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

IN THE MATTER OF:

SEC En Banc Case No. 10-10-217
For: Review of Imposition by CFD of Penalty

ARCHITECTURAL CENTRE CLUB, INC.

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DECISION

For consideration is the *Appeal* dated 8 October 2010 filed on 11 October 1010 by Architectural Centre Club, Inc. ("ACCI", for brevity) from the *Letter-Ruling* of the Commission's Corporation Finance Department ("CFD") dated 25 January 2007 imposing the penalty of Four Hundred Seventy-Three Thousand Pesos (Php473,000.00) on ACCI for violation of Sections 8 and 12 of the Securities Regulation Code ("SRC")[1].

This case stemmed from the endorsement by the Company Registration and Monitoring Department ("CRMD") to the CFD of ACCI's proposed amended By-Laws that was filed by the company with CRMD on 23 October 2006.[2]

Upon evaluation, ACCI was found to have issued securities in the form of membership certificates without prior registration/permit to sell or exemption therefrom, from the Commission, in violation of Sections 8 and 10.1 of the SRC.[3]

On 27 October 2006, the CFD sent a letter to ACCI directing it to show cause why it should not be held liable for the said violation of the SRC.[4]

On 6 November 2006, the CFD held a conference with ACCI's representatives to determine the number of shares offered for sale or sold by the company without prior registration as well as the valuation thereof.[5] Two (2) days after, ACCI submitted, among others, a list of its members (individual and corporate) starting with the year 1963, and a Secretary's Certificate stating that the said list was in accordance with the available and authentic records of the company.[6]

The CFD's Securities Specialists then went to ACCI's principal office to conduct a spot examination of the corporation's books and records; however, ACCI failed to produce its records on the same day. The said documents were only submitted to the CFD on 11 December 2006.[7]

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[1]Republic Act No. 8799 (2000).
[2]CFD's Memorandum to the Office of the General Counsel (OGC) dated 3 December 2009, p. 1.
[3]Ibid.
[4]CFD's Letter to ACCI dated 27 October 2006.
[5]Supra, Note 2.
[6]See the list and Secretary's Certificate, as attached to ACCI's letter to CFD dated 8 November 2006.
[7]Supra, Note 2.

Based on the foregoing, the CFD found ACCI to have issued 162 membership certificates, as follows[8]:

Year Issued	No. of Membership Certificates	Amount per Share	Total Sales
1963-1979	30	P50,000.00	P1,500,000.00
1980-1994	67	P60,000.00	P4,020,000.00
1995	9	P60,000.00	P 540,000.00
1996-2000	10	P85,000.00	P 850,000.00
2001-2005	46	P85,000.00	P3,910,000.00
Total	**162**		**P10,820,000.00**

Hence, on 14 December 2006, the CFD assessed ACCI a penalty of Php473,820.00[9], broken down as follows[10]:

	Total Sales	Imposable Penalty	Total Penalty
1963-1979 (30 membership certificates x P50,000.00)	P1,500,000.00	2/10 of 1% of P1,500,000.00[11]	P 3,000.00
1980-1994 (67 membership certificates x P60,000.00)	P4,020,000.00	2/10 of 1% of P4,020,000.00[12]	8,040.00
1995 (9 membership certificates x P60,000.00)	P 540,000.00	2/10 of 1% of P540,000.00[13]	1,080.00
1996-2000 (10 membership certificates x P85,000.00)	P 850,000.00	2/10 of 1% of P850,000.00[14]	P 1,700.00
2001-2005 (46 membership certificates x P85,000.00)	P3,910,000.00	P10,000.00 x 46[15]	P 460,000.00
Total			**P473,820.00**

On 20 December 2006, ACCI sought reconsideration of the 14 December 2006 letter assessing and directing the company to pay the penalty of Php473,820.00, on the following grounds: (1) it was not aware that it had to register the said membership certificates prior to issuance to members; (2) most of its members for 2001-2005 were those who have supplied labor, construction materials,

[8]Supra, Note 2, pp.1-2.
[9]CFD's Letter-Directive dated 14 December 2006. In this Letter-Directive, the total penalty was erroneously stated as Php473,000.00.
[10]Supra, Note 2, p. 2.
[11]2/10 of 1% of the aggregate par or issue value of the securities issued but in no case to be less than P200.00, pursuant to SEC Rules and Regulations Prescribing Penalties for Issuance of Shares without Prior Permit, issued on 17 October 1978.
[12]Ibid.
[13]Ibid.
[14]2/10 of 1% of the aggregate par or issue value of the securities issued but in no case to be less than P1,000.00, pursuant to the Rules Amending the Rules and Regulations Prescribing Penalties for Issuance of Shares without Prior Permit, issued on 24 March 1995.
[15]P10,000.00 per transaction or 1/10 of 1% of the aggregate issuance, whichever is higher, pursuant to SEC Memorandum Circular No. 2, Series of 2003 (Revised Scale of Fines).

furniture and fixtures for the renovation of its office, and that no cash was involved in those transactions, there being a mere offsetting of accounts through membership shares in exchange for the labor and materials supplied to ACCI; and (3) it is financially distressed and not capable to settle the amount inasmuch as it wanted to.[16]

On 25 January 2007, the CFD, finding ACCI's request for reconsideration unmeritorious, reiterated its directive for the company to pay the above-said penalty.[17]

On 30 January 2007, ACCI filed another letter requesting the CFD to set aside the assessment in view of its findings that the securities issued fall under the exemption stated in Subsection 10.1(k) of the SRC.[18] This was supplemented by another letter dated dated 31 January 2007, wherein ACCI pointed out that while it had a positive net income as of December 2006, it was saddled with liquidity problem.[19] It then proposed to pay twenty-five percent (25%) of the total penalty only, payable in six (6) months immediately upon approval of the request.[20]

The CFD then endorsed to the Commission *En Banc* through the Office of the General Counsel ("OGC") these letters of ACCI dated 30 January 2007 and 31 January 2007.[21]

ACCI was then directed to file a formal appeal in accordance with the Commission's rules and pay the docket fees therefor[22], which it did on 11 October 2010.

The issue is whether the CFD was correct in imposing the penalty of Php473,820.00 on ACCI.

We rule in the affirmative.

In 1936, Commonwealth Act No. 83 ("CA 83")[23] repealed the first securities legislation in the country, Act No. 2581. Section 4 of CA 83 provides:

> "SECTION 4. *Sale and Registration of Securities.* — No securities except of a class exempt under any of the provisions of section five hereof or unless sold in any transaction exempt under any of the provisions of section six hereof shall be sold within the Philippines unless

[16] ACCI's letter for reconsideration dated 20 December 2006.
[17] CFD's Letter-Ruling dated 25 January 2007.
[18] ACCI's second letter for reconsideration dated 30 January 2007.
[19] ACCI's "Supplemental Motion for Reconsideration" dated 31 January 2007.
[20] Ibid.
[21] Supra, Note 2.
[22] Order dated 15 September 2010.
[23] *An Act To Regulate The Sale Of Securities, To Create A Securities And Exchange Commission To Enforce The Provisions Of The Same, And To Appropriate Funds Therefor.*

> such securities shall have been registered and/or licensed as hereinafter provided. xxx."

In 1982, CA 83 was repealed by the Revised Securities Act ("RSA")[24]. The RSA, the prevailing law before the effectivity of the SRC on 8 August 2000, retained, however, the said registration requirement, to wit:

> "Sec. 4. *Requirement of registration of securities.* – xxx.
>
> (a) No securities, except of a class exempt under any of the provisions of Section five hereof or unless sold in any transaction exempt under any of the provisions of Section six hereof, shall be sold or offered for sale or distribution to the public within the Philippines unless such securities shall have been registered and permitted to be sold as hereinafter provided.
>
> xxx xxx xxx."

Section 4 of the RSA is reproduced in Section 8 of the SRC, which provides that: "*Securities shall not be sold or offered for sale or distribution within the Philippines, without a registration statement duly filed with and approved by the Commission.*"

ACCI anchors the instant *Appeal* on the following grounds: (1) it was only on the occasion of the 2006 amendment of the company's By-Laws that ACCI was notified of the violation; (2) the requirement of registration of securities does not apply to the sale of securities by an issuer to fewer than twenty (20) persons in the Philippines during any twelve-month period, pursuant to Subsection 10.1(k) of the SRC; and (3) the requirement of registration is not necessary as the investors were the contractors, engineers, architects, building contractors, interior designers, landscape designers or city planners, and other professionals identified with the construction industry, citing Subsection 10.2 of the SRC.

IGNORANCE OF THE LAW

The argument of ACCI that it was not aware of the registration requirement and that it was only on the occasion of the 2006 amendment of the company's By-Laws that it was notified of the violation, is unavailing. Ignorance of the law excuses no one from compliance therewith.[25] As correctly put by the CFD, out of expediency, policy and necessity, the public is always put on constructive notice of laws' existence and effectivity through their publication.

[24] Batas Pambansa Blg. 178 (1982).
[25] Article 3, New Civil Code.

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SUBSECTION 10.1(K) OF THE SRC

ACCI's invocation of Subsection 10.1(k) of the SRC, which provides that "*the sale of securities to fewer than twenty (20) persons in the Philippines during any twelve-month period*" shall not be subject to the registration requirement, likewise fails to persuade.

Subsection 10.1(k) is peculiar to the SRC, meaning, it is a new category of exempt transaction in that there is no provision in the RSA or CA 83 permitting the same.[26] Hence, this exemption was not yet available when ACCI issued the membership certificates from 1963 to 8 August 2000[27].

As to those membership certificates issued from 8 August 2000 onwards, while it is true Section 10.1(k) is now available, the same must still be attended with certain mandatory requirements and conditions. A notice of exemption on SEC Form 10-1 is mandatory in an offering or distribution of securities under Subsection 10.1(k) of the SRC.[28] Also, the said exemptive relief shall be subject to, among others, the following terms and conditions: (1) the issuer claiming such relief shall not engage in any form of general solicitation or advertising in connection therewith; (2) securities sold in any such transaction may only be sold to persons purchasing for their own account; and (3) if the buyer of the securities is a corporation, partnership or any other entity, which is organized for the specific purpose of acquiring the securities and which is not a qualified buyer under Subsection 10.1(l) of the SRC, each beneficial owner of equity securities in that entity shall count as separate buyer for purposes of this exemption.[29]

A notice of exemption is to be distinguished from a confirmation of exemption. The former is, by its name, a mere notice to the Commission, while the latter is a confirmation or declaration by the Commission that the transaction is indeed exempt under the law. The former requires no fee while the latter must be accompanied with a filing/application fee.[30] The filing of the former is generally optional, with the exception of the transactions under Subsections 10.1(k) and (l) of the SRC, while the filing of an application for the latter is always optional. While the transaction is guaranteed by the law to be exempt, the issuer may opt to obtain confirmation of exemption to ensure that the Commission will not challenge the claimed exemption.[31]

Unless confirmation of the availability of such exemption is applied for, any person claiming an exempt transaction has the burden, if challenged, to establish that the exemption is available. The Commission may challenge such exemption at

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[26] Rafael A. Morales, Philippine Securities Regulation Code (Annotated) 100 (2005).
[27] The effectivity date of the SRC.
[28] SRC Rule 10.1(3)(A) of the SRC's Implementing Rules and Regulations (IRR).
[29] SRC Rule 10.1(3)(C)(iii), IRR of the SRC.
[30] SRC Rule 10.1(4)(A), IRR of the SRC.
[31] Supra, Note 26.

any time.[32] A presumption that an exemption is not available may arise from the failure to file a notice of exemption, if required.[33]

In the case at bar, ACCI failed to discharge the burden of establishing that the exemption under Subsection 10.1(k) of the SRC is available to it, and that all the terms and conditions for its availability have been complied with. The record is bereft of any filing of the required notice of exemption under Subsection 10.1(k) for the membership certificates issued from 2000-2005. There is also no record of any application for confirmation of exemption of the said securities and the payment of filing fees therefor.

SUBSECTION 10.2 OF THE SRC

Neither is ACCI's invocation of Subsection 10.2 of the SRC compelling.

While certain securities transactions do not fall under any of the exempt transactions under Section 10 of the SRC, the same may, nonetheless, be exempt from registration by leave or permission of the Commission. The provision reads: "*The Commission may exempt other transactions, if it finds that the requirements of registration under this Code is not necessary in the public interest or for the protection of the investors such as by reason of the small amount involved or the unlimited character of the public offering.*"

Subsection 10.2 of the SRC is a substantial reproduction of Section 6(b) of the RSA. However, there is no counterpart provision under CA 83.

ACCI argues that most of the investors from 2001-2005[34], who were issued membership certificates in consideration for the labor and materials they supplied for the renovation of its office, were not strangers to ACCI, and hence, the evil sought to be avoided by the registration requirement does not obtain. We do not agree. The fact that these people performed services and supplied materials for the renovation of ACCI's office does not necessarily mean that they have a good deal of knowledge about the company's securities.

At any rate, to avail of the leave or permission of the Commission pursuant to Subsection 10.2 of the SRC, an application must be filed with the Commission, coupled with a filing/application fee.[35] Records disclose that ACCI did not file such application.

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[32]SRC Rule 10.1(7)(A), IRR of the SRC.
[33]SRC Rule 10.1(7)(B), IRR of the SRC.
[34]Supra, Note 16.
[35]Supra, Note 26; Subsection 10.3 of the SRC; Section 6(c) of the RSA; Letter-Directive addressed to Mr. Miguel M. Gonzalez dated 2 July 1992; SEC Opinion dated 2 February 1996 addressed to Ms. Judith Philips; SEC Opinion dated 5 May 1997 addressed to Ponce Enrile Reyes& Manalastas.

WHEREFORE, premises considered, the instant *Appeal* is hereby **DISMISSED**. Architectural Centre Club, Inc. is hereby **DIRECTED TO PAY**, within fifteen (15) days from receipt hereof, the penalty of Four Hundred Seventy-Three Thousand Eight Hundred Twenty Pesos (Php473,820.00) for violation of Sections 8 and 12 of the Securities Regulation Code.

SO ORDERED.

Mandaluyong City, 07 April 2011.

FE B. BARIN
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner