Republic of the Philippines
SECURITIES AND EXCHANGE COMMISSION
SEC Bldg. EDSA, Greenhills, Mandaluyong City

JOHNNY K.H. UY and UBS MARKETING CORPORATION,
Petitioners-Appellees,

-versus-

SEC Case No. AC 520
(SEC Case No. 3328)

BAN HUA U. FLORES, BAN HA U. CHUA and ROLAND M. KING, doing business under the firm name of King's Bookkeeping and Accounting Agency and SOON KEE COMMERCIAL, INC.,
Respondents-Appellants.

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ORDER

This refers to Respondents-Appellants' Motion for Reconsideration of the Commission *En Banc*'s 05 November 2009 Order, which provides:

> "**WHEREFORE**, premises considered, respondents-appellants' Motion to Recall Orders dated 17 July 2002 and 06 September 2004 and to Quash Writ of Execution dated 06 September 2004 and the Sheriff's Notice dated 23 August 2006 is hereby **DENIED** for lack of merit.
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> Further, to fully comply with the 24 June 1996 Resolution, the Commission directs the Sheriff to issue the corresponding Notices to **all other responsible persons and/or officers who may now have custody or possession of the books and records** of UBS Marketing Corporation and Soon Kee Commercial during the pendency of the case, directing them to render a complete accounting in satisfaction of the 06 September 2004 Writ of Execution implementing the Supreme Court's Decision dated 31 May 2000."[1]

[1] *Emphasis added.*

Respondents-Appellants assail the 05 November 2009 Order on the ground that it is contrary to the Supreme Court's Decision in the case of *Ban Hua U. Flores and Ban Ha U. Chua vs. UBS Marketing Corporation and Johnny K.H. Uy*, docketed as G.R. No. 169747.[2] They reiterate their arguments contained in their earlier Motion to Recall Orders that the Supreme Court allegedly ruled that they are not among the responsible officers required to render an accounting, instead it is the petitioner-appellee Johnny Uy and his wife Magdalena Uy, who are the ones liable for accounting.

At the outset we emphasized that the Motion for Reconsideration, which raises no new grounds, should be expunged from the records for being a prohibited pleading under the Commission's rules. Be that as it may, we will still proceed in resolving the present Motion in order to finally end any lingering doubt on the issue of who are liable for accounting in accordance with the Supreme Court's Decision in G.R. No. 169747, which provides:

> "WHEREFORE, the instant petition is GRANTED and the assailed Decision and Resolution dated June 3, 2005 and September 14, 2005, respectively, of the Court of Appeals in CA-G.R. SP No. 85447 are set aside. **Accordingly, the SEC is directed to execute its Resolution of June 24, 1996 in SEC AC No. 520 (SEC Case No. 3328) strictly in accordance with the terms thereof.** Any writ of execution issued, if any, not in conformity with such resolution is hereby declared a nullity and the SEC is hereby directed to recall any such writ."[3]

For clarity's sake, recall that on 3 May 1995, the Commission's hearing officer rendered a judgment by default against the respondents-appellees, the pertinent dispositive portion of which reads:

> "WHEREFORE, considering the foregoing, judgment[,] is hereby rendered as follows:
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> xxx
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> 2. Commanding the respondents to immediately render a full and complete accounting of all the assets, properties and moneys and the receivables for both Soon Kee (from 1981-1991) and UBS (from 1981 to 1987) respectively;
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> xxx
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> SO ORDERED."

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[2] Promulgated on 27 July 2007.
[3] Emphasis Added.

Respondents-appellants appealed the hearing officer's decision to the Commission *En Banc*. The Commission *En Banc* set aside the hearing officer's decision, save for paragraph number 2 of the dispositive portion. In effect, the Commission *En Banc* directed respondents-appellants to render a full and complete accounting of all the assets, properties and receivables of Soon Kee Commercial, Inc. and UBS Marketing Corporation. Respondents-appellants moved for partial reconsideration of the order. The Commission *En Banc*, in its 24 June 1996 Resolution, denied the motion for partial reconsideration. In other words, the Commission *En Banc* upheld and affirmed respondents-appellants' liability to render an accounting. Additionally, the Commission *En Banc* explained further that:

> "Needless to state, if Johnny K. H. Uy or any person/officer for that matter should also be subjected to account any monies or properties relative to the corporations herein involved, the questioned Order should cover such a situation as it directs full and complete accounting of all assets, properties and receivables of the said corporations. To say otherwise would render ineffective our Order of December 21, 1995.
>
> **WHEREFORE**, premises considered, this motion for partial reconsideration should be, as it is hereby **DENIED**. The Order of December 21, 1995 affirming the directive of the hearing officer for full and complete accounting should, by this Resolution, cover all responsible persons and/or officers who may now have custody or possession of the books and records of the corporation."

In other words, as held by the Supreme Court in G.R. No. 169747, the Commission *En Banc* "effectively modified or revised its earlier December 21, 1995 Order via its Resolution of June 24, 1996." As modified, the Order now provides that not only are the respondents-appellants liable to render an accounting, all other responsible persons and/or officers who may now have custody or possession of the books and records of the corporations are also equally liable for accounting. This is the final judgment in this case – that respondents-appellants, as well as all other responsible persons and/or officers who may now have custody or possession of the books and records of the corporations, must immediately render a full and complete accounting of all the assets, properties and moneys and the receivables for both Soon Kee (from 1981-1991) and UBS (from 1981 to 1987) respectively. The possibility that petitioner Johnny K. H. Uy and his wife may be included in the category of "responsible persons and/or officers," does not necessarily mean that respondents-appellants automatically are no longer liable to render an accounting. In short, they are not mutually exclusive. The situation where respondents-appellants and petitioner-appellees are equally liable to render an accounting is not an impossibility. It must be emphasized that in its June 24, 1996 Resolution, the Commission *En Banc* denied respondents-appellants' motion for reconsideration and maintained the December 21, 1995 Order commanding the respondents-appellants to immediately render a full and complete accounting. The only modification was that

the Commission *En Banc* expanded the scope of its order to include other responsible persons or officers who may have custody of the corporate books and records so that a full and complete accounting may be accomplished. This is the import of the June 24, 1996 Resolution as clarified by the Supreme Court's Decision in G.R. No. 169747. And it is in accordance with all of these premises that the Commission *En Banc* issued the assailed 05 November 2009 Order. We stress that the dispositive portion of the 05 November 2009 Order expressly provides, among others, that all responsible persons and/or officers who may now have custody or possession of the books and records of UBS Marketing Corporation and Soon Kee Commercial are equally liable to render an accounting. Thus, the Commission *En Banc* committed no reversible error since its 05 November 2009 Order is in conformity with the Supreme Court's judgment.

Incidentally, we deem it appropriate to remind respondents-appellants' counsel namely, Atty. Caridad S.J. Villamor-Yee of the following canon from the lawyers' Code of Professional Responsibility:

> "CANON 11 - A LAWYER SHALL OBSERVE AND MAINTAIN THE RESPECT DUE TO THE COURTS AND TO JUDICIAL OFFICERS AND SHOULD INSIST ON SIMILAR CONDUCT BY OTHERS.
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> xxx
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> Rule 11.03 - A lawyer shall abstain from scandalous, offensive or menacing language or behavior before the Courts.
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> Rule 11.04 - A lawyer shall not attribute to a Judge motives not supported by the record or have no materiality to the case."

In the Motion for Reconsideration she prepared on behalf of respondents-appellants, Atty. Villamor-Yee showed gross disrespect towards the Commission and the orderly administration of justice. She deliberately used such offensive and menacing language that besmirched the dignity of the Commission *En Banc* and maliciously imputed unfounded motives upon the Commissioners. We need not reproduce the scandalous language directed by Atty. Villamor-Yee against the Commission. To do so would only serve to further disrupt the orderly administration of justice in this case. Perhaps it would be more appropriate to reproduce such Atty. Villamor-Yee's unsavory words as evidence in the proper disciplinary proceedings that may be initiated against her in due course.

Moreover, for future reference and guidance of other lawyers appearing before this Commission, we emphasize that a lawyer, as officer of the court, has the duty to uphold the dignity and authority of the courts or tribunals and to promote

confidence in the fair administration of justice.[4] A lawyer's first duty is not to his client but to the orderly administration of justice, to which his client's success is wholly subordinate. His conduct ought to and must always be scrupulously observant of law and ethics. The use of intemperate language and unkind ascription can hardly be justified nor can it have a place in the dignity of judicial forum. [5] A lawyer must not transcend the permissible bounds of fair comment and constructive criticism to the detriment of the orderly administration of justice.[6] A lawyer's intemperate and unfair criticism against the courts is a gross violation of his duty to respect the courts, and subjects the lawyer to disciplinary action. [7] Hence, in the assertion of their clients' rights, lawyers — even those gifted with superior intellect — are enjoined to rein up their tempers.[8] Hopefully, lawyers will be always mindful of the Supreme Court's guidance:

> "We concede that a lawyer may think highly of his intellectual endowment. That is his privilege. And he may suffer frustration at what he feels is others' lack of it. That is his misfortune. Some such frame of mind, however, should not be allowed to harden into a belief that he may attack a court's decision in words calculated to jettison the time-honored aphorism that courts are the temples of right."[9]

In conclusion, we reiterate our ruling that the December 21, 1995 Order and the June 24, 1996 Resolution together provide that respondents-appellants and other responsible persons and/or officers who may now have custody or possession of the books and records must render a complete accounting of all the assets, properties and moneys and the receivables for both Soon Kee and UBS. Hence, the 06 September 2004 Writ of Execution and the 23 August 2006 Sheriff's Notice against respondents-appellants are valid. The possibility that petitioner Johnny Uy and his wife also fit in the category of "responsible persons and/or officers" liable for accounting does not negate or extinguish respondents-appellants' previously established liability to make an accounting. The end sought to be achieved here is that a full and complete accounting should be made, and that is the reason why all parties who are "responsible persons and/or officers" must render an accounting.

WHEREFORE, premises considered, respondents-appellants' "*Motion for Reconsideration of the Order dated November 5, 2009 for being Contrary to the Decision dated July 27,2007 of the Supreme Court in G.R. No. 169747*" is hereby **DENIED** for lack of merit.

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[4] *In re: Published Alleged Threats Against Members of the Court in the Plunder Law Case Hurled by Atty. Leonardo De Vera*, A.M. No. 01-12-03-SC, 385 SCRA 285 (2002).
[5] *Alonte vs. Savellano*, et al., 350 Phil 700 (1998).
[6] *In Re: Almacen* 31 SCRA 562, (1970).
[7] Id.
[8] Id.
[9] Per Justice Sanchez in *Rheem of the Philippines vs. Ferrer*, G.R. No. L-22979. June 26, 1967.

SO ORDERED.

Mandaluyong City, Philippines, 25 March 2010.

JOSE B. BARIN
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner