



SECP
INSURANCE DIVISION
Islamabad

Before Fida Hussain Samoo, Commissioner (Insurance)

In the matter of

State Life Insurance Company Limited

Date of Show Cause Notice: August 2, 2016

Date of Hearing: September 26, 2016

Attended By:

For the Respondent(s):

1. Mr. Waqas Asad Sheikh
Advocate for the Respondents; and
2. Mr. Pervaiz Altaf
Deputy General Manager
M/s. State Life Insurance Company Limited.

For the Complainant:

1. Syed Aijaz Ali Shah
The Complainant; and
2. Mr. Ghulam Asghar Pathan
Advocate for the Complainant.

Date of Order: October 24, 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") and its Directors, for alleged contravention of Section 76, Section 11(1)(f) & (h) and Section 12(4) of the Insurance Ordinance, 2000 (the "Ordinance"). The Company, its Directors and/or any of its authorized representatives in the instant matter shall be referred to as the "Respondents".



A. Background

2. Syed Aijaz Ali Shah (the "Complainant") obtained an insurance policy from the Company in the month of December 2004 for a period of 10 years.

3. As per the illustration provided to the Complainant, cash surrender values were shown as Rs. 948,875/- at the end of the 9th year and Rs. 1,840,000/- at the end of 10th year of the underlying insurance policy. However, the Complainant was paid an amount of Rs. 1,144,000/- upon maturity i.e. at the end of the term of the said policy. The Complainant being aggrieved by the short payment in maturity proceeds, approached the Commission for seeking relief in accordance with provisions of the law.

4. The Company, vide its letter No. PHS/PO/SECP/Comp/2015 dated December 9, 2015, admitted that the high projected values showing abnormally high bonuses' value at the 10th 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, which forms part of the insurance contract, and hence, continued to make premium payments to the Company till maturity of the insurance policy. 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 him.

6. In this regard, the Company was advised by the Commission vide letter dated December 30, 2015 to make compensation of Rs. 696,000/- to the Complainant on account of loss suffered by the Complainant as a result of his reliance on the deceptive and misleading illustration. However, the Company preferred an appeal before the Hon'ble Appellate Bench against the Commission's letter dated December 30, 2015. The Hon'ble Appellate Bench vide its order dated June 22, 2016 remanded the case to Director (Insurance) and directed to provide adequate opportunity of hearing to both the parties before final adjudication and address the issue as per his jurisdiction.

7. The Hon'ble Appellate Bench vide its order dated June 22, 2016 directed as under:

"...we find it appropriate to remand the case to the Respondent No.1 without going into the merits, to consider and evaluate the claims of the parties. The Respondent No. 1 is further directed to provide adequate opportunity of hearing to both the parties before final adjudication. We further, direct the Respondent No.1 to address the issue as per his jurisdiction. In view of the above discussion and observations, we hereby set aside the Impugned Order dated 30/12/15 and remand the case to Respondent No.1 to decide it afresh."



8. The provisions of Section 76 of 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.”

9. 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.”

10. 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.”

11. Hence, the S.R.O No. 122(I)/2016 dated February 26, 2016 was referred to by the Director (Insurance) so as to ascertain his jurisdiction / power in terms of the powers delegated by the Commission to the Commissioner and officers prior to adjudicating the Company and/or hearing the parties to the instant matter. It was



observed that the powers to adjudicate under Section 76(5) of the Ordinance had been delegated to the Commissioner (Insurance) and accordingly, the instant matter did not fall under the jurisdiction of the Director (Insurance) as per the said notification. Therefore, Show Cause Notice bearing number ID/Enf/SLIC/2016/6203 dated August 2, 2016 was issued to the Company and its Board of Directors (through the Company Secretary), by the undersigned, thereby calling upon them to show cause as to why punitive action may not be taken against them in terms of Section 76(5) and/or 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 11(1)(f) & (h), Section 12(4) and Section 76 of the Ordinance.

12. Thereafter, the Company Secretary, vide his letter dated August 8, 2016, while acknowledging the receipt of the said Show Cause Notice, stated that the Show Cause Notice has been forwarded to the Board of Directors of the Company and that the Chairperson has directed the Executive Director (Legal Affairs) to reply to the Show Cause Notice. Subsequently, in response to the said Show Cause Notice, Mr. Waqas Asad Sheikh, Advocate High Court, M/s. W&A Law Associates, while acting on behalf of the Respondents, provided response to the said Show Cause Notice vide letter dated August 16, 2016, whereby a power of attorney executed by the Respondents in his favor was also enclosed. It was contended that:

- i. The Complainant filed a complaint against the Company vide undated letter, however, without any jurisdiction and due process of law, the Director (Insurance) passed an order dated December 30, 2015 advising the Company to pay compensation to the policyholder, which was passed without complying with codal formalities and the Director (Insurance) was not competent to adjudicate on the issue. The order dated December 30, 2015 was impugned before the Hon'ble Appellate Bench, which gave the following directions vide order dated June 22, 2016:

"In the above circumstances, we find it appropriate to remand the case to the Respondent No. 1 without going into merits, to consider and evaluate the claim of parties. The Respondent No.1 is further directed to provide adequate opportunity of hearing to both the parties before final adjudication. We further, direct the Respondent No. 1 to address the issue as per his jurisdiction. In view of the above discussion and observations, we hereby set aside the Impugned Order dated 30/12/15 and remand the case to Respondent No.1 to decide it afresh."

- ii. It seems that the directions imparted by the Hon'ble Appellate Bench have been misunderstood or the concept of matter being remanded back is oblivious to the Insurance Division. In case of remand back, the authority directed has to proceed in terms of the directions and scope of the order of remand by the superior forum.



- iii. The matter has to be proceeded by the Director (Insurance) as per his jurisdiction. No deviation from the remand order is allowed as per the principle of law. However, the Company has received SCN from Commissioner (Insurance);
- iv. Remand back does not mean that a party can address the lacunas, gaps left by the authority or to improve upon their case during post remand proceedings, the position has to be reverted back to the original proceedings;
- v. There cannot be any subsequent show-cause notice or amendment in the undated complaint as per the scope of the remand order;
- vi. The matter has to be decided by the Respondent No. 1 i.e. Director (Insurance) as per his jurisdiction and not the Hon'ble Commissioner (Insurance);

13. In this regard, it would be pertinent to state that the order of the Hon'ble Appellate Bench required the Director (Insurance) to address the matter as per his jurisdiction. Hence, subsequent to the order of the Hon'ble Appellate Bench dated June 22, 2016, the S.R.O No. 122(I)/2016 dated February 26, 2016 was referred to by the Director (Insurance) so as to ascertain his jurisdiction / power in terms of the powers delegated by the Commission to the Commissioner and officers prior to adjudicating the Company and/or hearing the parties to the instant matter. As per the said notification, the powers to adjudicate under Section 76(5) of the Ordinance had been delegated to the Commissioner (Insurance). Therefore, the instant matter did not fall under the jurisdiction of the Director (Insurance). Accordingly, Show Cause Notice was issued by the Commissioner (Insurance).

B. Hearings

14. Thereafter, the Commission, vide its notice no. ID/Enf/SLIC/2016/6480 dated August 23, 2016, scheduled hearing for September 5, 2016 at 10:00 a.m.

15. 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.

16. Brief proceedings of the hearing of September 5, 2016 were as follows:

- i. Respondents stated that the identical cases were reported to the Federal Ombudsman;
- ii. The illustration was given to the policyholders after the policies were effected;



- iii. In response to the query, the Respondents stated that 50 policies of 10 years term were issued in 2003 showing abnormally high bonuses value. The Respondents claimed that the Company has already identified those policyholders, and is in the process of intimating those policyholders;
- iv. The Respondents further stated that *mala fide* intention on part of the Company and its Directors needs to be established before any penalty is to be imposed;
- v. The Respondents read out the Appellate Bench order in which the case was remanded back to the Director. It was argued that other party needs to be heard. Therefore, it was decided another opportunity of hearing would be provided;

17. The Commission, vide its notice no. ID/Enf/SLIC/2016/6690 dated September 7, 2016, scheduled another hearing for September 26, 2016 at 10:00 a.m.

18. Both the parties were present at the hearing held on September 26, 2016 duly accompanied by their respective authorized representatives. Syed Aijaz Ali Shah (the Complainant) was also present. The hearing was held through video link facility of the Commission connecting the Commission's Karachi Office with its Head Office in Islamabad. Brief proceedings of the hearing were as follows:

- i. The Respondents stated that as per the directions of the Appellate Bench Mr. Hasnat (Director Insurance) was required to hear the matter;
- ii. He was clarified that Commissioner (Insurance) has been delegated the power as per the S.R.O No. 122 (I)/2016 to hear the matter in respect of Section 76 (5) of the Insurance Ordinance, 2000. Therefore, the Show Cause Notice was issued by the Commissioner (Insurance) as per his jurisdiction;
- iii. The Complainant stated that he has been defrauded;
- iv. The Complainant further stated that he paid all his premium regularly. The Respondent did not inform him about reduced maturity proceeds;
- v. The Respondents reiterated that illustration was given after the policy was issued. To which the Complainant responded that he would not have opted for the policy, had he known the figures. The Respondents pointed that the illustration was issued on December 1, 2004 and first payment was made on December 30, 2004. An ND (Non- Declaration Scheme) policy was issued to the Complainant;
- vi. The Respondents read out the notes given on the illustration which provided that return on investment would be 5% per annum compound. The Respondents further stated that all policies were issued with bonus



certificates. However, the Complainant denied receiving any bonus certificate;

- vii. The Respondents in response to a query, stated that all the policies issued with the error in 2003, were of 10 years term and have already been matured. Four cases were reported to the Company of which 3 were settled in favor of the Company by the Federal Ombudsman;
- viii. The Respondents stated that the total premium paid by the Complainant during the 10 years term of the policy was Rs. 1,070,000/-. Whereas, the Complainant received an amount of Rs. 1,144,000/- upon maturity of the policy after 10 years;
- ix. The legal counsel of the Complainant pointed that the Audit of the Company should have highlighted the computer error. The Respondents did not inform the policyholder. He alleged that the agent of the Company must have used the brochures to convince the policyholders to sell the policies;

C. Issues

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

20. As per the illustration provided to the Complainant, cash surrender value at the end of 10th year was shown as Rs. 1,840,000/-. However, the Complainant was paid an amount of Rs. 1,144,000/- 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.

21. 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

22. The Respondents in the first hearing read out the Appellate Bench's order in which the case was remanded back to the Director (Insurance). It was argued that other party needs to be heard. Therefore, another opportunity of hearing was provided on September 26, 2016 to both the parties.

23. The Respondents further stated that as per the directions of the Appellate Bench, the Director (Insurance) was required to hear the matter. He was informed that Commissioner (Insurance) has been delegated the power, as per S.R.O No.



122(I)/2016, to hear the matter in respect of Section 76(5) of the Ordinance, hence, the Commissioner (Insurance) was the lawful authority to adjudicate the instant matter. Furthermore, the Director (Insurance) remained part of the entire proceedings. Therefore, this objection of the Respondents was not tenable. It would be pertinent to note that the preamble of the Ordinance 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.

24. The Respondents also pointed out that there was no misrepresentation as the illustration was provided after the policy was issued. In this regard, it would be pertinent to state that the Respondent issued an illustration, which showed an amount of Rs. 1,840,000 as surrender value at the end of 10 year term of the policy, whereas the amount paid to the policyholder was much less i.e. Rs.1,140,000/- . 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 its management / Directors, and the Company and its management / Directors 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 deceptive and the Company should have been aware of it as part of its statutory responsibilities. Furthermore, 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 policyholders. 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 such person's purchase decision. Therefore, any ambiguity in the insurance contract should be construed in favor of the policyholder.

25. 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.

26. 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."

27. 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 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:

28. 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

29. 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.

30. This Order is issued without prejudice to any other action that the Commission may initiate against the Company and / or its management



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Insurance Division

Continuation Sheet 9

(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)

