

**PRESIDENT'S SECRETARIAT (PUBLIC)
AIWAN-E-SADR**

Rep.No.112/BM/2022
Date of Decision:31.01.2023

United Bank Ltd VS Mr. Kashif Lakhani

Subject: REPRESENTATION FILED BY UNITED BANK LTD AGAINST THE ORDER OF THE LEARNED BANKING MOHTASIB DATED 21.04.2022 IN COMPLAINT NO. 2020-559

Kindly refer to your representation on the above subject addressed to the President in the background mentioned below:-

This representation has been filed by United Bank Ltd (UBL) on 21.05.2022 against the order of the learned Banking Mohtasib dated 21.04.2022, whereby it has been held that:

“Having regard to the facts and above discussions, I under the powers vested in me vide Section 82D of the Banking Companies Ordinance, 1962 read with Section 9 of Federal Ombudsmen Institutional Reforms Act 2013 (XIV of 2013), allow the Complaint and advise the Bank to re-calculate the profit at the rate of 12.06% on total TDRs (i.e., Rs. 150 million) in pursuance of above observations and credit / pay the balance amount to the Complainants within a period of 30 days from the date of this order and report compliance.”

2. Mr. Kashif Lakhani (the complainant) alongwith his family members have been maintaining three accounts with the Bank's Clifton Branch, Karachi. Statedly, on March 31, 2020, he deposited an aggregate amount of Rs. 150 million in Term Deposit Receipts (TDRs) for one year @ 12.06% profit rate which was agreed and confirmed by the Branch Manager Mr. Aamir Khalid of the Bank. Further, due to COVID-19, the staff attendance was short in the Bank, therefore, the Bank staff did not issue him the Term Deposit Receipts (TDR) on the day of deposit i.e., March 31, 2020. However, the Branch Manager (Mr. Aamir Khalid) confirmed to him through a WhatsApp message at 1626 hours on the same day that the funds had been placed @ 12.06% profit on one year maturity and Rs. 150 million had been debited from their account. Further, on April 01, 2020, the Branch Manager provided him computer generated TDR receipts which were printed on plain paper wherein no markup rate was mentioned. However, on his inquiry, the Operations Manager (Mr. Omar) of the Branch informed him that the Bank had placed the TDR @ 10.48% instead of @ 12.06%. Whereas, their accounts were debited against the TDR sum on March 31, 2020, and the Branch Manager (Mr. Aamir Khalid) confirmed to him placement of funds in the TDR @ 12.06% the same day at 4.26 PM before the close of business, then how could the Bank change the profit rate to 10.48%, which would result in a loss of Rs. 2,370,000/- due to rate difference. Moreover, on April 2, 2020, he again visited the Branch and met with Mrs. Qurat, who was on relieving duty at the Branch, in the absence of Mr. Aamir Khalid, and she provided him TDR receipts on the Bank letter head, which again had no indication/mention of the profit rate. On his insistence, she wrote the profit rate of 10.48% by hand on the TDRs and put a Branch Stamp with the name of the Branch Manager, Mr. Aamir Khalid. Reportedly, she stated that the difference would be paid at maturity after approval whereas, the disputed profit rate of 10.48% was the rack interest rate which the Bank would offer on a minimal deposit of even Rs. 5000/-. On taking up the matter with the Bank's Head Office, he was conveyed vide their email dated April 3, 2020, that the profit rate of 12.06% was miscommunication on the part of the Branch Manager Mr. Aamir Khalid. Therefore, he lodged a formal complaint with the Bank on April 3, 2020 and subsequently he

received a letter dated April 24, 2020 from the Bank which was unsigned, stating that a comprehensive review had been undertaken and before TDR booking, the Branch had communicated the actual rate to him. So there was no issue at their end. Thus, he escalated his complaint with the learned Banking Mohtasib seeking resolution of his grievance and praying for disbursement of profit by the Bank at the agreed profit @ 12.06% instead of 10.48% on all TDRs.

3. The Bank's stance before the learned Banking Mohtasib was that the disputed TDRs were booked on March 31, 2020 for Rs. 150 million with the consent of the complainant and profit rate of 10.48% was officially communicated through Bank Certificate on April 1, 2020 at 10.30 AM. As per Bank's format, the rate was "not visible" on the Certificate, hence, the profit rate was shown to him through the Bank's System by the Operation Manager. Further, he was informed in advance that due to cut in the discount rate three times during the month of March 2020, the Bank would not be able to offer him higher rate as requested by him for next month and that the Bank never mislead or forced him to invest the money with the Bank. Moreover, he was running a Brokerage House and was in the Branch on March 31, 2020 negotiating the rate and on April 1, 2020 as well. That he had the option to break the TDRs and move the funds on April 1, 2020 as was discussed with him before the booking of the TDRs, as the rates were being negotiated and nothing final was communicated to him on March 31, 2020. The rate of 12.06% was suggested to him and never agreed with him, since it was last day of the month and rates were expected to be changed in next month. Hence, he went ahead with the booking process knowingly and later changed his statement, and started to complain to get a profit rate that the Bank could not offer, and which would result in a loss to the Bank. Whereas, the WhatsApp message was merely a communication done with respect to the negotiation and it should not be considered as confirmation of profit rate to him. The Bank has added that in the detailed meeting with him on March 31, 2020 at the time of TDRs booking, he was informed that due to steep fall in the discount rate and the market trend, there was possibility that the rates to be revised at the time of booking. Moreover, in March, 2020, the profit rate was changed from 13.25% to 12.50% and then to 11.00%, which was discussed with him at the time of booking of TDRs. However, he insisted to book the TDRs on March 31, 2020 in order to avail the current profit rate as it was expected that one year TDR rate would further decrease on April 01, 2020 to 8.79% due to the COVID-19 situation, giving him the benefit of 1.69% due to booking him on March 31, 2020. Thus, he was not forced or miscommunicated the profit rate in order to keep the funds in TDR. Since, he himself was running brokerage house and was well aware of the fact of fall in the discount rate was sudden due to outbreak of Covid-19.

4. Considering the respective stances, the learned Banking Mohtasib proceeded to pass the above mentioned order which is assailed by the Bank.

5. The hearing of the case was fixed for 17.01.2023. Mr. Adnan Aziz Malik, District Operation Manager has represented the Bank, whereas, Mr. Kashif Lakhani complainant himself has appeared.

6. The learned Banking Mohtasib thrashed the matter vide paras 11 to 17 of the order as follows:
11. Despite clearly mentioned in the hearing notice for nomination of relevant senior officer(s) to attend the hearing, the hearing was attended by a junior officer (Branch Operation Manager), who didn't know about the case details, bank relevant policies and who even didn't have a PA number, which reflects Bank's casual attitude towards the matter. The senior management of the Bank is advised to review the matter and take appropriate measures and ensure going forward senior official(s) attend the hearing in conformance of the instructions of the Banking Mohtasib Pakistan Secretariat, as mentioned in hearing notices.

12. The Bank, under the CPD Circular No. 2 of 2015 dated July 27, 2015 (The guidelines of business conduct) is required to maintain relationship with customer which will be guided by the principles of a) trust, b) fairness, c) transparency, and d) accountability, which the Bank has failed to comply with in its true spirit. Full disclosure of profit was neither divulged clearly / precisely nor prominently mentioned in the TDR receipts.

13. The Bank issued system generated TDRs on April 1, 2020 on a plain paper and then on April 2, 2020 on letter head of the Bank. In both instances the TDRs were unsigned and no profit rate was mentioned thereof, creating ambiguity which is against the instruction of SBP BC & CPD Circular No. 2 of 2018, under the title "Guidelines on Prohibited Banking", **quote:**

with regards to misleading conduct quoted in clause (b) of prohibition rule 1, which states that "a. hiding or not disclosing the actual price of a financing product -(interest communication — APR only without disclosing other charges) as a case of deceptive conduct on the part of a bank." **unquote**

14. The Bank has claimed that its officials had provided the complainant a clear understanding about the profit rate at the time of negotiating the profit rate, but there is no evidence to support their claim. The Bank's stance that it had given advantage of close to 1.69 % against the one-year profit on TDR at 8.79% which was effective April 1, 2020, by booking his TDRs at 10.48% on March 31, 2020 appear to support the stance of the Bank. However, the claim of the Complainant that he was offered. 12.06% is substantiated by mention of 12.06% on the TDR applications signed by the complainant and his parents, and the WhatsApp message dated March 31, 2020 to the 'Complainant from the Bank Manager. The Bank could not provide any evidence in support of any clear communication to the Complainant for the change in committed rate of 12.06% to 10.48% before booking the TDRs, despite the fact that the amount being invested by the Complainant was substantial, i.e., Rs. 150 million.

15. The stance of the Complainant that he had intention to invest the funds on profit rate of 12.06% carry weight, since it is clearly stated on the TDR application and as communicated to him through WhatsApp by the Branch Manager, and on the prevailing rate sheet for the product (UBL Profit Deposit Receipts) for the period effective March 1, 2020. The issue of miscommunication of the TDR rate on the part of the branch staff is admitted by the GM, South (Syed Jaffar Hussain) in his email communication dated April 3, 2020 with Nadia Anwar Lakhani (sister of the Complainant), based on the findings stated by DM, Clifton (Mr. Shafaat Hamdani) in his email dated April 3, 2020 to Syed Jaffar Hussain, highlighting the fact that the computer-generated TDR unsigned receipts carry no indication of markup rate.

16. The Terms & Conditions prescribed in the TDR application form were not transparent to give clear understanding to the reader with respect to the profit rate assertion mechanism or process or indication for the customer. The Bank did not provide clear understanding to the customer about the profit rate at the time of receiving the request for fixed deposit. There is no indication in the record submitted by the Bank that the Bank had explained to the Complainant in clear terms the revised profit. rate used for booking the TDRs in question, except after fact when the revised rate was manually stated on the TDR Receipt, which gives an evasive and incorrect indication with regards to the agreed profit rate.

17. Further, SBP BC&CPD Circular No. 2 of 2018, under the title "Guidelines on Prohibited Banking" clause 2 (f) read as "Giving prominence to the returns on a banking service or product without judiciously disclosing the significant terms, conditions, and risk warnings or

not following the related regulations. Such action may mislead consumers from unrealistic expectations on the returns to be earned. The Bank could not produce any evidence that they have fully/disclosed all T&C as well as return on TDR in a precise and transparent way which was Bank's fiduciary responsibility and compliance with SBP's instructions referred above to safeguard the interest of depositor. The case in hand is a typical example of misleading and deceptive marketing and violation by the Bank of the aforementioned instructions given by the Regulator. The management of the Bank is recommended to revisit its products literature and make it transparent with full disclosure and key conditions be prominently displayed. It appears that despite similar observation vide findings issued to the Bank in Complaint # 2020-949, no concrete action has been taken by the Bank."

These are findings arrived at on due consideration of the record and no cavil could be found with such an approach to the matter.

7. It is established on record that the Bank proposed/offered an interest rate of 12.06% on one year maturity of TDR. Accordingly, after formal negotiation and on agreed rate of 12.06% p.a, the complainant submitted duly filled in TDR Application clearly indicating profit rate 12.06% p.a. Thus, he booked TDRs amounting to Rs.150 million on March 31, 2020 and Rs.150 million were debited from their accounts. The Branch Manager also confirmed to him profit rate 12.06% p.a through WhatsApp message at 1626 hrs on March 31, 2020. Whereas, the Bank issued System generated TDRs on a plain paper on April 1, 2020 and then on April 2, 2020 on letter head of the Bank. Surprisingly, the TDRs were unsigned and no profit rate was mentioned thereof creating an ambiguity which is sheer violation of the SBP's BC&CPD Circular No.2 of 2018 "Guidelines on Prohibited Banking." Suffice it to observe that if the TDRs were booked by the Bank without first getting the clearance from their concerned authorities/Deptts and without the consent of the complainant violating their earlier commitment of offering profit @12.06% p.a., the customer should not suffer. Apparently, it shows that firstly the Bank made commitment to give profit @12.06% p.a. on TDRs of substantial amount i.e. Rs.150 million then instead of fulfilling its agreed commitment of profit, the Bank undoubtedly created ambiguity regarding rate of profit and finally resiled from its agreed commitment.

8. Suffice it to observe that while interpreting the contractual transaction/matter, the established law is to discover the intention of the parties behind it as to what persuaded the parties to enter into the agreement. The intention of the parties is well reflected from their meetings and the Manager's WhatsApp message before booking of the TDRs. The Bank had offered profit at a particular rate as per expectation of the complainant and that was the persuading factor in reaching the contractual arrangements.

9. The contention of the petitioner Bank is that the learned Banking Mohtasib is precluded from exercising judicial powers in such like matters on the strength of the judgment in UBL vs Federation of Pakistan 2018 CLD 1152. Suffice it to observe that this matter is already subjudice before the Honourable Supreme Court of Pakistan in view of conflict of opinions about this issue, inter se, the various High Courts of the country and whatever will be the decision by the Apex Court, the same will hold the field. Be that as it may there is no restraining order of the Honourable Supreme Court of Pakistan for non-entertaining the complaints by the learned Banking Mohtasib who is thus dealing with such matters in accordance with the law.

10. The ambit and extent of jurisdiction of Banking Mohtasib is spelt out under Section 82A(3)(a)(e), Section 82B (4)(5) and Section 82F of the Banking Companies Ordinance, 1962. The cumulative reading and perusal of these provisions of law undoubtedly leads to the conclusion that the Banking Mohtasib is to inquire into the complaints about banking malpractices, maladministration,

wrong doings, the fraudulent transactions, the corrupt and malafide practices by the Bank officials and pass appropriate orders on conclusion of inquiry. These powers of the Banking Mohtasib when considered in context with Sections 18 and 24 of the Federal Ombudsmen Institutional Reforms Act, 2013 further show that in matters falling within the jurisdiction of the Banking Mohtasib, the jurisdiction of other courts or authorities is excluded; and the provisions of Act 2013 have the prevalence.

11. The Bank was given ample opportunity to controvert the claim of the complainant and the findings of the learned Banking Mohtasib, the Bank, however, failed to discharge the burden and statutory liability cast upon it under the law. Hence, no justification has been made to interfere with the order of the learned Banking Mohtasib. The Representation of the Bank is devoid of any merit and deserves to be rejected.

12. In view of above circumstances, it proves unequivocally that in the presence of TDR Applications and the Manager's WhatsApp Message, the Bank had booked TDRs at profit of 12.06% p.a. However, after booking TDRs of substantial amount i.e. Rs.150 million, the Bank resiled from its agreed profit rate, conversely, it is the Bank's fiduciary responsibility and the compliance of the SBP's Instructions to honestly safeguard the interests of the depositors. Whereas, the Bank used a typical example of misleading and deceptive marketing as well as violation of the Regulator's Instructions. In such circumstances, the order of the learned Banking Mohtasib is based on sound and valid legal footings which calls for no interference. Thus, the representation is liable to be rejected accordingly.

13. Accordingly, the Hon'ble President, as per his decision above, has been pleased to reject the representation of the Bank.

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(Anwar-ul-Haq)
Director General (Legal)

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- (2) Master file.

-Sd-

(Anwar-ul-Haq)
Director General (Legal)