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

YU & COMPANY, INC.,
Appellant,

-versus-

SEC En Banc Case No. 05-15-373
Promulgated: 20 June 2023

CAPITAL MARKETS INTEGRITY CORPORATION,
Appellee.

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DECISION

Before the Commission is a *Memorandum* (the "Appeal") dated 15 May 2015 filed by Appellant Yu & Company Inc (the "Appellant"), praying for the reversal of the Decision dated 07 November 2014 (the "Assailed Decision") rendered by the Appellee, Capital Markets Integrity Corporation (CMIC), which imposed upon the Appellant a monetary penalty in the aggregate amount of Pesos: Thirty Thousand (₱30,000.00) after finding that the latter violated the Securities Regulation Code ("SRC"), the Revised Trading Rules and the CMIC Rules. The finding in the Assailed Decision was sustained by the CMIC Board in its Resolution dated 29 April 2015 (the "Assailed Resolution"), where the amount of the monetary penalty was modified and increased to an aggregate amount of Pesos: One Hundred Fifty Thousand (₱150,000.00).

PARTIES

The Appellant is a corporation duly organized and existing under Philippine laws having been issued a Certificate of Incorporation bearing SEC Registration No. 0000014137. Its primary purpose, as stated in its Articles of Incorporation ("AoI"), is "*to engage in the business of stock and bond brokers and dealers in securities and in all activities directly or indirectly connected therewith or incidental thereto.*"

CMIC is a domestic corporation duly authorized and licensed by the Commission to act as a Self-Regulatory Organization (SRO), having been issued a Certificate of Incorporation bearing SEC Registration No. CS201104274. CMIC's primary purpose as stated in its AoI is:

> "To function as the independent audit, surveillance and compliance unit of the Philippine Stock Exchange, Inc. (the Exchange), reinforce the confidence of the investing public through the adoption, enforcement, implementation and interpretation of rules, guidelines and securities laws applicable to the operations and dealings of trading participants and other market participants of the Exchange, and register and act as a self-regulatory organization under the laws of the Philippines."

RELEVANT FACTS

In a letter dated 20 October 2014, CMIC's Audit and Compliance Department ("ACD") directed the Appellant to explain in writing the following findings that were observed during the conduct of the annual regulatory audit which possibly violated the SRC, the Revised Trading Rules and the CMIC Rules: (a) Article VI, Section 20(c) of the Revised Trading Rules in relation to Article VI, Sec. 1(b)(vii)(a) of the CMIC Rules, for Appellant's failure to liquidate error transactions; (b) Annex A (XV) of the Implementing Guidelines of the Trading Rules in relation to Article IV, Section 19 of the Revised Trading Rules and Article VI, Section 1(b)(vii)(a) of the CMIC Rules, for using bundled codes for transactions which are individual in nature and used foreign codes instead of local codes; and (c) Article VI, Sec. 2 of the CMIC Rules in relation to SRC Rule 30.2-6(2)(3) and 28.1-4(7), for Appellant's violation of the Customer Account Information Rule.

On 24 October 2014, the Appellant submitted its written explanation on the findings of the ACD, to wit: (a) on the first finding, the Appellant admitted having failed to liquidate certain shares within the prescribed period because the same will result in losses, and thus requested to be allowed to sell the shares at least at a break-even; (b) as regards the second finding, the Appellant explained that it had no malicious intent in failing to comply with the rules, and was only prompted to do so because of the predicament that it was in; and (c) as regards the last finding, Appellant provided evidence that it was not remiss in informing its clients to strictly comply with the CAIF Rule.

On 29 October 2014, the CMIC conducted an exit conference which was attended by the Appellant, and which resulted in the submission by the latter of a written explanation based on what was discussed therein. In a letter dated 3 November 2014, the Appellant basically reiterated the reasons given in its previous letter. Appellant also manifested that (a) it would be liquidating the error transactions by December 2014; and (b) it would be changing the codes of the affected accounts.

The CMIC found the explanation proffered by the Appellant without merit and forthwith issued the Assailed Decision.

On 14 November 2014, the Appellant sought reconsideration of the Assailed Decision with the CMIC Board, alleging that: (a) it already started liquidating the erroneous transactions; (b) it has taken corrective actions to avoid errors in the use of client codes; and (c) requested that it be given a chance to implement its responsibilities to ensure compliance with the rules, policies, and procedures of the company. The CMIC Board issued the Assailed Resolution which partly reconsidered the Assailed Decision with the reversal of the finding of a violation of the CAIF Rule, but modified the amount of the monetary penalty by increasing the same to Pesos: One Hundred Fifty (₱150,000.00).

In its Appeal, the Appellant argued that the CMIC failed to prove the violations that were used as bases in imposing the monetary penalty. The Appellant also maintained that it acted in good faith in its dealings with its clients, fellow stockbrokers, the PSE, and all other entities.

Moreover, instead of elevating the Assailed Resolution to the Commission, the Appellant sent a letter dated 6 May 2015 to the President of CMIC where it emphasized that under Article XII Section 5(2) of the CMIC Rules, the violations subject of the Appeal should no longer be reported as such since the six (6) year period has already been breached; and that at any rate, it immediately rectified its errors after its attention was called. These arguments were incorporated by the Appellant in the Appeal.

On 9 June 2015, CMIC filed its Reply Memorandum (to Appellant's Memorandum on Appeal) dated 8 June 2015 where it prayed for the denial of the Appeal for lack of merit. The CMIC argued that its findings were supported by substantial evidence which showed that a total of fifteen (15) positions were not liquidated by the Appellant during the prescribed period, a fact that the latter did not contest.[1] The CMIC further argued that the Appellant's reliance on Article XII Section 5(2) of the CMIC Rules is misplaced because the said provision, in fact, mandates the CMIC to take into account all previous violations committed within the six (6) year period in imposing the appropriate penalty.

On 10 January 2023, the CMIC filed a Manifestation stating that the Appellant has not paid, even under protest, the monetary penalties imposed upon it which are immediately executory notwithstanding the

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[1] *Reply Memorandum* dated 6 June 2015. Pars. 22 to 24, and 26

appeal to the Commission. The appellant is thus liable for surcharges and interests under Article XII, Section 8 of the CMIC Rules.

On 19 January 2023, the Appellant filed its Manifestation which reiterated its claims and defenses set forth in the Appeal.

ISSUE

Whether or not the CMIC committed reversible error in imposing the monetary penalty on the basis of its finding that the Appellant violated the securities laws.

RULING

The Appeal is without merit. The Assailed Resolution stands.

The evidence presented by the CMIC shows that the Appellant failed to liquidate fifteen (15) positions[2] within the period prescribed under Article IV, Sec. 20(c) of the Revised Trading Rules, as follows:

NO.	ISSUE	VOLUME
1	Asiabest Group International, Inc. (ABG)	1,000
2	Cyber Bay Corporation (CYBR)	1,000
3	Lopez Holdings Corporation	4,950
4	Metro Pacific Investments Corporation (MPI)	59
5	Philippine Telegraph & Telephone Corporation (PTT)	9,000
6	Prime Orion Philippines, Inc. (POPI)	10,000
7	Shang Properties, Inc. (SHNG)	10,011
8	Steniel Manufacturing Corporation (STN)	31,250
9	Unioil Resources & Holdings Co., Inc. (UNI)	10,000
10	Wellex Industries, Inc. (WIN)	874
11	Asia United Bank Corporation (AUB)	9,000
12	Lepanto Consolidated Mining Company "B" (LCB)	150,000
13	Manila Mining Corporation "B" (MAB)	1,000,000
14	Megaworld Corporation (MEG)	200,000
15	Petron Corporation (PCOR)	

Article IV, Sec. 20(c) of the Revised Trading Rules categorically provides that:

[2] See *Reply Memorandum* dated 8 June 2015. Annex "2"

> "Any position in the error account shall be liquidated no later than one (1) month from the date of the relevant transaction."

Relative thereto, the records show that not only was CMIC able to prove that the fifteen (15) positions were not liquidated within the prescribed period, the Appellant itself expressly admitted such fact in its letter dated 3 November 2014,[3] to wit:

> "Prices of the remaining shares were not disposed because of high acquisition costs. We have explained this account to the previous auditors since the previous audits starting with NETCAP computation. We don't intend to make huge profit on the shares as long as break-even or a little profit or little loss to cover the amendment fees and other incidental expenses.
>
> Prices of the said stocks were high and if we sell at too low, we will be incurring a loss and reported in the books. Since it is still listed, we are hoping for a recovery of the market price and dispose them."

Hence, it was only after the Audit Exit Conference that the Appellant would start liquidating the subject positions in the error account, to wit:

> "We wish to inform your good office that as what we already started liquidating those erroneous transactions as committed during our Audit Exit Conference and intend to dispose on or before November 2014." [4]

Now, in relation to CMIC's finding of a violation of Article VI, Sec. 2 of the CMIC Rules[5] in relation to SRC Rule 30.2-6(2)(3) and 28.1-4(7) by the Appellant, the records show that the latter similarly admitted having failed to comply with the same, thus:

> "We are furnishing you the old CAIF for your reference since clients failed to complete the filling-up of other information with particular to if affiliated to another broker or an officer of the listed company. We

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[3] *Memorandum* dated 15 May 2015. Annex "A"
[4] *Ibid.* Annex "C"
[5] "**Section 2. Supervision.** Xxx

(b) Associated Persons shall be responsible, in addition to the duties enumerated under SRC Rule 28.1 (4) (G) for maintaining a system to supervise the activities of all persons employed by the Trading Participant who are directly or indirectly related to the conduct of its securities business**. The supervisory system shall be reasonably designed to achieve compliance with the rules of the CMIC, the Exchange, other applicable laws, including, but not limited to, Republic Act No. 9160, as amended**, or the Anti-Money Laundering Act ("AMLA"), and the Trading Participant's own internal policies and procedures. Xxx" (Emphasis and underscoring supplied)

> have communicated to our clients the need to comply and that they have to redo their CAIFs with us.
>
> We welcome your suggestions on how we can best comply and how we can disseminate properly the rules to investors."

It is a settled rule in evidence,[6] which finds consistent application in jurisprudence, that judicial admissions are binding upon the person(s) making it and removes the facts admitted from the field of controversy, thus:

> "As ordained in ***Constantino v. Heirs of Constantino, Jr.***, a party who judicially admits a fact cannot later challenge the fact as judicial admissions are a waiver of proof; production of evidence is dispensed with. A judicial admission also removes an admitted fact from the field of controversy. Consequently, an admission made in the pleadings cannot be controverted by the party making such admission and are conclusive as to such party, and all proofs to the contrary or inconsistent therewith should be ignored, whether objection is interposed by the party or not. ***The allegations, statements or admissions contained in a pleading are conclusive as against the pleader. A party cannot subsequently take a position contrary of or inconsistent with what was pleaded***."[7] (Emphasis and underscoring supplied)

On account thereof, we find no compelling reason to disturb the findings of the CMIC as well as the penalties imposed upon the Appellant in the Assailed Resolution. With the admission by the Appellant that it had failed to comply with the securities laws, We hold that the CMIC did not commit reversible error in imposing the appropriate penalties provided in the CMIC Rules.

Finally, this Commission finds the defense of good faith or the absence of malicious intent in failing to comply with the rules proffered by the Appellant to be unavailing in the instant case. Time and again, this Commission has stressed that acts and/or omissions that violate the securities laws are *mala prohibita* where the intent of the perpetrator is immaterial.[8] The instant case which involves a violation of the securities laws by Appellant is not an exception to the said rule.

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[6] Rule 129, Sec. 4 of the Revised Rules on Evidence (which is applied suppletorily)

[7] *Monteroso v. Morado*, G.R. No. 247534 (Notice), June 28, 2021.

[8] "When an act is *malum prohibitum*, "[i]t is the commission of that act as defined by the law, and not the character or effect thereof, that determines whether or not the provision has been violated."

In *ABS-CBN Corp. v. Gozon*, we discussed the difference between acts *mala prohibita* and *mala in se*:

WHEREFORE, premises considered, the *Memorandum* dated 15 May 2015 filed by Yu & Company Inc. is hereby **DISMISSED** for lack of merit. The **RESOLUTION** dated 29 April 2015 issued by the CMIC Board which modified the **DECISION** dated 29 April 2015 is hereby **AFFIRMED in TOTO.**

SO ORDERED.

Makati City, Philippines.

EMILIO B. AQUINO
Chairperson

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO*
Commissioner

MCJILL BRYANT T. FERNANDEZ
Commissioner

*On official business

The general rule is that acts punished under a special law are *malum prohibitum.* "An act which is declared *malum prohibitum,* malice or criminal intent is completely immaterial." (Matalam vs People of the Philippines. G.R. No. 221849-50, April 4, 2016)