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

IN THE MATTER OF:

SEC EN BANC CASE NO. 10-07-119
For: Review of CFD's Imposition of Penalty

CLEARWATER COUNTRY CLUB, INC.

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DECISION

For consideration is the *Appeal* dated 8 October 2007 filed by Clearwater Country Club, Inc. ("appellant", for brevity) on 9 October 2007 from the assessment letter issued by the Commission's Corporation Finance Department ("CFD") dated 29 August 2007.

The facts are:

On 16 May 2007, appellant filed its 1st Quarter Report (SEC Form 17-Q) for the year 2007, pursuant to Section 17 of the Securities Regulation Code ("SRC")[1] in relation to SRC Rule 17.1(1)(A)(ii) of the SRC's Implementing Rules and Regulations. Finding the same to be not in full compliance with the disclosure requirements under the said Rule, CFD directed the appellant to submit its amended report and show cause why it should not be held liable for the violation.

In its reply to the show-cause letter, appellant alleged that it already filed the said 1st Quarter Report on 15 May 2007, and that at any rate, the required disclosures were already stated in its 20 July 2007 report.

Finding the above justifications unmeritorious, CFD issued its herein assailed assessment letter of 29 August 2007, which provides:

> "In view thereof, the company is directed to file the required Amended 1st Quarter Report per our comment letter dated June 29, 2007 and pay the penalty of Sixty Thousand Pesos plus Six Hundred Pesos per day of delay or a total of SIXTY THOUSAND SIX HUNDRED PESOS (P60,600) within five (5) days from receipt of this letter. Otherwise, the matter shall be referred to our Legal Officer for appropriate action."

Hence, this *Appeal*.

Under the SRC, registered issuers of securities are mandated to file not only an Annual Report (which shall include, among others, a balance sheet, profit and loss statement and statement of cash flows for the last fiscal year) but such other

[1]Republic Act 8799 (2000).

periodical reports for interim fiscal periods, one of which is the Quarterly Report (SEC Form 17-Q).[2]

Pursuant to SRC Rule 17.1(1)(A)(ii), a Quarterly Report on SEC Form 17-Q must be filed within forty-five (45) days after the end of each of the first three quarters of each fiscal year. For the first quarter, the deadline falls on the 15th of May.

Appellant argues that there was substantial compliance on its part and that it acted in good faith, considering that it filed its 1st Quarter Report (SEC Form 17-Q) for the year 2007 on 16 May 2007, or only one day from the deadline.

There is no cogent reason to disturb CFD's findings.

One of the major changes introduced by the SRC is the adoption of the full disclosure approach to regulation, under which securities are bought and sold on the basis of accurate, comprehensive and updated disclosure by the issuer. This is essential to protect investors who participate in the securities market to ensure that their investment decisions are informed by current and accurate information.[3]

Accordingly, no less than strict compliance with the rules is required. All reports shall comply with the full disclosure requirements of the Rules and any report which shall be found to be materially incomplete shall be considered or deemed not filed.[4]

For the same reason, a good faith defense is generally unavailing. Good faith or bad faith hardly comes into the picture in the enforcement of simple rules mandating submission of reportorial requirements. To allow legal notions to intrude at every level in the implementation of these rules would defeat their very purpose, as every penalty could be subject to question and every violation based on a clear-cut rule would be qualified by the presence or absence of good faith or bad faith, or the question of motive or intent.[5] Hence, negligence in complying with the requirements is enough to warrant imposition of penalties.

There is no question that appellant is a reporting company and that it filed its 1st Quarter Report for 2007 on 16 May 2007, or a day after the deadline. It is also not controverted by appellant that such a report was not in full compliance with the disclosure requirements of the afore-mentioned Rule.

Neither is it disputed that this is already appellant's third offense for the same violation. Appellant ought to have been more meticulous, conscientious and conscious of all the demands of the requirement, be it as to form, content and time.

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[2]Section 17, SRC.
[3]Draft Commentary on the Securities Regulation Code prepared by the Consortium of Development Alternatives, Inc., Cesar Virata & Associates and IBM Business Consulting Services, p. 80.
[4]SRC Rule 72.1(13).
[5]*Decision* dated 13 July 2006 in *SEC En Banc Case No. 04-04-13* (In the Matter of: A. Brown Company, Inc.)

Put differently, appellant, by this time, should have known the strict implementation and application of the rules. Its failure to learn from such previous mistakes cannot, thus, be countenanced.

This being its third violation, appellant is liable for the penalty of Sixty Thousand Pesos plus Six Hundred Pesos per day of delay, or a total of Sixty Thousand Six Hundred Pesos (P60,600.00).[6]

WHEREFORE, premises considered, the instant *Appeal* is hereby **DISMISSED**. Clearwater Country Club, Inc. is hereby directed to pay, within ten (10) days from receipt hereof, Sixty Thousand Six Hundred Pesos (P60,600.00) for violation of Section 17 of the Securities Regulation Code in relation to SRC Rule 17.1(1)(A)(ii), without prejudice to any other penalty which may be imposed in the future. The corporation is hereby admonished that a repetition of the same or similar offenses in the future will be dealt with more severely.

SO ORDERED.

Mandaluyong City, 26 August 2010.

FE B. BARIN
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner

[6]Pursuant to the Consolidated Scale of Fines, SEC Memorandum Circular No. 6, Series of 2005.