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

IN THE MATTER OF
CASINO ESPAÑOL DE CEBU, INC.

SEC EN BANC CASE NO.: 01-10-194

CASINO ESPAÑOL DE CEBU, INC. ,
Petitioner.
x----------x

DECISION

For consideration of the Commission *En Banc* is the appeal from the letters dated 06 February 2007 and 19 March 2007 of the Corporation Finance Department ("CFD") of the Commission assessing a penalty of One Hundred Five Thousand Pesos (Php105,00.00) against Casino Español De Cebu, Inc. ("Casino Español," for brevity).

The relevant facts of the case are narrated below.

Casino Español is a corporation registered with the Commission with SEC Registration No. PW00000762 "to provide its members, social, recreational, sports and cultural facilities proper for a good organization promoting unity and the spirit of harmony among [its] members."[1] Casino Español is also a registered issuer of securities.

Casino Español, was late in submitting its certifications on the (1) attendance of its board of directors in the 2006 board meetings; and (2) extent of its compliance with its Manual on Corporate Governance. In a letter dated 06 February 2007, the CFD directed Casino Español to file the two certifications and to show cause why it should not be held liable under Section 54 of R.A. No. 8799, also known as the Securities Regulation Code ("SRC"). In another letter dated 19 March 2007, the CFD assessed a penalty considering that this is the second time Casino Español incurred the same violation. Casino Español sought reconsideration[2] but the same was denied, and the following penalties were assessed pursuant to SEC Memorandum Circular No. 6, series of 2005:

Report	Date Due	Date Filed	Imposable Penalty	Amount
1. 2006 Certification on	December 31, 2006	February 15, 2007	Php25,000.00 (basic penalty)	Php48,000.00

[1] Articles of Incorporation of Casino, Second Article.
[2] Letter dated 02 April 2007 attached to the Notice of Appeal and Memorandum Appeal dated 27 September 2007.

the attendance of the directors			plus Php23,000.00 (46 days x Php500.00)	
2. 2006 Certification on the extent of compliance with its Manual of Corporate Governance	January 30, 2007	April 2007	Php25,000.00 (basic penalty) plus Php32,000.00 (64 days x Php500.00)	Php57,000.00
TOTAL				**Php105,000.00**[3]

Hence, the instant appeal.

The only issue involved in this case is whether there are valid justifications that will warrant the condonation or reduction of penalties imposed against Casino Español.

The appeal is partly meritorious.

Casino Español's request for waiver or reduction of penalties is anchored on two grounds, namely:

(1) That the request for reconsideration is justifiable based on the factual situation that caused delay in the filing of the reports.

(2) That the amount of the penalty imposed is not proportionate to the potential harm that the late submission could have caused.

To support its first argument, Casino Español claims that the late submission was a mere oversight brought about by the conversion of its ownership structure from non-proprietary to proprietary, and began only its operations in January 2005. Casino Español also submits that the mistake was made in good faith, and there was no intent on its part or its officers to disregard the rules of the Commission. Further, Casino Español also argues that its mistake caused no prejudice to third persons or any of its members.

The CFD found such justifications insufficient and unsatisfactory that will merit a condonation of the imposed penalties. Such an oversight due to changes in Casino Español's structure is not a fortuitous event or an exempting circumstance that will exonerate the company from its liability.

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[3] Letter dated 09 May 2007 addressed to Atty. Hidelito Pascual, Compliance Officer of Casino Español.

We agree with the CFD. As a registered issuer of securities, Casino Español is mandated and expected to be vigilant in complying with the provisions of its Manual of Corporate Governance.[4] As a public company, it has the duty to submit the required certifications within the prescribed period. The certifications serve as tools to monitor the level of compliance by public companies with the Code of Corporate Governance.[5] In the case under consideration, a delay of more than forty (40) days in the submission of the certifications is tantamount to a violation of Casino Español's Manual of Corporate Governance, and shows a lapse in the internal control system of the company.

As for the second ground, petitioner submits that as a non-stock, non-profit company, its operating funds are limited to the monthly dues paid by its members. Its audited financial statements will also show that the corporation has been losing since the start of its operations under the new ownership structure. Moreover, the imposed penalty is disproportionate to the mistake committed.

Suffice to say that the penalties meted out are within the allowable limit that may be imposed by the Commission pursuant to the SRC, to wit:

> "SECTION 54. Administrative Sanctions. — 54.1. If, after due notice and hearing, the Commission finds that: xxx (c) Any registrant or other person has, in a registration statement or in other reports, applications, accounts, records or documents required by law or rules to be filed with the Commission, made any untrue statement of a material fact, or omitted to state any material fact required to be stated therein or necessary to make the statements therein not misleading; xxx impose any or all of the following sanctions as may be appropriate in light of the facts and circumstances:
>
> xxx
>
> (ii) A fine of no less than Ten thousand pesos (P10,000.00) nor more than One million pesos (P1,000,000.00) plus not more than Two thousand pesos (P2,000.00) for each day of continuing violation; xxx"

The range of penalties is designed to ensure strict compliance with the reporting obligation and to deter non-submission or late filing of reports and certifications by covered companies. Thus, it is incorrect to say that the penalty imposed against Casino Español is inappropriate or disproportionate to its infraction.

The CFD noted, however, that Casino Español has been realizing net losses for the previous years as follows:

Year	Net Income (Loss)
September 2009	Php(8,165,105.00)
2008	(7,312,655.00)

[4] Casino's Manual of Corporate Governance was submitted with the Commission on 28 June 2002.
[5] Now the "Revised Code of Corporate Governance."

2007	(9,216,392.00)
2006	(10,081,631.00)

Considering its financial losses for the previous years, Casino Español may be given a fifty percent (50%) reduction of the assessed penalty.

WHEREFORE, the appeal is partially **GRANTED**. The assessed penalty in the amount of ONE HUNDRED FIVE THOUSAND PESOS (Php105,000.00) is hereby reduced to FIFTY-TWO THOUSAND FIVE HUNDRED PESOS (Php52,500.00). Consequently, Casino Español De Cebu, Inc. is hereby directed to pay the reduced fine within ten (10) days from receipt of this Decision. Failure to settle the obligation of the company will merit a stiffer penalty.

SO ORDERED.

Mandaluyong City, 04 March 2010.

FE B. BARIN
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner