Republic of the Philippines
Department of Finance
Securities and Exchange Commission

Ms. ERLINDA I. BILDNER,
Complainant-Appellee,

- **versus** -

Mr. VIRGILIO R. SANTOS,
Respondent-Appellant.

x----------x

SEC En Banc Case No. 11-07-122
For: Removal from SEC List of Accredited External Auditors

DECISION

Before the Commission is an Appeal[1] filed by Mr. Virgilio R. Santos, assailing the Resolution of the Commission's Office of the General Accountant (OGA) dated 30 October 2007 in OGA Case No. 5-07-001 ("Assailed Resolution"), the dispositive portion of which states thus:

> IN VIEW OF THE FOREGOING, we find that Respondent Virgilio R. Santos, Managing Partner of Virgilio R. Santos & Co., committed gross negligence in the conduct of his audit of the financial statements of Philcomsat Holdings Corporation, which is a ground for the suspension of his accreditation under SEC Memorandum Circular No. 13, Series of 2006. Considering the said gross negligence and the circumstances of this case, the Respondent's accreditation is hereby suspended for a period of one (1) year effective November 30, 2007, with a stern warning that a repetition of the same or similar act shall be a ground for delisting of his accreditation. As a result of such suspension, the Respondent shall not audit within the said period financial statements of any corporation covered by the said Circular.
>
> SO RESOLVED.

The relevant facts,[2] as found by the OGA, and proceedings of the case are as follows:

The Complainant-Appellee Ms. Erlinda I. Bildner is the President and Chief Executive Officer of Philippine Communications Satellite Corporation ("Philcomsat"), a duly registered domestic corporation, and a stockholder owning 81% of Philippine Holdings Corporation ("PHC"). She likewise represents the largest private shareholder group that owns 18% of Philippine Overseas Telecommunications Corporation (POTC), the parent company of Philcomsat.

The Respondent-Appellant Mr. Virgilio R. Santos is a Certified Public Accountant and managing partner of the auditing firm Virgilio R. Santos & Co. ("VRSC"). On 7 March 2002, he was engaged by PHC to be its external auditor and was tasked to audit PHC's financial statements for the year ending 31 December 2000 onwards. Mr. Santos issued unqualified audit opinions on the following periods:

Year	Company(ies) audited	Audit report date
2000	PHC	26 March 2002
2001	PHC	31 May 2002
2002	PHC	10 April 2003
2003	PHC	16 April 2004
2004	PHC	30 March 2005
	PHC & Subsidiary	30 March 2005
2005	PHC	5 April 2006
	PHC & Subsidiary	5 April 2006

[1] *Memorandum on Appeal* dated 28 November 2007.
[2] Paragraphs 1 to 10 of the *Assailed Resolution.*

On 21 September 2005, Jose Ma. Ozamis, stockholder of PHC wrote a *Letter* addressed to the Commission's Office of the General Counsel (OGC), requesting the Commission to issue a "Cease and Desist" Order against PHC, its directors and officers, agents or assigns, to prevent unlawful dissipation of its assets to the prejudice of its stockholders, until the completion of the Annual Stockholders' Meeting of PHC.

Then General Counsel Vernette G. Umali-Paco issued a *Memorandum* dated 27 February 2006, referring *Mr. Ozamis's Letter* to the Commission's Corporate Finance Department (CFD).

Acting on *Mr. Ozamis's Letter*, CFD Director Justina F. Callangan instructed SEC Auditors to verify the allegation of dissipation of assets by conducting an examination of PHC's books and records. However, despite several attempts, the SEC Auditors were not allowed ingress to the company's premises, much less the company's books and records. Hence, the CFD was compelled to require PHC's external auditor VRSC to provide the audit working papers (AWP) for review, pursuant to Section 7.1(viii) of SEC Memorandum Circular No. 13, Series of 2006 ("MC 13").[3] Consequently, the AWP was submitted to the Commission.

Based on the review of the AWP, the following findings were noted:

> Various adjustments from the company and external auditors were not reflected in the schedules of accounts. As a result, some amounts do not equal the amounts in the AFS.
>
> Various accounts with material balances do not have schedules.
>
> The account *Advances to Affiliates* includes unusual transactions such as directors' salaries, allowances, travel allowances, legal fees paid by PHC, as follows:

Advances to affiliates	2005	2004
Beginning balances*	33,442,054	15,879,819
Directors' Salaries, legal expenses		
Andal	1,999,204	1,734,194
Brodett	1,774,000	1,290,670
Locsin	3,457,613	3,164,028
Lokin	3,273,964	1,415,335
Nieto	550,000	560,000
Araneta	550,000	
Guy De Leon	696,509	955,324
Jalandoni	169,007	128,640
Other items**	11,078,812	9,944,044
Ending balances	56,991,163	35,072,054

*beginning balance 2005 does not tie up with ending balance 2004
**unaccounted by SEC auditors

> Referring from the data above, total Directors' Salaries, allowances, legal expenses charged to *Advances to Affiliates* is P12,470,297 in 2005 and P9,248,191 in 2004.

On 5 December 2006, a *Subpoena Duces Tecum* from the Senate Committee on Government Corporation and Public Enterprises was received, requiring the Commission to submit all working papers of Mr. Santos submitted to the Commission, relative to Senate Resolution No. 455.[4]

Ms. Bildner filed her *Complaint-Affidavit* with the Commission on 9 May 2007, stating several areas of concern, among others:[5]

---

[3] Section 7.1(viii) requires the submission to the Commission an "undertaking under oath by the managing partner that the firm shall fully cooperate with the regulator by preserving his working papers for a period of seven (7) years and making them available to the Commission's representatives when required or directed to do so."
[4] The *subpoena* was issued in connection with a Senate inquiry in aid of legislation conducted on 14 December 20016, pertaining to the anomalous loss incurred by POTC, Philcomsat, and PHC, due to alleged improprieties in the operations by their respective Board of Directors; Note 5 of the *Assailed Resolution*.
[5] *Assailed Resolution*, Paragraphs 8, 8.1 to 8.4 of the Facts.

1. Included in the AWP presented in the Senate hearing is a draft memorandum entitled *Points for Discussion* which enumerated the audit findings of VRSC, regarding certain irregularities and anomalies in the financial, accounting and record keeping of PHC's business transactions, specifically item No. 7, which became the basis of the complaint.

   The following are excerpts from Item No. 7 of the document *Points for Discussion*:

   > *7. The following expenses were paid during the year, however, the expenses were debited to PHILCOMSAT and POTC. What are the legal bases for paying the following expenses and charging the same to PHILCOMSAT and POTC?*
   >
   > *a) PHILCOMSAT*

Name of Director	*Salaries*	*Reimbursement*	*Travel Allowance*	*Allowance*	*Total*
P. Brodett	*P1,224,000*	*P66,670*	-------	----	*P1,290,670*
E. Locsin		*2,271,388*	*560,000*	*128,640*	*2,960,028*
M. Andal		*841,554*	*560,000*	*128,640*	*1,530,194*
J. Jalandoni		----	-------	*128,640*	*128,640*
M. de Leon		*188,724*	*560,000*	*53,600*	*802,324*
M. Nieto			*560,000*		*560,000*
Total	*P1,224,000*	*P3,368,336*	*P2,240,000*	*P439,520*	*P7,271,856*

Legal Services of L.K. Locsin	-	*P500,000*
Publication expenses of L.K. Lokin	-	*115,335*
Legal Fees	-	*800,000*
Sonic Print (print, poseters, etc.)	-	*442,240*
Security services – Lourdes Africa Residence	-	*248,610*
Cash Advance	-	*3,000,000*
Sikini Labastilla – Legal services	-	*1,000,000*
Ortega Del Castillo – Legal services	-	*401,160*
Cash – PR – Media	-	*250,000*
Adjustment	-	*27,000*
Total	-	*6,784,345*

   b) POTC

E. Locsin	*Allowances as POTC director*	*P204,000*
M. Andal	*Allowances as POTC director*	*204,000*
M. de Leon	*Allowances as POTC director*	*153,000*
Cash Advances		*2,000,000*
Total		*2,561,000*

2. It appears that substantial amounts of funds were being attributed by PHC management without legal basis as to its affiliate companies, POTC and PHILCOMSAT, while said amounts were actually paid out by PHC to its directors, officers, and their service providers. PHC management has been recording these amounts as "advances" which is an asset account, on the false premise that said amounts will be repaid back to PHC. PHC's accounting and financial reporting for this substantial sum has no legal justification, and as such, totally misrepresents the nature of the transactions between PHC, the disbursing corporation, and the recipient entities, which, contrary to PHC's financial reporting, is neither POTC nor PHILCOMSAT. As stated under Note 8 of the 2005 AFS of PHC:

   > *Note 8: Advances to Affiliates*
   > *This consists of legal and other expenses incurred by the Company for the account of its affiliates. The balances as of December 31, are as follows:*

PHILCOMSAT	*P45,317,797*	*P29,284,652*
POTC	*11,673,366*	*5,787,402*
TOTAL	*P56,991,163*	*P35,072,054*

3. The substantial amounts involved materially affect the financial statements of PHC, as these are operating expenses and were booked as advances. For 2005, the increase in the *Advances to Affiliates* is P21,919,109, which would have increased PHC's operating expenses from P133,679,291 to P155,598,400. Correspondingly, PHC's losses for 2005 should have more than twice the amount, or P43,600,460, instead of the audited/reported loss of P21,681,357.

4. Despite full knowledge of the recurring irregularities and violations of accounting principles, which understates PHC's expenses and losses Mr. Santos issued an unqualified opinion on the financial statements of PHC as of, and for the year ended 31 December 2005 and 2004.

On 23 July 2007, both parties were directed to appear before the Commission's designated Hearing Officer, pursuant to Section 5-1 of the 2006 Rules of Procedure of the Commission.

Based on the findings and evaluation of the OGA, it concluded that Mr. Santos and his accounting firm has been negligent in the conduct of the audit of the financial statements of PHC. Furthermore, the OGA found that the negligence of Mr. Santos is gross which constitutes sufficient ground for suspension of accreditation, per Section 10 of MC 13.

According to the OGA, Mr. Santos was grossly negligent in recognizing and disclosing the account *Advance to Affiliates* in the 2005 AFS of Philcomsat.

The OGA determined that Mr. Santos did not perform the audit approaches for the account "advances" pursuant to the Philippine Accounting Standards, to wit, (1) external confirmation under PSA 505, and (2) inspection of intercompany agreements under PSA 500. During the proceedings, Mr. Santos did not present any audit evidence that would show that either PHC's affiliates confirmed the advances or there are loan agreements entered into between them. Rather, Mr. Santos admitted that he relied on the clarification and assurance made by PHC's management as to the existence of sufficient legal bases for charging advances to PHC's affiliates, as well as the Statement of Management Responsibility signed by the PHC management. Moreover, the audited financial statements of Philcomsat and POTC were not filed with the Commission from 2003 until 2005.

OGA explained that inquiry with the management alone does not provide sufficient and appropriate audit evidence with respect to the nature and materiality of the account "advances." The failure of the external auditor to make the aforementioned PAS procedures constitutes negligence on the auditor's conduct of the audit, because the subsequent issuance of an unqualified opinion is not supported with full compliance by the auditee with Generally Accepted Accounting Principles. Such is the case in Mr. Santos's audit of Philcomsat for 2005.

As to the degree of Mr. Santos's negligence, the OGA considered the materiality, as defined in PSA 320, *infra.*,[6] of the misappropriated accounts or balances. Based on OGA's analysis of the 2005 and 2004 financial statements, the OGA observed that the aggregate potential losses which were capitalized as *Advances to Affiliates* led to the understatement of Net Loss by 42.52% in 2005 and 246.21% in 2006. According to the OGA, such departure is considered as material, and therefore is construed as gross negligence on the part of Mr. Santos, having failed to effect the adjustments in the audited financial statements.

On appeal, Mr. Santos raised the following errors:

I.

THE OFFICE OF THE GENERAL ACCOUNTANT COMMITTED SERIOUS AND MANIFEST ERRORS IN ITS FINDING OF FACTS, WHEN IT CONCLUDED THAT RESPONDENT-APPELLANT FAILED TO COMPLY WITH PSA 505 AND PSA 500, WHICH IF NOT CORRECTED, WOULD CAUSE GRAVE AND IRREPARABLE DAMAGE OR INJURY TO RESPONDENT-APPELLANT.

II.

---

[6] Page 9 of this *Decision*.

THE OFFICE OF THE GENERAL ACCOUNTANT COMMITTED SERIOUS AND MANIFEST ERROR IN CONCLUDING THAT THERE IS A MATERIAL MISSTATEMENT IN THE AUDITED FINANCIAL STATEMENTS CONSIDERING THAT THE AMOUNTS ARE IMMATERIAL IN RELATION TO THE TOTAL ASSETS OF THE CORPORATION.

III.

THE OFFICE OF THE GENERAL ACCOUNTANT COMMITTED SERIOUS AND MANIFEST ERROR IN ITS CONCLUSION THAT RESPONDENT-APPELLANT WAS NEGLIGENT IN HIS CONDUCT OF AUDIT OF THE FINANCIAL STATEMENTS OF THE PHILCOMSAT HOLDINGS CORPORATION.

IV.

THE PENALTY OF SUSPENSION OF ONE YEAR IMPOSED BY THE OFFICE OF THE GENERAL ACCOUNTANT IS TOO HARSH CONSIDERING THAT RESPONDENT-APPELLANT CONDUCTED THE PHS'S [FINANCIAL] STATEMENTS IN ACCORDANCE AUDITING STANDARDS GENERALLY ACCEPTED IN THE PHILIPPINES.

V.

COMPLAINANT IS BLATANTLY GUILTY OF FORUM-SHOPPING.

Appellee Bildner commented that the arguments of Mr. Santos in the appeal are not new, but mere rehash of the issues Mr. Santos already pointed out in his *Answer*.[7]

Appellant Mr. Santos presented the following arguments to refute the OGA's findings in the *Assailed Resolution*:

1. The finding of the OGA holding Mr. Santos liable for the accusations in the complaint is without basis, considering the following:
    a. The document *Points for Discussion*, which is heavily relied on by the OGA in arriving at its conclusion, cannot be admitted in evidence and cannot be made basis for holding Mr. Santos liable, considering that the document is privileged and confidential;[8]
    b. The *SEC Auditor's Report* acknowledged that the examination conducted by the Commission was limited in scope in view of the unavailability of documents to verify the figures in the Report, and, consequently, a conclusive finding as to Mr. Santos's negligence cannot be arrived at on the basis thereof;[9] and
    c. The OGA's conclusion that Mr. Santos did not present any audit evidence that would either show that PHC's affiliates confirmed the advance or there are loan agreements entered into between them is sweeping and erroneous;[10]
        i. PSA 505 did not impose on the auditor the use of external confirmation but to determine if such is necessary considering materiality, nonetheless Mr. Santos sent a confirmation letter to Philcomsat, to which no reply was received;
        ii. Mr. Santos was shown documents by the management of PHC as to the legal justification of the charging of the salaries and legal expenses to be treated as "Advances."
2. The misstatement of total *Advances to Affiliates* is immaterial, considering that the amounts do not exceed the 10 percent (10%)-threshold of the effect of losses or potential losses against the assets, pursuant to Section 9(3)(ii) of MC 13.[11]
3. The imposition of the penalty of suspension is excessive considering that:
    a. The case brought about by Ms. Bildner is purely a harassment suit;[12]
    b. There is no finding of malice, bad faith, evil intention, furtive design, or intent of gain proven in the proceedings;[13] and

---

[7] *Comment*, p. 2.
[8] *Memorandum on Appeal*, Discussion I, par. 3.0.
[9] Ibid., Discussion III, par. 4.0.
[10] Ibid., Discussion I, par. 4.0.
[11] Ibid., Discussion II, pars. 1.0-4.0.
[12] Ibid., Discussion IV, par. 2.0.
[13] Ibid., Discussion IV, par. 3.0.

c. Mr. Santos was never given the opportunity to explain his side on the findings in the SEC Auditor's Report.[14]

4. Ms. Bildner is guilty of forum-shopping, having filed a separate case before the Board of Accountancy of the Professional Regulation Commission, which involves the very same subject matter and stating the same allegations.[15]

Based on the foregoing, the following are the key issues for the resolution of this appeal:

1. Whether or not the Appellant Santos is grossly negligent in the conduct of his audit of PHC;
2. Whether or not the misstatement of the *Advances to Affiliates* is material to consider Mr. Santos as grossly negligent;
3. Whether or not the one-year suspension imposed is excessive; and
4. Whether or not Ms. Bildner is guilty of forum-shopping.

First Issue
The OGA's Finding as to Mr. Santos's Negligence

Mr. Santos persistently contends that the *Assailed Resolution* has no basis, considering that the documents relied upon by the OGA in arriving at its conclusion, to wit, the *Points for Discussion* and the SEC Auditor's Report, are inadmissible and unreliable, and that the conclusion that Mr. Santos did not present the pertinent audit evidence is made sweepingly and erroneously.

To restate, Mr. Santos argued that the document *Points for Discussion* is inadmissible in evidence being part of the AWPs, hence, a privileged and confidential document pursuant to Section 29[16] of the Philippine Accountancy Act.[17] As to the SEC Auditor's Report, the same is unreliable to support a conclusive finding of negligence of Mr. Santos on his part of the audit, in view of the disclaimer on the report, viz.:

> In view of the limitation of the scope of the review conducted, our findings as discussed above are based only on the audit schedules of the company's external auditor; adjustments made by the company and external auditors are not verified due to lack of sufficient documents and evidence.
>
> Likewise, we cannot comment on the company's overall internal control system. We were not furnished with a copy of the Company's Accounting Manual.

Furthermore, Mr. Santos argued that PSA 505 did not impose on the auditor to use external confirmation but to determine if such is necessary, taking into account materiality. Nonetheless, Mr. Santos disclosed that the basis for charging advance to affiliates was discussed with the management, and was supported with documents showing that the matter was taken up and approved by the Executive Committee of Philcomsat.

The contentions of Mr. Santos are untenable.

To begin with, the argument as to the inadmissibility and unreliability of the documents is misplaced. The *Points of Discussion* and the *SEC Auditor's Report* are not the sole basis for the finding of Mr. Santos's negligence in his conduct of the audit. In fact, the primary bases for the OGA's finding are the unqualified opinion of Mr. Santos and his admissions in the *Answer*.

---

[14] Ibid., Discussion IV, par. 4.0.
[15] Ibid., Discussion V.
[16] Section 29. Ownership of Working Papers. - All working papers, schedules and memoranda made by a certified public accountant and his staff in the course of an examination, including those prepared and submitted by the client, incident to or in the course of an examination, by such certified public accountant, except reports submitted by a certified public accountant to a client shall be treated confidential and privileged and remain the property of such certified public accountant in the absence of a written agreement between the certified public accountant and the client, to the contrary, unless such documents are required to be produced though subpoena issued by any court, tribunal, or government regulatory or administrative body.
[17] Republic Act No. 9298 (2004).

As regards the confidential nature of the AWPs, it is true that pursuant to Section 29 of the Philippine Accountancy Act, all working papers, schedules, and memoranda of a certified public accountant made in the course of his audit are treated confidential and privileged. However, Mr. Santos failed to appreciate that the Commission's production of the AWPs was in compliance to a subpoena *duces tecum* in connection with the Senate inquiry, in aid of legislation, pertaining to the anomalous loss incurred by POTC, Philcomsat, and PHC held on 14 December 2006. The confidential and privileged nature of the AWPs yields to the power of the Congress to compel the production of documents during legislative inquiries.

In turn, the information written in the *Points of Discussion* has become public when the same was openly discussed during the Senate inquiry. The information then became a part of the basis of the complaint filed by Ms. Bildner before the OGA. The circumstances attending Mr. Santos's conduct of PHC audit were established during the proceedings before the OGA.

With regard to the unreliability of the *SEC Auditor's Report*, the document likewise was not made the basis of the *Assailed Resolution*. To reiterate, the factual basis for the findings of the OGA was established through other means during the proceedings before it, i.e., the unqualified opinion and Mr. Santos's admissions.

The issue of inadmissibility and unreliability of the aforementioned documents being addressed, the basis for the OGA's finding will now be revisited.

To recall, it is has been established during the proceedings before the OGA that (1) the financial statements of PHC reflect the account *Advances to Affiliates*, and (2) Mr. Santos issued an unqualified opinion on the financial statements of PHC.[18] However, during the same proceedings, Mr. Santos failed to present any audit evidence to show that either PHC's affiliates confirmed the advance or there are loan agreements entered into between them. Mr. Santos explained his actions in relation to the account *Advances to Affiliates* in broad language, and did not submit any evidence to support his explanation.[19]

Thus, based on the submissions presented during said proceedings, the OGA concluded that Mr. Santos issued the unqualified and clean opinion on the financial statements of PHC: (1) without documentary evidence to support that the *Advances to Affiliates* were indeed have been made as such by PHC and received as such by the affiliates; and (2) relying only on the representations of the PHC's management as to the sufficiency of the legal bases for charging the amounts as *Advances to Affiliates*.

At this point, it is worthy to note that Mr. Santos's detailed explanation on his action in relation to the account *Advances to Affiliates* and the supporting document thereto was presented **only during the appeal**,[20] and not during the proceedings before the OGA. Thus, the OGA cannot be expected to have considered these in their inquiry.

Moreover, the *Secretary's Certificate*[21] presented by Mr. Santos to support his explanation may not be admitted for being presented only for the first time on appeal. In *Tanjuan v. Philippine Postal Savings Bank, Inc.*,[22] the Supreme Court made a ruling on the reception of new evidence for the first time on appeal in administrative cases, thus:

> It is well-settled that the NLRC is not precluded from receiving evidence, even for the first time on appeal, because technical rules of procedure are not binding in labor cases. This rule applies equally to both the employee and the employer. In the interest of due process, the Labor Code directs labor officials to use all reasonable means to ascertain the facts speedily and objectively, with little regard to technicalities or formalities. **However, delay in the submission of evidence should be clearly explained** and should adequately prove the employers allegation of the cause for termination. (emphasis ours)

---

[18] Annex "D" of *Complaint-Affidavit*.
[19] *Answer*, par. 20.
[20] *Memorandum on Appeal*, Discussion I, pars. 6.0-8.0.
[21] Annex "5" of the *Memorandum on Appeal*.
[22] G.R. No. 155278, 16 September 2003, cited in *Angeles v. Fernandez*, G.R. No. 160213, 30 January 2007.

> x x x
> ii. Losses or potential losses the aggregate of which amounts to at least ten percent (10%) of the consolidated total assets of the company;

Mr. Santos maintains that the advances do not constitute 10% of PHC's total assets, and thus, could not be considered material that calls for reporting of such finding with the Commission.[26]

The Commission is not convinced.

The 10%-threshold stated in the aforementioned provision is in relation to the duty of the external auditor to disclose to the Commission any finding of such ratio of losses to the total assets of the company, which is of no moment. In the case at bar, **the basis of holding Mr. Santos liable is his negligence in the conduct of PHC's audit which resulted in the material misstatement of the financial statements of PHC**, and NOT any failure to disclose to the Commission losses or potential losses the aggregate of which amounts to at least 10% of the consolidated total assets of the company.

On the other hand, the materiality referred to in the *Assailed Resolution* is the effect of the misstatement of the account *Advances to Affiliates* to the net profit or net loss of the company being audited.

As explained in the *Assailed Resolution*, the materiality of the misappropriated accounts or balances is used as basis in determining the degree of negligence, taking into consideration the definition of materiality in in PSA 320, viz.:

> Information is material if its omission or misstatement could influence the economic decisions of users taken on the basis of the financial statements.

In this case, the ratio of deviation of the understated net loss in the financial statement vis-à-vis the adjusted net loss taking into account the misstated *Advances to Affiliates* was made the basis of determining the degree of negligence, **considering that the difference between the stated net profit or net loss and the adjusted net loss is substantial and not minimal**, i.e., Net Loss is understated by **42.52%** in 2005 and **246.21%** in 2004. The deviation is deemed as material, thus Mr. Santos's negligence is not simple, but gross.

Third Issue
The Propriety of the One-year Suspension

In assailing the imposition of the one-year suspension, Mr. Santos maintains that he exercised his functions as auditor without malice or evil intentions and that the complaint is brought merely to vex and humiliate him. Moreover, Mr. Santos claims that he was never given the opportunity to explain his side on the SEC Auditor's findings where he could refute the same ventilate facts which will exonerate him from the complainant's charges.

The argument is unmeritorious. Neither malice on the part of Mr. Santos nor the intent to vex on the part of Ms. Bildner is relevant to the finding of the OGA. To emphasize, the finding of the OGA is that Mr. Santos failed to observe the diligence required of him in the conduct of his audit of PHC when he did not conduct the audit procedures to test the account *Advances to Affiliates*, which resulted to the issuance of an unqualified opinion on PHC's Financial Statements. Notwithstanding malice on the part of Mr. Santos or harassment coming from Ms. Bildner, the finding of negligence shall remain.

The Commission likewise disagrees with Mr. Santos's contention that he was not given the opportunity to be heard. It is already settled that a full blown hearing is not necessary to comply with due process requirements. The Court held thus:

> **Due process in an administrative context does not require trial-type proceedings similar to those in courts of justice.** Where opportunity to be heard either through oral arguments or through pleadings is accorded, there is no denial of procedural due process. **A formal or trial-**

---

[26] *Memorandum on Appeal*, Discussion II, par. 4.0.

> **type hearing is not at all times and in all instances essential.** The requirements are satisfied where the parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand. The standard of due process that must be met in administrative tribunals allows a certain degree of latitude as long as fairness is not ignored. In other words, **it is not legally objectionable for being violative of due process for an administrative agency to resolve a case based solely on position papers, affidavits or documentary evidence submitted by the parties as affidavits of witnesses may take the place of their direct testimony.**[27] (emphases supplied)

Upon perusal of the records of this case, Mr. Santos was given the opportunity to give his explanation and defenses against Ms. Bildner's complaint. In his *Answer*, he already ventilated his side. Mr. Santos's failure to provide a full elucidation as to his side and evidence to support his explanation should not be taken against the Commission, as his failure to fully exploit the opportunity for him to be heard is his own doing.

Lastly, even considering Mr. Santos's argument that he is a "first time offender," the penalty of one-year suspension shall be upheld. It was established that he was grossly negligent in the conduct of his audit of PHC's financial statements. The accreditation of external auditors is imbued with public interest, thus, high qualification standards and strict reporting obligations are expected of accredited external auditors.[28] As it is, the penalty of delisting from the list of SEC Accredited External Auditors should have been imposed. However, taking into account that this is his first offense, the penalty imposed by OGA is less severe than that of delisting. In this case, **the penalty of one-year suspension is a mere minimum, the same being the equivalent of one (1) auditing period**. Thus, Mr. Santos's contention that the imposed penalty is harsh and excessive has no basis.

Fourth Issue
Ms. Bildner's Forum-Shopping

According to Mr. Santos, Ms. Bildner instituted a separate case against Mr. Santos involving exactly the same subject matter and stating the very same allegations before the Board of Accountancy of the Professional Regulation Commission (PRC), docketed therein as Administrative Case No. 702. Such act, Mr. Santos asserts, constitute forum-shopping.

Before proceeding, the argument may already be disregarded, being raised for the first time on appeal. Jurisprudence has already settled that the question of forum shopping cannot be raised for the first time on appeal, since such an issue must be raised at the earliest opportunity.[29] The high court even warned that "invoking it in the later stages of the proceedings or on appeal may result in the dismissal of the action x x x."[30] In this case, Mr. Santos already had his opportunity at the proceedings before the OGA, which, unfortunately, he again failed to avail.

At any rate, the Commission does not find merit in the argument. To begin with, the essence of forum-shopping is the filing of multiple suits involving the same parties **for the same cause of action**, either simultaneously or successively, for the purpose of obtaining a favorable judgment.[31]

In the case at bar, the relief prayed for before the OGA are: (1) holding Mr. Santos liable for conduct unbecoming of a certified public accountant and gross violations of the Code of Professional Ethics; and (2) delisting Mr. Santos from the Commission's List of Accredited External Auditors.

---

[27] *Lastimoso vs. Asayo*, G.R. NO. 154243, 4 December 2007, citing *Samalio v. Court of Appeals*, G.R. No. 140079, 31 March 2005.
[28] Section 1, SEC Memorandum Circular No. 13, Series of 2006
[29] *S.C. Megaworld Construction and Development Corporation vs. Parada*, G.R. No. 183804, 11 September 2013, citing *Young v. John Keng Seng*, G.R. No. 143464, 5 March 2003.
[30] Ibid.
[31] *Spouses Melo vs. Court of Appeals*, G.R. No. 123686, 16 November 1998, citing *Executive Secretary v. Gordon*, G.R. No. 134171, 18 November 1998.

Obviously, **it is the Commission, through the OGA, that has sole jurisdiction over complaints for delisting of auditors or auditing firms from the Commission's List of Accredited External Auditors or suspension of such Accreditation, pursuant to MC 13**. The administrative sanctions imposable under MC 13 is based on the Commission's power and duty to supervise and regulate not only the operations of corporations that issue registered securities and/or those with secondary license,[32] but also to ensure the quality of their financial reporting for the protection of the public. Otherwise stated, *no other court, tribunal, or agency, such as the PRC, has jurisdiction over the delisting or suspension of such accreditation pursuant to MC 13.*

In the case at bar, the legal basis for the OGA's imposition of the penalty is MC 13. While the cases before the PRC and the Commission might involve the same allegations and subject matter, the suspension of Mr. Santos's SEC Accreditation is not similar to whatever extent to any relief that may be granted by the PRC, nor the reliefs granted by the Commission and the PRC have the same legal basis. To reiterate, the relief granted by the OGA in this case is the suspension of Mr. Santos's SEC Accreditation on grounds enumerated under MC 13. **Clearly, the causes of action in the two cases cannot be the same, considering that the PRC has no jurisdiction to impose penalties pursuant to MC 13.** Thus, there is no forum shopping in this case.

As to the first relief prayed for, the same involves the regulation of the practice of accountancy which is outside the jurisdiction of the Commission, and thus not granted by the OGA. Such denial already addressed any concern of forum shopping because the effect is substantially the same, that is, dismissal. However, it would be absurd to dismiss the *Complaint* entirely because of the first relief prayed for, considering that the second relief prayed for may be granted exclusively by the Commission.

In view of the foregoing discussions on the issues on appeal, the Commission does not find any reason to overturn the *Assailed Resolution*. A dismissal of this appeal is thus warranted.

WHEREFORE, premises considered, the Appeal is hereby **DISMISSED**.

SO ORDERED.

Pasay City, Philippines; 4 October 2016.

TERESITA J. HERBOSA
Chairperson

MANUEL RUBERTO B. GAITE
Commissioner

ANTONIETA F. IBE *
Commissioner

EPHYRO LUIS B. AMATONG *
Commissioner

BLAS JAMES G. VITERBO
Commissioner

*On Official Business

[32] Section 5.1(a) of the Republic Act No. 8799, otherwise known as the Securities Regulation Code (2000).