Republic of the Philippines
Department of Finance
Securities and Exchange Commission

KALAHI REALTY, INC.
Appellant,

\- **versus** - **SEC En Banc Case No. 08-10-209**

CORPORATION FINANCE DEPARTMENT
(now Corporate Governance and
Finance Department)
Appellee.

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DECISION

Before the Commission *En Banc* is a *Letter-Appeal*[1] filed on 17 August 2007 by Kalahi Realty, Inc. (**KRI**), assailing the *Letter-Order* dated 30 July 2007 (**Assailed Order**) by the then Corporation Finance Department (CFD), now the Corporate Governance and Finance Department (CGFD). The pertinent portions of the *Assailed Order* is read as follows:

> "In light of the foregoing considerations, the **penalty of P782,200.00** imposed against Kalahi Realty, Inc. for the **late filing of various reports**, in violation of **SRC Rules 17 and 20** is hereby AFFIRMED. The company is hereby directed to pay said penalty within five (5) business days from receipt of the letter by way cash, Manager or Cashier's check."

The Facts

KRI is a stock corporation registered with the Commission on 03 April 1989 with SEC Registration No. 0000161872. Its primary purpose is "*to acquire by purchase, lease, donation or otherwise, and to own, use, improve, develop, subdivide, sell, mortgage, exchange, lease, develop and hold for investment or otherwise, real estate of all kinds, whether (to) improve, manage or otherwise, dispose of buildings, houses, apartments, and other structures of whatever kind together with their appurtenances.*"

Sometime in 2006, KRI filed SEC Forms 17-L[2] and 17-Q[3] despite the fact that it was not previously registered with the Commission as a reporting

[1] Letter dated 15 August 2007, this was forwarded to the Office of the General Counsel, on 23 November 2007 by the CFD in a Memorandum dated 22 November 2007.

[2] Filed on May 9 and August 11, 2006; Notification of Inability to File All or Any portion of SEC Form 17-A or 17-Q.. It is filed on or before the required due date of filing of the Annual or Quarterly Report.

company. CFD, in a *Letter* dated 28 August 2006, directed KRI to submit an updated list of its stockholders with their corresponding shareholdings. KRI submitted, on 14 September 2006, the list of its stockholders as of 30 April 2006[4].

As a result, CFD was able to confirm that KRI is a "public company" based on the fact that it has a total assets of P118,180,112.00 and 2,641 stockholders, with 2,335 stockholders holding at least 100 shares each[5].

CFD, in a *Letter*[6] dated 06 November 2006, directed KRI to submit its 2005 Annual Report (SEC Form 17-A), 2006 1st, 2nd, and 3rd Quarter Reports (SEC Form 17-Q), 2006 Information Sheet (SEC Form 20-IS) and a written explanation why it should not be held liable for violation of Securities Regulation Code (SRC) and its implementing rules for failure to file the required reports pursuant to Section 17.2 of the Securities Regulation Code (SRC) in relation to SRC Rule 3 (1) (M)[7].

On 05 December 2006, KRI replied to CFD's directive acknowledging the receipt of CGFD's letter[8] on 20 November 2006 and stating that it already submitted its SEC Forms 17-Q (for the periods ended on 31 March 2005, 30 June 2006 and 30 September 2006) and SEC Form 17-A (for the year ended 31 December 2005). It also informed CFD that it used to be a 100% wholly-owned subsidiary of Dizon Copper-Silver Mines, Inc. (DCSMI). It stated that on 09 July 2004, DCSMI's Board of Directors declared as property dividend[9] all its investments in KRI as property dividends on a "one to one basis" to its stockholders of record as of 13 January 2005[10].

In a *Letter*[11] dated 23 January 2007, CFD cited KRI for the late filing of the following reports:

Report	For the period ended	Date filed	Due date
1. Quarterly Report	March 31, 2005	May 22, 2006	May 15, 2005

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[3] Filed on May 22 and August 11, 2006; Quarterly report which contains Interim Financial Statements and Interim Management Discussion. It is filed within 45 calendar days after the end of the quarter.

[4] Records, Pages 17-19.

[5] Ibid.

[6] Records, page 1.

[7] Section 17.2. The reportorial requirements of Subsection 17.1 shall apply to the following: x x x c) An issuer with assets of at least Fifty Million Pesos (P50,000,000.00) or such other amounts as the Commission shall prescribe, and having Two hundred (200) or more holders each holding One hundred (100) shares of a class of its equity securities: Provided, however, that the obligation of such issuer to file reports shall be terminated ninety (90) days after notification to the Commission by the issuer that the number of its holders holding at least one hundred (100) shares is reduced to less than One hundred (100).
SRC Rule 3 (1) (M) – Public company means any corporation with a class of equity securities listed on an Exchange or with assets in excess of Fifty Million Pesos (P50,000,000.00) and having two hundred (200) or more holders, at least two hundred (200) of which are holding at lest one hundred (100) shares of a class of its equity securities.

[8] Dated 06 November 2006.

[9] To its stockholder of record as of 13 January 2005.

[10] Records, page 2.

[11] Records, page 4-5.

(SEC Form 17-Q)		**(late)**	
2. Quarterly Report (SEC Form 17-Q)	June 30, 2006	August 22, 2006 (not late; with SEC Form 17-L submitted on Aug. 11, 2006)	August 14, 2006
3. Quarterly Report (SEC Form 17-Q)	Sept. 30, 2006	Nov. 7, 2006	Nov. 14, 2006
4. Annual Report (SEC Form 17-A)	December 31, 2005	May 13, 2006 **(late)**	May 2, 2006 (*Special extension granted by the Commission*)

CFD also discovered that KRI failed to submit the following reportorial requirements:

Report	For the period ended
1. First Quarter Report (SEC Form 17-Q)	2006
2. Second Quarter Report (SEC Form 17-Q)	2005
3. Third Quarter Report (SEC Form 17-Q)	2005
4. Information Statements (SEC Form 20-IS)	2005 and 2006
5. Annual Report (SEC Form 17-A)	2004

Based on the above-stated deficiencies, CFD assessed KRI a penalty of Php 862,700.00[12] and required it to pay the same within 5 days from receipt of the letter.

KRI, in a *Letter*[13] dated 13 February 2007, sought for a reconsideration of the assessed penalties. It claimed that on 13 January 2005 it was officially separated from its mother company DCSMI. KRI's sudden separation from DCSMI showed its unpreparedness to handle the reportorial requirements. Thus, it requested that it be given consideration as a newly-released subsidiary. It also pointed out that its 2004 Annual Report was consolidated with DCSMI when the latter filed the same report. Further, it claimed that there was an error as to the date of its 2006 First Quarter Report (SEC Form 17-Q) wherein the date was mistakenly encoded as "March 31, **2005**" when it should be "March 31, **2006**".

CFD, in a *Letter*[14] dated 13 March 2007, found merit in some of KRI's justifications. CFD reduced the assessed penalty to Php 782,200.00, citing for the following violations pursuant to SRC Rule 17 and 20:

Reports	***Period Covered***		***Basic Penalty***	***Penalty per Day***	***Total***
2005	Ending March	1st	Reprimand	Filed on 01	Reprimand

12 Ibid.

13 Records, page 7.

14 Records, pages 9-10.

1st Quarter Report	31, 2005	violation		February 2007	
2nd Quarter Report	Ending June 30, 2005	2nd violation	50,000.00	160,800 (536 days[from 14 Aug 2005 to 01 Feb 2007] x 300	210,800
3rd Quarter Report	Ending Sept. 30, 2005	3rd violation	60,000.00	266,400 (444 days [from 14 Nov 2005 to 01 Feb 2007] x 600)	326,400.00
Information Statement	Annual Stockholders; Meeting (last Wed of May – May 25, 2005)	1st violation			Reprimand
2006 Information Statement	Annual Stockholders; Meeting (last Wed of May – May 25, 2006)	2nd violation	100,000.00	145,000 (290 days [from 25 Apr 2006 to 09 Feb 2007] x 500)	245,000.00
Total					782,200.00

On 02 April 2007, KRI sought for a clarification with CFD on why the assessed penalties for the late filing of the three (3) 2005 quarterly reports were based on SEC Memorandum Circular No. 6, series of 2005 (MC No. 6-05), which took effect only on 15 October 2005. Further, it claims that it was not given due notice before the Commission penalized it for non-filing of reports.[15]

CFD, in a *Letter*[16] dated 03 May 2007, explained that the retroactive application of MC No. 6-05 is more favorable to KRI. CFD informed KRI that if they would be assessed the penalties under the prior rule (Revised Scale of Fines - SEC Memorandum Circular No. 2, series of 2003), the amount of penalties is higher by Php 37,700.00. As to due notice, CFD explained that the SRC and its Implementing Rules were duly published in newspapers of general circulation, hence it is not necessary to inform KRI that it should promptly file the required reports.

[15] Records, page 11.

[16] Records, pages 12-13.

KRI, in a *Letter*[17] dated 28 June 2007, raised the issue that they were not notified of the 1st and 2nd violations but still the Commission assessed corresponding penalties for such violations. KRI added that notice by any standard is the information actually received by the person to whom it is intended to be imparted. KRI argues that corporations would be meted the huge penalties if the Commission would not timely and properly notify them of their violations. Also, KRI requested for clarification on whether Saturdays, Sundays and non-working holidays are included in the computation of the assessed penalties.

In a *Letter*[18] dated 30 July 2007, CFD explained that it is the duty of KRI's corporate secretary to inform the Commission that it has attained a status of a public company. This requirement is mandated under SEC Memorandum Circular No. 5, series of 2005[19] (MC No. 5-05). Likewise, CFD stated that KRI did not comply with SRC Rule 68 (1) (d) which requires all external auditors to issue a supplemental written statement indicating the total number of its stockholders each owning more than one hundred or more shares. CFD further explained that MC No. 6-05 charges an additional day of penalty per day of delay and does not exclude Saturdays, Sundays and legal holidays, thus, included in the computation of penalties.

On 17 August 2007, KRI filed with CFD the instant *Letter-Appeal*[20]. It pointed out that upon learning of its status and being categorized as a "Public Company", it voluntarily complied with its reportorial requirements without notice from the Commission. It also averred that all the figures and data needed to prepare reports for 2005 were already established in its books. It is therefore only a manner of utilizing the format and forms of the Commission in filing the said reports. Thus, it requested for a re-computation and reduction the assessed penalties to Php 330,300.00. It proposes to pay the amount of Php 300,000.00 in installment basis.

This time CFD treated the said letter as an *Appeal* and forwarded the same to the Commission *En Banc*, through the Office of the General Counsel.

In an *Order*[21] dated 19 March 2014, the Commission *En Banc* directed CFD to file its *Reply Memorandum*. On 22 April 2014, CFD filed its *Reply Memorandum*[22] reiterating its position in the Assailed Order. However, it recomputed the assessed penalties and recommended for the reduction of the same to Php 162,200.00.

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[17] Records, page 14.

[18] Records, pages 15-16.

[19] MC No. 5-05 – Notification to all Corporate Secretaries of Philippine Corporations – x x x As part of that obligation, secretaries of corporations that meet the foregoing criteria (also known as "public companies") are hereby directed to advise the Commission in writing, not later than November 30, 2005, of that fact and the date said status was attained.

[20] Records, page 24.

[21] Records, pages 57.

[22] Records, pages 60-75.

The Issue

The issue is whether or not then CFD correctly imposed the appropriate penalties against KRI for late and non-filing of the reportorial requirements as a public company.

The Ruling

In its *Appeal*, KRI claims that since its incorporation up to its separation from DCSMI, all of its reportorial requirements were consolidated with DCSMI. When it learned that it was classified as a public company, it immediately accomplished the said requirements. Thus, it requests that it be given consideration since it is not yet fully operational and the assessed penalties will burden the company. Furthermore, it argues that it was not immediately notified by CFD of its violations as a public company which resulted in the increased penalties.

On the other hand, CFD claims that KRI violated Sections 17[23] and 20 of the SRC. However, it recommends that KRI's assessed penalties should be recomputed from the time it was required by the Commission to file its reports or from 05 December 2006 which is within 15 days from CFD's notice. This is in view of the case of *Philippine Veterans Bank vs. Callangan*[24] where the court ruled that a corporation could only be held liable from the time it was informed of its status as a public company and was required to submit the required reports. The rationale is that a corporation is in good faith when it believe that it is not a public company defined under the SRC. Thus, CFD recommends, as stated in their *Reply Memorandum*, the following modified assessment:

Reports	***Period Covered***		***Basic Penalty***	***Penalty per Day***	***Total***
2005 1st Quarter Report	Ending March 31, 2005	1st violation	Reprimand	No monetary penalty, KRI filed its report on 01 February 2007	Reprimand
2nd Quarter Report	Ending June 30, 2005	2nd violation	50,000.00	17,400.00 (58 days[from 05 Dec 2006 to 01 Feb 2007] x 300	67,400.00

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23 "Section 17. Periodic and Other Reports of Issuer. 17.1. Every issuer satisfying the requirements in Subsection 17.2 hereof shall file with the Commission: (a) Within one hundred thirty-five (135) days, after the end of the issuer's fiscal year, or such other time as the Commission may prescribe, an annual report which shall include, among others, a balance sheet, profit and loss statement and statement of cash flows, for such last fiscal year, certified public accountant, an a management discussion and analysis of results of operation; and (b) Such other periodical reports for interim fiscal periods and current reports on significant developments of the issuer as the Commission may prescribe as necessary to keep current information on the operation of the business and financial condition of the issuer."

24 G.R. No. 191995, 03 August 2011; CA-G.R. No. 96391, 06 March 2008.

3rd Quarter Report	Ending Sept. 30, 2005	3rd violation	60,000.00	34,800 (58 days [from 05 Dec 2006 to 01 Feb 2007] x 600)	94,800.00
2006 Information Sheet	Annual Stockholders Meeting	1st violation			Reprimand
Total					**162,200.00**

MC No. 06-05 provides that:

SRC/IRR Provision	***Description***	***First Offense***	***Second Offense***	***Third Offense***
Section 17.1; SRC Rule 17.1	LATE FILING OF CURRENT REPORT (**SEC FORM 17-C**)	Reprimand/ warning	P30,000 plus P200 per day of delay	P40,000 plus P400 per day of delay
	INCOMPLETE CURRENT REPORT (**SEC FORM 17-C**) This shall be in addition to the penalty for late filing of the report per due date under the Rules.	Reprimand/ warning	P10,000 plus P200 per day of delay of filing the amended report	P20,000 plus P400 per day of delay of filing the amended report
	LATE FILING OF QUARTERLY REPORT (**SEC FORM 17-Q**)	Reprimand/ warning	P50,000 plus P300 per day of delay	P60,000 plus P600 per day of delay
	INCOMPLETE QUARTERLY REPORT (**SEC FORM 17-Q**) This shall be in addition to the penalty for late filing of the report per due date under the Rules.	Reprimand/ warning	P20,000 plus P300 per day of delay of filing the amended report	P40,000 plus P600 per day of delay of filing the amended report
	LATE FILING OF ANNUAL REPORT (**SEC FORM 17-A**)	Reprimand/ warning	P100,000 plus P500 per day of delay	P200,000 plus P1,000 per day of delay
	INCOMPLETE ANNUAL REPORT (**SEC FORM 17-A**) This shall be in addition to the penalty for late filing of the report per due date under the Rules.	Reprimand/ warning	P30,000 plus P500 per day of delay of filing the amended report	P60,000 plus P1,000 per day of delay of filing the amended report

Section 20 [in relation with 17.1 (b)]; SRC Rule 20	LATE FILING OF INFORMATION STATEMENT (**SEC FORM 20-IS**)	Reprimand/ warning	P100,000 plus P500 per day of delay	P200,000 plus P1,000 per day of delay
	INCOMPLETE INFORMATION STATEMENT (**SEC FORM 20-IS**)	Reprimand/ warning	P30,000 plus P500 per day of delay of filing the amended report	P60,000 plus P1,000 per day of delay of filing the amended report
	FAILURE TO COMPLY WITH ANY OF THE OTHER PROCEDURAL REQUIREMENTS OF SRC RULE 20	Reprimand/ warning	P50,000 plus P500 per day of delay of filing the amended report	P100,000 plus P1,000 per day of delay of filing the amended report

Based on the facts and evidence presented, it is apparent that KRI belatedly filed the required reports (2005 Annual Report-SEC Form 17-A; 2005 1st, 2nd, 3rd, Quarter Report-SEC Form 17-Q; 2006 Information Statement-SEC Form 20-IS) for a public company. However, KRI became aware of its status as a public company only on 06 November 2006 when it was directed by CFD, in a single notice, to submit the required reports and an explanation for its non-compliance.

Furthermore, CFD, in its letter dated 06 November 2006 (first notice), only required KRI to file its 2006 SEC Forms 17-Q for the 1st, 2nd and 3rd quarters. When KRI responded to CFD's notice, the former informed the latter that it already filed its 2006 SEC Forms 17-Q. During this time, CFD discovered that KRI did not also file its 2005 SEC Forms 17-Q. For this reason, KRI was assessed penalties for non-filing of the reports.

The Supreme Court in its resolution affirmed the decision of the Court of Appeals in the case of *Philippine Veterans Bank vs. Callangan*[25], as to the payment of penalty. A corporation believing in good faith that it is not a public company should be held liable only from the time of its failure to submit the required reports after being informed by the Commission that it qualifies as a public company.

[25] Note 23, *Supra*.

Applying the foregoing ruling, since KRI became aware of its status as a public company on 06 November 2006, its liability for late filing should be counted only from the said time. Likewise, CFD, in a single notice, informed KRI of all its violations. Hence, CFD's assessment of KRI's violation for non-filing of the 2005 SEC Form 17-Q for three (3) consecutive quarters should be considered as the latter's first citation for an offense. Therefore, the appropriate penalty to be imposed should by reprimand, as provided in SEC Memorandum Circular No. 6, series of 2005.

WHEREFORE, premises considered, the Corporation Finance Department's (now Corporate Governance and Finance Department) *Letter-Order* dated 30 July 2007, as amended by CFD's *Reply Memorandum,* is hereby **MODIFIED** to read as follows:

> "the penalty of reprimand is imposed against Kalahi Realty, Inc. for the:
>
> 1.) Late filing of SEC Form 17-Q for 1st, 2nd and 3rd quarters in 2005."

SO ORDERED.

Pasay City, 29 June 2017.

TERESITA J. HERBOSA
Chairperson

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

BLAS JAMES G. VITERBO
Commissioner

EMILIO B. AQUINO
Commissioner