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

IN THE MATTER OF:

	SEC EN BANC CASE NO. 08-07-111
	For: Review of CFD's Imposition of
CLEARWATER COUNTRY CLUB,	**Penalty for Violation of Section**
INC.	**54 of the SRC**

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DECISION

For consideration is the *Appeal* dated 8 August 2007 filed by Clearwater Country Club, Inc. ("appellant", for brevity) on 16 August 2007 from the imposition by our Corporation Finance Department ("CFD") of penalty for appellant's violation of Section 54 of the Securities Regulation Code ("SRC")[1].

The facts are:

On 6 February 2007, CFD issued a letter ("show-cause letter") to appellant directing the company to show cause why it should not be held liable under Section 54 of the SRC for failure to submit the required sworn certifications on the attendance of its directors during its 2006 Board meetings and on the extent of its compliance with its Manual on Corporate Governance ("Manual").

In its 20 February 2007 letter-response to the show-cause letter, appellant alleged that its failure to file the certification on the extent of its compliance with the Manual was neither willful nor deliberate. It explained that its Compliance Officer, who was also its Vice-President for Corporate Affairs, gave birth by caesarian section on 21 December 2006 and that her maternity leave lasted for a period of sixty (60) days, or until 20 February 2007. It averred that as of 31 January 2007, the deadline for compliance, its compliance officer was not yet in a perfect condition to do her regular tasks.

On 13 March 2007, CFD, finding the above explanation to be unmeritorious, assessed appellant and directed it to pay the total penalty of One Hundred Six Thousand Five Hundred Pesos (P106,500.00), considering that this was already appellant's 2nd violation of the same requirements. The breakdown of such total penalty is as follows:

[1]Republic Act No. 8799 (2000).

Nature	Penalty	No. of Days Late	Amount
Certification on the attendance of directors during 2006 board meetings	P25,000.00 plus P500.00 per day of delay	72	P61,000.00
Certification on the extent of compliance with Manual of Corporate Governance	P25,000.00 plus P500.00 per day of delay	41	P45,500.00
Total			P106,500.00

Appellant then filed with the CFD a letter dated 12 April 2007 requesting a reconsideration of the 13 March 2007 assessment. It put in issue the computation made by CFD and essentially questioned the ruling as to the number of days late, on the ground that it had filed the certifications earlier than what the CFD found. Aside from reiterating its earlier explanation(s), i.e. that the omission was neither intentional nor deliberate and that the same was due to its Compliance Officer's maternity leave, appellant likewise invoked its "*virtual incapacity to shoulder the huge penalties imposed on it*".[2]

On 30 April 2007, CFD issued a letter-ruling, the pertinent portions of which read:

> "Please be informed that we find no justifiable reason to warrant a reconsideration of the assessed penalties. Reporting companies are strictly mandated to comply with their reportorial obligations and with the representations contained in their respective Manuals on Corporate Governance.
>
> However, in view of the company's filing of said certifications on February 21, 2007, the assessed penalties are recomputed as follows:

Nature	Penalty	No. of Days Late	Amount
Certification on the attendance of directors during 2006 board meetings	P25,000.00 plus P500.00 per day of delay	52	P51,000
Certification on the extent of compliance with Manual of Corporate Governance	P25,000.00 plus P500.00 per day of delay	21	35,500
Total			P86,500

> The company is directed to pay the aforesaid penalty within five (5) business days from receipt of this letter, by way of cash or Manager's

[2]Appellant's letter to CFD dated 12 April 2007, Annex "D" of the *Appeal*.

check. Otherwise, the matter shall be referred to our Legal Officer for appropriate action."

Hence, this *Appeal.*

SEC Memorandum Circular No. 2, Series of 2002, or the Code of Corporate Governance ("the Code"), which was the governing rule at the time of subject violation, was promulgated by the Commission to implement the State's policy of actively promoting corporate governance reforms aimed to raise investor confidence, develop the capital market and help achieve high sustained growth for the corporate sector and the economy.[3] It is applicable to corporations whose securities are registered or listed, corporations which are grantees of permits/licenses and secondary franchises from the Commission and public companies.

Every covered corporation is mandated to promulgate and adopt its corporate governance rules and principles in accordance with the Code. Said rules shall be in manual form, to be submitted to the Commission, which shall evaluate the same and its compliance with the Code taking into account the size and nature of the company's business.[4]

Without question, appellant is a covered corporation. Accordingly, it submitted its Manual[5] on 2 August 2002, with its Board of Directors and Management committing themselves to the principles and best practices contained in said Manual.

Under the Manual, appellant's Chairman of the Board shall designate a Compliance Officer who is duty bound to, among others, "*issue a certification every January 30th of the year on the extent of the corporation's compliance with this Manual for the completed year, explaining the reason/s of the latter's deviation from the same.*"[6] As to appellant's Corporate Secretary, he is required by the Manual to "*submit to the Commission, at the end of every fiscal year, an annual certification as to the attendance of the directors during Board meetings.*"[7]

Section 54 of the SRC gives authority to the Commission to impose administrative sanctions for violation(s) of the SRC, its rules or its orders, one of which sanctions is 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.*"[8]

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[3]SEC Memorandum Circular No. 2, Series of 2002. This was amended by SEC Memorandum Circular No. 6, Series of 2009, or the Revised Code of Corporate Governance.
[4]Article VIII, SEC Memorandum Circular No. 2, Series of 2002.
[5]Amended in 2008 by the filing of appellant's *Amended Manual on Corporate Governance* on 29 February 2008.
[6]Section II(A)(2), the Manual.
[7]Section II(B)(3), the Manual.
[8]Section 54, SRC.

Under SEC Memorandum Circular No. 6, Series of 2005, or the Consolidated Scale of Fines, failure to submit any of the certifications on corporate governance which were represented to be submitted is a violation of Section 54 of the SRC, the second offense for which has the corresponding penalty of "*P25,000 plus P500 per day of violation.*"[9]

In the instant *Appeal*, appellant no longer disputes the computation of the penalty but rehashes instead the arguments it raised before, and found unmeritorious, by the CFD.

We see no cogent reason to disturb CFD's findings.

As admitted by appellant, the maternity leave of its Compliance Officer lasted for a period of sixty (60) days from 21 December 2006, or until 20 February 2007.[10] We note, however, that the date 21 December 2006 was already practically at the tail-end of appellant's fiscal year (which ends December 31) and was so near in point of time to 30 January 2007, the deadline for submission of the certification on the extent of its compliance with its Manual. At such date, the Compliance Officer could be reasonably expected to already have an idea or estimation of the extent of the company's compliance with its Manual[11] such that the issuance of the certification would then be only a formality, to be accomplished in just a matter of time. The Compliance Officer and appellant knew, or should have known, when such officer was actually or approximately due for birth, and that said, could have avoided the violation by preparing the groundwork and the requirement earlier, especially in view of the fact that December 21, as earlier intimated, was already practically the end of the year to be evaluated. Further, appellant, cognizant of the situation, ought to have taken contingency plans, such as the designation of an assistant to, or a temporary successor of, the Compliance Officer who would perform the duties of such officer during her leave of absence.[12] In short, it was incumbent upon appellant to have a system or mechanism for succession and continuity.[13]

That the omission was neither intentional nor deliberate is of no moment. Good faith or bad faith hardly comes into the picture in the enforcement of simple rules mandating submission of reportorial requirements. To allow legal notions to intrude at every level in the implementation of these rules would defeat their very purpose, as every penalty could be subject to question and every violation based on

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[9]Page 5, Consolidated Scale of Fines.
[10]Appellant's letter to CFD dated 20 February 2007.
[11]This expectation is reasonable, considering that it is the core function of the Compliance Officer to monitor compliance with the provisions and requirements of the Manual.
[12]Under the Manual, the Board is expected to "*identify key risk areas and key performance indicators and monitor these factors with due diligence.*"
[13]Under the Code, it is the Board's responsibility to "*adopt an effective succession planning program for Management.*" [Article 3(F)(2)(a), the Code]. In this connection, Article 3(F)(2)(m) of the Revised Code of Corporate Governance mandates that the Board shall appoint a Compliance Officer who shall have the rank of vice president and that in the absence of such appointment, the Corporate Secretary, preferably a lawyer, shall act as Compliance Officer.

a clear-cut rule would be qualified by the presence or absence of good faith or bad faith, or the question of motive or intent.[14] Hence, negligence in complying with the requirements is enough to warrant imposition of penalties.

We likewise concur with the CFD that the alleged dire financial condition of appellant is not *per se* sufficient reason to either erase or reduce the penalty. Strict compliance with the Commission's rules cannot and should not be made to depend on the financial status of the covered corporation, especially if the company, its Board and its management clearly failed, as in this case, to exercise the necessary due diligence, the very principle of good corporate governance. To hold otherwise would be to encourage every covered corporation in actual or perceived financial distress to flout or simply disregard the rules, to the detriment of the investing public, knowing that such a defense would be available to it.

WHEREFORE, premises considered, instant Appeal is hereby **DISMISSED**. The total penalty of Eighty-Six Thousand Five Hundred Pesos (P86,500.00) is hereby imposed upon Clearwater Country Club, Inc. for its failure to timely file, in violation of Section 54 of the Securities Regulation Code, the required sworn certifications on the attendance of its directors during its 2006 Board meetings and on the extent of its compliance with its Manual on Corporate Governance for the year 2006, to be paid within ten (10) days from receipt hereof. The corporation is hereby admonished that a repetition of the same or similar offenses in the future will be dealt with more severely.

SO ORDERED.

Mandaluyong City, 25 March 2010.

FE B. BARIN
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner

[14] *Decision* dated 13 July 2006 in *SEC En Banc Case No. 04-04-13* (In the Matter of: A. Brown Company, Inc.)