



SECP
Insurance Division
Karachi

Before Mr. Tariq Hussain Director (Insurance)

In the matter of
Appeal No. 08 of 2012

M/s. The Crescent Star Insurance Company Limited

Nadir House,
2nd Floor
I.I. Chundrigarh Road
P.O. Box# 4616
Karachi -74000.

..... Appellant

Versus

M/s. Sultanabad Model Ginning, Pressing Factory & Oil Mills

P.O. Box No. 114
Khipro Road,
Mirpurkhas.
Sindh.

..... Respondent

ORDER

Under Section 130 (2) Insurance Ordinance 2000

Dated March 22, 2013

Issue: Validity of Cover Note

Hearing:

29-01-2013 at SECP Office Karachi

Present:

For the Appellant:

Mr. Qutbuddin
Mr. Fakhruddin Bundukwala

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For the Respondent:

Mr. Zahid Mahmood Advocate

Karachi

Mr. Prdeep Kumar

Mirpurkhas

This Order shall dispose of the appeal No.08 of 2012 which was filed with this office on 26-9-2012 by M/s. The Crescent Star Insurance Company Limited under Section 130 (2) of the Insurance Ordinance, 2000 (the Ordinance). They filed it against the Order passed on 27-08-2012 (the "Impugned Order") u/s 130(1) of the Ordinance by the Hon'ble Federal Insurance Ombudsman (the Insurance Ombudsman). The Order was made on the complaint filed by the Respondents i.e., Sultanabad Model Ginning, Pressing Factory & Oil Mills, Mirpurkhas on 25-01-2010, that the Appellant i.e. the insurance company had unjustifiably cancelled the Fire Cover Note and prayed therein that the Cover Note be declared valid.

Background Facts:

Recalling the facts briefly, the Respondents M/s Sultanabad Mills, Mirpurkhas in their complaint lodged with the Insurance Ombudsman submitted that they entered into a contract on 14/10/2009 of Fire Insurance vide Cover Note No. 2009/HOB/F/GS/D/T/0050 with covering period of three months starting from 14/10/2009 to 13/12/2009 for a total sum insured of Rs. 5,000,000/- against a premium of Rs. 44,246/- through an agent namely Mr. Fakharuddin Bandukwala alias Baboo Bhai of the Appellant insurance company. As no specified date for the payment of the premium on the cover note was given, the Respondents submitted that they were of the view that the premium amount could be paid within the currency of the cover note, i.e. within the three months from 14/10/2009 to 13/12/2009.

The Respondents therefore sent out a cheque # CD/F-0170852, dated 25/10/2009, current account # 008501010063856, MCB Bank, Grain Market, Mirpurkhas Branch to the Appellant insurance company regarding payment of premium. In response thereto the Appellant vide their letter dated 4/11/2009 intimated the Respondent that as they had refused to pay the premium then on taking the delivery of the Cover Note, which was subject to the receipt of the payment of premium amount, the Cover Note stood cancelled automatically and therefore returned the cheque. The Respondent thereupon, served a legal notice on the Appellant dated 10/11/2009, enclosing the said cheque requiring the Appellant to accept the premium but got no response, no acknowledgement from the Respondent, nor was the cheque returned.

2. The Insurance Ombudsman office: Proceedings and Order

The Respondent eventually lodged a complaint with the Honorable Insurance Ombudsman on 25th January 2010 praying that the insurance company be directed to accept

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the premium payment cheque dated 25/10/2009 and for the declaration of the validity of the said Cover Note.

The Appellant insurance company asserted in its comments that payment of premium becomes due from the date of attaching the risk. Legal attachment of risk does not take place until full premium is paid. They submitted that the agent subsequent to the delivering the Cover Note asked for the payment premium which they refused, expressing their unwillingness over the terms and conditions of the Cover note. The agent thus conveyed the reluctance of the Respondent to the Appellant insurance company's management and requested for the cancellation of the Cover. As a result the cancellation was dispatched reportedly through a letter dated 23/10/2009. But according to the Appellant insurance company, the Respondent, who initially showed aversion to accept the Cover Note, later on his own, for the reasons known to him handed over the cheque to the agent Mr. Fakhruddin Bandukwala but he returned it to the bearer instantly. The Appellant further contended that the Cover Note may be treated as an interim cover before the issuance of the policy. And that the Cover Note is issued for the benefit of the insured to accept the terms before a Policy is issued. A timely payment of the premium by the insured would have conveyed his acceptance of the terms but his dillydallying and expression of hesitancy prompted the Appellant to cancel the Cover Note.

The Respondent in a reply however stated that they sent the cheque without any delay to the Appellant on 25/10/2009 to the agent and that they had not expressed any hesitancy or reluctance over the terms of the Cover Note. The Respondent further strengthened his case by submitting that they entered into similar contracts with other insurance companies like EFU and Adamjee and both had accepted the premium without any cavil that was made in the same way as that to the Appellant.

Later at the hearing before the Ombudsman the Appellant insurance company maintained that the payment of the premium became due as soon as the risk was attached w.e.f.14/10/2009. But the Respondent rebutted by stating that the agent Mr. Bandukwala had asked the Respondent for the payment of premium and the Respondent without any delay had sent over the cheque No. CD/F 0170852 dated 25/10/2009 for Rs.44, 246/- drawn on MCB Bank Ltd. MirpurKhas towards the payment of the premium. But the Appellant insurance co. refused to accept it and returned it along with a Cancellation letter dated 4/11/2009, that since the Cover Note was issued subject to the receipt of the Premium therefore the Cover Note in question stood cancelled automatically due to non-payment of premium. The aggrieved Respondent therefore served a legal Notice dated 10/11/2009 upon the Appellant, objecting the cancellation of the Cover and along with it sent the premium payment cheque. It was followed by a reminder on 17/12/2009 but Notice was not responded by the Appellant nor was the cheque returned.

The Insurance Ombudsman also made observation that no date had been specified there on the Cover Note for the payment of the premium and the relevant column in the Note found blank. And that the Clause iii) of Premium Payment Clause says the Insurer shall give 15 days' prior notice of cancellation to the insured. As a consequence the Ombudsman found that

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the cancellation of the Cover Note was unsubstantiated by any law, agreement etc. No independent evidence had been presented to support the contention that the Respondent had expressed any unwillingness over the acceptance of the terms of the Cover Note. Likewise the Appellant's argument that the Cover Note was not an insurance agreement found equally untenable. The ombudsman concluded that the cancellation of the Cover Note was illegal on the part of the Appellant and held it to be valid till its expiration date. He directed the Appellant Insurance Company to complete all the procedural formalities to the validity of the Cover Note within 30 days from the receipt of the Order dated 27/8/2012.

3. Appeal u/s 130(2):

Thereafter the Appellant has filed an appeal (No. 8 of 2012) with this office on 26/09/2012 with the prayer that the impugned order may be set aside and then pass an order as the Commission may deem fit. Briefly stating, the Appellant contended inter alia that the learned Insurance Ombudsman failed to appreciate that the Cover Note is issued for the interim period and unless and until the premium is paid and the policy is issued by the insurance company, the risk covering does not start. He added that the Respondent issued the cheque to the payment of the premium without any covering letter and that too when the Appellant had already cancelled the Cover note. That the Cover Note was issued subject to the payment of premium and since the premium was not paid then when it was due, rather the Respondent refused to pay the premium when the agent said above requested for it, it automatically stood cancelled, and later on receiving the cheque they had returned it to the Respondent. For that reason alone there was no need to issue a prior cancellation notice on the part of the Appellant.

The copy of the Appeal was sent out to the Respondent with direction to submit the comments thereupon whatsoever into this office but no comments were received by the office. Though the Respondents gave repeated assurances that the comments were on the way, they finally submitted on the hearing day.

4. Hearings:

At the very outset of the proceeding, before the Director Insurance on 29-01-2013 at the Commission office, Karachi, the officials representing the Appellant insurance company said that the negotiation were under way to settle the claim amicably. The Company officials maintained that certain misconception caused the cancellation of the Cover note and now they are of the opinion that cover note remained valid.

As neither the Appellant nor the Respondent made any mention before of the claim pending with the Appellant insurance company, the Respondent were asked about it and they informed the office that indeed a fire incident took place during the purported currency of the impugned Cover Note and that the other insurance companies like Adamjee and EFU had already settled their liabilities regarding the claim. But with the Appellant insurance company issue of the claim payment was yet to be settled. As the very validity of the Cover Note per se

had been put in question by the Appellant, no claim payment could arise till the validity of the cover is conceded. Consequently what they (Respondent) were striving was to get the appellant insurance company declare the validity of the Cover Note it had issued.

The Respondent also submitted therein the para wise comments on the Appeal. The Respondent wherein logically responded to each of objection raised by the Appellant. The detail of which is not different from the preceding explanations. Mainly it was their contention that as the Cover Note did not carry any specified date for the premium payment; they were under bona fide impression that it could be paid any time during the currency of the Cover Note. Then the premium payment too was made without any delay i.e., 25/10/12, hence there was no point in canceling the Cover unilaterally and that too without prior Notice of 15 days. Nor had they expressed their unwillingness to accept the terms of the Cover Note. Besides the Appellant on receiving the Legal Notice on 10/11/12 along with the cheque for premium payment did not bother to respond, nor returned the cheque. The Respondent then prayed for the dismissal of the appeal and requested that as other insurance companies had already paid their share of claim, the Appellant too should clear their liability which came to the amount of Rs.600,000/- only.

The Appellant insurance company officials however exhibited an accommodating attitude and said that the new management which took over Appellant insurance company since January 01, 2012, has set the priority to settle the due claims amicably and that previously a certain matters factored in but by now the Appellant Company would soon take up the matter with the Respondent in order to settle the dispute. They however requested for some time to hammer out the differences with the Respondent on the claim issue. The Respondent agreed to the settlement offer made by the Appellant. It being a welcome development on part of the Appellant Company, so it was thought quite appropriate to grant them some time to let them hold talks to resolve the issue. Hence the hearing concluded by advising the parties to have time till February 15 to discuss the matter to settle it down.

5. Conclusion:

Coming to the conclusion it comes to forth that the key issue at the core of the dispute, that the Cover Note issued on 14/10/2009 which carried no premium payment date was cancelled on 23/10/2009, without any prior notice to the respondent. Whereas just within a few days of issuance of cover note, the Respondent sent out the premium payment cheque to the Appellant on 25/10/2009, obviating any need to such a unilateral action to the extent of cancellation on i.e. 23/10/2009 and that too quite unilaterally. Although the Appellant Company had not raised any objection, nor had denied the fact that the Cover Note carried no date of premium payment at all, the relevant column found blank, nor the Appellant or his agent made any prior advice to the Respondent to this effect that the premium must be paid within so an so days. Nor the law supports the view that an insurance company must insist on immediate payment of the premium in order to award the insurance cover. In this regard we may cite the Rule 35, SECP (Insurance) Rules, 2002 issued on 12/12/2002, laying:

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Insurance policy not to be avoided for non-payment of premium.- (1)

No insurance policy shall be liable to be avoided on the ground that the premium has not been paid.

(2) Nothing in this rule shall prevent the inclusion in a policy of a provision to the effect that cover under the policy shall not commence until the premium has been paid or guaranteed to be paid in such manner as may be set out in the policy or otherwise accepted or agreed to by the insurer.

Besides, the Accounting Regulations for Non-Life Insurance do not rule out the possibility of unpaid premium on part of the policy holders. Within this context the Annexure II (Rules 16 and 21(1)) the Definition 8 may be referred wherein it is the provision that *premium receivable under a policy shall be recognized as written from the attachment of the policy to which it relates. Over the period of insurance from inception to expiry,...premium shall be recognized as revenue....*

More so the Appellant Insurance Company by abrupt cancelling of the Cover Note violated its own clauses and terms printed on the Premium Payment Clause. They also failed to substantiate their contention that the Respondent expressed their refusal to the agent on accepting the Cover Note. And lastly the argument that the Cover note in question issued just for interim period and until premium is paid was not an agreement could be not be maintained by any strength of law, precedent etc.

6. Order:

It may be reiterated that the Appellants have already expressed their willingness to resolve the contentious issue with the Respondent in the hearing as said above. Now with the observations made above, the undersigned sees no reason to differ from the impugned Order and thus the order passed by the Insurance Ombudsman is upheld in terms of section 130(2) of the Insurance Ordinance 2000 and the Appellant Company is directed to treat the Cover Note as quite valid as if it has not been cancelled by their letter dated 23/10/2009 and binding to be honoured.


Tariq Hussain
Director