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

IN THE MATTER OF:

ARNULFO S. PILANDO, CHRISTINE B. WANGDALI and ANTONIO ALVAREZ,
Petitioners,

-versus-

SEC Case No. 07-09-275
For: Indirect Contempt

RURAL BANK OF RIZAL (K.A.), INC.,
Respondent.
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ORDER

For resolution is the *Petition to Cite or Punish for Indirect Contempt* dated 14 July 2009 filed by petitioners against the officers and board directors of Rural Bank of Rizal (K.A.), Inc. (the "Bank," for brevity).

The relevant facts are narrated below.

On 29 January 2008, petitioners filed a petition praying the Commission to call the annual stockholders' meeting of the Bank. The same was docketed as SEC Case NO. 01-08-0209. Petitioners alleged in the petition that no annual stockholders' meeting has been held since 2005. Finding the petition meritorious, the Commission through its Office of the General Counsel issued an Order dated 17 November 2008 granting the petition, and further set the meeting on the second Saturday of January 2009, as called for in Article III, Section 1[1] of the By-laws of the Bank.

Despite receipt of the 17 November 2008 Order, however, the Bank set the stockholders' meeting on 03 January 2009. Petitioners did not receive any notice of the meeting. Neither were they informed of the meeting.

Aggrieved by the actions of the officers and directors of the Bank, petitioners filed the instant petition to cite the directors and officers of the Bank. Summonses were duly served to the following officers and directors of the Bank, namely: Marietta L. Jambaro, Nerissa L. Orodio, Benjamin De Sesto, Efraim B. Orodio and Samuel Garcia.

In its *Comment* dated 15 September 2009, respondent Bank, through its counsel Atty. Renante Caba, argues that: (1) the Commission has no contempt

[1] Article III, Section 1. Annual Meetings. The annual meeting of the stockholders shall be held at the principal office of the Bank on the second Saturday of January in each year at 9:00 a.m. or if such day be a legal holiday, then on the first full business day thereafter, at the same hour and place.

power since it is not a court in itself; (2) the order has not become final and executor since Atty. Caba was not furnished a copy of the Order dated 17 November 2008; and (3) the Commission has no jurisdiction over the petition to call the annual meeting of the Bank's stockholders since the same involves an intra-corporate controversy. The officers and directors of the Bank, however, did not file any answer or comment on the petition.

To clarify certain matters, the case was set for hearing on 16 December 2009. Atty. Renante Caba sent a telegram message requesting a resetting of the hearing to a later date, or on 26 January 2010.

During the hearing on 16 December 2009, only the petitioners and their counsel appeared. They reiterated their motion that the case be submitted for resolution, and the motion for resetting be denied.

We now resolve the case.

The issue is whether there is a valid ground to cite in contempt the officers and board of directors of the Bank.

We grant the petition.

The power to cite or hold a person in contempt is inherently judicial in nature.[2] It is vested with the courts, the exercise of which is intended to preserve order in judicial proceedings and to uphold the due administration of justice.[3] To determine whether an administrative agency has the contempt power depends on whether there is an express legislative grant conferring upon the agency such power.

With respect to the powers of the Commission, Section 5 of Republic Act No. 8799 also known as the "Securities Regulation Code" ("SRC," for brevity) granted specific powers to the Commission. Pertinent to the case under consideration is Section 5, par. (j), which reads:

> "SEC. 5. Powers and Functions of the Commission. — 5.1. The Commission shall act with transparency and shall have the powers and functions provided by this Code, Presidential Decree No. 902-A, the Corporation Code, the Investment Houses Law, the Financing Company Act and other existing laws. Pursuant thereto the Commission shall have, among others, the following powers and functions:

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[2] Chief Prosecutor Zenon L. De Guia vs. Judge Francisco Ma. Guerrero, Jr., A.M. No. RTJ-93-1099. August 1, 1994.
[3] Chief Prosecutor Zenon L. De Guia vs. Judge Francisco Ma. Guerrero, Jr., *supra.*

(j) Punish for contempt of the Commission, both direct and indirect, in accordance with the pertinent provisions of and penalties prescribed by the Rules of Court;"

From the cited provision of the SRC, it cannot be doubted that the Commission has the power to cite or hold a person in contempt. This power is an essential component in the conduct and performance of the Commission's regulatory and supervisory powers over corporations, partnerships and associations registered with it. In particular, it is an essential power of the Commission in the exercise of its power to try, hear and decide any controversy that may be submitted in connection with its quasi-judicial functions.

To implement the above-cited provision of the SRC, the 2006 Rules of Procedure of the Commission, Rule VII was adopted. The pertinent portion is quoted below:

"SEC. 7-2. Indirect Contempt. – The Commission or the Hearing Panel or Officer may, after observance of due process, cite or punish any person for indirect contempt on any of the grounds prescribed under the Revised Rules of Court."

Rule 71, Section 3 of the Revised Rules of Court enumerates the acts punishable for indirect contempt, the pertinent portion of which reads as follows:

"SECTION 3. Indirect contempt to be punished after charge and hearing. — After charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt:

xxx

(b) Disobedience of or resistance to a lawful writ, process, order, or judgment of a court,

(c) Any abuse of or any unlawful interference with the process or proceedings of a court not constituting direct contempt under section 1 of this Rule;

(d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice; xxx"

In the instant case, the 17 November 2008 Order was served to the Bank through mail, and the same was received on 12 December 2008. Petitioners also served a copy of the Order to Atty. Caba on 27 November 2008. It cannot be denied that as early as 27 November 2008, Atty. Caba was aware of the Order issued by the

Commission. And yet, despite notice, the officers of the Bank chose to reset the annual stockholders' meeting from 09 January 2009 to 03 January 2009, without even sending any notice of the meeting to the petitioners. Clearly, this is a blatant and willful disregard of the Commission's Order. Such resetting is likewise not in accord with the By-laws of the Bank, which states that the annual meeting of the stockholders of the Bank shall be held every second Saturday of January each year.[4]

In light of the foregoing, and after carefully examining the circumstances in this case, the act of defying the 17 November 2008 Order of the Commission by the officers and directors of respondent Bank must be censured. Otherwise, any order, directive or process of the Commission shall be rendered nugatory by the defiant act of any party to a case.

As for the other issue of jurisdiction over the petition to call the annual meeting of the stockholders of a corporation, suffice to say that this was properly addressed in the Order dated 17 November 2008. To repeat the discussion in this case will serve no purpose.

WHEREFORE, the officers and directors of Rural Bank of Rizal (K.A.), Inc., namely: Marietta L. Jambaro, Nerissa L. Orodio, Benjamin De Sesto, Efraim B. Orodio and Samuel Garcia are hereby REPRIMANDED, and ordered to pay a fine of One Thousand Pesos (Php1,000.00) each, with a stern warning that a repetition of the same act will be severely dealt with in the future.

SO ORDERED.

Mandaluyong City, 04 February 2010.

EDUARDO B. BARIN
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner

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[4] Respondent Bank's By-laws, Article III, Section 1.