Republic of the Philippines
Securities and Exchange Commission
SEC Bldg. EDSA, Greenhills, Mandaluyong City

Released on 20 Jan 2012 @ 9:30AM

IN THE MATTER OF:

SOUTHWATERS MARINA, COUNTRY CLUB AND FARM, INC.
(S.E.C. Reg. No. A1997-15379)

Appellant,

SEC En Banc Case No. 07-09-171
For: Appeal

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DECISION

For consideration of the Commission is an appeal from the letter dated 01 June 2009 of the Corporation Finance Department (**"CFD"**) of the Commission denying the request for waiver of the penalty assessed against Southwaters Marina, Country Club and Farm, Inc. (the **"Appellant"**).

As borne by the records, the following are the facts of the case.

The appellant is a reporting company required to file certain reports with the Commission. Two of these required reports are:

1. Sworn certificate of the corporation's Corporate Secretary and Compliance Officer on the attendance of its directors during the 2008 board meetings; and

2. Sworn certificate on the extent of the corporation's compliance with its Manual on Corporate Governance for the year 2008.

In a letter dated 23 February 2009, the CFD directed the appellant to file the two certificates and to show cause why it should not be held liable for violation of Section 54 of R.A. No. 8799, also known as the Securities Regulation Code (**"SRC"**), and of SEC Memorandum Circular No. 3, Series of 2007.

In compliance, the appellant explained in its 06 March 2009 letter that it failed to submit the certifications because of some staff problem and financial difficulties that it was experiencing. The appellant, however, submitted a certificate of attendance of the directors during the 2008 board meetings.

The CFD found the reasons lacking in merit, and further stated that as a reporting company, the appellant should be familiar and strictly comply with its reporting obligations. Since it was the second time the appellant failed to file the Corporate Secretary's Certification, the appellant was assessed a penalty in the amount of Forty-Four Thousand Five Hundred Pesos (Php44,500.00).[1]

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[1] 16 March 2009 Letter of CFD.

On 16 April 2009, the CFD gave notice that the appellant has not yet paid the penalty relative to the late filing of its Corporate Secretary's Certification on the attendance of its directors to the 2008 Board Meetings.

The appellant reiterated its request for waiver of payment of penalty in a letter dated 23 April 2009, on the ground that it has not been earning, and its tight financial position is being aggravated by the current global financial crisis.

Considering that it was the first time that the appellant was late in filing its Current Report (SEC Form 17-C) on the appointment of its Compliance Officer, the appellant was reprimanded pursuant to the 2005 Consolidated Scale of Fines.[2] The directive to pay the assessed penalty relative to the late filing of the Corporate Secretary's Certification on the attendance of the directors in the 2008 board meetings was likewise reiterated.

The appellant, in its letter dated 21 May 2009, again requested that it be spared from paying the penalty. The request was denied in a CFD letter dated 01 June 2009.

Hence, the instant appeal.

The principal issue in this case is whether there is a valid reason to waive the penalty assessed against the appellant.

We rule in the negative.

Memorandum Circular No. 3, Series of 2007 provides in part:

> "Section 15. The certificate of compliance with the Manual of Corporate Governance required of (a) Associated Persons of Broker Dealers, and (b) Compliance Officers of Transfer Agents, Investment Houses/Underwriters, Listed Issuers, Registered Issuers, Financing Companies, and Pre-Need Companies shall follow the format of SEC Form MCG – 2002 and shall be submitted every 30th day of January.
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> Section 16. The certificate of attendance of directors in meetings of the board of directors of Broker Dealers, Transfer Agents, Investment Houses/Underwriters, Listed Issuers, Registered Issuers, Financing Companies and Pre-Need Companies shall be signed by the corporate secretary, and countersigned by the chairperson of the board of directors, and shall be submitted every 30th day of January."

The sanctions for violation of any of the provisions of the rules or orders of the Commission are provided in Section 54 of R.A. No. 8799, to wit:

> "SEC. 54. *Administrative Sanctions.* - 54.1. If, after due notice and hearing, the Commission finds that: (a) There is a violation of this Code, its rules, or its orders; x x x it shall, in its discretion, and subject only to the

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[2] SEC Memorandum Circular No. 6, Series of 2005.

limitations hereinafter prescribed, impose any or all of the following sanctions as may be appropriate in light of the facts and circumstances:

(i) Suspension, or revocation of any registration for the offering of securities;

(ii) A fine of no less than Ten thousand pesos (P10,000.00) nor more than One million pesos (P1,000,000.00) plus not more than Two thousand pesos (P2,000.00) for each day of continuing violation;

(iii) In the case of a violation of Sections 19.2, 20, 24, 26 and 27, disqualification from being an officer, member of the Board of Directors, or person performing similar functions, of an issuer required to file reports under Section 17 of this Code or any other act, rule or regulation administered by the Commission;

(iv) In the case of a violation of Section 34, a fine of no more than three (3) times the profit gained or loss avoided as a result of the purchase, sale or communication proscribed by such Section; and

(v) Other penalties within the power of the Commission to impose."[3]

We need not belabor that fact that the appellant failed to submit the above-mentioned certifications, and even admitted that it failed to file the reportorial requirements of the Commission within the prescribed period. The record, however, is bereft of any evidence that would justify the waiver of the fine imposed against the appellant. As borne by the records, this is the second time the appellant was late in filing the required certification from the Corporate Secretary. Also, the claim of the appellant that it is in dire financial condition fails to convince, which does not merit the relief prayed for.

As a reporting corporation, the appellant is expected to comply with the reportorial requirements of the Commission, considering the paramount interests of the investing public. These requirements are meant to assure full, fair and accurate information for the protection of investors.[4] These reports also serve as a basis for the investors to make an informed investment decision, and to make them aware that the responsible officials of reporting corporations are operating in accordance with the applicable laws, rules and regulations. Moreover, this is to address the information asymmetry between the insiders or those who run the corporation on one hand, and the investors on the other hand.

WHEREFORE, foregoing premises considered, the letter dated 01 June 2009 issued by the Corporation Finance Department is hereby **AFFIRMED** and the instant appeal is **DENIED** for lack of merit. Consequently, the appellant **SOUTHWATERS**

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[3] For specific violations and the corresponding penalties, refer to the Consolidated Scale of Fines, SEC Memorandum Circular No. 6, Series of 2005.

[4] Union Bank of the Philippines vs. Securities and Exchange Commission, G.R. No. 138949, 06 June 2001.

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MARINA, COUNTRY CLUB AND FARM, INC. (S.E.C. Reg. No. A1997-15379) is hereby **DIRECTED TO PAY** the assessed penalty of **FORTY-FOUR THOUSAND FIVE HUNDRED PESOS (Php44,500.00)** for the late filing of its certification on the attendance of its directors to the 2008 Board Meetings, within ten (10) days from receipt of this Decision.

SO ORDERED.

Mandaluyong City; 12 January 2012.

TERESITA J. HERBOSA
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner