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

HILARIO P. SORIANO,

Complainant-Appellant,

-versus- **SEC En Banc Case No. 11-10-222 (PSE-PED-IOC-2009-002)**

SUMMIT SECURITIES, INC., HARRY G. LIU and MA. ANDREA LUISA M. RAYMUNDO,

Respondents-Appellees.

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DECISION

For consideration of the Commission is the Appeal[1] dated 27 October 2010 filed by Hilario P. Soriano ("Complainant-Appellant") from the Resolution of the Market Integrity Board of the Philippine Stock Exchange ("MIB-PSE"), affirming the Decision of the Market Regulation Division of the Philippine Stock Exchange ("MRD-PSE")[2] which dismissed his complaint against Summit Securities, Inc., Harry G. Liu and Ma. Andrea Luisa M. Raymundo ("Respondents-Appellees").

FACTS OF THE CASE

The genesis of this case can be traced back in the complaint[3] filed with the Market Regulation Department of this Commission on 29 October 2009 where herein complainant-appellant alleged that he opened five (5) accounts with herein respondent-appellee Summit Securities, Inc., namely: the CHILARIO (opened in 1994), CHILARII (opened in 1994), CRBSM (opened in 1994), CRBSM-M (opened in 1994) and CHILARIO (opened in 1998) accounts.

Allegedly, the last statement that respondents-appellees furnished complainant-apellant regarding his 1994 accounts is a faxed statement sent on 18 March 1996, and a statement dated 18 July 2000 for his 1998 account. Complainant-appellant bemoans that aside from the above statements of account, respondents-appellees never furnished him any regular statement regarding his accounts, despite several oral and written demands by him.

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[1] *Records*, at 469-489.
[2] The MRD-PSE was succeeded by the Capital Markets Integrity Corporation of the Philippine Stock Exchange (CMIC-PSE), which was granted authority to operate as the independent audit, surveillance and compliance unit of the PSE with provisional self-regulatory organization (SRO) status, on 2 February 2012.
[3] Annex "B"; *Records*, at 454-465.

Complainant-appellant observes that per the 18 March 1996 statement of account,[4] CHILARIO account has still a balance of PhP664,843.50 worth of shares based on 1996 prices and PhP1,500.00 in cash. The account, he says, would have also earned dividends from 18 March 1996 up to the present.

The CHILARII account is a margin account and according to the 18 March 1996 statement of account, CHILARII still has 666 shares of PTT-B and cash balance of PhP1,500.00, plus dividends earned by the shares for the past 14 years since 18 March 1996 statement of account.

The CRBSM is a cash account opened by complainant-appellant using his personal funds. According to the 18 March 1996 statement of account, the account has a balance of PhP9.30 and 37 shares in Petron.

The CRBSM-M account is a margin account opened by complainant-appellant using his personal funds. The latest statement of account states that the account still has a cash of at least PhP8.5 Million.

On 10 October 2008, however, complainant-appellant was shocked to learn from respondents-appellees that the CRBSM-M account was already closed and the proceeds were already paid to him per Equitable Bank Check No. 110208268, purportedly drawn against Account No. 010-22228-9 with Equitable Bank, Binondo Branch.

Another CHILARIO account, which is a cash account, was opened in 1998. Complainant-appellant admits that this is the only account among the five (5) accounts that was partially paid to him from 17 July 2008 to 9 September 2008 after he started inquiring about his accounts with respondents-appellees on 27 June 2008. Per his recollection, "there are still shares remaining under this account plus cash in the amount of PhP13,778.04,"[5] but respondents-appellees claim that the account has no more balance, be it shares or cash.

Complainant-appellant finally obtained statements of accounts from respondents-appellees after several oral and written demands. After reviewing and studying the available records on his accounts, complainant-appellant belatedly discovered several alleged "questionable transactions" by respondents-appellees regarding his accounts.

For one, respondents-appellees, without knowledge or consent of the complainant-appellant, transferred 3,700 PLDT shares and 50,000 San Miguel Corporation shares from the CRBSM account to CRBSM-M account, with the combined value of around PhP11 Million. He argues that there was no valid reason for respondents-appellees to make the transfer, as there was no prior margin call made on him. What is more, the CRBSM-M account has adequate security worth PhP11.7 Million with a balance due of only PhP6.5 Million.

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[4] Complainant-appellant says that the 18 March 1996 statement of account "was printed on a thermal blue paper" and thus, the entries "could now only be read with the help of a blue light." This is the reason, according to him, why he is unable to attach a copy of said statement of account in his Complaint. *Records*, at 464; Complaint, at 2.

[5] Complaint, at 4; *Records*, at 462.

For another, respondents-appellees also misrepresented in one of complainant-appellant's customer ledger, in an entry dated 6 March 1995, that they paid him PhP8.5 Million. Complainant-appellant "emphatically denies" that he received the check indicated in the "questionable entry," nor has this check been received by his staff. A verification with the Philippine Deposit Insurance Corporation (PDIC), which has been appointed as the receiver of the Rural Bank of San Miguel, Bulacan (RBSM), also reveals that no PhP8.5 Million check was entered, deposited or negotiated with RBSM on 6 March 1995.

Based on the above facts, complainant-appellant prays for the 1) revocation or cancellation of the registration of respondent-appellee Summit Securities, Inc. (Summit) as a broker dealer; and 2) revocation or cancellation of the registration of respondent-appellee Ma. Andrea Luisa M. Raymundo as an associated person. Likewise, complainant-appellant prays that respondents-appellees be ordered to render a "complete, accurate and updated" statement of all his accounts.[6]

On 10 November 2009, the Commission, through its Market Regulation Department ("MRD"), informed complainant-appellant through a letter[7] that his complaint was forwarded to the Philippine Stock Exchange ("PSE"), the latter being the self-regulatory organization authorized to determine compliance of its member trading participants with pertinent rules and regulations. The MRD-PSE received the SEC's letter and the attached complaint on 23 November 2009.

Respondents-appellees answered[8] the complaint on 4 January 2010, where they painted a different version of events.

In 1994, complainant-appellant opened the CHILARIO, CHILARII, CRBSM and CBRM-M [*sic*][9] accounts with respondent-appellee Summit. The CHILARIO and CHILARII accounts are in the name of complainant-appellant, while the CRBSM and CRBSM-M accounts are in the name of the Rural Bank of San Miguel ("RBSM"). Respondents-appellees claim that complainant-appellant "represented himself to be the authorized signatory for the RBSM accounts."[10] The CHILARIO account allegedly opened in 1998 is the same as the CHILARIO account opened in 1994.

For the CHILARIO account, respondents-appellees state that complainant-appellant had specific instructions that all statements and documents regarding the account shall be for "pick-up only."

Complainant-appellant, utilizing his agent Christopher G. Legesma, bought and sold several securities with the CHILARIO account. As of 31 March 1996, based on the Customer Ledger Account, CHILARIO has 2,250 Meralco shares and 4,550 Kuok shares. On 11 July 1996, the 2,250 Meralco shares were sold and the proceeds thereof, plus several cash dividends, were received by complainant-appellant on July 1996 as may be seen in Sheet 13 of the Customer Ledger. This Sheet 13 was,

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[6] *Id.*, at 10; *id.*, at 456.
[7] Annex "C"; *id.*, at 404.
[8] Annex "D"; *id.*, at 385-403.
[9] Should be CRBSM-M.
[10] Answer, at 4; *id.*, at 400.

however, "deliberately withheld" by complainant-appellant "which clearly belies his allegations."[11]

The CHILARIO account did not have much transaction during the latter part of 1996 until the end of 1997. It was only in 1998 that herein complainant-appellant started actively trading again with herein respondent-appellee Summit, which transactions were booked in the same CHILARIO account that was opened in 1994.

Respondents-appellees also contend that the transfer of 37 Petron Corporation shares and 667 PTT-B shares was with the consent of complainant-appellant.

On 6 August 1998, complainant-appellant authorized the transfer of 667 PTT-B shares from the CHILARII to the CHILARIO cash account, as evidenced by "out" receipt No. WD007336 and "in" receipt No. 00014720. On even date, RBSM, as represented by complainant-appellant, caused the transfer of 37 Petron shares from CRBSM to CHILARIO cash account as evidenced by "out" receipt No. WD007335 and "in" receipt No. 00014719. These receipts were duly acknowledged by complainant-appellant's representative.

As of 11 July 2000, the CHILARIO account had a cash balance of PHP13,778.04. There are also 60,000 shares in Ayala Land, Inc.; 330,000 Belle Corporation shares; 60,000 Leisure and Resorts World Corp. shares; 125 Negros Navigation Corp. shares; 37 Petron Corporation shares; 200 SM Prime Holdings, Inc. shares; and 1,000 Uniwide Holdings, Inc. in this account as stated in pages 10-11 of the 1 March 1997 to 31 December 2000 CHILARIO Statement of Account.

On July 2008, complainant-appellant caused the sale of the shares in Petron Corporation, Belle Corporation, and Leisure & Resorts World Corporation. The proceeds of the sale, amounting to PhP35,129.37, were paid to complainant-appellant, as evidenced by BDO Check No. 0170459 dated 21 July 2008.

On August 2008, in accordance with the request of complainant-appellant, respondent-appellee Summit paid him the amount of PhP76,918.04 representing his cash dividends from the Ayala Land shares and the cash balance of PhP13,789.04, as evidenced by the check voucher and BDO Check No. 0170821 dated 22 August 2008.

CHILARII account is a margin account that was opened by complainant-appellant under his name. He also had specific instructions that all statements of account and documents for this account will be "for pick-up only."

As of March 1996, the CHILARII account had 667 shares of PTT-B. These are the same shares which were transferred to the CHILARIO account on 6 August 1998.

On 7 August 1998, respondent-appellee Summit paid complainant-appellant PhP1,500.00 representing cash dividends of Metro Pacific shares, as evidenced by Check Voucher No. 00003635 and Equitable Bank Check No. 0110-005497 dated 7

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[11] *Id.*, At 5; *id.*, at 399.

August 1998. The Statement of Account covering 1 March 1997 to 31 December 2000 confirms that this account no longer has any cash balance or shares of stocks as of 20 August 1998.

The CRBSM account is a cash account in the name of RBSM opened in 1994 by RBSM, thru complainant-appellant. As far as respondents-appellees are concerned, however, the recognized owner of the account is RBSM.

Securities were purchased and sold for and in behalf of RBSM through CRBSM account. Complainant-appellant represented himself to be the authorized signatory of this account. Just like the other accounts, complainant-appellant had specific instructions that all statements and documents related to this account are for "pick-up only."

On 9 November 1994, RBSM caused the transfer of its 50,000 San Miguel-A shares to the RBSM-M account, as evidenced by "out" receipt no. 10606 and "in" receipt no. 21390. On even date, RBSM also caused the transfer of 3,700 PLDT common shares to the CRBSM-M account, as evidenced by "out" receipt no. 10605 and "in" receipt no. 21391. The subject shares were transferred from the cash account to the margin account, which both accounts are owned by RBSM.

Respondents-appellees also claim that on 6 March 1995, RBSM was paid PhP8,870,463.69 which represents the net amount due per transaction dated 23-28 February 1995, as evidenced by Equitable Bank Check No. MA-110208263 and Check Voucher No. 21910.

As of 31 August 1997, RBSM had 37 Petron shares. These are the same shares that were transferred to the CHILARIO account on 6 August 1998. After the transfer, the ending balance for this account was PhP9.30 which represents cash dividends for the Petron shares. This amount was paid to RBSM through EBC Check No. 005498 dated 7 August 1998. The CRBSM account has neither cash balance nor shares of stock to date.

The CRBSM-M is a margin account opened in 1994 by RBSM, thru complainant-appellant, who had specific instructions that all statements and documents pertinent to this account are for "pick-up only."

CRBSM-M had a cash balance of PhP8,526,520.69 as of 2 March 1995. On 6 March 1995, the same amount was paid to RBSM through EBC check no. MA-110208268 dated 6 March 1995 with supporting Check Voucher No. 21915 duly received by complainant-appellant's authorized representative. The check was deposited on even date with the Rural Bank of San Miguel, Inc. in Plaridel, Bulacan.

In compliance with the directive[12] of the MRD-PSE, complainant-appellant filed his Reply[13] on 21 January 2010. A preliminary conference was held on 26 January 2010 and thereafter, respondents-appellees filed their Rejoinder[14] on 8 February 2010. The MRD-PSE held another preliminary conference on 15 February 2010.

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[12] Annex "E"; *id.*, at 354.
[13] Annex "F"; *id.*, at 343-353.
[14] Annex "H"; *id.*, at 317-326.

Complainant-appellant filed his Memorandum[15] on 22 February 2010, while respondents-appellees filed their Memorandum[16] on 26 February 2010.

On 23 February 2010, the MRD-PSE in a decision[17] resolved to dismiss the complaint for having been filed out of time.

The herein complainant-appellant correspondingly appealed[18] to the MIB-PSE, to which respondents-appellees filed a comment[19] on 15 September 2010.

On 24 September 2010, the MIB-PSE affirmed[20] the resolution of the MRD-PSE dismissing the complaint for having been filed out of time.

Hence, this appeal.

ISSUES

Complainant-appellant essentially raises two issues: 1) the first, whether the MRD-PSE and MIB-PSE were correct in dismissing his complaint for being filed out of time; and 2) the second, whether respondents-appellees violated the Securities Regulation Code.

RULING

The complaint was filed on time

Previous to its amendment, the prescriptive period for filing actions with the PSE was governed by Section 9, Article VI, Book V of the Exchange Rules ("Exchange Rules") which provides that complaints against any member for any irregularity in securities transactions must be filed either within: 1) two (2) years from the knowledge of its commission; or 2) five (5) years from the commission thereof, *whichever comes first*. This rule was obviously patterned after Section 62.2 of the Securities Regulation Code ("SRC"), which provides for the same prescriptive period for filing actions under Section 56 or 57 of the SRC.

Section 9, Article VI, Book V of the Exchange Rules was subsequently amended on 19 November 2009 by the Amended Market Regulation Rules ("Amended MRD Rules") where the period of filing complaints was shortened to six (6) months, thus:

> "An aggrieved or interested party (the "Complainant") may file a sworn complaint with the MRD against any Trading Participant and, in a proper case, against an Issuer (the "Respondent") for Trading-related Irregularities or other violations of the Securities Laws **within six (6) months from knowledge of its commission**. The Complaint should conform to the Complaint form, which MRD may prescribe from time to time. Failure to file a

[15] Annex "J"; *id.*, at 226-238.
[16] Annex "K"; *id.*, at 194-225.
[17] Annex "L"; *id.*, at 181-185.
[18] Annex "M"; *id.*, at 163-180.
[19] Annex "O"; *id.*, at 117-148.
[20] Annex "A"; *id.*, at 467-468.

Complaint within the prescribed period shall bar the aggrieved or interested party from filing a Complaint with the Exchange." (Emphasis supplied)

The question then is, what Rule should be used in determining whether the complaint was filed on time? Is it the Exchange Rules providing for a two (2) or five (5) year period or the Amended MRD Rules which shortened the period of filing of complaints to six (6) months?

The first step in order to be able to resolve the impasse is to recall the important dates and events that transpired in this case, which are as follows:

Date	**Event**
27 June 2008	The date when complainant-appellant allegedly started inquiring about his accounts with respondents-appellees.
10 October 2008	The date when complainant-appellant was informed by respondents-appellees that the CRBSM-M account was already closed and the proceeds of PhP8.5 Million were already paid to him.
29 October 2009	The date when the complaint was filed with the Market Regulation Department of this Commission.
18 November 2009 and earlier	The period when the Exchange Rules, which provides for a filing period of two (2) or five (5) years, was effective.
19 November 2009	The date when the Amended MRD Rules, where the period of filing was shortened to six (6) months, took effect.
23 November 2009	The date when the MRD-PSE received the SEC's letter and the attached complaint.

The MRD-PSE, as affirmed by the MIB-PSE, refused to apply the Exchange Rules and instead applied the MRD-PSE Rules. According to the MRD-PSE, the provisions of the Amended MRD Rules should determine if the complaint was filed on time because the Amended MRD Rules took effect on 19 November 2009 and the complaint was filed with the PSE-MRD only on 23 November 2009 or after the Amended MRD Rules took effect. This is notwithstanding that the cause of action occurred prior to the effectivity of the Amended MRD Rules, since the complaint was filed after its effectivity.[21] In short what the MRD-PSE is saying is that the pivotal date is 23 November 2009.

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[21] *Records*, at 183.

We cannot agree.

For us, 10 October 2008 is the date that we should pay close attention to. Per complainant's own admission, and which was not denied by respondents-appellees, this is the date when he was informed by respondents-appellees that the CRBSM-M account was already closed and that the PhP8.5 Million proceeds of the account were already paid to him. Put differently, this is the date when complainant became aware of the alleged violations of his rights. In legal parlance, 10 October 2008 is the date when complainant-appellant had a cause of action against respondents-appellees.

In other words, contrary to the ruling of the MRD-PSE, the starting point of inquiry should not be the time of the filing of the complaint, but the time when the alleged violation took place. This is buttressed by the fact that whether we apply the Exchange Rules or the Amended MRD Rules, the common r eckoning point for purposes of determining whether the complaint was filed on time is always the time of the knowledge of the commission of the offense.

Thus, the date of the filing of the complaint, whether 29 October 2009 (the date the complaint was filed with the Market Regulation Department of this Commission) or 23 November 2009 (the date the MRD-PSE received the SEC's letter and the complaint) is only material for purposes of determining whether the prescriptive period has already lapsed by the time it was filed. The date of filing of the complaint has no bearing, however, whether the Exchange Rules or the Amended MRD Rules apply. The applicability of both Rules does not depend on the date of the filing of the complaint, but on the knowledge of its commission or the commission of the offense, whichever comes first, with respect to the Exchange Rules; and on the knowledge of its commission with respect to the Amended MRD Rules.

Having said that, we hold that the prescriptive period of two (2) years in the Exchange Rules, and not the prescriptive period of six (6) months in the Amended MRD Rules, should apply, since it is the Exchange Rules that was in force on 10 October 2008, the date when the complainant-appellant had a cause of action against respondents-appellees. It necessarily follows also that the complaint was filed on time regardless of whether we adopt the 29 October 2009 or 23 November 2009 as the date of filing of the complaint because either date is within two (2) years from 10 October 2008.

The MRD-PSE, however, insists that the Amended MRD rules should be applied retroactively because "rules on prescriptive periods for filing actions, being remedial in nature, may be given retroactive effect to actions pending or undetermined at the time of its passage."[22] The MRD-PSE cites *Sumiran v. Damaso*[23] as its basis.

We have no quarrel with the principle but its application to the instant case is misplaced.

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[22] *Id.*

[23] G.R. No. 162518, 19 August 2009.

In *Sumiran*, the Regional Trial Court ("RTC") issued an Order denying the notice of appeal of petitioner for having been filed out of time because its decision acquitting petitioner but finding him civilly liable was promulgated on 21 February 2003 in the presence of the contending parties and their counsels. Considering counsel for petitioner to have received a copy of the decision on the date of promulgation, the RTC ruled that since petitioner had filed a motion for reconsideration on 6 March 2003, the 13th day, the notice of appeal was filed late when he filed it ten (10) days after allegedly receiving the Order of 9 May 2003 denying his motion for reconsideration on 19 May 2003.

The Supreme Court reversed and held that as early as 2005, the Court pronounced in *Neypes v. Court of Appeals*[24] that by virtue of the power of the Supreme Court to amend, repeal and create new procedural rules in all courts, the Court is allowing a fresh period of 15 days within which to file a notice of appeal in the RTC which is counted from receipt of the order dismissing or denying a motion for new trial or motion for reconsideration. The Court explained that this would standardize the appeal periods provided in the Rules of Court and do away with the confusion as to when the 15-day appeal period should be counted.

The Supreme Court further ruled that *Neypes* could also apply retroactively to cases where the period for appeal had lapsed prior to the date of promulgation of *Neypes* on 14 September 2005. This is because "procedural laws may be given retroactive effect to actions pending and undetermined at the time of their passage, there being no vested rights in the rules of procedure."[25]

Thus, said the Supreme Court, "[s]ince this case was already pending in this Court at the time of promulgation of *Neypes*, then, ineluctably, the Court must also apply the foregoing rulings to the present case." In other words, petitioner is entitled to a "fresh period" of 15 days within which to file a notice of appeal that should be counted from 19 May 2003 which is the date petitioner received the Order denying his motion for reconsideration of the RTC Decision. In sum, the Court held that when petitioner filed his notice on 29 May 2003, "or only ten (10) days after receipt of the Order denying his motion for reconsideration, his period to appeal had not yet lapsed."

Clearly, *Sumiran* cannot apply in the instant case, as they are not all-fours.

First, the instant case was not yet pending and undetermined, so to speak, at the time of promulgation of *Neypes* on 14 September 2005. In fact, the instant complaint was only filed in 2009, a good four (4) years after the effectivity of *Neypes*.

Second, the subject matter in *Sumiran* is the "fresh period rule" which relaxed and made uniform the period for filing appeals from motions for reconsideration denied by a lower court. Such is not the case in the present case.

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[24] G.R. No. 141524, 14 September 2005, 469 SCRA 633.
[25] *Id.*, citing *Fil-Estate Properties, Inc. v. Homena-Valencia,* G.R. No. 173942, 25 June 2008, 555 SCRA 345.

Third, the retroactivity in *Sumiran* or the "fresh period" of 15 days was allowed because it is beneficial to the party filing the notice of appeal. In the instant case, however, it is the reverse where retroactivity is allowed because it is detrimental to the party filing the complaint, as this would mean that the prescriptive period of six (6) months has already lapsed when the complaint was filed either on 29 October 2009 or 23 November 2009.

Lastly, the retroactivity being referred to in *Sumiran* applies only to procedural rules. The Amended MRD Rules is a substantive Rule because it effectively shortened the prescriptive period for filing complaints from two (2) or five (5) years per the Exchange Rules to only six (6) months, thus, taking away a vested right of the complainant, which is the longer period of prescription under the Exchange Rules. Notably, in *Fabian v. Disierto,*[26] the Court, in laying down the test for determining whether a rule is procedural or substantive, stated that if the rule takes away a vested right, it is not procedural but a substantive rule.

Need to remand the instant case

We are not unmindful that complainant-appellant has already filed a second motion for early resolution of the instant case. While we are very much tempted to rule on the second issue that complainant-appellant raises, we deem it best to remand the records of this case to the Capital Markets Integrity Corporation (CMIC-PSE), the successor of MRD-PSE, for further proceedings because we are incapable of resolving the conflicting factual issues raised by both parties, as will be shown below. Besides, it should not be forgotten that this case is already on a second level of appeal from the first level-appeal to the MIB-PSE and thus, determination of factual issues should be avoided as much as possible, especially if the jurisdiction to do so lies elsewhere.

As the only issue resolved by the MRD-PSE as affirmed by the MIB-PSE is whether the complaint was timely filed, the MRD-PSE has not made a factual determination on several issues which are necessary to determine if respondents-appellees are guilty of violating the SRC and if complainant-appellant has the personality to file the complaint. A finding of facts should then be made by the CMIC-PSE on the following issues and allegations:

1. Whether the CRBSM and CRBSM-M accounts were indeed opened in the name of the Rural Bank of San Miguel ("RBSM") and if so, in what capacity did complainant-appellant open the accounts;

2. Whether the PhP8.5 Million representing the proceeds of the CRBSM-M account was indeed already paid to complainant-appellant should also be made. It has not escaped our attention that respondents-appellees have attached Equitable Bank Check No. 110208268, purportedly drawn against Account No. 010-22228-9 with Equitable Bank, Binondo Branch in order to prove that the PhP8.5 million was already paid to complainant-appellant. Complainant-appellant, however, vehemently denies

[26] G.R. No. 12 9742, 16 September 1998.

this and insists that an inquiry from the Philippine Deposit Insurance Corporation ("PDIC"), which has been appointed as receiver of the RBSM, "reveals no such PhP8.5 Million check was entered, deposited or negotiated with RBSM" on 6 March 1995.[27] A proof that the amount was debited from Summit's account or a certification from RBSM that the check was or was not entered, deposited or negotiated with it on 6 March 1995 could settle the issue. Note that complainant-appellant also accuses respondents-appellees of making alterations in the voucher number purportedly corresponding to the check payment. What is more, complainant-appellant draws attention to the fact that the alleged PhP8.5 Million payment to him *has exactly the same centavos and date* with *another* PhP8.8 Million that was actually paid to, and received by complainant-appellant for *another* transaction with respondents-appellees;

3. Whether the CHILARIO account allegedly opened by complainant-appellant in 1998 was *the same* as the CHILARIO account opened in 1994;

4. Whether there are remaining shares and/or cash, if any, in the accounts that were opened by complainant-appellant;

5. Whether respondent-appellees were indeed authorized to transfer the shares from one account to another; and

6. Whether respondents-appellees were remiss in their duty of regularly updating complainant-appellant of the status of the accounts that he opened with Summit, in violation of the provisions of the SRC.

What complicates the matter all the more is the fact that while respondent-appellees attempt to controvert the allegations of complainant-appellant, even branding them as "litany of lies," they have nonetheless at the same time manifested voluntarily that although the MRD-PSE dismissed the complaint, a spot audit and investigation was conducted and *Summit was sanctioned/penalized for violating several provisions of the SRC*, which allegedly renders the complaint moot.[28] The manifestation, however, is not supported with any attachment, so we are at a quandary as to which allegations of complainant-appellant were the alleged penalties imposed. It is the CMIC-PSE as the successor of the MRD-PSE, therefore, that is in the best position to reconcile and decide the conflicting allegations of the parties.

We also recognize that this case has been pending since 2009. Thus, the CMIC-PSE is given an unextendible period of sixty (60) working days from the receipt of this Decision within which to rule on whether or not respondents-appellees violated the SRC. The CMIC-PSE is directed to furnish this Commission with a copy of its Decision.

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[27] *Records*, at 460.
[28] *Id.*, at 629-630.

Both parties in this case, including the CMIC-PSE, are also directed to submit a manifestation to the Commission as to the date of their receipt of this Decision.

WHEREFORE, premises considered, the Decision of the Market Integrity Board of the Philippine Stock Exchange (MIB-PSE), affirming the Resolution of the Market Regulation Division of the Philippine Stock Exchange (MRD-PSE), which dismissed the complaint of the herein Complainant-Appellant, is hereby **SET ASIDE.**

The instant case is hereby **REMANDED** to the Capital Markets Integrity Corporation of the Philippine Stock Exchange (CMIC-PSE) as the successor of MRD-PSE, for further proceedings. The CMIC-PSE is **DIRECTED** to rule on whether or not respondents-appellees violated the Securities Regulation Code, within an **unextendible period of sixty (60) working days** from the receipt of this Decision. The CMIC-PSE, including the CMIC-PSE Board, in case the former's decision in this instance is appealed to the latter, are also **DIRECTED** to forward to the Commission their respective Decisions, within an **unextendible period of five (5) working days** from rendering said Decisions.

Both parties in this case, including the CMIC-PSE, are **DIRECTED** to submit a manifestation to the Commission as to the date of their receipt of this Decision.

SO ORDERED.

Mandaluyong City; 16 August 2012.

TERESITA J. HERBOSA
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner