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

In the Matter of

Pueblo De Oro Golf and Country Club, Inc.

SEC En Banc Case No. 12-09-187
Re: Request for Waiver of Penalty

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DECISION

For consideration of the Commission *En Banc* is the appeal filed on 17 December 2009 by PUEBLO DE ORO GOLF AND COUNTRY CLUB, INC. ("apellant") for the *condonation or waiver of the penalty* in the amount of ONE HUNDRED SIXTY SIX THOUSAND PESOS (Php 166,000.00) assessed by the Corporation Finance Department ("CFD") of the Commission, for appellant's failure to file its Annual Report for the fiscal year ended 31 December 2008, within the prescribed period.

FACTS OF THE CASE

Appellant is a stock corporation registered on 23 January 1996, with registration number AS96000683. SEC Memorandum Circular No. 7, Series of 2008 (the "Circular") mandates that:

xxx

> "1. All corporations, xxx that file their FS[1] at the Commission's head office shall, depending on the last numerical digit of their SEC registration or license number, be governed by the following schedule in 2009:
>
> April 20, 21, 22, 23, 24 : "1," "2," "3,"
>
> xxx
>
> 6. Requests for extension of time to file the FS or notifications of inability to file SEC Form 17-A[2] under paragraph 1 (F) of SRC[3] Rule 17.1 shall likewise not be accepted;"

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[1] Annual Financial Statements (introduced in par. 1 of the Circular).
[2] Annual Report Pursuant to Section 17 of the Securities Regulation Code and Section 141 of the Corporation Code.
[3] Securities Regulation Code, R. A. No. 8799 (2000).

Thus, appellant should have filed its 2008 Annual Report ("2008 AR") for the fiscal year ended 31 December 2008 within the period 20 to 24 April 2009. Due to its failure to file the 2008 AR within the prescribed period, CFD sent a letter [4] to the company directing it to submit the 2008 AR and to explain why it should not be held liable for violation of Securities Regulation Code ("SRC")[5] Rule 17.1.[6]

It was only on 3 September 2009 when the company submitted the 2008 AR, incurring a delay of ONE HUNDRED THIRTY – TWO (132) days, together with a letter explaining the reason for the delay. Accordingly, the 2008 AR was ready for submission as early as 15 April 2009, but the Accounting Assistant tasked to submit it was absent without leave (AWOL) starting 13 April 2009. The appellant was confident the 2008 AR was already filed until the company received the 19 August 2009 letter from CFD informing them of the delay.

Finding no merit in appellant's explanation, CFD ordered appellant to pay the penalty of ONE HUNDRED SIXTY-SIX THOUSAND PESOS (Php 166,000.00) for late filing of its 2008 AR, within five (5) days of receipt of its letter dated 30 September 2009.[7] *In the same letter, CFD advised appellant "that this is already the company's second (2nd) violation of the said requirement."*[8]

Appellant wrote CFD a letter dated 22 October 2009, requesting waiver of the penalty, which was denied in CFD's 23 November 2009 letter.

Hence, this appeal.

ISSUE

Whether there is valid ground to reduce or waive the assessed penalty for appellant's failure to comply with SEC Memorandum Circular No. 7, Series of 2008.

RULING

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[4] Dated 19 August 2009 which appellant received on 1 September 2009.

[5] Republic Act 8799 (2000).

[6] 17.1. Every issuer satisfying the requirements in Subsection 17.2 hereof shall file with the Commission:

a) Within one hundred thirty-five (135) days, after the end of the issuer's fiscal year, or such other time as the Commission may prescribe, an annual report which shall include, among others, a balance sheet, profit and loss statement and statement of cash flows, for such last fiscal year, certified by an independent certified public accountant, and a management discussion and analysis of results of operations; and

b) Such other periodical reports for interim fiscal periods and current reports on significant developments of the issuer as the Commission may prescribe as necessary to keep current information on the operation of the business and financial condition of the issuer.

[7] Based on SEC Memorandum Circular No. 6, Series of 2005, computed as follows: P100,000+132 days of delay (from April 24 to September 3, 2009)xP500.00] per letter dated 30 September 2009 to Mr. Rodolfo L. Menes from Director Justina F. Callangan.

[8] CFD Letter to Pueblo de Oro Golf & Country Club dated 30 September 2009, par. 3.

The petition is unmeritorious.

In its letter-appeal to the Office of the General Counsel ("OGC") filed on 17 December 2009, appellant enumerated the following reasons for its request for waiver of the penalty imposed upon it by CFD : 1) The oversight of its Accounting Assistant who was absent without leave (AWOL) starting 13 April 2009; 2) It has not recovered from its accumulated excess of expenses over revenue (deficit) of Php 24.5 million as of 31 December 2008; 3) It has no intention to defeat the policy of full and fair disclosure as evidenced by the submission of its 2008 Audited Financial Statements duly stamped by the Commission's Human Resource and Administrative Department on 24 April 2009; 4) The error did not arise due to willful neglect, and does not deserve the exorbitant penalty.

The CFD found that the circumstances surrounding the delay in the submission of the 2008 AR could not exonerate the company from its liability. Undoubtedly, there was a lapse on the part of the company for its failure to verify if the report has actually been filed.

The delay of ONE HUNDRED THIRTY – TWO (132) days in filing of the 2008 AR constitutes a violation of the central provision of the SRC. To exonerate the company for such delay would undermine the force and effectivity of the periods set by the Rules and defeat the policy of timely, full and fair disclosure enshrined in the law itself.[9] In addition, this delay in filing said requirement is the company's *second violation* of filing the same.[10]

Moreover, paragraph 4 of the Circular is clear: "Late filings shall be accepted starting May 15 and *shall be subject to the prescribed penalties* which shall be computed from the date of the last day of the filing schedule stated in paragraph 1." (Emphasis supplied) Monetary sanctions are imposed precisely to ensure strict and vigilant compliance with the periodic reporting requirements mandated of covered companies under the SRC.[11]

As to its financial position, the CFD found that appellant has "cash on hand and in banks" in the amount of FOUR MILLION FIVE HUNDRED FOURTEEN THOUSAND THREE HUNDRED EIGHT PESOS (PHP 4,514,308) as of 31 December 2009. Thus, it has sufficient cash balance to cover the assessed penalty of ONE HUNDRED SIXTY SIX THOUSAND PESOS (Php 166,000.00).

WHEREFORE, premises considered, the instant appeal is hereby **DENIED** for lack of merit.

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[9] CFD Letter to Pueblo De Oro Golf & Country Club dated 23 November 2009.
[10] CFD Letter to Pueblo De Oro Golf & Country Club dated 30 September 2009.
[11] CFD Reply-Memorandum dated 20 May 2010 p. 2.

SO ORDERED.

Mandaluyong City, 24 June 2010.

FE B. BARIN
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner