Republic of the Philippines
Department of Finance
Securities and Exchange Commission
COMMISSION EN BANC

RENE GOLANGCO,
Complainant-Appellant,

- versus -

SEC *En Banc* Case No. 07-22-502
(CMIC-IED-IC-2022-001)

CAPITAL MARKETS INTEGRITY CORPORATION, PHILIPPINE EQUITY PARTNERS, INC., LORENZO ANDRES T. ROXAS, EMETERIO GONZALES III, and MA. LOURDES ARROYO - DE GUZMAN,
Respondents-Appellees.

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DECISION

Before this Commission is the *Memorandum of Appeal* dated 5 July 2022 (the "Appeal") filed by Complainant-Appellant Rene Golangco (Mr. Golangco) on 6 July 2022, praying for the reversal of the Resolution dated 23 March 2022 of the Capital Markets Integrity Corporation (CMIC), which was subsequently affirmed by the CMIC Board in its Resolution dated 17 May 2022 (collectively referred to as the "Assailed Resolutions"), the dispositive portion of the latter reads, thus:

> "RESOLVED, That the Board of Directors of the Capital Markets Integrity Corporation (the "Corporation") deny, as it hereby, denies, the request for reconsideration dated 11 April 2022 of Mr. Rene U. Golangco of the Corporation's resolution dated 23 March 2022 and the motion to expunge dated 12 April 2022 of Philippine Equity Partners, Inc. ("PEPI"), et al. in the case docketed as CMIC-IED-IC-2022-001.
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> "RESOLVED FURTHER, That the Board of Directors of the Corporation affirms, as it hereby affirms, the imposition of a fine in the amount of Twenty Thousand Pesos (Php20,000.00) on PEPI for its first violation of Article VI, Section I(b)(vii)(c) and (d) of the CMIC Rules, as stated in the Corporation's resolution dated 23 March 2022."

The *Appeal* specifically prays for the reversal of the Assailed Resolutions, by directing the CMIC to (a) accept the ID, SSS number and business address indicated in the Customer Account Information Form (CAIF) of Mr. Golangco; (b) fully restore Mr. Golangco's trading rights; (c) impose additional fines on Philippine Equity Partners, Inc. corresponding to its alleged eleven (11) additional violations; and (d) pay Mr. Golangco Php10,000,000.00 by way of temperate damages.

PARTIES

Complainant-Appellant Mr. Golangco is of legal age, Filipino, and a client of Philippine Equity Partners, Inc. (PEPI).

Respondent-Appellee CMIC is a domestic corporation duly authorized and licensed to act as a Self-Regulatory Organization (SRO), with SEC Registration No. CS201104274. Its business address is at 10/F, PSE Tower, 5th Ave. Corner 28th St., Bonifacio Global City, Taguig City.

Respondent-Appellee PEPI is a corporation duly organized and existing under Philippine laws, with SEC Registration No. A200111507, and registered as a broker and dealer in securities. Its business address is at 10/F, PSE Tower, One Bonifacio High Street, Taguig City.

Respondents-Appellees Lorenzo Andres T. Roxas (Mr. Roxas), Emeterio Gonzales III (Mr. Gonzales), and Ma. Lourdes Arroyo – De Guzman (Ms. De Guzman) [collectively referred to as the "Individual Appellees"], officers and members of the Executive Committee of PEPI, and have been impleaded in the instant case under such capacity.

RELEVANT FACTS

On 8 April 2020, PEPI and Mr. Golangco executed the Terms and Conditions (the "Agreement") which provided for, and embodied their agreed obligations covering securities transactions as broker/dealer and client, respectively. Relative to the opening of an account with PEPI, Mr. Golangco accomplished and submitted, among others, a CAIF.[1]

On 13 April 2020, PEPI sent an email to Mr. Golangco which provided for a list of documents that the latter needs to submit, and the required information which he needs to provide in order to make his account regular. According to PEPI, the following information was lacking in the CAIF of Mr. Golangco: (a) Tax Identification Number; (b) residential and company address; (c) annual income and assets; (d) two (2) government issued identification cards; and (e) proof of income[2] (the "Required Information and Documents").

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[1] Comment Ad Cautelam with Motion to Dismiss Outright. Par. 3 (page 4).
[2] Ibid. Pars. 3.3 and 4.

Notwithstanding the non-submission of the Required Information and Documents by Mr. Golangco, PEPI facilitated and carried out two (2) trade transactions on 13 and 15 April 2020, where the latter purchased Manila Water Company (MWC) shares.[3]

In a letter dated 16 April 2020, PEPI reiterated to Mr. Golangco that he needs to submit the Required Information and Documents, which was also required under the Anti-Money Laundering Act (AMLA), to regularize his trading account.[4]

On 7 May 2020, Mr. Golangco placed another trade (purchase) transaction with PEPI. However, considering that the Required Information and Documents have not yet been submitted, PEPI sent another letter dated 8 May 2020 to Mr. Golangco where it again reiterated the need for latter to comply with the requirements, otherwise, it "*cannot accept further instructions to buy/sell stocks*" for him.[5]

Sometime in October and November 2021, Mr. Golangco informed PEPI of his intent to purchase shares which was turned down by the latter on the alleged ground that his account was suspended for shares purchase as there was a pending investigation being made by the PSE on his complaint. The failure of Mr. Golangco to submit the Required Information and Documents also prompted PEPI not to act on any further request for purchase of shares from Mr. Golangco.[6]

On 7 January 2022, Mr. Golangco filed a Complaint with the CMIC, seeking the issuance by the latter of a resolution mandating PEPI and the Individual Appellees to cease and desist from (a) harassing him in the normal course of his stock trading activities, and (b) removing/excluding/restricting his stock buying activities. The Complaint likewise prayed for the imposition upon PEPI of the appropriate sanctions for alleged violation of the Article VII, Sections 1 (a), (b), and (d) of the CMIC Rules. Mr. Golangco claimed that the CMIC's act of capriciously denying him of his stock trading rights based on a non-existent deficiency in his CAIF, as well as his alleged refusal to submit an ID which is not required under the CMIC Rules, warrants the imposition of the appropriate fines, and an award of temperate damages.

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[3] Ibid. Pars. 7 and 8
[4] Ibid. Pars. 8 and 9
[5] Ibid. Par. 12
[6] Ibid. Pars. 32 and 33

On 10 January 2022, the CMIC issued a *Show Cause Letter* directing PEPI to submit its answer to the Complaint, and explain why it should not be held liable for violating the following provisions of the CMIC Rules:

a.) Article XII, Section 3 (a)(iii), in relation to Article XI-B, Section 1 (d), and Sections 26.1 and 26.3 of the Securities Regulation Code (SRC);
b.) Article V, Section 1, in relation to Article V, Section 2;
c.) Article VI, Section 1 (a), (b)(i)(ii) and (iii);
d.) Article VI, Section 1 (b)(vii)(c) and (d); and
e.) Article VI, Section 2.

On 26 January 2022, PEPI filed its *Answer*[7] where it denied having violated the CMIC Rules, and refuted the allegations in the Complaint. PEPI maintained that Mr. Golangco's inability to continue trading was caused by his refusal to comply with the requirements under the contract, the law, and rules and regulations. PEPI averred that it continuously communicated with Mr. Golangco, and repeatedly reminded the latter to comply with the requirement to submit the Required Information and Documents.

On 3 February 2022, Mr. Golangco filed his *Reply* where he reiterated PEPI's alleged gross violations of the agreement, the laws and CMIC Rules; and its lack of remorse and arrogant attitude in denying service to a customer. Mr. Golangco then prayed for the imposition of the maximum fines and sanctions against PEPI.

On 14 February 2022, PEPI filed a *Rejoinder* where it essentially reiterated its earlier allegations and arguments in support of its defense. PEPI also emphasized that under the Agreement, it can reject transactions that are not compliant with the laws, rules and regulations, sound market practice and/or would work undue hardship on PEPI. The failure of Mr. Golangco to submit the Required Information and Documents which was needed to fully accomplish his CAIF, which is an integral part of the Agreement, justified the suspension of his trading account.

The CMIC then issued the Assailed Resolutions which are the subject of the instant Appeal. The Resolution dated 17 May 2022 issued by the CMIC Board which denied Mr. Golangco's Motion for Reconsideration was served upon Mr. Golangco on 27 May 2022.[8]

[7] Answer dated 26 January 2022; Annex "1" of Respondents-Appellees' Comment ad Cautelam with Motion to Dismiss Outright [re: Memorandum of Appeal dated 05 July 2022].
[8] Comment Ad Cautelam with Motion to Dismiss Outright. Annex "8-A".

On 29 July 2022, the CMIC filed its *Comment (on Appellant's Memorandum of Appeal),* praying for the denial of the Appeal on the ground that the same lacks factual and legal bases. In support thereof, the CMIC maintained that (a) the suspension of the exercise by Mr. Golangco of his trading rights under the Agreement was justified by his failure to submit the Required Information and Documents which is required by law;[9] and (b) the penalties imposed upon PEPI were consistent with Article VI, Sec. 1(b) in relation to Article I, Sec. 2 of the CMIC Rules.[10]

On the same date, PEPI and the Individual Appellees filed their *Comment Ad Cautelam with Motion to Dismiss Outright [Re: Memorandum of Appeal date 05 July 2022],* praying for the dismissal of the Appeal on the ground that the same was filed out of time. PEPI and the Individual Appellees also maintained therein that the CMIC Board was correct in finding that PEPI did not violate any law when it restricted Mr. Golangco from continuing to trade as he continually refused to submit the required information; and there is no basis to impose additional penalties against Appellees.

ISSUES

A. Whether the Appeal of Mr. Golangco was timely filed.

B. Whether PEPI violated the CMIC Rules when it suspended the provision of its services to Mr. Golangco, which resulted in the inability of Mr. Golancgo to trade shares in the Exchange.

RULING

The factual circumstances attendant in the instant case, and the evidence on record support the dismissal of the Appeal.

The Appeal was not filed within the reglementary period. The Resolution dated 17 May 2022 of the CMIC has attained finality.

Section 3-2, Rule III Part IV of the 2016 Rules of Procedure of the Securities and Exchange Commission (the "2016 Rules") provides:

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[9] Comment (on Appellant's Memorandum of Appeal). Pars. 22, 32, 34 and 39
[10] Ibid. Pars. 44 and 45

"An appeal to the Commission En Banc may be taken within fifteen (15) days from receipt by the party to an action of the adverse decision, final order or resolution of a Director of an Operating Department or the Special Hearing Panel.

An appeal to the Commission En Banc may be taken <u>within thirty (30) days from receipt</u> by the party to an action <u>of the adverse decision, final order or resolution of a Self-Regulatory Organization</u>." (Emphasis and underscoring supplied)

In addition to the requirement that the appeal must be filed within the 30-day reglementary period, Sec. 3-3 Rule 3 Part V of the 2016 Rules equally requires appellants to perfect the same in the following manner:

"**The appellant <u>shall</u> perfect an appeal by filing the following with the Commission En Banc**, through the Office of the General Counsel, **within the period prescribed** in the preceding section: (i) an appeal memorandum in six (6) legible copies; (ii) **proof of service of a copy of the appeal memorandum on the appellee and**/or the Director of the Operating Department, the Special Hearing Panel or **the Self-Regulatory Organization concerned**, as the case may be; and (iii) payment of the appeal fee and other applicable fees." (Emphasis and underscoring supplied)

It is established in jurisprudence that the right to appeal can be invoked only if the same is granted by statute, since it is not a natural right or a component of due process. Any person who wishes to exercise a statutory privilege of appealing a decision or resolution of a court or an administrative agency performing quasi-judicial functions, must comply with the requirements prescribed by law. Non-compliance with the statutory requirement results in the forfeiture of the privilege to file an appeal. In the case of *Boardwalk Business Venture, Inc. v. Villareal*[11], the Supreme Court emphasized this rule in this wise:

"**[T]he right to appeal is neither a natural right nor [is it a component] of due process[. I]t is a mere statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law." This being so, x x x an appealing party must strictly comply with the requisites laid down in the Rules of Court. Deviations from the Rules cannot be tolerated.** The rationale for this strict attitude is not difficult to appreciate as the Rules are designed to facilitate the orderly disposition of appealed cases. In an age where courts are bedeviled by clogged dockets, the Rules need to be followed by appellants with greater fidelity. Their observance cannot be left to the whims and caprices of appellants.

[11] G.R. No. 181182, April 10, 2013.

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> **To stress, the right to appeal is statutory and one who seeks to avail of it must comply with the statute or rules.** The requirements for perfecting an appeal within the reglementary period specified in the law must be strictly followed as they are considered indispensable interdictions against needless delays. Moreover, the perfection of an appeal in the manner and within the period set by law is not only mandatory but jurisdictional as well, hence failure to perfect the same renders the judgment final and executory. And, just as a losing party has the privilege to file an appeal within the prescribed period, so also does the prevailing party have the correlative right to enjoy the finality of a decision in his favor." (Emphasis supplied)

Under the 2016 Rules, any party who is aggrieved by a decision/resolution of an SRO, such as the CMIC, and who intends to have the same reviewed, revised or reversed by the Commission, is required to perfect an appeal and file the same with the latter within thirty (30) days from receipt thereof. As regards the date of receipt of a decision/resolution, Sec. 4-2(e), Rule IV Part I of the 2016 Rules provides that service thereof, if made electronically, is deemed complete upon transmission to the party(ies), thus:

> "**Service <u>shall be deemed complete</u> when** (i) it is personally received by him or his authorized agent; (ii) it is received by the clerk or some other person in charge thereof at his principal office or regular place of business; (iii) it is received by some person of suitable age and discretion then residing at his dwelling house or residence; (iv) it is received by him in a sealed envelope by registered mail or by courier at his office or residence address or after five (5) days from the date he received the first notice of the postmaster or the private courier, whichever is earlier; or (v) **<u>in the case of electronic service, upon transmission</u>, but is not effective if the person serving it learns that it did not reach the person to be served.**" (Emphasis and underscoring supplied)

The failure of a party to perfect and file an appeal within a reglementary period, results in the decision or resolution of the court or administrative agency becoming final and executory. This rule was reiterated and emphasized in *Chipongian v. Benitez-Lirio*[12], to wit:

> "Considering that the petitioner did not submit a record on appeal in accordance with Section 3 of Rule 41, he did not perfect his appeal of the judgment dismissing his intervention. As a result, the dismissal became final and immutable. He now has no one to blame but himself. **The right to appeal, being statutory in nature, required strict**

[12] G.R. No. 162692, August 26, 2015.

> **compliance with the rules regulating the exercise of the right. As such, his perfection of his appeal within the prescribed period was mandatory and jurisdictional, and his failure to perfect the appeal within the prescribed time rendered the judgment final and beyond review on appeal.** Indeed, we have fittingly pronounced in Lebin vs Mirasol:
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> **In like manner, the perfection of an appeal within the period laid down by law is mandatory and jurisdictional, because the failure to perfect the appeal within the time prescribed by the Rules of Court causes the judgment or final order to become final as to preclude the appellate court from acquiring the jurisdiction to review the judgment or final order.** The failure of the petitioners and their counsel to file the record on appeal on time rendered the orders of the RTC final and unappealable. **Thereby, the appellate court lost the jurisdiction to review the challenged orders, and the petitioners were precluded from assailing the orders.**" (Emphasis supplied)

In the instant case, the records show that Mr. Golangco consented to, and requested that all communications relating to his complaint be coursed through his electronic mail (e-mail).[13] Thus, when the CMIC electronically served the Resolution dated 17 May 2022 upon Mr. Golangco on 27 May 2020, service of the same was deemed completed and the latter was, for all legal intents and purposes, deemed to have received the same on the said date.

The Commission takes cognizance of the fact that Mr. Golangco admitted having received on 6 June 2022, the electronic service of the Resolution dated 17 May 2022 which the CMIC made on 27 May 2022. This admission affirms not only the completeness of the service of the Resolution dated 17 May 2022, but also the absence of any circumstance that would have placed CMIC on notice that the same did not reach Mr. Golangco. It bears emphasis that under the 2016 Rules, what is determinative in reckoning the completion of an electronic service of resolutions/decisions, is the date of its transmission and not the date when the party opened and/or read the email.

Considering that Mr. Golangco is deemed to have received the CMIC Resolution dated 17 May 2022 on 27 May 2022, he had thirty (30) days or until 27 June 2022[14] within which to perfect and file the Appeal. The records however show, and no less than Mr. Golangco himself admitted, that the Appeal was filed only on 6 July 2022, which is nine (9) days after the reglementary period has lapsed.

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[13] Complaint dated 7 January 2022.
[14] 26 June 2022 being a Sunday, filing of the Appeal can be made on the succeeding business day.

On account thereof, this Commission finds and so holds that the Appeal was filed out of time. Verily, the CMIC Resolution dated 17 May 2022 has lapsed into finality *ipso jure*[15], which legally prevents this Commission from reviewing the same for want of jurisdiction. This principle which is established in jurisprudence was explained in the case of *Torres v. Aruego*[16], thus:

> "**<u>A judgment becomes 'final and executory' by operation of law</u>. Finality becomes a fact when the reglementary period to appeal lapses and no appeal is perfected within such period. As a consequence, no court (not even this Court) can exercise appellate jurisdiction to review a case or modify a decision that has become final.**
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> When a final judgment is executory, it becomes immutable and unalterable. It may no longer be modified in any respect either by the court which rendered it or even by this Court. The doctrine is founded on considerations of public policy and sound practice that, at the risk of occasional errors, judgments must become final at some definite point in time." (Emphasis and underscoring supplied)

With the CMIC Resolution dated 17 May 2022 having become final and executory, this Commission is constrained to dismiss the Appeal for want of jurisdiction; mindful of the rule that without such jurisdiction, the only power of this Commission is to dismiss the case, and any decision rendered without jurisdiction is a total nullity and may be struck down at any time.[17]

PEPI did not violate the CMIC Rules when it suspended the provision of its services to Mr. Golangco, which

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[15] Part IV, Rule II, Section 2-4 of the 2016 Rules provides that:

> "(a) If no appeal or motion for reconsideration is filed within the period fixed in these Rules or the Rules of Court, the decision, final order or resolution of the Commission En Banc, Special Hearing Panel or the Director of the Operating Department, as the case may be, **<u>shall become final and executory</u>**. (emphasis and underscoring supplied)"

See Cirineo Bowling Plaza, Inc. vs. Gerry Sensing, et al., 448 SCRA 175 (2005).

[16] G.R. No. 201271, September 20, 2017

[17] "Jurisdiction is defined as the power and authority to hear, try, and decide a case. In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire jurisdiction over the subject matter. It is axiomatic that jurisdiction over the subject matter is conferred by law and not by the consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists. Thus, **when a court or tribunal has no jurisdiction over the subject matter, the only power it has is to dismiss the action**. Here, we find it necessary to discuss first the HLURB's jurisdiction.

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It is settled that any decision rendered without jurisdiction is a total nullity and may be struck down at any time, even on appeal before this Court. The only exception is where the party raising the issue is barred by estoppel, which does not appear in the case before us. On the contrary, the issue was raised as early as in the motion to dismiss filed in the trial court by the petitioner, which continued to plead it in its answer and, later, on appeal to the respondent court. We have no choice, therefore, notwithstanding the delay this decision will entail, to nullify the proceedings in the trial court for lack of jurisdiction." (Velasquez vs Lisondra Land Incorporated. G.R. No. 231290, August 27, 2020)

resulted in the inability of Mr. Golangco to trade shares in the Exchange.

The dismissal of the instant Appeal on jurisdictional ground notwithstanding, this Commission nonetheless finds that in relation to the substantive issues, the Appeal is equally dismissible for lack of merit. Thus, while the final and executory status of the CMIC Resolution dated 17 May 2022 can no longer be disturbed, the Commission deems it necessary to expound, for the instruction of the parties herein, why the Appeal will not prosper even on the substantive aspect.

In his Appeal, Mr. Golangco maintained that PEPI's act in restricting/suspending the exercise of his trading right due to his failure to submit the Required Information and Documents was contrary to the intent and purpose of the securities laws[18], and was made in violation of the Agreement.[19] This, according to Mr. Golangco rendered PEPI liable administratively, and for damages.

Thus, Mr. Golangco equally maintained that CMIC's affirmation and finding that PEPI had sufficient grounds to suspend his trading right were contrary to the purposes of Securities Law[20], and should be reversed by this Commission.

We find the position and argument of Mr. Golangco to be bereft of merit and basis.

Section 2 of the SRC provides for the policy of the State encouraging widest participation of ownership in enterprises, promoting the development of the capital market, minimizing if not totally eliminating fraudulent or manipulative practices which create distortions in the free market, and protecting investors, among others. These are the core principles of our securities regulation laws, which the Commission is mandated and duty-bound to implement.[21]

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[18] Appeal. Pars. 16, 21 and 23
[19] Ibid. Pars. 17
[20] Ibid. Par. 21
[21] **"It has been observed that the afore-quoted provision lays down seven core principles of our securities regulation laws**: self-regulation, encouragement of the widest participation of ownership in enterprises, enhancement of the democratization of wealth, promotion of capital market development, protection of investors, ensuring full and fair disclosure about securities, and minimization, if not total elimination, of insider trading and other fraudulent or manipulative devices and practices that create distortions in the free market, **with the unifying principle being the protection of investors. These core principles animate the whole of the SRC; and as such, any doubt or conflict in the interpretation of the SRC and its implementing rules must be resolved in a manner that will carry out the foregoing principles.** We therefore resolve the issues before Us with these principles in mind, giving particular attention to the principles of full disclosure, investor protection, and the elimination of fraudulent or manipulative devices and practices." (Palanca IV v. RCBC Securities, Inc., G.R. No. 241905, [March 11, 2020])

The trading of listed securities in the Exchange through a broker-dealer is one of the transactions that is covered and regulated under the SRC, the same being imbued with public interest. *PSE v. Secretary of Finance*[22] was emphatic in holding that its effect on the national economy makes regulation thereof imperative, thus:

> "Stock market transactions affect the general public and the national economy. The rise and fall of stock market indices reflect to a considerable degree the state of the economy. Trends in stock prices tend to herald changes in business conditions. Consequently, securities transactions are impressed with public interest, and are thus subject to public regulation."

Being a regulated activity, securities trading, which necessarily includes investing in securities, is merely a privilege granted by the State, and is not an inherent right. Neither is the same a statutory right which is legally demandable from the State. Thus, persons who engage in securities trading are under the obligation to abide by, and comply with all securities laws, rules and regulations. The SRC expressly authorizes the Commission to regulate, investigate or supervise the activities of persons to ensure compliance, and to impose the appropriate sanctions on the basis of a finding of violation of any of its provisions.[23]

In the instant case, the records show that Mr. Golangco engaged the services of PEPI, where they executed the Agreement required under Sec. 30.2.3.1 of the 2015 SRC-IRR, which embodied their respective obligations relating to the purchase/sale of securities, among others, for and on behalf of Mr. Golangco. It was therefore incumbent upon PEPI and Mr. Golangco to ensure that all provisions in the Agreement which relate to, or cover transactions that are regulated under the SRC are compliant with, and/or does not violate its provisions, including that of its IRR, as well as the CMIC Rules, otherwise, the same can be struck down as a void for being contrary to law.[24]

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[22] G.R No. 213860, July 5, 2022.
[23] Sec. 5 (d) and (f) of the SRC.
[24] Sec. 71 of the SRC provides:
"71.1. Any condition, stipulation, provision binding any person to waive compliance with any provision of this Code or of any rule or regulation thereunder, or of any rule of an Exchange required thereby, as well as the waiver itself, shall be void.
71.2. Every contract made in violation of any provision of this Code or of any rule or regulation thereunder, and every contract, including any contract for listing a security or an Exchange heretofore or hereafter made, the performance of which involves the violation of, or the continuance of any relationship or practice in violation of, any provision of this Code, or any rule or regulation thereunder, shall be void:
(a) As regards the rights of any person who, in violation of any such provision, rule or regulation, shall have made or engaged in the performance of any such contract, and
(b) As regards the rights of any person who, not being a party to such contract, shall have acquired any right thereunder with actual knowledge of the facts by reason of which the making or performance of such contract was in violation of any such provision, rule or regulation."

Section 30.2.1.2.4 of the 2015 SRC-IRR requires registered persons, among others, to establish the true and full identity of each of their clients, their financial situation, investment experience and objectives. We find this provision adopted in the CMIC Rules[25], Section 1(a), Article VII of which, specifically requires all trading participants (including PEPI) to maintain customer accounts containing the information prescribed therein. Among the information required under the said provision is the residence address and TIN of the customer. These provisions are in place to promote the integrity of the capital market, and ensure protection of customers/investors and the public[26], which is the unifying principle in our securities law.[27] Thus, Article VI, Section 1 (iv) (g) categorically prohibits registered persons from effecting any transaction unless they have first complied with the same, and other requirements prescribed therein.[28]

In our jurisdiction, it is a settled doctrine that a law, rule or regulation enjoys a presumption of validity and proscribes a collateral attack on the same. Thus, until a law, rule or regulation is nullified by a court in a direct proceeding, the same is considered valid.[29] This doctrine applies to the CMIC Rules which, having been approved by this Commission on 12 January 2012[30], should continue to bind the CMIC and the Trading Participants (which include PEPI) in the absence of any declaration by a court nullifying the same. Both the CMIC and PEPI were duty-bound to comply with the above-cited provisions of the 2015 SRC-IRR and the CMIC Rules. Such duty constituted a valid justification for the CMIC to sustain the restriction/suspension by PEPI of Mr. Golangco's access to trade stocks in the Exchange because of his failure/refusal to submit the Required Information and Documents. A contrary position will sanction the exercise of a discretionary authority on the part of the

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[25] See Article VI, Section 1 (iv) (a) and (e).

[26] "KYC is the bedrock of financial advice. It is a form of due diligence to ascertain relevant client information before doing business with them. Advisers must be careful that they are not taken along for the ride; taking time to challenge appropriately is a must if the customer is to get value for money and your firm is to build a successful relationship with that customer. For too long there have been large blank spaces in fact finds or simple notes that state "does not wish to disclose" or "not applicable". It is an adviser's duty to get to know the customer in front of them." (https://www.huntswood.com/insights/reducing-investments-mis-selling-at-home-2);

"There are many reasons why financial institutions do customer due diligence and commit time and effort to 'know their customers':

- To ensure the organisation remains compliant with the regulations and laws of the regions or markets they are operating in
- To help make sure the customer is really who they say they are
- To guard against fraudulent activity such as identity fraud or impersonation
- So that the financial institution can assist law enforcement" (https://www.swift.com/your-needs/financial-crime-cyber-security/know-your-customer-kyc/customer-due-diligence-cdd)

[27] See Palanca IV v. RCBC Securities, Inc., G.R. No. 241905, March 11, 2020

[28] "A registered person shall not do anything to effect a transaction unless he has first complied with the requirements of this rule, as required in SRC Rule 30.2, paragraph 4."

[29] Kilusang Mayo Uno v. Hon. Benigno Simeon C. Aquino, III., G.R. No. 210500. April 2, 2019

[30] https://documents.pse.com.ph/CircularOPSPDF/PSE-ANCMNT2110000455.pdf

CMIC to modify the requirements prescribed under the 2015 SRC-IRR and the CMIC Rules, one which the CMIC does not have.

This Commission therefore finds that no reversible error was committed by the CMIC in sustaining the restriction/suspension by PEPI of Mr. Golangco's access to trade stocks in the Exchange insofar as the same was grounded on the latter's failure/refusal to submit the Required Information and Documents, which is required under the 2015 SRC-IRR and the CMIC Rules. Aside from the fact the such act was based on contract, we hold that an act or decision which aims to comply with a law, rule or regulation cannot give rise to a violation or liability in the absence of a Constitutional or statutory provision expressly penalizing the same.

It is worth stressing, and this Commission holds, that Mr. Golangco who was trading stocks in the Exchange is not exempt from complying with the relevant provisions of the SRC, the 2015 SRC-IRR and the CMIC Rules which cover or relate to (individual and corporate) investors, including and especially the requirements to submit/provide the Required Information and Documents. Investors who trade listed securities in the Exchange through a broker-dealer are required to fully and continuously comply with all securities laws, rules and regulations, and the State can, at any time, prohibit (and even penalize) such investors if found to have violated any law, rule or regulation. We have in fact a number of cases where the Supreme Court sanctioned the imposition of appropriate penalties upon investors who traded based on insider information, committed market manipulation or carried out fraudulent transactions, all of which are acts violative of the securities law. This shows that the realization and achievement of the purposes and objectives of the securities laws, rules and regulations can only be possible by strict implementation of its provisions by this Commission, and faithful/dutiful compliance with the same by market participants and investors.

In the instant case, the records show that Mr. Golangco stood firm in his refusal to comply with the statutory requirement to submit/provide the Required Information and Documents. We thus find and so hold that the suspension of his privilege to trade stocks in the Exchange by PEPI (which was sustained by the CMIC) did not violate the 2015 SRC-IRR or the CMIC Rules. If at all, such suspension put a stop to a continuing non-compliance by Mr. Golangco of the relevant provisions of the 2015 SRC-IRR or the CMIC Rules which required him submit/provide the Required Information and Documents.

Mr. Golangco also maintained that PEPI's act in restricting/suspending his access to buy/sell stocks in the Exchange violated the Agreement which renders it liable for payment of damages. The competence in determining and passing upon this matter rests with the regular courts and not with this Commission. Thus, had the Assailed Resolutions not attained finality, this Commission cannot take cognizance of this matter for want of jurisdiction.

The Commission is an administrative agency of limited jurisdiction and may only exercise powers, take cognizance of, and pass upon matters that are specifically granted/provided by the statute. Matters relating to the validity of contracts, the breach of its provisions or the award of damages are governed by the provisions of the Civil Code which are within the jurisdiction of the proper Regional Trial Courts. We find this rule emphasized in the case of *Imperial .s Cruz*[31], where the Supreme Court also explained the rationale thereof, thus:

> "It is true that the trend is towards vesting administrative bodies like the SEC with the power to adjudicate matters coming under their particular specialization, to insure a more knowledgeable solution of the problems submitted to them. This would also relieve the regular courts of a substantial number of cases that would otherwise swell their already clogged dockets. <u>But as expedient as this policy may be, it should not deprive the courts of justice of their power to decide ordinary cases in accordance with the general laws that do not require any particular expertise or training to interpret and apply. Otherwise, the creeping take-over by the administrative agencies of the judicial power vested in the courts would render the judiciary virtually impotent in the discharge of the duties assigned to it by the Constitution</u>.
>
> <u>Applying these principles to this case, we rule that the SEC does not have jurisdiction to order the cancellation of the sale</u> between Napal and Cruz. <u>It also has no jurisdiction to cancel Cruz's TCT and order its transfer to NIDSLAND</u>.
>
> <u>To assail the validity of the sale, Imperial and NIDSLAND sought to prove that the sale to Cruz was simulated. This involves the application of the law on sales</u>. As we have already held in *Intestate Estate of Alexander T. Ty*, **the issue of whether a sale is simulated falls within the jurisdiction of ordinary civil courts**. It does not concern an adjudication of the rights of Imperial, NIDSLAND and Napal under the Corporation Code and the internal rules of the corporation." (Emphasis supplied)

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[31] G.R. No. 178842, January 30, 2017.

Finally, We hold that no reversible error was committed by the CMIC in finding that PEPI violated the CMIC Rules when it facilitated and effected stock purchases made by Mr. Golangco despite being fully aware that the latter has not complied with the statutory requirement to submit/provide the Required Information and Documents. We reiterate that there is nothing in the 2015 SRC-IRR and the CMIC Rules which grant PEPI the discretion to exempt its clients from the requirement to submit/provide the Required Information and Documents. PEPI clearly disregarded and violated Article VI, Section 1 (iv) (g) which categorically prohibits registered persons from effecting any transaction unless they have first complied with the same, and other requirements prescribed therein.[32] This warrants the imposition of the appropriate penalties provided in the CMIC Rules, which the CMIC correctly did.

WHEREFORE, premises considered, the *Memorandum of Appeal* filed by Mr. Rene Golangco is hereby **DISMISSED** for having been filed out of time. Consequently, this Commission **AFFIRMS** the Assailed Resolutions of the CMIC, which have become final and executory.

SO ORDERED.

Makati City, 13 December 2024.

EMILIO B. AQUINO
Chairperson

JAVEY PAUL D. FRANCISCO
Commissioner

KARLO S. BELLO
Commissioner

MCJILL BRYANT T. FERNANDEZ
Commissioner

ROGELIO V. QUEVEDO
Commissioner

[32] "A registered person shall not do anything to effect a transaction unless he has first complied with the requirements of this rule, as required in SRC Rule 30.2, paragraph 4."