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

BERNAD SECURITIES, INC.,
Appellant,

-versus-

SEC En Banc Case No. 02-20-471
Promulgated: 18 March 2025

CAPITAL MARKETS AND INTEGRITY CORPORATION,
Appellee.

x---x

DECISION

Before this Commission is the Appeal Memorandum dated 17 February 2020 (the "Appeal") filed by Appellant Bernad Securities, Inc. on 18 February 2024 assailing the Resolution dated 21 January 2020 (the "Assailed Resolution") issued by the Board of Directors of the Capital Markets Integrity Corporation, which affirmed its earlier Resolution dated 07 November 2019. The dispositive portion of the Assailed Resolution reads:

> RESOLVED FINALLY, That the Board of Directors of the Corporation affirm, as it hereby affirms the imposition of the following penalties on Bernad Securities for the following violations:

Rule Violated	Penalty
Bernad Securities' second violation of Article II, Section 2 of the CMIC Rules	Ten Thousand Pesos (Php 10,000.00)
Bernad Securities' first violation of Rule 30.2.9.2.7 of the 2015 SRC-IRR	Written Reprimand
Bernad Securities' second to one hundred fifty-first violation of Rule 30.2.9.2.7 of the 2015 SRC-IRR	One Million Five Hundred Thousand (Php 1,500,000.00)
Bernad Securities' seventieth violation of Rule 30.2.5.2 of the 2015 SRC-IRR in relation to PSE Memo No. 2008-0467	Ten Thousand Pesos (Php 10,000.00)
Bernad Securities' third to fifth violation of Article IX, Section 1 of the CMIC Rules	Thirty Thousand Pesos (Php 30,000.00)
Bernad Securities' third violation of Article VI, Section 2 of the CMIC Rules	Fifty Thousand Pesos (Php 50,000.00) with a directive to the Associated Person to henceforth comply with the cited provision."

The Appeal prays for the reversal and setting aside of the Assailed Resolution, specifically directing the Capital Markets Integrity Corporation to return the fine in the amount of Pesos: One Million Six Hundred Thousand (Php 1,600,000.00), which was paid by Bernad Securities, Inc. under protest.

THE PARTIES

Appellant Bernad Securities, Inc. (Bernad Securities) is a domestic corporation duly organized and existing under the laws of the Philippines having been issued a Certificate of Incorporation with SEC Registration No. AS93006463 on 23 August 1993, and a duly registered broker/dealer of securities.

Appellee, the Capital Markets Integrity Corporation (CMIC), is a domestic corporation duly organized and existing under Philippine laws having been issued a Certificate of Incorporation with SEC Registration No. CS201104274. CMIC is licensed to act as a Self-Regulatory Organization whose mandate is to maintain the integrity of the capital market and minimize the risk of the investing public by ensuring that trading participants comply with applicable rules and regulations. Its principal office is located at the 10/F PSE Tower, 5th Avenue corner 28th Street, Bonifacio Global City, Taguig City.

THE RELEVANT FACTS

In 2018, the Audit and Compliance Department of the CMIC (CMIC-Audit) conducted an Annual Regulatory Examination (the "Examination") of the books and records of Bernad Securities covering the period 01 July 2017 up to 30 June 2018[1], where it requested for relevant documents to facilitate the same, which Bernad Securities failed to submit on time. After the conclusion of the Examination, the CMIC-Audit found that the following acts/omissions of Bernad Securities violated the relevant rules and regulations, to wit:

(1) Bernad Securities did not submit done through transaction reports covering the one hundred eighty-three (183)

[1]Appeal Memorandum dated 17 February 2020.

transactions with Tower Securities, Inc. (TC11101400747287), Aurora Securities, Inc. (TC111015001354997), and Lucky Securities, Inc. (TC21101501354973), which is required under Rule 30.2.9.2.7 of the 2015 Implementing Rules and Regulations of the Securities Regulation Code (the "2015 SRC-IRR");[2]

(2) The sale transaction of Account 90882 (under the name of Bernad Securities' nominee, Mr. Elphege Wong) on 15 January 2018 involving 10,000 MAC shares at PhP21.12, was charged with a commission fee of PhP200.00, or 0.0946%, which is below the minimum required commission rate of 0.25%, in violation of Rule 30.2.5.2 of the 2015 SRC-IRR, in relation to PSE Memo No. 2008-0467;[3]

(3) There were discrepancies in the recorded money balances of three (3) client accounts which was shown in the customer account ledgers, received statement of accounts and Aging of Receivables, in violation of Article IX Section 1 of the CMIC Rules;[4]

(4) Bernad Securities used eight (8) different trading codes to execute its dealer account with backroom code 98, in violation of Article XV (1) of the Implementing Guidelines of the Revised PSE Trading Rules (the "Trading Rules");[5] and

(5) Bernard Securities' associated person failed to perform the required compliance functions, in violation of Article VI Section 2 of the CMIC Rules.[6]

On the basis thereof, the CMIC-Audit issued Show Cause Letters on 06 February 2019 and 05 August 2019 (the "Show Cause Letters"), directing Bernad Securities to explain in writing why it should not be held liable for violating the foregoing rules and regulations.

On 07 August 2019, Bernad Securities submitted its written explanation[7] on the findings of the CMIC-Audit. Bernad Securities provided the following justifications for its failure to comply with the

---

[2] Appeal Memorandum. Page 2 (See Annex "B").
[3] *Ibid.*
[4] *Ibid.*
[5] *Ibid.*
[6] *Ibid.*
[7] *Ibid.* See Annex "C".

relevant rules and regulations: (a) the non-reporting of the done through transactions was admitted, but the same was occasioned by the fact that this requirement was new to its staff; (b) the charging of the commission that was below the prescribed rate was overlooked, and was brought about by the fact that the account of Mr. Elphege Wong has been allegedly inactive for more than ten (10) years where the commission rate was still set at the minimum; and (c) the transactions of its dealer account were executed by different traders.[8]

During the exit conference held on 16 August 2019 conducted by the CMIC-Audit, Bernad Securities reiterated its allegations and justification in its written explanation.

After the proceedings, the CMIC issued its Resolution dated 07 November 2019, finding the justifications proffered by Bernad Securities to be without merit, and imposed upon it an aggregate fine of Pesos: One Million Six Hundred Thousand (PhP1,600,000.00) [the "Monetary Penalties"] for violating the relevant rules and regulations, the details of which are as follows:

(1) Ten Thousand Pesos (PhP10,000.00) for Bernad Securities' *second* violation of Section 2, Article II of the CMIC Rules;
(2) One Million Five Hundred Pesos (PhP1,500,000.00) for Bernad Securities' second to one hundred fifty-first violation of Rule30.2.9.2.7 of the 2015 SRC-IRR;[9]
(3) Ten Thousand Pesos (PhP10,000.00) for Bernad Securities' *seventieth* violation of Rule 30.2.5.2 of the 2015 SRC-IRR, in relation to PSE Memo No. 2008-0467;
(4) Thirty Thousand Pesos (PhP30,000.00) for Bernad Securities' *third to fifth* violation of Article IX, Section 1 of the CMIC Rules; and
(5) Fifty Thousand Pesos (PhP50,000.00) for Bernad Securities' third violation of Article VI, Section 2 of the CMIC Rules.[10]

In its letter dated 19 November 2019[11] (the "Request for Reconsideration"), Bernad Securities sought the reconsideration of the foregoing Resolution, specifically the imposition of the Monetary

---

[8] *Ibid.*
[9] The first violation of Rule30.2.9.2.7 of the 2015 SRC-IRR was meted with the penalty of "Reprimand".
[10] *Id.* See Annex "D".
[11] *Id.* See Annex "E".

Penalties. Bernad Securities argued that the Monetary Penalties is not commensurate with the offenses charged against it, and is allegedly punitive in nature. The imposition upon it of the Monetary Penalties is contrary to the principle under the CMIC Rules that sanctions are remedial in nature which are designed to ensure compliance, especially that fraud, manipulation and misconduct were not attendant in its failure to submit the done-thru transactions. Bernad Securities further argued that the immediate imposition of the Monetary Penalties without a prior reprimand and without giving it the opportunity to rectify the violation, constituted a violation of its right to due process.

The CMIC found the arguments in the Request for Reconsideration of Bernad to be without merit, and forthwith issued the Assailed Resolution affirming the findings in its earlier Resolution, and the imposition of Monetary Penalties.

On 5 February 2020, Bernad Securities paid the Monetary Penalties under protest, considering the absence of a stay order issued by the Commission.

The filing of the instant Appeal then followed, which essentially reiterated the allegations and arguments presented in the Request for Reconsideration.

On 23 June 2020, the CMIC filed its Comment (on Appellant's Appeal Memorandum), therein praying for the denial of the Appeal, and the affirmation of the Assailed Resolution. The CMIC maintained that the sanctions imposed in the Assailed Resolution are remedial in nature, and in accordance with the CMIC Rules.[12] The CMIC equally maintained that it observed due process in the instant case i.e. Bernad Securities was informed of its violations[13] and was given the opportunity to explain its side.[14] Lastly, the CMIC argued that the failure of Bernad Securities to comply with the reportorial requirements cannot be simply remedied by a belated submission of the necessary information as there is no provision under the CMIC Rules that allows the CMIC to dispense with the penalties imposed on the basis that there is belated compliance with the requirements under law.[15]

---

[12] Comment. Pars. 26, 27 and 54.
[13] *Ibid.* Pars. 37 and 45.
[14] *Ibid.* Par. 57.
[15] *Ibid.* Pars. 63 and 68.

ISSUE

(A) Whether the CMIC committed reversible error in imposing the Monetary Penalties.

(B) Whether Bernad Securities was denied of its right to due process.

RULING

The Appeal is bereft of merit and basis.

I. The CMIC correctly imposed the Monetary Penalties, consistent with the amounts prescribed under the CMIC Rules.

At the outset, it should be pointed out that the evidence on record shows Bernad Securities' express admission of the violations of the provisions in the 2015 SRC-IRR, the CMIC Rules, and the Trading Rules (the "Relevant Rules and Regulations"), which it was found to have committed, to wit:

> As per our first finding regarding the non-reporting of our done through transactions, my staff and AP totally forgot to submit the report.[16]
>
> On the matter of our second finding, my staff overlooked the commission amount and I overlooked it myself."[17]

The foregoing admissions established the fact that Bernad Securities violated the Relevant Rules and Regulations subject of the Show Cause Letters, which was affirmed and penalized accordingly by the CMIC in the Assailed Resolution. These admissions effectively removed the issue on whether Bernad Securities violated the Relevant Rules and Regulations. In fact, it is immediately apparent in the Appeal, that what Bernad Securities is assailing is **only** the propriety and validity of the Monetary Penalties.

---

[16] *Appeal*. See Annex "C".
[17] *Ibid.*

On account thereof, this Commission will proceed to determine if the CMIC erred in imposing the Monetary Penalties.

In support of its position that the CMIC committed reversible error in imposing the Monetary Penalties, Bernad Securities invoked Article XII, Section 2 of the CMIC Rules which provides for the principle that disciplinary sanctions are remedial in nature designed, among others, to ensure compliance and to prevent fraud. Bernad Securities argued that the Monetary Penalties imposed by the CMIC are punitive in the sense that the same was exorbitant, and did not allow Bernad Securities to remedy the situation by complying with the requirements.

We do not agree with Bernad Securities.

The "disciplinary sanctions" which Article XII, Section 2 of the CMIC Rules are referring to as "remedial in nature" are the sanctions prescribed in Section 4, Article XII of the CMIC Rules, which provides for the appropriate sanction(s) (for each count of violation) depending on the classification of the violation i.e. grave, major or minor, to wit:

(a) Grave Violations
   (i) First violation – Written reprimand and fine in the amount of at least Php25,000.00 but not exceeding Php200,000.00;
   (ii) Second violation – Fine of at least Php200,000.00 but not more than Php500,000.00 and/or denial of (1) the exercise of the Trading Right and (2) access to the facilities and systems of the Exchange for a period not exceeding fifteen (15) trading days;
   (iii) Third violation – Fine of at least Php500,000.00 but not more than Php1,000,000.00 and/or denial of (1) the exercise of the Trading Right and (2) access to the facilities and systems of the Exchange for a period not exceeding thirty (30) trading days;
   (iv) Fourth and subsequent violations – Bar the erring Trading Participant from entry to or employment in any kind of commercial association with the Exchange or other Trading Participant.

(b) Major Violations

   (i) First violation –Fine of at least Php10,000.00 but not more than Php30,000.00;
   (ii) Second violation – Fine of at least Php30,000.00 but not more than Php50,000.00;
   (iii) Third violation – Fine of at least Php50,000.00 but not more than Php100,000.00;

(iv) Fourth and subsequent violations – Fine of at least Php100,000.00.

(c) Minor violations

(v) First violation – Written reprimand;
(vi) Second and subsequent violations – a fine of at least Php10,000.00 but not more than Php50,000.00."

The foregoing sanctions are what the CMIC Rules consider and classify as remedial in nature; and such classification is not altered or modified by the actual amount of fine imposed on an erring trading participant. The reason for this is that the amount of the fine is always determined by the classification of the violation i.e. grave, major, or minor, and the number/count of violations committed. Thus, a trading participant, for instance, which is found to have committed a *minor* violation twice, will be meted with a sanction consisting of (a) a written reprimand (for the first count) and (b) a fine ranging from PhP10,000.00 to PhP50,000,00. On the other hand, a trading participant which commits a *major* violation for the fourth (4th) to the eleventh (11th) times will be meted with a sanction consisting of a fine in the amount of PhP100,000.00 for each count. In both cases, the total amount of fine imposed for the minor violation i.e. P50,000.00 (assuming that the maximum amount is imposed), as well as the total amount of fine imposed for the major violation i.e. PhP800,000.00 are classified under the CMIC Rules as remedial in nature, considering that both of them are intended to ensure compliance with the securities laws, and to prevent fraudulent and manipulative acts, among others. In other words, the fact that the amount of a fine is huge owing to the number of violations committed, does not negate its nature and purpose as remedial, contrary to the position of Bernad Securities. The doctrine in *People v. Cruz*[18] which affirmed the validity of a penalty that is authorized by law, is instructive, to wit:

> It takes more than merely being harsh, excessive, out of proportion, or severe for a penalty to be obnoxious to the Constitution. "**The fact that the punishment authorized by the statute is severe does not make it cruel and unusual." Expressed in other terms, it has been held that to come under the ban, the punishment must be "flagrantly and plainly oppressive," "wholly disproportionate to the nature of the offense as to shock the moral sense of the community**. (Emphasis supplied)

---

[18] G.R. No. L-25513, March 27, 1968 [Per J. Reyes, J.B.L, En Banc]. See also *Flores-Concepcion v. Judge Castaneda* (A.M. No. RTJ-15-2438 [Formerly OCA I.P.I. No. 11-3681-RTJ], September 02, 2020 [Per J. Leonen, En Banc].

On account thereof, this Commission holds that as long as the CMIC imposes a fine on the basis of the classification of the violation i.e. grave, major or minor, and the number/count of violations committed by the trading participant, the resulting aggregate amount of the fine will be valid, and will continue to be classified as remedial in nature. This is the import of Section 2, Article XII the CMIC Rules which this Commission is bound to apply.

Thus, this Commission equally holds that the CMIC did not commit reversible error in imposing the Monetary Penalties which, as the records will bear, was arrived at on the basis of both the nature of, and the number of violations committed by Bernad Securities.

Considering, however, that the violations relating to the failure of Bernad Securities to comply with the reportorial requirements under the CMIC Rules account for, and resulted in the imposition upon it of the Monetary Penalties, it may be well to emphasize the importance of these reports in protecting investors, and in maintaining the integrity of the market.

Time and again, this Commission has emphasized that compliance with reportorial requirements plays a very important and critical role in our regulatory system as it relates to the implementation of the State policy that ensures full and fair disclosure of securities to promote the development of the capital market, protect investors and eliminate fraudulent or manipulative devices and practices. The requirement to file/submit reports and disclosures prescribed under the securities laws, rules and regulations is mandatory and absolute. In this regard, The Supreme Court in *SEC v. Universal Rightfield Property Holdings, Inc.*[19] emphasized the importance of complying with reportorial requirements, and sustaining the imposition of the supreme penalty of revocation in case of repeated non-compliance, to wit:

> Therefore, notwithstanding the belated filing of the said reports, as well as the claim that public interest would be better served if the SEC will merely impose penalties and allow it to continue in order to become profitable again, the **SEC cannot be faulted for revoking once again URPHI's registration of securities and permit to sell them to the public due to its repeated failure to timely submit such reports. Needless to state, such continuing reportorial requirements are pursuant to the state policies declared in Section 2 of the SRC of**

[19] G.R. No. 181381, July 20, 2015 [Per J. Peralta, Third Division].

protecting investors and ensuring full and fair disclosure of information about securities and their issuer. (Emphasis supplied)

II. Bernad Securities was not denied of its right to due process.

In its Appeal, Bernad Securities maintained that its right to due process was denied when the penalty of written reprimand was served together with the imposition of fines therefore denying it the opportunity to correct its mistake. It is the position of Bernad Securities that the penalty of "reprimand" is a condition precedent for a valid imposition of any fine; and that the failure of the CMIC to observe this rule constitutes a violation of its right due process.

Bernad Securities' argument has no basis in law and jurisprudence.

In our jurisdiction, it is hornbook doctrine that the essence of due process in administrative proceedings is the opportunity to explain one's side, or seek a reconsideration of the action or ruling that is being assailed. Thus, administrative due process is satisfied where the notice requirement, and the opportunity to be heard, either through oral arguments or pleadings, are complied with,[20] and respondent is given the opportunity to explain his/her side or the opportunity to seek reconsideration of the action/ruling that is being assailed. We find this doctrine emphasized and applied in the case of *Ledesma v. Court of Appeals*[21], to wit:

> Due process, as a constitutional precept, does not always and in all situations require a trial-type proceeding. Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. **The essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of**. (Emphasis supplied)

---

[20] *Vivo v. Philippine Amusement and Gaming Corporation*, G.R. No. 187854, November 12, 2013 [Per J. Bersamin, En Banc].
[21] G.R. No. 166780, December 27, 2007, [Per J. Tinga, Second Division].

In the instant case, the records show that Bernad Securities was informed of the nature of cause/charges against it; was given the opportunity to explain its side and adduce its defenses through the Show Cause Letters that were issued by the CMIC; and actively participated in the exit conference where another opportunity to explain its side was given to it. The records also show that Bernad Securities filed the Request for Reconsideration where it pointed out the findings in the Resolution which, to its mind, were not supported by law. Verily, Bernad Securities cannot claim that it was *deprived of its day in court* as these established facts show otherwise.

Moreover, We do not agree with Bernad Securities' argument that the imposition of a fine before and/or simultaneously with the penalty of "reprimand" constitutes a violation of the right to due process. This has no basis in, and is not supported by the provisions of the CMIC Rules (and jurisprudence).

In relation to Bernad Securities' one hundred fifty-one counts[22] of violation of Rule 30.2.9.2.7 of the 2015 SRC Rules which Section 3(c), Article XII of the CMIC Rules classifies as a "minor violation", Section 4(c) of Article XII expressly provides, thus:

> Minor violations
>
> (vii) First violation – Written reprimand;
> (viii) Second and subsequent violations – a fine of at least Php10,000.00 but not more than Php50,000.00."

The afore-quoted provision of the CMIC Rules does not grant CMIC the discretion in imposing the prescribed sanctions. The CMIC is duty-bound to impose the penalty(ies) for the number of violation(s) found to have been committed by a trading participant. Thus, if there is only one (1) violation, the CMIC must impose the penalty of reprimand. In such case, the erring trading participant is given sufficient warning that a repetition of the same violation will be meted with the appropriate fine, as what Bernad Securities was trying to adduce in its Appeal. This circumstance is, however, not applicable if a trading participant is found to have committed a number of violations, simultaneously or successively. In such case, the CMIC must impose the penalty of

[22] Section 5, Article XII of the CMIC Rules provides: "In imposing disciplinary sanctions, CMIC or the CMIC Board shall treat each count of violation as one and separate violation and shall not treat several counts of violations arising from the same set of facts as a single violation."

reprimand for the first violation, and fine in the amount ranging from Php10,000.00 but not more than Php50,000.00, for the succeeding violations. The only discretion given to the CMIC in this latter case is the amount of the fine to be imposed which must be within the range provided in the CMIC Rules.

In the instant case, the finding of the CMIC on the number of violations of Rule 30.2.9.2.7 of the 2015 SRC Rules committed by Bernad Securities was not controverted. We therefore find no cogent reason to disturb, more so modify or reverse the amount of the fine that was imposed upon Bernad Securities. We hold that the CMIC correctly applied Section 4(c) in relation to Section 5 of the CMIC Rules.

WHEREFORE, premises considered, the *Appeal Memorandum* filed by Bernad Securities Inc., is hereby **DISMISSED** for want of merit and basis. The Resolutions dated 07 November 2019 and 21 January 2020 issued by the Capital Markets Integrity Corporation are hereby **AFFIRMED**.

SO ORDERED.

Makati City, Philippines.

EMILIO B. AQUINO
Chairperson

JAVEY PAUL D. FRANCISCO
Commissioner

KARLO S. BELLO
Commissioner

MCJILL BRYANT T. FERNANDEZ
Commissioner

ROGELIO V. QUEVEDO
Commissioner