Republic of the Philippines
Department of Finance
Securities and Exchange Commission
Pasay City, Philippines

In the matter of the Penalty Imposed against Royale Tagaytay Country Club SEC En Banc Case No. 01-11-227 Inc., for Non-filing of the Required Annual, (SEC Form 11-A), Quarterly (SEC Form 11-Q), and Current Report or Material Facts/Events Report (SEC Form 11-C), pursuant to SRC Section 17.2(a).	SEC En Banc Case No. 01-11-227
ROYALE TAGAYTAY COUNTRY CLUB, INC., represented by its General Manager, Mr. Ruben B. Encinas, *Offeror-Appellant.*	

DECISION

This resolves the appeal of Royale Tagaytay Country Club, Inc. from the Notice issued by the Enforcement and Prosecution Department, dated 5 January 2011, disapproving the company's Offer of Compromise.

Appellant is a non-stock, non-profit corporation registered with this Commission under SEC Reg. No. 0000197316. On 9 August 2006, the Corporation and Finance Department (CFD) imposed the penalty of Eight Million, Six Hundred Ninety-Five Thousand, Eight Hundred Pesos (P8,695,800.00) upon Appellant for its failure to file its annual (SEC Form 11-A), quarterly (SEC Form 11-Q), and current reports or material facts/event report (SEC Form 11-C)[1] from 1997 to 2004.

On 23 October 2006, Appellant sought reconsideration of the abovementioned imposition of fines. CFD, in its letter dated 16 June 2010, denied reconsideration and directed Appellant to pay the assessed penalty within ten (10) days from receipt of the letter.

Appellant filed a *Motion for Reconsideration with Offer of Compromise* on 16 August 2010. CFD denied the motion, without prejudice to the outcome of the Offer of Compromise, which was endorsed to the Enforcement and Prosecution Department (EPD) on 27 August 2010.

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1 Formerly required under Section 11 of the then Revised Securities Act and RSA Implementing Rule 11(a)-1 of the RSA Full Disclosure Rules, currently required under Sections 17, 17.1(a)(b) and 17.2(a) of the Securities Regulation Code.

On 18 October 2010, Appellant filed before the EPD an *Appeal with Offer of Compromise* and offered to pay the amount of Two Hundred Fifty Thousand Pesos (P250,000.00) in lieu of the total assessed penalty imposed by CFD. Appellant was required and submitted documents[2] in support of its appeal. In its *Full Compliance for Submission of a) Board Resolution for the Appeal with Offer of Compromise and b) 2010 General Information Sheet with Motion to Approve the Offer of Compromise*, Appellant sought approval of its settlement offer in the amount of One Million, Three Hundred Four Thousand, Three Hundred Seventy Pesos (P1,304,370.00).

In its letter, dated 5 January 2011, EPD disapproved Appellant's *Offer of Compromise*, stating that:

> While the settlement offer is not less than fifteen percent (15%) of the total imposable penalty required by Section 10-10(b) of the SEC 2006 Rules of Procedure and the company's Income Tax Returns from 2003 to 2009 reflected negative taxable income, we also note that based on its 2009 Financial Statement, it has Php115,614,000 total assets. Considering this, we find that the company is in the position to pay the said total monetary penalty. We regret to inform you that your settlement offer is unacceptable.

On 24 January 2011, Appellant filed an *Appeal* with the Commission En Banc. More than a year later, or on 31 January 2012, Appellant filed its *Supplemental Documentary Evidence to Appeal.* Then, on 9 May 2012, it filed an *Amended Appeal with Prayer for Condonation of Penalty on Ground of Serious Losses from the Year 2003 to Present and the Imposition of the Penalty of P8,695,000.00 will push the Appellant to Eventual Closure.*

The issues raised in Appellant's *Appeal* of 24 January 2011, are the following:

1. Appellant did not violate any provision of law, nor was it motivated by criminal intent or fraud, in failing to comply on time with the reportorial requirements prescribed by the Securities Regulation Code or its Implementing Rules and Regulations.
2. The Notices of Non-Compliance with Reportorial Requirements were not sent to Appellant's principal address; hence, such cannot be considered as due notice to Appellant.

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2 Letter-Engagement signed by Atty. Melchor Monsod and "Mariza & Mr. Sarayba", dated 6 March 1998; Letter, dated 6 March 1998, signed by Atty. Melchor Monsod, requesting an increase of his basic legal retainer's fee; Statement of Account as of June 2004; Photocopy of Bank of the Philippine Islands check payable to the order of Melchor Monsod, worth P1,361.79; Check Voucher, dated 1 June 2004, under the name of Melchor Monsod; Board Resolution for the Appeal with Offer of Compromise; and 2010 General Information Sheet.

3. The offer to settle the imposed penalty from Eight Million, Six Hundred Ninety-Five Thousand (P8,695,800.00) to One Million, Three Hundred Four Thousand, Three Hundred Seventy Pesos (P1,304,370.00), which is fifteen percent (15%) of the total imposed penalty, is authorized by Section 10-10(b) of the 2006 Rules of Procedure of the SEC and in principle was agreed upon per the minutes of the conference held on 26 October 2010.

As to the first issue, we will not rule on such as the Appeal Order only pertains to the propriety of the denial of the settlement offer, and not as to the merits of the violation committed by the Appellant warranting the penalty.

As to the second issue, Notices of Non-Compliance with Reportorial Requirements were not duly served upon it. It alleges that the notices were not sent to its principal address at Emilio Aguinaldo Highway, Buck Estate, Alfonso, Cavite, but instead to the office of Sta. Lucia Development Corporation, its developer, at G/F State Financing Center Building, Ortigas Avenue, Mandaluyong City. However, aside from these averments, Appellant failed to present any evidence that it failed to receive the notices. CFD, in its letter to Appellant dated 16 June 2010, pointed out that:

> Records show that the Commission previously sent notifications to the company at G/F State Financing Center Bldg., Ortigas Avenue, Mandaluyong City, the principal business office indicated in its (then Royale Tagaytay Estates Sports and Country Club, Inc.) Registration Statement which was received by the Commission on 28 February 1994.
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> Records likewise show that the notices were addressed to the company's President, Atty. Mariza Santos-Tan, at G/F State Financing Center Bldg., Ortigas Avenue, Mandaluyong City, and that the company responded to notices sent thereat.
>
> It bears stressing that reporting companies are strictly mandated to faith-fully comply with their obligations under the SRC and its IRR. The company's alleged failure to receive the aforesaid notices is not an excuse from compliance with the law.

As to the last issue, The Summary of Proceedings/Conference[3] does not reflect any so-called "agreement in principle" between the hearing officers and Appellant relative to the approval of the offer of compromise from Eight Million, Six Hundred Ninety-Five Thousand, Eight Hundred Pesos (P8,695,800.00) to One Million, Three Hundred Four Thousand, Three Hundred Seventy Pesos (P1,304,370.00). The Summary of Proceedings/Conference states, that:

3 Annex "G", Reply Memorandum.

[Atty. Norman M. Verzosa] was also informed that the minimum settlement offer acceptable to this Commission is 15% of the total assessed monetary penalty. He promised to take up the matter with their Board of Directors.

Hence, it appears that Appellant was merely informed of the minimum settlement offer prescribed by Section 10-10(b) of the 2006 Rules of Procedure, and not assured that such minimum amount shall be approved by EPD, contrary to its claim.

In the course of the appeal, the Commission has formalized the rules regarding requests for reduction of penalty. SEC Office Order No. 183, Series of 2014 provides for criteria for reduction of penalties that may be applied by the Corporate Governance and Finance Department.

WHEREFORE, premises considered, the instant Appeal is hereby **denied**. The Settlement Offer within the Appeal of the Appellant is **endorsed** to the Corporate Governance and Finance Department to be evaluated as a Request for Reduction of Penalty

SO ORDERED.

Pasay City, Philippines, 3 November 2017.

TERESITA J. HERBOSA
Chairperson

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

BLAS JAMES G. VITERBO
Commissioner

EMILIO B. AQUINO
Commissioner