and in pursuance of Section 3 thereof, the Company has been incorporated under the Companies Ordinance, 1984 in the city of Karachi under CUIN # 0099629 on May 13, 2016, which is prior to the issuance of the aforementioned Show Cause Notice.

18. The Respondents have further raised their concern over the jurisdiction of the Commission in the instant matter. In this regard, it would be pertinent to note that the preamble of the Ordinance [Insurance Ordinance, 2000] and Section 12(4), Section 60 and Section 156 thereof read with Section 20(6)(fa), (fb), (fc) and (g) of the SECP Act, 1997 fully empower the Commission to monitor the conduct of insurers towards the insurance policyholders, and to issue direction under Section 60 of the Ordinance and also to impose penalties under Section 76(5) and 156 of the Ordinance in respect of all matters that are of similar nature i.e. deceptive and misleading conduct on part of the insurers.

19. The Respondents have also pointed out that misrepresentation has the two ingredients i.e. the statement must be false and the statement being made was known to be false by the person making it. In this regard, it would be pertinent to



state that a misleading or deceptive illustration can always drive and impact the decision of an insurance policyholder i.e. whether to purchase a policy or otherwise. Moreover, in terms of Section 45 of the Ordinance read with Section 11(1)(f) and Section 12(1)(a) & (e) and Section 12(4) of the Ordinance, any error in the computer software due to which illustrations were turning out to be deceptive and misleading becomes the sole responsibility of the Company, and the Company should have, at all times, taken steps to maintain adequate internal controls across all its systems and processes. Accordingly, the computer software should have been rigorously tested prior to its adoption or deployment. Hence, the illustration was not only deceptive but it can also be construed that the Company should have been aware of it as part of its statutory responsibilities. Further, as per Section 77 of the Ordinance, any ambiguity in a contract of insurance shall not be capable of being construed in a manner which is contrary to the interest of the policy holder. The contract of insurance entails the insurer and the policyholder at least; hence, any ambiguity in any representation / document provided by the insurer to the policyholder or the prospective policyholder would have direct impact on the policyholder's purchase decision. Therefore, any ambiguity in the insurance contract should be construed in favor of the policyholder.

20. In view of the above, the Commission has the power to impose penalty under Sections 76(5) and 156 of the Ordinance and also to issue direction under Section 60 of the Ordinance read with Section 20(6)(fa), (fb), (fc) and (g) of the SECP Act, 1997, for contravening the provisions of Section 76, Section 11(1)(f) & (h) and Section 12(4) of the Ordinance, as mentioned above.

21. Section 60 of the Ordinance states that:

*"Power of the Commission to give directions to the insurer.- (1) The Commission may, if it believes on reasonable grounds that an insurer registered under this Ordinance has failed, or is about to fail, to comply with the conditions of registration set out in section 11, issue to the insurer such directions, not otherwise provided for in this Ordinance, as it believes on reasonable grounds to be necessary to protect the interests of the policy holders of the insurer.*

*(2) The Commission may, on representation made in this behalf, or on its own motion, modify, or cancel any direction issued under sub-section (1) and may, in so modifying or cancelling a direction, impose such conditions as it may deem on reasonable grounds to be appropriate under the circumstances.*

*(3) Every insurer shall comply with any direction issued under sub-section (1) or such direction as modified under sub-section (2) subject to such further conditions, if any, as may be imposed."*

22. And Section 156 of the Ordinance states that:

*"Penalty for default in complying with, or acting in contravention of this Ordinance.- Except as otherwise provided in this Ordinance, any insurer who*



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*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."*

**E. Overall conclusion;**

23. 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 and other legal references, I am of the view that the default of Section 76, Section 11(1)(f) & (h) and Section 12(4) of the Ordinance is established. Therefore, the fine/penalty as provided under Sections 76(5) and 156 of the Ordinance can be imposed onto the Company and/or its Directors, and/or the Commission may also issue direction under Section 60 of the Ordinance. Further, as per Section 77 of the Ordinance, ambiguity caused in the insurance contract should be construed in favor of the policyholder.

**F. Penalties and directions**

24. I, instead of imposing penalty under Sections 76(5) and 156 of the Ordinance, issue direction to the Company in exercise of the power conferred under Section 60 of the Ordinance read with S.R.O. 122(I)/2016 dated February 12, 2016, to settle grievances of the policyholder and be careful in future of any such misleading or deceptive conduct towards its policyholders.

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 chief executive officer or directors of the Company) in accordance with the law on matters including those subsequently investigated or otherwise brought to the knowledge of the Commission.

Fida Hussain Samoo  
Commissioner (Insurance)

