



**International Journal of Biology, Pharmacy
and Allied Sciences (IJBPAS)**

'A Bridge Between Laboratory and Reader'

www.jibpas.com

CIVIL LIABILITY OF SECURITIES EXCHANGE BROKERS IN IRAN

NASSER HAMDOLLAH¹, ABBAS ZAMANI²

1: Department of Law, Fars Sciences and Researches Branch, Islamic Azad University, Marvdasht, Iran.

1: Department of Law, Marvdasht Branch, Islamic Azad University, Marvdasht, Iran.

2: Department of Law, Marvdasht Branch, Islamic Azad University, Marvdasht, Iran.

ABSTRACT

Brokers are one of the main components of securities market and conducting securities transactions are exclusively carried out by them. Also they are responsible for other duties such as providing advice to clients and portfolio. Membership in the association is compulsory for all the brokers and based on the law any brokers who intend to work, should first be a member of the broker's association and then initiate his activities. Despite the broker's major and important activities, their civil liability has not been considered by the legislator. It should be referred to the general rules to investigate this type of civil liability. According to the general principles, a unit base cannot be defined for civil liability of brokers. Therefore, by considering the instances of civil liability of brokers, they are different in origin. Of course in other cases it must be said that the main basis of civil liability of brokers is fault. Also, disagreement about compensation of some damages such as damages caused by losing the stock trading opportunities are existed in Iranian law. In case of disagreement between the brokers and clients in the first stage, the compromise center handles disputes; this means that the center acts as the primitive committee of the dispute resolution.

Keywords: Exchange broker, civil liability of broker, Securities

INTRODUCTION

In the not too distant past, people were able to start great works easily just by using their savings or with aggregation of several people. But currently, because it isn't possible to do

this easily and a huge capital is required to launch a business or an industrial plant, securities are provided to launch a huge project that beside interest available for everyone is able to help the country's economic prosperity. Therefore, with having the pulse of these markets in hand, it's possible to give them a boom by developing this sector and regular and lawful management for it and to steadier them. Because if we develop the willingness of investment among people in these markets we can replace this powerful macro system with the other incomes of the country and make it raise up to the perfection border and with strengthening the system we can clean up the created money games. When people can easily have a reliable investment in these markets which consists of (Commodity Exchange and the Stock Exchange) they will definitely invest their saved money into these types of markets. The current article has been prepared in order to evaluate the civil responsibility of securities exchange brokers. Therefore concepts such as the civil liability of securities exchange brokers are investigated and analyzed due to its legal place and significance. Legally, the necessity of compensate the losses entered into a person is called civil liability.

This responsibility which is principally up to the loss agent and is based on fault; sometimes is used in its general meaning and in a place that someone is in charge against another person due to his perjury or breaking the law or causing damage. In other words, the loss agent is in charged against the civil liability of the executive guarantee of law violation and commitment. But in most cases the civil liability is used in its specific meaning and this term is placed against liability arising out of breach of contract or delay in its implementation (contractual liability) (Ghasemzadeh, 2008). The purpose of civil liability is its particular meaning that a person is responsible for causing damage to another person, without no contract between them. This responsibility is interpreted as the forcible liability which some general rules and its general principles in civil law is available under the subject of no contract requirements. Liability or responsibility may be ethical or legal.

2 - Definition of stock exchange

Stock exchange is a French word which is taken from the Greek name of Bursa. In Persian dictionaries, sometimes the term of exchange and swap places and exchange system are used against the word of stock exchange. In terms of economic term it refers to a market and kind of sales system where

documents, financial securities and bills of various countries, gold and so on are exchanged. Therefore with regard to the types of products traded on the stock market, stock exchanges can be divided into different types including stock exchange, gold and oil and document exchange and so on. But the real root of this word is somewhat unknown. In terms of legal expression stock exchange or official market, regular market or constrained market, is known as the major markets of general transactions which is where the formal traders and speculators (brokers) and producers and consumers of exchange commodities are aggregated and long term cash transactions has been done into total amount and the trader takes advantage from the rate difference during long term and real dealing is going to take place. (Langeroodi, 2003). In this common meaning which has become increased among people, especially between speculators, if the word of Stock Exchange be told into an absolute form and unconditionally, buy and sale of securities and stock market business is the concept of it and this is because of the dominance of these types of transactions by stock markets because most of the turnovers in a variety of exchanges, such as gold, oil, etc. are related to these securities and people are more associated with these markets rather than

other stock markets. In Iran an organization that is at the top of these market and manages it is called the Stock Exchange of Iran. This organization is an organized entity which is one of the most efficient and basic institutions of the capital market and alongside other institutions and organizations is responsible for many tasks.

3. Broker of securities

Broker in the regulations of exchange organization is the agency for trading listed securities and other services provided in the law from individuals or in some cases into their own account in form of a legal person (Article 1 of the Exchange Council, 2010). The brokerage in the stock exchange has a fundamental position.

The broker is a legal person or a natural person who directly performs the purchasing operations, selling or borrowing securities. Individuals or companies that are willing to participate in the stock exchange are able to buy or sell securities by visiting one of the brokers. As stated previously, the transaction on the stock exchange are done by brokers. Usually, anyone can easily open a brokerage account. The investor chooses the broker or the brokerage unit through visiting or via his credit or other methods. Registered Companies of Securities Exchange are willing to know few basic facts about the potential

customers. Whereas usually just a small amount of these information is required. Usually there is no meeting between the broker and the client and most of the contacts are done via telephone or letter. Customers can easily choose their desired brokerage. A perfect broker provides various services for customers, particularly in the field of advice and giving information. Hence, investors can obtain extensive information on the economy, industry, various companies and sovereign debt markets through perfect brokers. In front of perfect brokers, there are brokers who work for low levels of money. Services provided by these brokers are the same as the services of perfect brokers but the difference is that recent brokers are provided a little information and advice about the investment. So investors who work with these agents, will pay less and get less profit. There are another group of brokers who receive minimum amount of money. These brokers are often included small firms that for purchase and sale of shares received minimal cost from selling each shares (Zareh Moayedi, 2010). Since the stock exchange has certain rules in trade and commerce and has a particular mechanism; transactions can be done just through brokers. Brokers are individuals who are familiar with the economy and particularly stock exchange because

individuals or companies that are doing their transactions on the stock are some kind of interested to know about expert opinions of brokers, and start to buy or sell by using their advice. Therefore proficiency is one of the main conditions for obtaining a brokerage.

4. The responsibility of stock exchange brokers

4.1. Bailment

A fiduciary relationship is created between the broker, customer and client. The broker who is honest against commitments, undertakes some duties that violation of them leads to civil responsibility (Abdipour Fard) and anyone in the same position, is obliged to take action just based on the interests of beneficiary and shouldn't use his position for personal gain or be in a position where his representation duties may be in conflict with his interests. A person, who is in a fiduciary position, has no right to make a profit and personally take advantage from it. In this regard, by virtue of Article 12 of the Securities Market Law, the oath conducted by the board members in the Supreme Council meeting of the Securities and Exchange are obliged them to protect the secrets of the organization and board of directors. (Mirzayi Monfared, 2010). Also, by virtue of Article 50 of the Securities Market Law, if the brokerage which the securities and trading

funds have been entrusted to him and is obligated to maintain them in separate accounts, intend to use them against the law and for personal advantages or other's benefit, his action is a malversation. (Abdipour, Haman). This fact that stock brokers have specific fiduciary tasks against their clients and customers is doing to say that they should execute their duties with skills and care that is expected from cautious and reasonable persons in their jurisdiction.

For example, employees and managers are not allowed to use the company's internal information in each transaction to the detriment of shareholders' or other buyers or potential sellers of shares. The transaction of shares in this way is called trading based on the confidential information and future benefits based on these activities leads to the responsibility of internal members and causes profit recycling and will benefit the shareholders or an employee who has obtained confidential information related to his work, should protect these information as the confidential trade secrets of his employer and avoid to revealing them. This duty will continue even after leaving the job. According to Article 75 of the Law on Electronic Commerce of Iran provides that "anyone who through electronic means, has obtained trade secrets or disclosed them to third parties

in order to compete, benefit, or do damage to commercial, industrial, economical, and service corporations violating employment contract where it prohibits revealing trade secrets, will be sentenced from 6 months to 2.5 years in prison or a penalty of 50,000,000 Rls.

4.2. Fault

In general, the responsibility of the broker toward his actions often has contractual origins and is created by a violation of a contractual obligation which because of its association with the contract is called contractual responsibility or "arising from the contract" and sometimes without the aspects of contractual relationship, the law knows that the agent is responsible for compensating losses of the injured person. This kind of responsibility due to the lack of the will involvement in development of commitment is called "forcible liability". In the recent type of liability there are disagreements on the basis of how the legislator puts someone liable to compensate the loss of another person. One opinion in this context is that principally liability is based on fault and liability without fault (based on risk creation and guarantee the right) are the exception (Ghasemzadeh, Haman). But some persons with regard to the dependence of private law to the Islamic jurisprudence and citing several

instances of the Islamic Penal Code (including articles 316, 320, 321,323, etc.), have considered the basis of civil liability in the Iran's rights, Common Citing " as a detrimental act for a person and the fault have mentioned as a factor that helps the judge to identify and establish this citing (Bariklo, 2006). Article 953 of the Iran's Civil Code knows the Fault as a wastage and aggression and in the two matters before has cleared the range of aggression and wastage. In Note of Article 145 the Islamic Penal Code approved 2013, the fault includes carelessness and recklessness. Carelessness, negligence, lack of skills, nonconformity of state system and items like them are considered cases of recklessness and contingencies. Fault is a common-social concept that each case must be evaluated and ruled with the conditions and characteristics of its particular situation.

4.2.1 General fault

Fault depending on the source and nature of the task can be general or contractual. Whenever there is no contractual relationship, fault is the nonconformity of obligations outside the contract that has existed before. This task may be a certain task by a norm or rule or it can be a general task without a certain nature. In explaining violation of certain task, it can be said that there are

specific norms and rules that impose specific behavior to citizens in special conditions.

Nonconformity of appointed behavior by law or regulation is called fault which is formed because of the violation of the rule. Also, violation of other's personal rights that have been created or supported by the law, such as the need to respect the safety and health of others, the need to respect the ownership, the need to respect personality and dignity of others, in order to prove this kind of fault it is sufficient that the injured person demonstrate the nonconformity of the regulations or rights which is protected by the law (Jordan, 2006). Beside the special assignments that are determined by the law or regulation, each individual is responsible for a general duty that is being cautious in his behavior and consider all necessary cares. The violation of this task that sometimes called norm of civility sometimes is considered the careless fault or fault in consciousness. The feature of this norm is its flexibility and in order to evaluate the fault, the judge must determine that what was the behavioral task and what was the person's task.

4.2.2 The job fault

The purpose of this fault is an error that the brokers committed in the direction and execution of their professional work. In fact, by virtue of paragraph 13 Article one of the

Securities Market Law, the broker is a legal person that trades securities for others and into their accounts. Therefore, for example, the broker can't ignore his professional responsibility, and without a notarized power of attorney from persons, order to buy or sell as an intermediary between companies and his customers, with this act the brokerage firm will be responsible for compensation to the complainants. In such cases, if the brokerage firm performs a transaction and because of the lack of license for sales and the absence of license for payments from the sale, subsequently doesn't enforce the applicants, according to Article 312 of the Civil Code, the Company is obligated to refund the same sold stock and in case of termination of the contract is obligated to repurchase shares for applicants. If there is no possibility to repurchase, beside the current price (The last stock price when it has been opened), the price difference must be paid by considering the highest price for the shares from the applicants causation. It is possible that fault be understood with a typical and objectively criterion. The purpose of this criterion is that the fault, regardless of the culprit, is a typical behavior that exiting from conventions and criteria can be observed. In fact, in this opinion more attention is given to the guilt than the culprit (Rah Peak, 2008).

4.2.3 Contractual fault

A contract will be signed usually between brokers and clients and brokers will operate based on this basis contract. But if the broker does not act in accordance with provisions of the contract, it is considered as violation of contract and will have a contractual responsible against customers. Whether in the emergence of civil liability, which is caused by implementing the provisions of contract, fault is committed to the condition or doing the obligation is enough, in such a way that the root of the liability is known to be committed to the law and not his fault, there are several theories in the legal systems of Kamen Lou and Romi - Germanic. In the positive law of Iran, in the topic of "damages resulted from the non-performance of obligations" there is no word about fault.

If the person infringing of performance of the obligation, cannot prove force majeure is sentenced to pay compensation (Article 227 of the Civil Code). On the other hand in some cases, the responsibility of the contracting parties (Generally faithful or sentence faithful) depends on proving his aggression or negligence (614,631,278 Articles the Civil Code). Some persons with regard to the Article 227 of Civil Code have assumed the existence of fault in the committed person unless the contrary be demonstrated by

himself. (Shahidi, 2004). It is obvious that the relationship between the injured person and the company is principally based on the expressed or implied contract and obligations of each side in the context of consent and the will of both parties is respectable and the validity of this will, requires that the contractual fault (abjuration) be the basis of the responsibility and the special provisions of enforced responsibility according to the analogy of the contractual fault, will be applicable.

CONCLUSION

The existence of brokers who are knowledgeable, skillful, truthful, depositary and honest, will guarantee the stability of stock exchange. Therefore, the broker's adherence to the rules of the stock exchange and expertise and commitment to the enforcement of laws, particularly in the area of civil liability can solve many problems and suffering. Among these, brokers and authorized individuals in the Article 35 of the Stock Exchange Law may cause damage to the others by their professional activities. So because of the economic importance of Stock exchange and economic transactions, there is more need to delicacy and legal subtlety in the area of responsibility of the brokers. One of the problems in the way of the stock exchange effectiveness is having a high risk

and being dangerous which the responsibility insurance of stock exchange brokers can help to decrease the concerns and problems of many customers in this area. It is recommended that a coherent and independent law must be approved in respect of the civil liability of the brokers because referring to other laws such as the civil code, cannot fully include all the responsibilities of the brokers.

REFERENCES

- [1] **Barikluo, A. (2006)** the civil liability, vol. 1, Tehran, Mizan publication.
- [2] **Patrice, Jordan (2006)** principles of the civil liability associated with the opinion of the Supreme Court of France, translation and research Majid Adib, Tehran, Mizan emission.
- [3] **Langroodi Jafari, M. J. (2003)** Terminology of rights, article 40 of the law of bankruptcy filtration, Tehran: The library publications of knowledge treasure.
- [4] **Rah peak, H. (2008)** the liability and compensation rights, Tehran: Khorsandi emission.
- [5] **Moayedi Zare, A. (2010)** exchange articles: the paper of transaction in the variety of securities stock exchange, eleventh of April.

[6] **Shahidi, M. (2004)** the effects of contracts and obligations, First Printing, Tehran: Majd publication.

[7] **Abdi Pourfard. Ibrahim (2003)** Analytical topics of the trade rights, Tehran, published by seminary and university, second edition.

[8] **Qasemzadeh, S. M. (2008)** obligations and the civil liability, Tehran, Mizan publication, Sixth edition.

[9] **Mirzai Monfared, GH (2010)** analyzing the crime of the transaction based on secret information, Journal of Legal Studies, No. 17.

[10] Article 1 of the regulations of licensing the broker in the form of a legal person, approved by the Exchange Council meeting dated 12/07/2010.