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

JOHNSTON SIA-UY

Complainant-Appellant,

- versus - SEC Case No. AC-11-01-825

B.H. CHUA SECURITIES CORP.

Respondent-Appellee,

x-----------------------------------x

RESOLUTION

Before the Commission *En Banc* is Johnston Sia-Uy's ("Appellant") letter-appeal dated 28 September 2001, seeking the reversal of the findings of the Commission's Market Regulation Department ("MRD") dated 13 September 2001.

Facts of the Case

B.H. Chua Securities Corp. ("Appellee") is a brokerage firm registered with the Commission on 13 September 1989 under SEC Reg. No. 168291. Its principal office is located at 872 G. Araneta Avenue, Quezon City.

Sometime in January 1997, appellant opened an account and signed the Customer Account Information Form ("CAIF") under Account No. 1401 with appellee corporation through its representative Go Tak Lee alias Lito Go, allegedly a licensed salesman of securities.

On 02 January 1997, Go signed the Margin Account Agreement as General Manager of appellee corporation at the ratio of 1:5, meaning for every P100,000.00, he is allowed to trade as much as five (5) times such amount or a total of P500,000.00 provided a margin call is made. Appellant bought shares of stock amounting to almost five million pesos (P5,000,000.00), and was required to issue twenty-six (26) postdated checks in the total amount of P2,003,816.24 to be deposited in case the balance of appellant's account becomes insufficient to maintain the required margin.

On May 1997, June, August and September 1998, appellant's account failed to meet the required margin rate and no liquidation was made on said account by the appellee. Instead of issuing a Margin Call to the appellant, appellee deposited appellant's postdated checks for said months to cover the deficit.

On 12 September 2000, appellant filed a letter-complaint for investigation with the MRD to determine the activities and violation of the Commission's Rules allegedly committed by Go and appellee corporation.

On 16 November 2000, appellant filed a letter-query to clarify the following issues:

1. Whether B.H. Chua Securities Corporation committed violation of law, rules and regulations of the Commission in employing Lito Go as its sales manager/account officer, without first obtaining a license to do business or employment permit from the Department of Labor and Employment;

2. Whether the transactions entered into by Lito Go can be annulled or voided considering that he has no license or permit issued by the Commission at the time of the questioned transactions and that his employment with B.H. Chua Securities Corp. is illegal;

3. Whether appellant may hold B.H. Chua Securities Corporation and Lito Go responsible for damages and losses he suffered as consequences of his transaction with the said corporation.

In a Memorandum dated 20 December 2000 addressed to Jose P. Aquino, Officer-in Charge of the MRD, Arturo B. Sabino of the Brokers and Dealers Division-MRD submitted his findings on the investigation conducted on the books and records of appellee corporation as follows:

1. Records show that Lito Go passed the Certified Securities Representative Examination (CSRE) on 31 July 1996 but applied for registration only on 27 December 1997 for which a license was issued effective 01 January 1998, and that the possibility of Lito Go having acted as a salesman of securities in 1997 is not remote;

2. In the space provided in the CAIF for "agent's signature", two signatures were affixed, those of Lito Go and Michael L. Chua, who is the president of B.H. Chua Securities, Corp., which is very "misleading and unusual";

3. The appointment of Lito Go as Marketing Head appears questionable considering that appellee corporation had only one (1) registered salesman in the person of Michael Chua;

4. Contrary to appellant's assertion, it appears that he was given copies of the written confirmation of purchases and sales as evidenced by his signature on the acknowledgment receipt. The customer's account ledger, debit and credit memos were also transmitted to appellant and properly acknowledged by him except for the August 2000 documents which appellee sent to him through registered mail;

5. B.H. Chua Securities Corp. violated the Margin Rule when no margin call was made when there arose a margin deficiency and instead, several postdated checks previously issued by appellant were immediately deposited to offset the deficiency.

Meanwhile, on 03 May 2001, in a letter directed to the president of appellee corporation, the MRD found that appellee violated the Margin Rule under RSA 23(b)-1[1] (now SRC 48.1) and ordered the subject corporation to pay a fine amounting to ten thousand pesos (P10,000.00).

On 13 September 2001, the MRD resolved the issues raised by the appellant and found that:

1. There is no evidence to prove that Lito Go is the salesman servicing the account of the complainant-appellant;

2. Trading of Interport shares started only on 05 February 1998 until 20 March 1998 while Apex A and B shares were traded on 07 March 1997 and 20 February 1997, respectively. Thus, Lito Go could not have complied with the complainant's instruction for the Interport shares considering that there is no more position of said shares during the period. Likewise, Apex A and B shares were still in complainant's account up to 20 December 2000;

3. Respondent violated the Margin Rule under RSA Rule 23(b)-1, thus respondent was penalized for said violation in the amount of ten thousand pesos (P10,000.00);

4. Violation of labor and immigration laws is not within the jurisdiction of the Commission;

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[1] RSA Rule 23(b)-1. *Margin Rule.*

x x x

(c) When there is an insufficiency of margin, a call for additional margin shall be issued promptly by the broker or dealer to the customer. A call for initial margin shall be satisfied within five (5) business days from the date the insufficiency is created. A call for maintenance margin shall be satisfied within twenty four (24) hours after the call is issued.

x x x

5. That complainant was given copies of the written confirmation of purchases and sales as evidenced by the complainant's signature on the confirmation receipt.

On 12 November 2001, appellant appealed the findings of the MRD to the Office of the General Counsel ("OGC").

In its Memorandum dated 05 March 2004, the OGC requested the Compliance and Enforcement Department ("CED")[2] of the Commission to undertake a re-investigation of the instant case. On 31 May 2004, CED rendered an investigation report and found appellant's allegation that Go received salesman commission untrue since appellee did not give any commission to Go as shown in its 1997 Audited Financial Statement and likewise no evidence to substantiate appellant's alleged instruction to sell his 50,900,000 Interport shares on 04 October 1999 at P0.018.

On 17 July 2006, appellant filed his Manifestation and Motion praying that the Investment Contracts he entered into with the appellee be declared null and void and prayed for the refund of his investments and income accrued from said investments.

On 27 November 2006, the Commission issued an Order directing the appellee to file its comment to Appellant's Manifestation and Motion filed on 17 July 2006, but appellee failed to file its comment.

On 28 January 2008, appellant filed an Urgent Motion for the issuance of a Cease and Desist Order and to resolve the instant appeal considering that appellant received a letter dated 10 January 2008 from appellee informing him of his alleged overdue balance amounting to P2,362,170.88 and to settle the same within three (3) days from receipt of the notice. Otherwise appellee shall be forced to sell his shares at the prevailing market price.

On 03 March 2010, the Commission issued an Order directing both parties to submit their respective final memoranda on or before 10 April 2010. Respondent-appellee, however, failed to file the memorandum despite due notice.

Issues

1. Whether Go acted as salesman of securities when he handled appellant's account with appellee corporation in 1997;

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[2] Now the Enforcement and Prosecution Department.

2. Whether Go failed to comply with appellant's instruction to dispose or sell his Interport shares in October 1999 and Apex A and B in 16 March 2000;

3. Whether the transactions entered into by appellant with B.H. Chua Securities Corp. should be annulled and the full amount of investments be recovered by appellant;

Discussion

Go acted as salesman of securities without the necessary license as required by Section 19 of the Revised Securities Act ("RSA").

Section 19 of the RSA[3], which was then in force at the time the questioned transactions were made, requires all brokers, dealers and salesmen of securities to be registered with the Commission, to wit:

> "Sec. 19. Registration of brokers, dealers and salesmen- No broker, dealer or salesman shall engage in business in the Philippines as such broker, dealer or salesman or sell any securities, including securities exempted under this Act, except in exempt transaction, unless he has been **registered** as a broker, dealer, or salesman pursuant to the provisions of this Section.
>
> x x x"

The factual circumstances of this case indicate that Go acted as salesman of securities when he transacted with appellant in 1997.

Records show that on 16 February 1995, Go was appointed by appellee corporation as General Manager, Marketing Head and Telephone Clerk, with the following compensation:

Basic Monthly Salary	P10,000.00
Gasoline Allowance	P6,000.00
Monthly Allowance	P20,000.00

Although Go passed the Certified Securities Representative Examination (CSRE) way back in 16 February 1995, he only applied for registration on 03 December 1997 and his license as salesman of securities was subsequently issued

[3] Batas Pambansa Blg. 178 (1982).

effective 01 January 1998. Prior to the issuance of his license, he was already active in soliciting investments, as evidenced by a proposed margin account agreement with effective transaction date on 02 January 1997 solicited by appellee from a certain Wendell K. Golangco, where he even signed on top of the name Michael Li Chua in the margin interest computation.

It is evident in the CAIF executed by appellant that two (2) signatures were affixed in the space provided for the agent's signature; those of Go and Chua, president of appellee corporation and a licensed salesman of securities, the fact of which was confirmed by the MRD. At the time of the said transaction, Chua was the only registered/licensed salesman of B.H. Chua.[4] According to appellant, he has never met Chua and it was Go, who was transacting with him throughout his investment transactions with appellee. It appears that at the time the CAIF was executed, Go affixed his signature on the space provided for the agent's signature and subsequently superimposed with that of the signature of Chua on the same space at the time he approved of the same.

Appellee's assertion that it is customary and a normal practice for Go and Chua to affix their signatures on the space for agent's signature is self-serving designed to mislead the investors and avoid liability, by making it appear that it was Chua, being a licensed salesman of securities, who was the authorized salesman of the transaction. This observation was confirmed by Arturo Sabino of the MRD, in a Memorandum addressed to Dir. Jose P. Aquino dated 20 December 2000, when he described the questioned practice as "very misleading and unusual." He further stated that "the possibility that Mr. Go might have acted as a salesman in 1997 when he was not registered although he passed the examination is not remote." More so, Go even admitted in his reply-affidavit[5] dated 28 August 2000 filed with the City Prosecutor of Manila, that he is the Sales Manager of B.H. Chua at the time of the questioned transactions.

It is also noteworthy that Go arrogated upon himself the position of a President or Chairman when he signed the Margin Account as General Manager. Likewise, Go manifested his blanket authority to represent the appellee when he affixed his signature over the printed name of Chua in one of the Margin Interest Computation[6] issued by appellee corporation. Also, it appears that the face to face interview was conducted by Go with appellant when the former brought the CAIF to the latter's residence. These acts of Go are illegal under appellee's procedure[7] for opening of customers account, which provides that:

"III. Opening of Customers Account

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[4] See Memorandum dated 20 December 2000 addressed to the MRD.
[5] Executed before Prosecutor Gideon Mendoza, Assistant City Prosecutor of Manila, in connection with Criminal Case No. 364665-364677.
[6] Margin Interest Computation of the account of Wendell K. Golangco for cut-off date 31 August 1997.
[7] Written Supervisory Procedure of B.H. Chua Securities Corporation.

It is the responsibility of the Marketing Head of ensuring that prior to effecting transactions for new clients that the clients fill up the Customer's Information Sheet and Reference Card and specimen signature cards. No further transaction can be executed until approval has been granted for the opening of the accounts.

The licensed salesman/agent who solicited the account has to be sure that information contained in the customer information sheet is verified to be true and correct.

x x x

Procedures in Opening of Accounts:

1. As a matter of policy, prior to effecting any transaction for or with any client, the assigned licensed salesman/agent had already done a face to face interview with the client;

2. The Marketing Head makes a recommendation for the prospective client's trading limit based on the information gathered from the customer information sheet;

3. The recommendation is reviewed by the Compliance Officer and submits it to the President or Chairman for approval;

4. Upon approval, client code will be assigned by the Settlement Section;

5. Together with the assigned licensed chairman/agent, the Marketing head makes a follow-up for all clients with lacking requirements.

x x x"(underscoring supplied)

Under Rule 19-14[8] of the Rules and Regulations of the Revised Securities Act, the establishment and maintenance of a written supervisory procedure is mandatory

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[8] RSA Rule 19-14. *Supervision.*

(a) Every broker or dealer shall establish and maintain a system to supervise the activities of all persons employed by it who are directly or indirectly related to the conduct of its securities business. The supervisory system shall be reasonably designed to achieve compliance with applicable securities laws and regulations and with the rules of the self regulatory organizations of which the firm is a member. Final responsibility for proper supervision shall rest with the firm. A firm's supervisory system shall include at least the following:

(1) The establishment and maintenance of written supervisory procedures;

x x x

for every dealer and broker as a means of supervising the activities of all persons employed by it. Based on the foregoing, we find that appellee violated Section 19 of the RSA by employing an unregistered salesman of securities to transact business in the name of B.H. Chua Securities in 1997.

More so, the fact that no commission expense was reflected in B.H. Chua's Audited Financial Statements[9] for the years 1997-2000 is not conclusive to show that indeed Go was not acting as salesman of securities at that time. In fact, the CAIF[10] account accomplished by appellant clearly indicates that there is a one-fourth percent (1/4%) commission on the transaction. Hence, it may be deduced that B.H. Chua intentionally omitted commission expense in its financial statements and only included the same starting the year 2001, as reflected in its Comparative Statement of Income and Retained Earnings for the period 2000-2001[11]. If indeed the Audited Financial Statements were to be accepted on its face as conclusive, appellee should have reflected the commission expense starting at the end of fiscal year 1998 when Go was already a licensed salesman.

Go failed to comply with appellant's instruction to dispose or sell his Interport shares in October 1999.

There is no doubt that Go mishandled appellant's account when it did not issue a Margin Call[12] when his margin account fell in the months of June, August and September 1998. Consequently, the Commission, after a finding of such violation, penalized appellee in the amount of ten thousand pesos (P10,000.00), which was paid by appellee on 26 June 2001 under Official Receipt No. 000004754112.

In resolving appellant's letter-complaint, the MRD issued a resolution finding that:

> "x x x trading of said shares started only on February 5, 1998 until March 20, 1998 for Interport shares while the sale of Apex A and B was done on March 7, 1997 and February 20, 1997, respectively. Thus, Mr. Go could not have complied with your instructions for the Interport shares since there was no more position of said shares during the period."

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9 See Investigation Report prepared by the CED addressed to Dir. Jose Tomas C. Syquia, dated 31 May 2004.

10 See CAIF Account No. 1401.

11 See Investigation Report (Annex "M") prepared by the CED addressed to Dir. Jose Tomas C. Syquia, dated 31 May 2004.

12 Rule 23(b)-1 of the RSA.

The MRD took into consideration that appellant's call to dispose his Interport shares was made in October 1997 instead of October 1999 as corrected by appellant in his successive pleadings. While the check issued by appellant on 30 August 1999 as guarantee for his margin account was cleared and honored by Security Bank, appellant could no longer fund the amount required of him to make good his check on 30 September 1999. Thus, appellant has no other option but to sell his Interport shares to settle his obligation.. This scenario bolstered appellant's claim that he called up Go on 04 October 1999 instructing him to sell the said shares. The instructions made by appellant to dispose his Interport shares on 04 October 1999 and his Apex A and B shares on 16 March 2000 should not have been ignored by Go considering that at the time the respective instructions were made, Interport shares were selling at a price of P0.018 and the Apex A and B shares were selling at P0.024 per share totaling P2,044,200.00, which is enough to offset all appellant's margin account.

The transactions entered into by appellant with B.H. Chua should be annulled and the full amount of investments recovered by appellant.

Section 53(b) of the RSA provides the status of a contract entered into in violation of any provision of the RSA, to wit:

> "Section 53. Validity of Contracts.
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> x x x
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> (b) **Every contract made in violation of any provision of this Act or of any rule or regulation thereunder**, and every contract, including any contract for listing a security on 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 Act, or any rule or regulation thereunder, shall be **void**:
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> x x x"(emphasis supplied)

In view of the foregoing, since there was a clear violation of Section 19 of the RSA when Go transacted with appellant without the necessary license, the investment contracts entered into by appellant with appellee corporation shall be considered NULL and VOID.

WHEREFORE, premises considered, the instant appeal is hereby **GRANTED**. Appellee corporation is hereby directed to refund appellant the amount of (1) ***Two Million Three Thousand Eight Hundred Sixteen and Twenty Four Centavos***

(P2,003,816.24) constituting payment by appellant of his margin account covered by twenty-six (26) postdated checks and encashed by appellee; and (2) ***Two Hundred Thousand Pesos*** (P200,000.00) representing the initial collateral under the terms and conditions for entering into a margin account. For knowingly allowing its unlicensed salesman to engage in stock transactions in violation of Section 19 of the RSA, the appellee corporation is hereby imposed a fine of ***Fifty Thousand Pesos*** (P50,000.00)[13] with a stern warning that a subsequent similar violation thereof shall be subject to appropriate sanction at the discretion of the Commission. Further, if appellant's shares have already been disposed, appellee corporation is also hereby directed to deposit the proceeds of the sale with the Commission pending the final resolution of the case.

SO ORDERED.

Mandaluyong City, 17 June 2010.

Fe B. Barin
FE B. BARIN
Chairperson

MA. JUANITA E. CUETO*
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner

*on leave

[13] SEC. 46 of the Revised Securities Act (Batas Pambansa Blg. 178) reads:

> "SEC. 46. *Administrative Sanctions.* – If, after notice and hearing, the Commission finds that there is a violation of this Act, its rules, or its orders x x x, it shall, in its discretion, impose any or all of the following sanctions:
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> x x x
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> (b) A fine of no less than two hundred pesos (P200.00) nor more than fifty thousand pesos (P50,000.00) plus not more than five hundred pesos (P500.00) for each day of continuing violation;
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> x x x"