Republic of the Philippines
Department of Finance
Securities and Exchange Commission
PICC Secretariat Building, PICC Complex, Pasay City

COMMISSION EN BANC

IN RE: OBLATE SISTERS OF THE MOST HOLY REDEEMER, INC.

SR. ALMA P. QUISTO, OSR, ET. AL.
Appellant,

- versus -

JOSE RAFAEL HERNANDEZ, ET. AL.,
Appellee.
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SEC EB Case No. 09-16-413
Double Filing of GIS

DECISION

This is an Appeal of the **COMPANY REGISTRATION AND MONITORING DEPARTMENT (CRMD) Order dated 26 August 2016**, declaring as an intra-corporate dispute the double filing of General Information Sheets (GIS) by two groups of members, each claiming to be the duly-elected Board of Trustees, and directing that the conflicting GIS for 2014 and 2015 be marked "DISPUTED," in accordance with SEC Office Order No. 242, Series of 2013.

RELEVANT FACTS

OBLATE SISTERS OF THE MOST HOLY REDEEMER, INC. (OBLATE SISTERS) is a corporation duly-registered with the Commission.[1]

On **14 January 2014**, a GIS for 2014 was filed on behalf of OBLATE SISTERS, certifying that Appellant Sr. Alma P. Quisto (QUISTO) was elected Chairman of the Board at a members' meeting held on 13 January 2014. QUISTO's group later filed a GIS for 2015 on **13 January 2015**.

On **10 October 2014**, a GIS for 2014 was filed on behalf of OBLATE SISTERS, certifying that Appellee Jose Rafael Hernandez (HERNANDEZ) was elected Chairman of the Board at a members' meeting held on 1 October 2014. HERNANDEZ' group later filed a GIS for 2015 on **12 January 2015**.

On **11 February 2016**, the CRMD issued summons to QUISTO and HERNANDEZ, who both claimed to represent the duly-elected Board of Trustees of OBLATE SISTERS. The CRMD held clarificatory conferences and subsequently directed the parties submit their respective Memoranda.

On **26 August 2016**, the CRMD issued the assailed **Order**, the dispositive portion of which states, viz.

> In light of the foregoing and considering that the Commission has no authority to determine the legitimacy of the officers and Board of Trustees of [OBLATE SISTERS] and the impending intra-corporate dispute that may be filed with the Regional Trial Court, the 2014 and 2015 GIS filed respectively on 14 January 2014 and 13 January 2015

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[1] SEC Registration No. 121694 dated 23 July 1984.

> by [QUISTO's group] and the 2014 and 2015 GIS filed on 10 October 2014 and 12 January 2015 by [HERNANDEZ' group], shall be marked "**DISPUTED**" in accordance with the Office Order of the Commission.
>
> Further, all transactions of [OBLATE SISTERS] with the Commission including the application for amendment of its articles of incorporation shall be temporarily deferred until the issue on the legitimacy of the officers, trustees and members is resolved with finality by a court of competent jurisdiction.[2]

On **21 September 2016**, QUISTO filed a **Memorandum on Appeal**.

On **17 October 2016**, HERNANDEZ filed a **Reply Memorandum**.

Meanwhile, the Commission's records show that OBLATE SISTERS GIS for 2016, 2017, and 2018 were also double-filed, viz.

- 2016 GIS filed on 11 January 2016 by QUISTO's group
- 2016 GIS filed on 12 January 2016 by HERNANDEZ' group
- 2017 GIS filed on 10 January 2017 by QUISTO's group
- 2017 GIS filed on 13 January 2017 by HERNANDEZ' group
- 2018 GIS filed on 8 January 2018 by QUISTO's group
- 2018 GIS filed on 18 January 2018 by HERNANDEZ' group

On **14 March 2018**, QUISTO filed a **Supplement to the Appeal Memorandum**.

Hence this Appeal.

DISCUSSION

Absent serious errors of fact, the Commission En Banc may adopt the findings of fact by the CRMD, viz.

> Review Standard. – Findings of fact by the Operating Department **shall not be disturbed by the Commission En Banc** unless serious errors of fact have been committed.[3]

The CRMD established, through pleadings submitted by the parties and by conferences held, that there are two groups of members of OBLATE SISTERS, the QUISTO group and the HERNANDEZ group, who each believe themselves to be the duly-elected Board of Directors. From 2014 to the present, each group filed a GIS on behalf of OBLATE SISTERS.

On the basis of such facts, the CRMD declared the conflict between the two groups as an intra-corporate dispute, and did not attempt to rule who between the two groups is

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[2] Page 4 of CRMD Oder dated 26 August 2016.
[3] SEC. 11-8, Rule XI of the 2006 SEC Rules of Procedure, which governs this case. This review standard has been reenacted as SEC. 3-11, Rule III, Part V of the current 2016 SEC Rules of Procedure.

the duly-elected Board of Trustees of OBLATE SISTERS. Instead, the CRMD abided by the instructions in SEC Office Order No. 242, Series of 2013, and merely marked the respective GIS as "disputed."

I. THE CRMD HAS NO JURISDICTION TO DETERMINE WHICH OF TWO GROUPS OF MEMBERS IS THE DULY-ELECTED BOARD

Under **Section 5.2 of the Securities Regulation Code**, viz,

> The Commission's jurisdiction over **all cases enumerated under Section 5 of Presidential Decree No. 902-A** is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court xxx (Emphasis supplied)

The cases enumerated in **Section 5 of PD 902-A** are:

> (a) **Devices or schemes employed by or any acts, of the board of directors, business associates, its officers or partnership, amounting to fraud and misrepresentation** which may be detrimental to the interest of the public and/or of the stockholder, partners, members of associations or organizations registered with the Commission;
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> (b) **Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members, or associates;** between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the state insofar as it concerns their individual franchise or right to exist as such entity; and
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> (c) **Controversies in the election or appointments of directors, trustees, officers or managers** of such corporations, partnerships or associations.
>
> (Emphasis supplied)

Here, there is an intra-corporate dispute between two groups, comprised of members of the same corporation. Since these two groups are responsible for the double filing of GIS, there is also an intra-corporate dispute as to which of them filed a GIS through fraud. Moreover, since each group claims to be duly-elected, there is an intra-corporate dispute as to the validity of the elections held by each group.

We note that neither group has brought their disputes before the Special Commercial Court. However, the law does not require that an actual case be filed and it is sufficient that the intra-corporate dispute is imminent. In any case, proceedings before

the Commission, or any of its departments, cannot be a substitute for the judgment of the Special Commercial Court.

Therefore, the CRMD, has no jurisdiction to decide which among the two groups is the duly-elected Board of Trustees.

II. THE CRMD HAS NO JURISDICTION TO DETERMINE WHICH OF TWO GENERAL INFORMATION SHEETS FILED IS AUTHENTIC

Under **SEC Office Order No. 242, Series of 2013**,[4] the CRMD is directed to mark each double-filed GIS as "**DISPUTED**," viz.

> 4. [The Compliance Monitoring Division (CMD) of the Company Registration and Monitoring Department or CRMD], in monitoring compliance of corporations with the reportorial requirements, **must ensure that there is no double filing of GIS.** If verification shows that there are filings by two different groups, the monitoring shall not proceed. A "Clarificatory Conference" shall then be held with the two different groups to determine the cause of the double-filing. If the case indicates an intra-corporate dispute or question of the legitimacy between the directors, officers, and stockholders of the corporation, CMD will recommend to the Corporate Filings and Records Division (CFRD) of the CRMD and to the Management Information System Division [MISD] of the Economic Research and Information Department (ERID)[5] the **marking of GIS in question as "DISPUTED."** CMD shall also advise the Central Receiving and Records Division (CRRD) of the Human Resource and Administrative Department (HRAD) of the double filing of GIS for such corporation.[6]

Here, the CRMD is left with the purely ministerial duty of recording and monitoring the GIS filings. When it marks any double-filed GIS as "disputed," it is recording and monitoring but not resolving the dispute as to authenticity, and deferring to the judgment of the Special Commercial Court.

QUISTO argues that the dismissal of criminal cases for falsification against members of her group, concerning the same GIS for 2014 and 2015, is conclusive as to their authority as the duly-elected Board of Trustees. However, jurisdiction to resolve the intra-corporate dispute lies with the Special Commercial Court, and there has been no final judgment of the Special Commercial Court as to which group is the true Board.

Therefore, the CRMD correctly ruled that the conflicting GIS should be marked "disputed."

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[4] GUIDELINES FOR APPLICATIONS FOR AMENDMENT OF THE ARTICLES AND/OR BY-LAWS WHERE THERE IS MORE THAN ONE SET OF GENERAL INFORMATION SHEET (GIS) FILED WITH THE COMMISSION dated 29 April 2013 and signed by then SEC Chairperson Teresita J. Herbosa.

[5] Now, Economic Research and Training Department (ERTD).

[6] Page 2 of SEC Office Order No.242, Series of 2013.

CONCLUSION

The CRMD correctly ruled that the determination of (1) which group is the duly-elected Board of Trustees, and (2) which of the GIS filed is authentic, are intra-corporate disputes that are entirely outside the jurisdiction of the Commission. The CRMD also correctly marked the respective GIS filed by the QUISTO and HERNANDEZ groups as "disputed" in accordance with SEC Office Order No. 242, Series of 2013.

We note that the QUISTO and HERNANDEZ groups continually double-filed from 2014 to 2018, placing an indefinite hold on the pending applications of the QUISTO group with the CRMD. We further note that the parties have neglected to bring the intra-corporate dispute before the proper tribunal. Consequently, there is no final judgment of the Special Commercial Court, nor any voluntary settlement or compromise as to who are the rightful directors and officers of the corporation, that would change the ruling of the CRMD.

WHEREFORE, the CRMD's Order dated 26 August 2016 is **AFFIRMED**.

SO ORDERED.

Pasay City, Philippines; 25 October 2018.

EMILIO B. AQUINO
Chairperson

ANTONIETA F. IBE*
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

*On Leave