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

GLOBALINKS SECURITIES AND STOCKS, INC.
Appellant,

- versus -

SEC En Banc Case No. **10-11-248**

MARKET INTEGRITY BOARD OF THE PHILIPPINE STOCK EXCHANGE, INC.
Appellee.

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

DECISION

For resolution is the Appeal filed by appellant, Globalinks Securities and Stocks Inc. ("Appellant," for brevity), assailing the Letter-Order dated 10 June 2009 issued by the appellee, Market Integrity Board of the Philippine Stock Exchange or the PSE ("Appellee," for brevity) denying Appellant's letter dated 09 June 2009 requesting for reconsideration of the penalty imposed by the Market Regulation Division of the PSE ("PSE-MRD," for brevity) for the late filing of the company's Annual Audited Financial Statements ("AAFS," for brevity) for the fiscal year 31 December 2008, in violation of SEC Memorandum Circular No. 7, series of 2008 ("MC No. 7, s.2008," for brevity) and SRC Rule 52.1-5 of the Amended Implementing Rules and Regulations ("Amended IRR," for brevity) of the Securities and Regulation Code ("SRC," for brevity).[1]

The relevant facts as culled from the records, are as follows:

On 21 May 2009, the PSE-MRD issued a show cause order to Appellant, the pertinent portions of which state:

> "Pursuant to SEC Memorandum Circular No. 7, series of 2008, the Market Regulation Division requires each Trading Participant whose fiscal year ends on 31 December 2008 to submit its audited financial reports in accordance with the schedule mandated in said circular.
>
> Our records show that you submitted your Annual Audited Financial Statements (AAFS) for the year ended 31 December 2008 on 14

[1] R.A. No. 8799 (2000).

May 2009. Based on the last digit of your SEC Registration No., your AAFS was due on 8 May 2009.

In this connection, we direct your attention to the consequence of such failure under the PSE Sanction Guidelines, as follows:

TYPE OF VIOLATION	SANCTION
SRC Rule 52.1-5 (Annual Audited Financial Reports of Broker Dealers) Delayed submission or non-submission of audited financial reports (deadline is 110 days after the close of the fiscal year)	P50,000 basic penalty plus P1000 per each day of delay

Accordingly, kindly explain in writing within five (5) days from your receipt of this letter why you failed to submit the AAFS on time."

Ramona Ang ("Ang," for brevity), the President of Appellant, forwarded the letter from PSE-MRD to Appellant's external auditor, R.S. Bernardo and Associates, through Romeo A. De Jesus, Jr. ("De Jesus," for brevity). On 29 May 2009, De Jesus wrote to the PSE-MRD with the following explanation, to wit:

> "Realizing how scheduling timely submission of 2008 AAFS for our many client *(sic)* has always paused *(sic)* a tough challenge, we actually tried to file the 2008 AAFS to Securities & Exchange Commission as early as April 20, 2009 but was advised to follow the new schedule. Likewise, attempt was also made to submit the AAFS first to PSE on April 20, 2009, but these were not accepted due to absence of receipt stamp from SEC.
>
> The AAFS was eventually filed and stamped received by BIR and SEC on April 15 and May 7, 2009 respectively, in preparation for timely submission to your good office on or before May 8, 2009 pursuant to the SEC Memorandum Circular No. 7. **However, due to internal miscommunications, copies that are supposed to go to PSE were not delivered on May 8, 2009 as instructed.**
>
> Please be assured that there is no willful intention to ignore the deadline nor cause our client to violate the reportorial requirement.xxx"[2] (Emphasis ours)

Appellant attached the letter-explanation of De Jesus to its letter dated 29 May 2009, reiterating that there was no willful intent to neglect the reportorial requirements.[3]

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[2] *Records,* p. 21.
[3] *Id.,* p. 20.

On 09 June 2009, Appellant sought reconsideration of the ruling of the PSE-MRD before the Appellee.[4]

On 13 July 2009, Appellant received a letter dated 10 July 2009 from the Appellee denying its request for reconsideration to waive the penalties imposed by the PSE-MRD.

In a letter-appeal dated 23 July 2009 addressed to Director Jose P. Aquino ("Director Aquino," for brevity) of the Market Regulation Division of the Commission ("SEC-MRD", for brevity), Appellant requested that the penalty imposed be waived as it is the company's first offense for late filing.

In a letter dated 27 July 2009, Director Aquino informed Appellant that the same had been endorsed to the Commission *En Banc* for appropriate action.

On 30 September 2011, the Commission issued an Order directing the Appellant to file a verified Memorandum on Appeal and to pay the corresponding docket fee.

On 19 October 2011, Appellant filed its Memorandum of Appeal and paid the docket fee.

On 08 November 2011, the Commission issued an Order to the Appellee to file its Reply Memorandum.

On 25 November 2011, the Appellee filed a *Manifestation* stating that it filed its Reply-Memorandum dated 24 November 2011 with the Commission by registered mail and that it furnished the Appellee a copy thereof. The said Reply-Memorandum was received by the Commission on 02 December 2011.

ARGUMENTS

In its Memorandum of Appeal, the Appellant advanced the following main arguments: (1) there is a sufficient ground to waive the penalties and (2) even assuming that there was delay in the submission, the circumstances warrant the relaxation of the rules pertaining to the imposition of the penalty which has caused prejudice to no one.

Appellant cites its track record for consistently filing its AAFS on time. Appellant likewise points out that the delay was not due to its negligence or willful intent not to abide by the rules, and reiterates that there was an attempt to submit its 2008 AAFS even before the deadline, but internal miscommunications in the office of the External Auditor which happened for the first time, resulted in the 2008 AAFS inadvertently not filed on the supposed day of submission to the PSE. In support of its contention, Appellant attached the Affidavit of Merit executed by De Jesus explaining the inadvertence in not submitting the 2008 AAFS on time.[5] Likewise, Appellant posits that the Commission should take into

[4] *Records,* p. 19
[5] *Id.,* p. 15.

consideration the attending circumstances and the good faith on its part to comply with the rules, and that the spirit, not the letter of the law, should be applied.

On the other hand, the Appellee contends that: (1) Appellant admits that it violated the provisions of MC No. 7, s.2008 and SRC Rule 52.1-5; (2) the pieces of evidence/defenses advanced by Appellant are self-serving in nature and there is no probative value to Appellant's allegations; (3) the obligation to submit the AAFS lies solely with the Appelllant and not its External Auditor; and (4) there is no legal basis for a relaxed implementation of the law.

In support of its arguments, the Appellee points out that as early as 28 January 2009, the PSE-MRD released a Memorandum to all Trading Participants informing them of SEC Memorandum Circular No. 7, series of 2008 pertaining to the new procedures for filing of AAFS. The Appellee even attached a copy of MC No. 7, s.2008 for the convenience of the trading participants.

Appellee emphasizes that the Appellant admitted that pursuant to MC No. 7, s.2008, it was required to submit its 2008 AAFS either on May 4,5,6,7 or 8, 2009, and that Appellant only submitted its 2008 AAFS on 14 May 2009, or six (6) days after the deadline. In addition, Appellee contends that other than its bare allegations, Appellant did not present supporting evidence to the PSE-MRD and failed to establish the alleged "internal miscommunication" and "absence of negligence or willful intent." Moreover, Appellee posits that under the law, it is the Appellant who is principally liable for the timely submission of its AAFS and not its External Auditor. Finally, Appellee contends that there is no justifying factual circumstances to warrant the relaxation of the rules in the Appellant's case.

ISSUE:

The sole issue for consideration is whether or not the Appellee erred in imposing sanctions upon the Appellant for its failure to submit its 2008 AAFS on time.

RULING:

We affirm the ruling of the Appellee.

The SRC provides:

> "SECTION 52. Accounts and Records, Reports, Examination of Exchanges, Members, and Others. — 52.1. Every registered Exchange, broker or dealer, transfer agent, clearing agency, securities association, and other self-regulatory organization, and every other person required to register under this Code, ***shall make, keep and preserve for such periods, records, furnish such copies thereof, and make such reports, as the Commission by its rules and regulations may prescribe.***

> Such accounts, correspondence, memoranda, papers, books, and other records shall be subject at any time to such reasonable periodic, special or other examinations by representatives of the Commission as the Commission may deem necessary or appropriate in the public interest or for the protection of investors.xxx" (Emphasis supplied)

The Amended IRR of the SRC states:

> "*SRC Rule 52.1-5(A)*
>
> A. Every Broker Dealer ***shall file annually with the Commission and any Exchange*** to which it is a member at the close of its fiscal year an audited financial report by a Commission-accredited independent certified public accountant and a statement of management responsibility of said Broker Dealer." (Emphasis supplied)

Pursuant to the rule making authority of the Commission, MC No. 7, s. 2008 was promulgated for corporations whose fiscal year ends on 31 December 2008 to ensure the orderly filing of the AAFS and avoid near pandemonium in the premises that compromise the safety of the filers, personnel and government property, by allocating certain dates corresponding to the last digit of SEC registration numbers of corporations as the dates within which they shall submit their respective AAFS.

It is worth noting that Appellant is cognizant of its delay in the filing of its AAFS with the PSE, which it admits in its various communications with the Appellee and in the instant Memorandum of Appeal.[6]

Appellant nonetheless, shifts the blame to its External Auditor for the delay in the submission. However, it is clear under the aforecited Section 52 of the SRC and SRC Rule 52.1-5(A) of the Amended IRR that the responsibility for the timely submission of reportorial requirements lies with the Appellant.

Appellant likewise claims that it attempted to file its 2008 AAFS to the PSE way before the stated schedule. However, other than the self-serving affidavit executed by its External Auditor De Jesus, the Appellant was not able to establish this fact by substantial evidence nor cite compelling reasons for it to be taken into consideration.

In administrative proceedings, substantial evidence has been defined as:

> "such evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred xxx The test is whether the administrative decision finds reasonable support in substantial evidence, whether the evidence reasonably tends to

[6] See *Records,* pp. 17, 19, 20, and 33.

support the findings, or, it has been indicated whether the decision is not clearly contrary to the overwhelming weight of the evidence."[7]

Other than bare allegations, the Appellant failed to convince that there is a significant, compelling reason to consider its purported attempts to submit its AAFS as substantial compliance with the law, rules and regulations implemented by the Commission.

Appellant is bound by the provisions of the law and the rules. It cannot claim ignorance nor inadvertence as excuse from compliance therewith. Even assuming that there are circumstances justifying a less stringent application of the rules, there are no exceptional circumstances that would be applicable in the present case.

WHEREFORE, premises considered, the instant Appeal is **DENIED** for lack of merit. The *Letter Order* dated 10 June 2009 of the Market Integrity Board of the Philippine Stock Exchange is hereby **AFFIRMED.**

Let a copy of this Decision be furnished to the Company Registration and Monitoring Department and the Philippine Stock Exchange for its information and appropriate action.

SO ORDERED.

Mandaluyong City, 12 January 2012.

TERESITA J. HERBOSA
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner

[7] 2 Am. Jur. 2d pp. 573-579, Sec. 688,