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

ASTRA SECURITIES CORPORATION,

Complainant-Appellee,

-versus-

SEC En Banc Case No. 11-08-148
(SEC-CFD Case No. 2008-02)

OMICO CORPORATION,

Respondent-Appellant.

x---x

DECISION

This refers to Omico Corporation's ("OC") Appeal, dated 19 November 2008, made pursuant to Section 40.7 of the Securities Regulation Code[1] ("SRC"). The Appeal requests the Commission *En Banc* to review the Corporation Finance Department's ("CFD") Order dated 04 November 2008 in the administrative proceedings docketed as SEC-CFD Case No. 2008-02.

OC and Astra Securities Corporation ("ASC") are corporations organized under the Corporation Code,[2] and under the Commission's jurisdiction. ASC is a stockholder of OC. On 20 June 2008, ASC initiated SEC-CFD Case No. 2008-02 through a Complaint, dated 18 June 2008, alleging that OC committed the following violations:

> First, OC, in contravention of its by-laws, failed to disclose the nomination guidelines for the election of directors in its SEC Form 20-IS (Definitive Information Statement).
>
> Second, OC violated SRC Rule 20 (3) (E) for failing to file an amended information statement indicating the proxy nominees submitted by ASC.
>
> Third, OC violated SRC Rule 20 (11) (b) (xxi) since it failed to constitute a special committee of inspectors that would pass upon the validity of proxies.

---

[1] Republic Act No. 8700 (2000).
[2] Batas Pambansa Bilang 68 (1980).

Lastly, OC violated Section 23 of the Corporation Code because it adjourned its annual stockholders' meeting for the election of directors scheduled on 30 May 2008 for an indefinite period.

On 13 August 2008, the CFD held a mandatory preliminary conference wherein the respective representatives of OC and ASC appeared.[3] During the conference, OC offered the reconvening of the adjourned 30 May 2008 stockholders' meeting, and the re-opening of the nominations for directors. Accordingly, on 29 August 2008, OC manifested that it resolved to reconvene the stockholders' meeting on 03 November 2008.[4]

On 25 August 2008, OC caused the publication of the nomination guidelines in the Manila Bulletin newspaper. However, ASC took exception to OC's failure to distribute written copies of the nomination guidelines to the stockholders, and to report the publication of said guidelines to the Philippine Stock Exchange (PSE) and to the Commission. ASC reported these facts to the Commission through a letter dated 17 September 2008. Incidentally, the Commission, through the CFD, imposed a penalty upon OC for its failure to disclose the nomination guidelines in its Definitive Information Statement.[5]

Subsequently, OC submitted a Preliminary Information Statement regarding the scheduled 03 November 2008 stockholders' meeting to the Commission. The statement included the nomination guidelines. However, the said guidelines provided a nomination period that had already lapsed. Further, the statement did not indicate whether it was duly published, or whether it was approved by the Board of Directors. The statement also failed to indicate an exact date for validation of proxies. Thus, on 29 September 2008, ASC requested the Commission to compel OC to rectify these shortcomings.

After hearing both parties on the matter, the Commission, through the CFD, issued a Resolution on 07 October 2008. The Resolution directed OC to:

> "1. Faithfully comply with the provisions of its Amended By-Laws and the requirements of the Corporation Code, the SRC and its IRR on the Nomination and Election of its Directors, the filing of proxy form and Information Statement and the validation of proxies;
>
> 2. Distribute copies of its *Guidelines on the Nomination of the Members of the Board of Directors* to its stockholders; and
>
> 3. Set a new deadline for the submission of nominees."

---

[3] Reply Memorandum, Annex "D."
[4] Ibid, Annex "E.".
[5] CFD Letter-Order to OC dated 17 October 2008.

Further, the Commission imposed the penalty of Reprimand upon OC for its violation of SRC Rule 20 regarding the validation of proxies and creation of special committee of inspectors.

Subsequently, the CFD, after considering the parties' respective Manifestations, issued the assailed 04 November 2008 Order. The CFD held that OC did not faithfully comply with the 07 October 2008 Resolution based on the following reasons:

> "1. Considering that the Guidelines governing the nomination of the members of the Board of Directors is deemed to be a material fact/information, the same should have been disclosed to the Commission in a Current Report (SEC Form 17-C) within five (5) after approval thereof on 22 August 2008, or on 27 August 2008.
>
> 2. Further, the directive is for the Respondent to "*distribute* copies of its guidelines". The obvious purpose of the distribution is to afford the stockholders their right to participate in the nomination process. The Guidelines setting the deadline of the nomination process to two (2) business days before the sixty-day period prior to the scheduled date of the Annual Stockholders' Meeting, i.e., 01 September 2008, was approved by its Board of Directors on 22 August 2008. Respondent filed its Preliminary Information Statement attaching the Guidelines on 24 September 2008. Evidently, the inclusion of said Guidelines in Respondent's Information Statement after the lapse of the nomination period circumvented such intent and deprived the stockholders to nominate their directors;
>
> 3. Finally, publication is different from distribution. While the intent of publication and distribution is to inform, the requirement was for the Respondent to distribute copies of the Guidelines in order to ensure that its stockholders were personally informed and could not [*sic*] participate in the nomination process if they so desired. Hence, the publication of the Guidelines is not a faithful compliance of the aforesaid Resolution."

Accordingly, the CFD resolved to impose the penalty of fine in the amount of Fifty Thousand Pesos (P50,000.00) upon the Respondent pursuant to Section 54 of the Securities Regulation Code.

OC takes exception to the CFD's Order, and makes the present Appeal to the Commission *En Banc.* OC anchors its Appeal on certain alleged procedural errors committed by the CFD. OC alleges that the 13 August 2008 Preliminary Conference Order, issued by the CFD Hearing Officer, stated that SEC-CFD Case No. 2008-02 will be deemed submitted for resolution after the Commission receives the result of OC's Board of Directors' meeting to be held on 22 August 2008, or 29 August 2008. In keeping with this declaration, OC argues that the CFD should not have considered ASC's two letters dated 17 and 29 September 2008 that raised issues surrounding the annual stockholders' meeting rescheduled for 03 November 2008.

As legal basis for this argument, OC cites Section 3-3 of the Commission's Rules of Procedure that provides: "The only pleadings that may be filed in any action are the complaint, answer, reply and rejoinder, if necessary, and motions in intervention." In accordance with this provision, OC argues that the CFD should have expunged the 17 and 29 September 2008 letters from the records of the case.

Finally, OC concludes that SEC-CFD Case No. 2008-02 involves issues arising from the 30 May 2008 Stockholders' Meeting, and thus, if ASC is aggrieved by any subsequent issue arising from the stockholders' meeting rescheduled for 03 November 2008, then ASC should have initiated another distinct case.

We rule that OC's Appeal has no merit.

It must be emphasized that the issues raised by ASC in its 17 and 29 September 2008 letters refer to supervening events arising subsequent to the issuance of the 13 August 2008 Preliminary Conference Order. To be precise, such supervening events pertain to the OC's contemporaneous actions that, to ASC's mind, seem to indicate that OC is continuing with the violations that were reported by ASC in the initiatory Complaint dated 18 June 2008.

We note that in order to afford due process to all parties regarding the subsequent matters raised in the 17 and 29 September 2008 letters, the CFD called a conference on 07 October 2008. During the conference, both parties were aptly represented, and they agreed that any new issues that were raised in the 17 and 29 September 2008 letters will not form part of SEC-CFD Case No. 2008-02.[6]

In fact, the CFD's 07 October 2008 Resolution did not address any new issues raised that were irrelevant to the violations complained of in the initiatory pleading in SEC-CFD Case No. 2008-02, that is, the 18 June 2008 Complaint. In other words, the 07 October 2008 Resolution and the assailed 04 November 2008 Resolution were strictly confined to matters raised in the 18 June 2008 Complaint, particularly regarding faithful compliance with the by-laws, the Corporation Code, the SRC and its Implementing Rules on the matter of nomination and election of directors, and validation of proxies. Thus, there can be no doubt that the CFD did not commit any procedural irregularities in the course of the proceedings in this case.

To indulge OC's strained reasoning that ASC should have initiated another distinct case would only serve to delay proceedings, disrupt the orderly administration of justice, and allow OC to hide from its liability for violating the Commission's lawful Order.

WHEREFORE, premises considered, the instant Appeal is hereby **DENIED** for lack of merit. The Corporation Finance Department's Order dated 04 November 2008 is hereby **AFFIRMED.**

---

[6] Minutes of the 07 October 2008 conference;

Appellant **OMICO CORPORATION** is hereby **ORDERED** to comply with the CFD Order dated 04 November 2008 and pay the fine imposed in the amount of Fifty Thousand Pesos (Php 50,000.00). Failure to do so shall constrain the Commission to impose a stiffer penalty.

SO ORDERED.

Mandaluyong City, 31 March 2011.

FE B. BARIN
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner