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

CORPORATE GOVERNANCE AND FINANCE DEPARTMENT,
Complainant-Appellee,

-versus- **SEC En Banc Case No. 11-17-432**

QUEZON CITY SPORTS CLUB, INC.,
Respondent-Appellant.
x---x

D E C I S I O N

For consideration of the Commission En Banc ("Commission") is the ***Memorandum of Appeal*** ("Appeal") filed[1] through the Office of the General Counsel ("OGC") by Quezon City Sports Club, Inc. ("QCSC, Inc.") assailing the decision of the Corporate Governance and Finance Department ("CGFD"), which imposed upon QCSC, Inc. a fine amounting to ₱823,500.00 for its violation of Rules 68 and 68.1 of the Securities Regulation Code ("SRC").

PARTIES

QCSC, Inc. is a corporation registered with the Commission under SEC Registration No. 0000076705. Its principal office is located at E. Rodriguez Sr., Boulevard, Broadway, Quezon City.

CGFD is one of the operating departments of the Commission which exercises authority over administrative actions over entities such as registered issuers of resorts or club shares, membership certificates and time shares, public companies, financing and lending companies, foundations and other non-stock corporations.

RELEVANT FACTS

The present case arose from the violation of Rules 68 and 68.1 of the SRC by QCSC, Inc. for which the CGFD imposed a fine amounting to ₱823,500.00 for failure to make necessary disclosures required under the

---

[1] On 7 November 2017.

SRC. The penalty imposed includes a basic penalty of ₱25,000.00 and a daily penalty amounting to ₱798,500.00, i.e. ₱500.00 multiplied by 1,597 days. The basic penalty was reckoned from ***28 April 2010***, the date when QCSC, INC. allegedly received the letter from the Office of the General Accountant ("OGA").

While QCSC, Inc. admitted its violation of the SRC, it questioned the reckoning period which should be the basis of the daily penalty. It argued that it did not receive OGA's letter on said date as the same was not properly served upon and was only notified of its violation on ***31 May 2016*** when it received CGFD's letter.

Furthermore, QCSC, Inc. contended that the letter from OGA should have been served in the same manner as summons are served in accordance with the 2016 SEC Rules of Procedure and even the 2006 SEC Rules of Procedure.[2] As such, it maintained that OGA's letter should not be served upon individuals other than those enumerated under the Rules, such as, among others, the corporation's president. It alleged that OGA's letter was received by a mere employee who is not qualified to be served upon a summon. Therefore, considering that it was only made aware of the said violation through the CGFD's letter on 31 May 2016, the computation of the daily penalty should be reckoned on such date.

On the other hand, CGFD contended that QCSC, Inc. was properly appraised of its violation in 2010 through OGA's letter. It argued that OGA's letter was addressed to the QCSC, Inc. bearing an attention directed to the corporation's president.[3] The said letter was received by a certain Bel dela Cruz.[4] It must be noted that CFGD's letter was also addressed to QCSC, Inc.'s president and it was also received by the same employee, Bel dela Cruz.[5]

After CGFD's receipt of QCSC, Inc.'s letter-reply[6], the CGFD found QCSC, Inc.'s arguments unmeritorious. As a result, the CGFD imposed a fine amounting to ₱823,500.00.

Thereafter, QCSC, Inc. sought for a reconsideration. However, the same was denied by CGFD.

Hence, this appeal.

---

[2] As stated in QCSC, INC.'s Reply received by the OGC on 27 December 2017.
[3] Annex "1" of CGFD's Reply.
[4] Annex "2" of CGFD's Reply.
[5] Annex "3-1" of CGFD's Reply.
[6] July 28, 2016

ISSUE

Whether or not QCSC, Inc. was properly appraised of its violation on ***28 April 2010***; hence, the calculation of the daily penalty should be reckoned from the said date.

DISCUSSION

After careful review of the facts and evidence presented, the Commission finds the ***arguments of QCSC, Inc. unmeritorious***.

First, QCSC, Inc.'s argument that the letter should have been served in a manner similar to a service of summons should have been served is misplaced. ***<u>The rule on summons does not apply in the present case</u>***.

It must be emphasized that an adjudicative action must precede before the issuance of summons. Under Section 4-1, Rule IV of the 2006 SEC Rules of Procedure, the issuance of summons is ***after*** a complaint is filed and ***after*** the filing fees are paid, to wit:

> "Upon the filing of the complaint and payment of filing fees, and determination by the Director of the Operating Department's jurisdiction over it and its sufficiency in form and substance, the proper summons to the respondent shall be issued by the Director not later than ten (10) days from the date of filing of the complaint"

The 2016 SEC Rules of Procedure echoes the same wordings, viz:

> "Upon the filing of the petition, the payment of filing fees and the determination by the Director of the Operating Department of its authority to act over the petition and of the sufficiency in substance of the petition, the Operating Department shall issue the corresponding summons."

The above-mentioned provisions are both lifted from Section 1, Rule 14 of the Rules of Court. Jurisprudence provides that the service of summons in ***adjudicative actions*** fulfills two (2) objectives: (1) acquisition of jurisdiction and (2) in observance of due process, viz:

> "The service of the summons fulfills two fundamental objectives, namely: (a) ***to vest in the court jurisdiction over***

> ***the person of the defendant***; and (b) ***to afford to the defendant the opportunity to be heard on the claim brought against him.***"[7] (emphasis supplied)

Furthermore, adjudicative action refers to the determination of the respective rights and obligations of parties.

Here, the case is ***not*** adjudicative in nature but **an administrative action** for the reason that QCSC, Inc. is being informed through a notice to explain whether or not there was a violation of the SRC, a law implemented by the Commission. Part I, Rule I, Section 1-3b of the 2016 SEC Rules of Procedure provides for the definition of an administrative action, to wit:

> "Administrative action shall refer to any proceeding involving the ***determination of any violation of laws, rules, regulations, circulars, and orders being enforced by the Commission and the imposition of appropriate penalties relative thereto.***" (emphasis and underscoring supplied)

Hence, ***service of summons as provided in the above-quoted provisions do not apply in the present case***.

Besides, what was sent to QCSC, Inc. was a notice to explain why it should not be made liable for violation of Rules 68 and 68.1 of the SRC. As such, requiring the Commission to apply the Rules on Service of Summons in the present case would overstretch the scope of actions on which said Rules are intended to apply.

Second, we delve into whether or not QCSC, Inc. was appraised of its violation of the said rules through OGA's letter. In its letter to CGFD,[8] QCSC, Inc. stated that "there appears to be no record"[9] of the letter sent by OGA in 2010. QCSC, Inc. further stated that the Commission did not make any follow up nor was there any mention of the OGA's letter in CGFD's letter dated 31 May 2016 to QCSC, Inc. The OGA's letter was only mentioned on a letter dated 29 March 2017, when the fine was already being imposed.

In *De la Cruz v. Department of Education, Culture and Sports - Cordillera Administrative Region*, the Supreme Court has held that substantial evidence suffices in administrative proceedings, which merely requires such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

---

[7] Macasaet et. al versus Co; G.R. No. 156759; 5 June 2013.
[8] Annex "6" of CGFD's Reply.
[9] Annex "6-1" of CGFD's Reply.

Moreover, the burden of proof is the duty of a party to prove the truth of his claim or defense, by the amount of evidence required by law.[10] Simply put***, the party who alleges a fact has the burden of proving it.***[11] (emphasis supplied)

Here***, the burden of proof lies with QCSC, Inc. to prove that it was not duly notified by substantial evidence***. However, QCSC, Inc. failed to discharge the burden of proof that it has not received OGA's letter in 2010. Based on the records, CGFD provided a receiving copy of the 2010 OGA letter which was received by QCSC, Inc.'s employee – Bel dela Cruz.[12] In fact, the 2016 letter of CGFD was also received by the same employee.

Therefore, considering QCSC, Inc.'s failure to prove, by substantial evidence that it has not received OGA's letter in 2010, the Commission has the reasonable ground to believe that *QCSC, Inc. was duly notified of its violation as early as 2010*. **Clearly, the weight of evidence bolsters CGFD's position that the QCSC, Inc. had been duly notified of its violation on *28 April 2010.***

Further, the Commission is under no legal obligation to make any follow-ups to corporations to settle their obligations with it, this obligation lies to the corporation and not to its regulator.

Lastly, the Commission is not convinced with QCSC, Inc.'s argument that it has no intent not to comply with the notice to explain.

Moreover, the Commission do not find any justifiable circumstance that would exempt QCSC, Inc. from complying with notice to explain. In fact, ***QCSC, Inc. was duly notified of the violation in 2010 and was given ample time to explain but it failed to do so***.

The principle of *dura lex sed lex* (the law may be harsh, but it is the law) finds apt application in the present case as the law is explicit. Hence, the penalties for said violations will have to be imposed. Consequently, ***the daily penalty should reckon from 28 April 2010.*** The CGFD is therefore correct in imposing the penalty in the amount of ₱823,500.00.

[10] Section 1, Rule 131 of the Rules of Court.
[11] Heirs of Teresita Villanueva, et. al. vs. Heirs of Petronila Syquia Mendoza, G.R. 209132, (June 5, 2017).
[12] Annex "3" of CGFD's Reply.

WHEREFORE, premises considered, the ***Memorandum of Appeal*** filed by Quezon City Sports Club, Inc. is hereby **DENIED** for lack of merit. The Commission En Banc **AFFIRMS** the decision of the Corporate Governance and Finance Department. Consequently, Quezon City Sports Club, Inc. is hereby **DIRECTED** to pay the assessed penalty in the amount of EIGHT HUNDRED TWNETY-THREE THOUSAND AND FIVE HUNDRED PESOS (₱823,500.00) within ten (10) days from receipt of this **DECISION**.

Let a copy of this **DECISION** be furnished to the Corporate Governance and Finance Department (CGFD) and to the Company Registration and Monitoring Department (CRMD) for their information and appropriate action.

SO ORDERED.

Pasay City, Philippines, 05 May 2020.

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner