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

AZURESTAR CORPORATION,
Appellant,

- *versus* - **SEC En Banc Case No. 02-15-356**

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,
Appellee.
x--x

DECISION

Before this Commission is the Memorandum on Appeal dated 17 February 2015 filed by Azurestar Corporation (the "Appellant") on 18 February 2015, assailing the Order (Second and Final) dated 28 January 2015 (the "Assailed Order") of the Enforcement and Investor Protection Department (EIPD) (the "Appeal") for allegedly being based on erroneous findings, the dispositive portion of which reads:

> "For purposes of due process and if only to afford the company the last chance to settle the penalties, it is directed to pay the amount of P619,519.36 as penalty within fifteen (15) days from receipt of this Order. Failure to comply with this Order shall constrain this department to initiate revocation proceedings against the license of AZURESTAR CORPORATION."

THE PARTIES

Appellant Azurestar Corporation is a domestic corporation duly organized and existing under Philippine laws having been issued a Certificate of Incorporation, with SEC Registration No. CS200403122. Its principal office address is at 2258 Chino Roces Avenue, Makati City.

Appellee EIPD is one of the operating departments of the Commission tasked to ensure compliance by all market participants, issuers and persons with the laws, rules and regulations implemented by the Commission, to investigate, *motu proprio,* or upon a verified complaint or referral, and to take appropriate enforcement action for any violation thereof. It is vested with the primary authority to conduct investigations and administrative actions involving, among others, the selling, offering or transacting of unregistered securities without a secondary license, as well as to initiate petitions for revocation of certificate of registration based on grounds within its jurisdiction.

STATEMENT OF RELEVANT FACTS

In a Letter-Order dated 28 May 2013, the then Enforcement and Prosecution Department[1] informed Appellant that based on the audit findings of the Office of the General Accountant on its 2008, 2009, 2010 and 2011 Audited Financial Statements (AFS), there were material disclosure deficiencies and material misstatements which were violative of Section 141 of the Corporation Code and SRC Rule 68. Appellant was thus directed to explain/comment on the said findings within fifteen (15) days from receipt thereof.

For failure of Appellant to submit an explanation, the EIPD issued an Order dated 29 May 2014 finding that the 2008, 2009, 2010 and 2011 AFS of Appellant were not compliant with the disclosure requirements under Rule 68 of the SRC, and imposed a monetary penalty of Php619,519.36 (the "Monetary Penalty").

In a letter dated 21 July 2014, Appellant sought the indulgence of the Commission and prayed for the reconsideration of the imposition of the Monetary Penalty on the ground that (a) there was no malicious intent, (b) no material advantage accrued to it as a consequence of its use of the historical cost, and (c) it merely relied on the professional advice of its external auditor.

The EIPD impliedly denied the request of Appellant when it issued the Assailed Order without acting on the same. Hence, the instant Appeal.

ISSUE

Whether the EIPD committed reversible error in finding that Appellant violated SRC Rule 68 and in imposing the Monetary Penalty on the basis thereof.

DISCUSSION

The Commission denies the Appeal for lack of merit.

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[1] Now the Enforcement and Investor Protection Department.

The records show that the imposition of the Monetary Penalty was based on the finding that Appellant (a) failed to recognize the fair value adjustments in the Equity Section in its 2009 and 2010 AFS which is required under PAS 39[2], (b) made material disclosure deficiencies in its 2008, 2009 and 2011 AFS, and (c) made material misstatements in its 2008 and 2009 AFS for its failure to recognize fair value adjustments.

In its Appeal, Appellant admitted and accepted, albeit impliedly, the correctness of the findings of the OGA which were affirmed by the EIPD when it stated that "*it would no longer be questioning the finding that there were material disclosure deficiencies in the hope of expediting the proceedings (and not waste the Honorable Commission's time) and in the recognition that nobody is perfect (and the audited Financial Statements having been prepared by human beings may indeed have contained deficiencies).*"

The foregoing admission affirmed the correctness of the finding of the OGA which was used by the EIPD as the basis of the Assailed Order, and justified the imposition of the Monetary Penalty. In *Republic v. Sarabia*[3], the Supreme Court emphasized the legal effect of admissions made by a party litigant in the course of the proceedings, thus:

> "Surely, private respondents' admissions in their Answer and Pre-Trial Brief are judicial admissions which render the taking of the lot in 1956 conclusive or even immutable. And <u>well-settled is the rule that an admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. A judicial admission is an admission made by a party in the course of the proceedings in the same case, for purposes of the truth of some alleged fact, which said party cannot thereafter disprove</u>. Indeed, an admission made in the pleading cannot be controverted by the party making such admission and are conclusive as to him, and that all proofs submitted by him contrary thereto or inconsistent therewith should be ignored whether objection is interposed by a party or not." (Emphasis supplied)

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[2] "Paragraph 46. After initial recognition, <u>an entity shall measure financial assets</u>, including derivatives that are assets, <u>at their fair values</u>, without any deduction for transaction costs it may incur on sale or other disposal, except for the following financial assets:

(a) Loans and receivables as defined in Paragraph 9, which shall be measured at amortized cost using effective interest method;
(b) Held to maturity investments as defined in paragraph 9, which shall be measured at amortized cost using effective interest method; and
(c) Investment in equity instruments that do not have a quoted market price in an active market and whose fair value cannot be reliably measured and derivatives that are linked to and must be settled by delivery of such unquoted equity instruments which shall be measured at cost. xxx"

[3] G.R. No. 157847, August 25, 2005

Appellant however maintained in its Appeal that the EIPD committed reversible error in sustaining OGA's finding of material misstatement, arguing that it failed to show that bad faith was attendant in the preparation and submission of the subject AFS. Appellant argued that bad faith should be proven to support a finding of "misstatement" considering the absence of a regulatory or jurisprudential definition of such concept. Appellant thus concluded that if at all, the violations found by OGA and affirmed by EIPD only amounted to material deficiencies since bad faith was not established.

The Commission does not agree.

Memorandum Circular No. 8, series of 2008 which implements Section 68 of the SRC clearly defines and enumerates what constitutes "material misstatements" in financial statements which the OGA and the EIPD used as one of the basis in evaluating Appellant's AFS.

Moreover, it bears emphasis that the defense of good faith is immaterial and irrelevant in violations of the financial reporting requirements of the Commission. Good faith or bad faith hardly comes into the picture in the enforcement of simple rules mandating submission of reportorial requirements. To allow legal notions to intrude at every level in the implementation of these rules would defeat their very purpose, as every penalty could be subject to question and every violation based on a clear-cut rule would be qualified by the presence or absence of good faith or bad faith, or the question of motive or intent.[4]

Finally, the Commission agrees with EIPD that Appellant's argument that it cannot be held liable for violation of Section 68 of the SRC as it merely relied on the professional advice of its external auditor is untenable. The records show that Appellant's management expressly declared in in the Statement of Management's responsibility for Financial Statements that "*the corporation is responsible for all information and representation contained in its financial statements.*"

WHEREFORE, premises considered, the Memorandum of Appeal filed by Azurestar Corporation is hereby **DENIED** for lack of merit. The Order of the EIPD dated 28 January 2015 is hereby **AFFIRMED.**

SO ORDERED.

[4] In re Clearwater Country Club, Inc., SEC EN Banc Case No. 08-07-111, March 25, 2010

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Pasay City, Philippines, 26 October 2020.

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner