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

JOVITO ONG,
Appellant,

-versus-

R. NUBLA SECURITIES, INC. and CAPITAL MARKETS INTEGRITY CORPORATION,
Appellees.
x--x

SEC En Banc Case No. 07-13-296

DECISION

This resolves the Memorandum of Appeal dated 16 July 2013 filed by Appellant Jovito Ong on 18 July 2013 before this Commission to assail the Letter-Order of the Capital Markets Integrity Corporation dated 1 July 2013[1] (the "Order") dismissing Appellant Ong's complaint against Appellee RNSI for violation of existing trading rules and other securities law.

THE PARTIES

Appellant **JOVITO G. ONG (Appellant Ong),** is a Filipino, of legal age, and a resident of 6 Harding Street, Greenhills West, San Juan, Metro Manila.

Appellee **R. NUBLA SECURITIES, INC. ("RNSI")** is a corporation duly organized under Philippine laws, with principal office at Room 300 CNC Investment Building, 231 Juan Luna Street, Binondo Manila.

Appellee **CAPITAL MARKETS INTEGRITY CORPORATION ("CMIC"),** formerly known as the Board of Market Integrity of the Philippine Stock Exchange, Inc. is a self-regulatory organization, duly organized and registered in the Philippines with the primary purpose of reinforcing the confidence of the investing public in capital market institutions and promoting a more active and vibrant market participation. Accordingly, CMIC acts as the independent audit, surveillance and compliance arm of the Philippine Stock Exchange.[2]

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[1] Memorandum of Appeal, Annex "A".
[2] http://www.cmic.com.ph/main/aboutUs.html. (Visited 23 July 2019).

STATEMENT OF FACTS

In his Memorandum of Appeal, Appellant Ong alleged that he filed a Letter-Complaint dated 8 September 2012[3] before the CMIC against RNSI on the ground that the latter failed to turn over the proceeds of the sale of the nine hundred twenty-two thousand one hundred seventy-six (922,176) Philippine Bank of Communications shares ("the PBCom Shares") under his name last December 2011, in violation of several trading rules on settlement and other securities law. In support of his allegations, Appellant Ong attached the following documents to his Letter-Complaint:

a) Invoice No. 44972 dated 23 December 2011[4] to show that appellee RNSI received the PBCom Shares from Appellant Ong for sale;
b) the Sales Confirmation Invoice dated 23 December 2011[5] issued by RNSI to Appellant Ong, which shows that the PBCom Shares were successfully sold in the market,
c) the Daily Trading Transaction Report of RNSI dated 23 December 2011[6] showing that the subject PBCom Shares of Appellant Ong were actually sold, a Debit Memorandum dated 23 December 2011[7] issued by RNSI to Appellant Ong; and
d) Official Receipt No. 46867 dated 26 December 2011[8] issued by RNSI to Appellant Ong showing that the former was paid its commission for the sale of the subject PBCom Shares.

Prior to the institution of the letter complaint, Appellant Ong alleged that he sent several demand letters[9] to Appellee RNSI, through his counsel, where the latter replied, through its counsel[10], that his claims had no basis.

In its Answer[11] and Rejoinder[12], which were filed in the course of the CMIC proceedings, RNSI averred that the PBCom Shares were transacted by Ralph Nubla, Jr. by virtue of a "Special Power of Attorney" allegedly issued by Appellant Ong containing the terms of sale of the PBCom Shares, in accordance with the Financial Assistance Agreement between the PDIC and

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[3] Memorandum of Appeal, Annex "B".
[4] Records, p. 38.
[5] *Id.*, p. 37.
[6] *Id.*, pp. 35-36.
[7] *Id.*, p. 34.
[8] *Id.*, p. 33.
[9] *Id.*, pp. 28-29; 31-32.
[10] *Id.*, p. 30.
[11] Memorandum of Appeal, Annex "D"
[12] *Id.*, Annex "E: and "E-1".

the controlling shareholders of PBCom, as well as the Custodianship Agreement dated 15 March 2004 and 23 March 2004, respectively.

Further, RNSI contended that the sale of the PBCom Shares was in accordance with the pre-arranged block sale agreement between the buyers and sellers of the same, allegedly consistent with the terms of the Memorandum of Agreement dated 26 July 2011 between the Nubla, Chung and Luy Groups as sellers and Mr. Roberto Ongpin as buyer. Finally, RNSI averred that since Appellant Ong was the president of the latter during that time, it was his responsibility to ensure that RNSI strictly complied with the pertinent rules and regulations and that he had all the resources to demand for the payment of the amount due to him at the earliest opportunity, which he failed to do. Appellant Ong, in his Reply[13], rebutted RNSI's allegations by raising the issue that direct settlements between buyers and sellers are prohibited under the existing trading rules during that time.

After the parties submitted their respective pleadings, the CMIC held an informal conference, which was attended by the parties. During the conference, respondent RNSI failed to produce the Special Power of Attorney executed by Appellant Ong in favor of Ralph Nubla, Jr., authorizing the sale of the PBCom Shares and justified such failure on the exercise of its duty to observe confidentiality. After evaluating the positions and documents presented by the parties, the CMIC issued the assailed Letter Order finding no violation of any trading rules on the part of RNSI and dismissing Appellant Ong's complaint on the ground that the sale of the subject PBCom Shares was in accordance with the Implementing Guidelines of the Revised Trading Rules of the Exchange.

In his Memorandum of Appeal, Appellant Ong alleges that RNSI violated Rule 2.1.5 of the Revised Operating Procedures of the Securities Clearing Corporation of the Philippines, which requires that the settlement of sales of securities be made within three (3) business days after transaction date and that he was deprived of due process.

ISSUE/S

I. Whether or not Jovito Ong was denied due process.

II. Whether or not a reinvestigation by CMIC of the transactions involving the instant case is warranted.

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[13] Memorandum of Appeal, Annex "D".

DECISION

After careful consideration of the facts and circumstances, as well as the evidence presented by both parties, this Commission hereby resolves to deny the appeal for lack of merit.

1. APPELLANT ONG WAS AFFORDED DUE PROCESS CONSISTENT WITH EXISTING AND APPLICBLE RULES OF THE COMMISSION

CMIC is a self-regulatory organization, the primary mandate of which is to maintain the integrity of the market and to minimize the risk of the investing public by ensuring that the Trade Participants (TP) adhere to and comply with all pertinent rules, regulations, and code of conduct of CMIC and the Exchange, as well as all related legislative and regulatory requirements. Tasked with regulating and monitoring the activities of market participants, the CMIC enforces rules, guidelines, and provisions of the Securities Regulation Code, or the SRC, and other securities laws, applicable to the operations and dealings of the TPs including, in particular cases, issuers whose securities are listed in the Exchange. Verily, under the CMIC Rules, which took effect in March 2012, one of the main functions of CMIC is to ensure compliance by TPs and Issuers with the securities laws.

Appellant Ong correctly pointed out that due process must be observed even in administrative cases, citing for this purpose, the case of Ang Tibay vs CIR[14] (Ang Tibay Case). The records of the case reveal that CMIC conducted a conferenced and afforded the parties the opportunity to present their respective arguments and positions. The foregoing is supported by the fact that, as admitted by Appellant Ong in his Memorandum on Appeal, both Appellant Ong and RNSI filed their respective pleadings which were duly considered by CMIC in coming up with the assailed Order. These factual circumstances thus negate Appellant Ong's allegation that he was denied due process.

CMIC sufficiently satisfied the demands of fair play when it afforded the parties to submit and present their respective positions and evidence. Appellant Ong is in fact estopped from raising this issue of violation of due process after he actively participated in the conference conducted by CMIC, submitted the appropriate pleadings in response to the ones filed by RNSI. In

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[14] 96 Phil 635

the case of Vivo vs PAGCOR[15], the Supreme Court clarified the concept of due process in the context of administrative proceedings, thus:

> "The essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard. In administrative proceedings, such as in the case at bar, procedural due process simply means the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of. "To be heard" does not mean only verbal arguments in court; one may be heard also thru pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process."

Appellant Ong belabored his position that he was denied due process by going to the extent of emphasizing that he was allegedly not furnished with the documents which were relied upon by CMIC in coming up with the Order. He is of the position that the foregoing violated one of the requisites prescribed in the Ang Tibay Case i.e. "*The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected.*"[16]

The Commission is not convinced. A careful reading of the requisite which Appellant Ong quoted would reveal that what is required is that the Decision which is based on the evidence presented during the hearing should be disclosed to the parties. This was complied with by CMIC; and no less than Appellant Ong himself admitted that he received a copy of the assailed Order.

2. REINVESTIGATION IS NOT WARRANTED IN THE INSTANT CASE

Having established that CMIC complied with the due process requirement, we now resolve the question on whether CMIC committed grave error in appreciating the facts and the law, or serious irregularities in the proceedings that warrants the conduct of a reinvestigation. After review of the records, the Commission finds that reinvestigation is not warranted and there is thus no reason to disturb the findings of the CMIC in the assailed Order.

The Commission finds that CMIC did not commit reversible error in dismissing the complaint of Appellant Ong for lack of merit.

The existence and due execution of the Memorandum of Agreement dated 26 July 2011 (the "MOA") is not disputed. Pursuant to the MOA, the

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[15] GR No. 187854, November 12, 2013.
[16] See page 19 of the Memorandum on Appeal.

Nubla, Chung and Luy groups (the "Sellers") agreed to the disposal via block sale of the PBC shares (consisting of 47,094,807 common shares and 120,000,000 preferred shares), which included the PBCom Shares of Appellant Ong, to the group of Mr. Roberto Ongpin (Buyer). The PBCom Shares of Appellant Ong were among the shares held by the Nubla Group which was represented by Mr. Ralph Nubla Jr. (Mr. Nubla). This was in fact disclosed by PBC to the Exchange on 23 December 2013.

Moreover, a careful review of the MOA would reveal that CMIC was correct in finding that RNSI was not in any way obligated to settle the proceeds of the sale considering that the parties expressly agreed that the responsibility to settle the proceeds of sale to the designated bank accounts of the Sellers was with PBC, the escrow agent. On account of the foregoing, Appellant Ong's recourse to ensure receipt of the proceeds of the sale of his PBCom Shares was to collect the same from Mr. Nubla, the authorized representative of the Nubla Group, and not from RNSI. Furthermore, the Commission duly notes of the fact that Appellant Ong was the President of RNSI when the MOA was executed and implemented. Lastly, the records of the CMIC proceedings show that Appellant Ong did not deny the existence and the validity of the SPA he executed in favor of Mr. Nubla. The absence of evidence on record showing that Appellant Ong had no participation or knowledge of the same leads this Commission to agree with the position of CMIC that Appellant Ong is presumed to be aware and have agreed to these transactions considering that overseeing the over-all operations of RNSI is one of his primary functions.

The Commission also agrees with the finding of CMIC that RNSI did not violate securities laws, rules and regulations on the ground that the block sale of the PBC shares, which included the PBCom Shares of Appellant Ong, was in the nature of special block sale[17] sanctioned under the Implementing Guidelines of the Revised Trading Rules of the Exchange.

As a final word, the Commission would like to stress that as a matter of policy, the operating departments, special hearing panels, and self-regulatory organizations who have the primary jurisdiction to take cognizance of matters within their competence and expertise, are afforded the presumption of regularity in the performance of their functions. The foregoing policy is embodied in Sec. 3-11, Part V, Rule III of the 2016 SEC Rules of Procedure which states that findings of fact by the Operating Department, the Special Hearing Panel or the Self-Regulatory Organization shall not be disturbed by the Commission En Banc, **unless serious errors of fact have been committed**. This rule is important because it facilitates efficiency in the administration and dispensation of justice; it is designed to ensure that

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[17] As an exception to the general rule provided in Article VII, Section 5(a) of the Amended Market Regulation Rules (MRD Rules)

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courts and quasi-judicial tribunals are not reduced to a mere fact finding bodies. To successfully overcome such presumption of regularity, case law demands that the evidence against it must be clear and convincing; absent the requisite quantum of proof to the contrary, the presumption stands deserving of faith and credit.[18] The Commission finds that the Order of CMIC was rendered consistent with applicable rules and regulations, and on the basis of the evidence presented by the parties. This being the case, the presumption of regularity stands; the Commission thus decides not disturb the Order.

WHEREFORE, premises considered, the Order of the CMIC dated 1 July 2013 is hereby **AFFIRMED**. The Memorandum of Appeal of appellant Jovito Ong is hereby **DISMISSED** for lack of merit.

SO ORDERED.

Pasay City, Philippines, 3 December 2019.

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner

[18] Yap vs Lagtapon. GR No. 196347, January 23, 2017