Republic of the Philippines
Department of Trade and Industry
Securities and Exchange Commission
SEC Bldg. EDSA, Greenhills, Mandaluyong City

CITIBANK N.A.,
Respondent-Appellant,

-versus-

SEC En Banc Case No. 01-10-189
For: Annulment of EPD Ruling

ESTER H. TANCO-GABALDON, ARSENIO TANCO & HEIRS OF KU TIONG LAM,
Complainants-Appellees.
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DECISION

For consideration is the *Appeal* dated 29 December 2009 filed on 4 January 2010 by Citibank N.A. ("appellant", for brevity), praying for the setting aside of the 14 December 2009 *Letter* of the Commission's Enforcement and Prosecution Department ("EPD"), which clarified the procedure for the conduct of the investigation of the matters raised in the *Complaint* filed by Ester H. Tanco-Gabladon, Arsenio Tanco and Heirs of Ku Tiong Lam ("appellees") against appellant.

Records of the Commission disclose the following relevant facts:

On 21 September 2007, appellees filed before the EPD a verified *Complaint* against appellant and its officers for alleged violations of the Revised Securities Act ("RSA")[1] and the Securities Regulation Code ("SRC")[2].

In an Order dated 8 December 2008, EPD dismissed the verified *Complaint* on the ground that the causes of action stated therein had already prescribed, pursuant to Section 62 of the SRC.

The Commission *En Banc*, in its Decision dated 15 October 2009 ("EB Decision"), reversed the 8 December 2008 Order of the EPD, finding that prescription had not yet set in. Accordingly, the *En Banc* directed EPD to reinstate the verified *Complaint* and to conduct an immediate investigation whether there is probable cause to file a criminal case against appellant and its officers with the Department of Justice, and whether administrative sanctions should be imposed against them for the alleged violations of the RSA and the SRC.

Appellant filed a Petition for Review of the EB Decision before the Court of Appeals ("CA") docketed as *CA-G.R. SP No. 111501.*

Thereafter, appellant, through a letter dated 4 December 2009[3], sought clarification from EPD as to the proper procedure that the latter will follow in the

[1]Batas Pambansa Blg. 178 (1982).
[2]Republic Act No. 8799 (2000).

conduct of its investigation. Appellant expressed the view that the investigation that the EPD was able to conduct is only an initial examination to determine whether the *Complaint* filed by appellees is sufficient in form and substance and whether it has a valid and legal basis. If the *Complaint* is compliant, appellant posited, it is only then that the formal investigation ensues, wherein appellant and its officers should be: (a) officially served with summons and furnished copies of the *Complaint* and its supporting documents; (b) directed to file their Answer, with supporting affidavits; and (c) made to appear before the Hearing Panel or Officer for preliminary conference. Thus, appellant sought confirmation that the proceeding EPD has undertaken in relation to the *Complaint* still relates to the "informal" stage and that, in implementing the EB Decision, EPD will strictly comply with the above procedure as embodied in the Commission's 2006 Rules of Procedure ("SEC Rules").

In response, EPD issued its herein assailed *Letter* of 14 December 2009[4], the pertinent portions of which read:

> "Please be advised that your appreciation of this department's conduct of the investigation as contained in Paragraph 2 Page 3 of your letter is misplaced. Firstly, there is no distinction between an "informal" and "formal" stage in the conduct of an investigation. There is only the "investigation proper" stage which is commenced upon the filing of the complaint and payment of docket fees. This stage would already include an evaluation as to the form and substance of the complaint. **Ordinarily, and until the termination of the investigation, an investigation is fact- finding and is usually *ex-parte*.**
>
> In addition, **we are generally prohibited from disclosing information relating to our fact-finding investigation since the conduct of investigation is always confidential. As provided under Section 64.2 of the Securities Regulation Code**:
>
> > '64.2. – **Until the Commission issues a cease and desist order, the fact that an investigation has been initiated or that a complaint has been filed, including the contents of the complaint, shall be confidential.** Upon issuance of a cease and desist order, the Commission shall make public such order and a copy thereof shall be immediately furnished to each person subject to the order.' " (Emphasis ours).

Hence, this *Appeal*, which prays for the issuance of an Order setting aside the above 14 December 2009 *Letter* of EPD and directing it to comply with the SEC Rules in implementing the EB Decision by, among others, (a) officially serving summons on appellant and its officers and furnishing them copies of the *Complaint* and other submissions of the appellees; (b) allowing them to file their Answer thereto; and (c) inviting them to appear before the Hearing Panel or Officer for preliminary conference.

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[3]Memorandum on Appeal, Annex "E".
[4]Memorandum on Appeal, Annex "A".

Appellees point out that the issue on the proper procedure for the conduct of the investigation (specifically, whether the same should be confidential and/or *ex parte*) had already been brought to the CA in *CA-G.R. SP No. 111501*, as the assailed *Letter* of EPD dated 14 December 2009 was used by appellant to support its prayer for issuance by the CA of a Temporary Restraining Order and/or Preliminary Injunction.[5] At any rate, appellees, in the interest of justice and fair play, do not object to appellant's instant request that the SEC Rules be followed in the conduct of the investigation.[6]

In its Decision of 5 October 2010 ("CA Decision"), the CA, while upholding the EB Decision as to prescription, agreed with appellant on the issue above-stated regarding the conduct of the investigation. The pertinent parts and the dispositive portion of the CA Decision read:

> "**Finally, it cannot be successfully claimed that withholding from petitioners information concerning the complaint against them and not furnishing them with a copy of the complaint were dictated by the rules of procedure before the SEC-EPD and the confidentiality of its proceedings.** The *ex-parte* procedure and confidentiality that generally attends the SEC-EPD's fact-finding investigation owes itself to the primary intention of keeping effective the power of the Securities and Exchange Commission to issue cease and desist orders. Section 64.2 of the Securities Regulation Code provides that –
>
> > '64.2. – Until the Commission issues a cease and desist order, the fact that an investigation has been initiated or that a complaint has been filed, including the contents of the complaint, shall be confidential. Upon issuance of a cease and desist order, the Commission shall make public such order and a copy thereof shall be immediately furnished to each person subject to the order.'
>
> Undoubtedly, in cases when an investigation is simply for fact-finding purposes and is not concerned with the issuance of any *cease and desist order*, there is no reason why the SEC-EPD should proceed with its investigation *ex-parte* and thereby deprive the parties of the opportunity to participate in the proceedings. **In the present case, there is no *justification for keeping the investigation of the SEC-EPD confidential for there was clearly no necessity for the issuance of a cease and desist order*, the complained offense having been committed and completed years ago. Furthermore, the subsequent investigation by the SEC-EPD is no longer one that is initiated upon a verified complaint but a re-investigation conducted upon the directives of the SEC *En Banc*. The claim as to the confidentiality nature of the investigation therefore has no basis.** xxx.

[5] Appellees' Manifestation and Motion dated 24 January 2010, p. 6.
[6] Ibid, p. 7.

xxx xxx xxx

WHEREFORE, the foregoing premises considered, the petition is partly **GRANTED. The writ of injunction is hereby DISSOLVED**. The Securities and Exchange Commission-**Enforcement and Prosecution Department is ordered to proceed with its *investigation with dispatch*** *and with due regard to the parties' right* to notice and hearing." (Emphasis ours).

Further, it has come to our knowledge, and we take judicial notice thereof, that the EPD, in an Order dated 12 October 2010, already followed the prescribed procedure and directed appellant and its officers to file their Answer to the *Complaint*, in compliance with the CA Decision.[7]

WHEREFORE, premises considered, the instant *Appeal* is hereby **DISMISSED** for being moot and academic.

SO ORDERED.

Mandaluyong City, 25 November 2010.

FE B. BARIN
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner

[7]This fact is established from the records of another case between the same parties, SEC En Banc Case No. 11-10-223, recently filed before the Commission *En Banc*. The said case is an appeal from the ruling of the EPD to defer the filing by appellant of its Answer.