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

In the Matter of

Medical Arts Tower, Inc.
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SEC En Banc Case No. 09-07-115
Re: Annulment/Setting Aside of CFD Order dated 10 August 2007

DECISION

For consideration of the Commission *En Banc* is the appeal filed on 03 September 2007 by Medical Arts Tower, Inc. ("MATI") for the annulment and setting aside of the Order dated 10 August 2007 of the Corporation Finance Department ("CFD"), wherein CFD re-assessed a penalty in the amount of ONE HUNDRED EIGHTY EIGHT THOUSAND PESOS (Php188,000.00) against MATI for the late filing of its 2005 Sworn Certification on the Extent of its Compliance with its Manual on Corporate Governance ("2005 Sworn Certification").

FACTS OF THE CASE

MATI is a stock corporation registered on 17 August 2001 with SEC Registration No. A200112231. Its primary purpose is:

> To own, acquire, maintain, hold, operate, manage, administer, sell, dispose of, convey, lease, or otherwise deal with a certain building hereinafter referred to as "Medical Arts Tower" in the New Medical City, to be constructed at a lot along Ortigas Avenue, Pasig City, particularly described in TCT No. PT 113805, its equipment, machinery and any and all related facilities for the use or utilization by any and all qualified medical practitioners and their assistants.

MATI's Manual on Corporate Governance provides that it shall submit its Sworn Certification on the Extent of its Compliance with its Manual on Corporate Governance every January 30 of each year.[1]

However, on 14 February 2006, CFD wrote MATI directing the company to file its 2005 Sworn Certification and show cause why it should not be held liable under Section 54 (Administrative Sanctions) of the Securities Regulation Code ("SRC"),[2] for failure to submit the subject document up to said date.[3]

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[1] Reply Memorandum dated 28 February 2008, p. 2.
[2] Republic Act 8799 (2000).
[3] *Op. Cit.,* Annex "A."

In a letter dated 13 March 2006, MATI's Compliance Officer replied that the company has "already filed with the Commission on January 12, 2006, the required report." In support of their representation, MATI attached photocopies of the following: 1. SEC Form 17-C with the attachment of Secretary's Certificate on the attendance in the board meeting of each director for fiscal year ending 31 December 2005; and 2. Corporate Governance Self-Rating Form.[4]

On May 8, 2006, CFD wrote MATI and reiterated that MATI was directed to file the 2005 Sworn Certification and NOT the certification on the attendance of its directors in the board meetings in 2005, which the company filed on 12 January 2006. Records show that as of said date, no such filing of the 2005 Sworn Certification had been made. Consequently, MATI was again directed to file said 2005 Sworn Certification and assessed a penalty of SEVENTY THREE THOUSAND FIVE HUNDRED PESOS (Php73,500.00),[5] with the warning that the matter shall be referred to CFD's legal counsel for appropriate action should it fail to comply with the directives.[6] In a letter dated 03 July 2006, CFD reiterated its previous directive in its 8 May 2006 letter, due to MATI's continued failure to file its 2005 Sworn Certification, and directed MATI to pay the assessed penalty, with the warning that proceedings will be initiated to suspend the company's license.[7]

MATI continued to ignore the warnings from CFD. Thus, a Notice of Hearing was issued dated 01 December 2006, directing the corporation, through any of its responsible or authorized officers, to appear at a hearing on 20 December 2006 and show cause why its Certificate of Permit to Sell securities should not be suspended. As of date of notice, the records of the Commission showed: 1) Late filing of the required certification on the attendance of its directors during the 2005 board meetings; and 2) Failure to file the required 2005 Sworn Certification.[8] During the hearing, MATI's authorized representatives made an undertaking to submit a request for reconsideration of the penalty assessed against it for its violation of Section 54 of the SRC. They were given fifteen days from the date of the hearing, or up to 04 January 2007, to submit the request, but no request was filed.[9]

On 21 March 2007, CFD wrote MATI[10] acknowledging receipt on 27 December 2006 of the amount of THIRTY ONE PESOS (Php31,000.00) as payment for penalties, but clarified that the amount was only for the penalty

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[4] *Id.*, Annex "B."
[5] Pursuant to SEC Memorandum Circular No. 6, Series of 2005, the Consolidated Scale of Fines.
[6] *Op. cit.*, Annex "C."
[7] *Id.*, Annex "D."
[8] *Id.*, Annex "E."
[9] *Id.*, pp. 2-3.
[10] *Id.*, Annex "F."

for its late filing of the required certification on the attendance of its directors during the 2005 board meetings and not for the unsettled penalty for its non-filing of the required 2005 Sworn Certification. As of said date, the unsettled penalty amounted to a total of TWO HUNDRED THIRTY TWO THOUSAND FIVE HUNDRED PESOS (Php232,500.00).[11]

MATI, through its counsel, responded through a letter dated 19 June 2007, requesting CFD for a reconsideration of the order requiring the payment of the amount of Php232,500.00 for the non-filing of the 2005 Sworn Certification on the ground that the late filing of the 2005 Sworn Certification was due to "excusable inadvertence" and due to "several equally pressing activities that the corporation has to attend to." MATI requested reconsideration because they "are most certain that the amount of the assessed penalty will definitely deplete and hurt the corporation's negative earnings, thereby, prejudicing its entire business."[12] In response, CFD issued a letter dated 17 July 2007 inviting MATI to show the original copy of the subject document. On 26 July 2007, Ma. Cristina Dogillo, Corporate Clerk of MATI, showed the original copy of the filed 2005 Sworn Certification, to CFD.[13]

MATI wrote CFD on 01 August 2007,[14] informing the latter that MATI has complied with the latter's 17 July 2007 letter and repeated its request for reconsideration of the CFD's order to pay the penalty in the amount of Php 232,500.00.

In a letter dated 10 August 2007, CFD clarified that the 2005 and 2006 Sworn Certifications on the Extent of its Compliance with its Manual on Corporate Governance were filed simultaneously on 22 December 2006. Due to the late filing of the 2005 Sworn Certification, CFD re-assessed a penalty of ONE HUNDRED EIGHTY EIGHT THOUSAND PESOS (Php188,000.00).[15]

At the same time, CFD informed MATI that its explanation for the delay, which is, "due to excusable inadvertence is unacceptable." CFD further articulated that, "Internal problems of the company are not valid justifications to excuse the company from its timely compliance with the reportorial requirements of the Securities Regulation Code."[16]

Hence, this appeal.

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[11] Based on SEC Memorandum Circular No. 6, series of 2005,P25,000.00 plus P500.00 per day of delay.
[12] *Op. cit.*, Annex "G"Letter to CFD dated 19 June 2007 from the Bengzon Law Firm.
[13] *Id.*, p. 3.
[14] *Id.*, Annex "I."
[15] Basic penalty of Php25,000.00 plus (Php 500.00 x 326 days late), CFD letter dated 10 August 2007.
[16] Expressed in MATI's 19 June 2007 letter.

ISSUE

Whether there is a valid ground to set aside the assessed penalty for MATI's failure to submit its Sworn Certification for 2005 on the Extent of its Compliance with its Manual on Corporate Governance on time.

RULING

The petition is unmeritorious.

MATI's allegation that the imposition of the penalty by CFD for the late filing of the 2005 Sworn Certification finds no support in law and in fact[17] is erroneous. As a registered corporation with a secondary license and permit to sell securities to the public, MATI is definitely covered by the provisions of the SRC. Section 5.1 of the SRC specifically provides that,

> The Commission shall act with transparency and shall have the powers and functions provided by this Code, xxx and other existing laws. Pursuant thereto the Commission shall have, among others, the following powers and functions:
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> (a) Have jurisdiction and supervision over all corporations, partnerships or associations who are the grantees of primary franchises and/or a license or permit issued by the Government;
>
> xxx
>
> (f) Impose sanctions for the violation of laws and the rules, regulations and orders issued pursuant thereto;

Among the different departments of the Commission, it is CFD that is empowered to implement the provisions of the SRC and its Amended Implementing Rules and Regulations (Amended IRR) regarding the Commission's core function of regulating the capital market.[18] This is clearly stated in SRC Rule 4.1 (B):

> The *Corporation Finance Department* registers securities before they are offered for sale or sold to the public and ensures that adequate information is available about the said securities. It also ensures that investors have access to all material disclosures regarding the said offering and the securities of public companies. *The department also monitors compliance by issuers with the Code and rules and regulations adopted thereunder and* endorses infractions thereof to the Compliance and Enforcement Department. (Italics supplied)

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[17] Memorandum on Appeal filed on 03 September 2007, p. 2.
[18] Reply Memorandum dated 28 February 2008, p. 5.

CFD simply applied Section 54.1 of the SRC to MATI in the exercise of this power.

> SECTION 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; (b) xxx (c) Any registrant or other person has, in a registration statement or in other reports, applications, accounts, records or documents required by law or rules to be filed with the Commission, made any untrue statement of a material fact, or omitted to state any material fact xxx (d) xxx it shall, in its discretion, and subject only to the limitations hereinafter prescribed, impose any or all of the following sanctions as may be appropriate in light of the facts and circumstances:
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> (i) Suspension, or revocation of any registration for the offering of securities;
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> (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; xxx
>
> (v) Other penalties within the power of the Commission to impose.

CFD computed the amount of penalty based on SEC Memorandum Circular No. 6 Series of 2005 otherwise known as the 2005 Consolidated Scale of Fines. This was issued by the Commission *En Banc* on 22 September 2005, approving the revised administrative penalties for specified violations of the SRC, its Amended IRR, and other laws implemented by the Commission.[19]

MATI's filing of its 2005 Sworn Certification was THREE HUNDRED TWENTY SIX (326) days late.[20] CFD was not negligent in reminding MATI of its duty to file the same, as evidenced by CFD's letters dated 14 February 2006, 08 May 2006, and 03 July 2006. In addition, MATI failed to submit its request for reconsideration of the penalty assessed against it, after the hearing on the subject, on 20 December 2006. Clearly, the CFD has the power in law and in fact, to impose the penalty of ONE HUNDRED EIGHTY EIGHT THOUSAND PESOS (Php188,000.00).

MATI insists that its filing of the Corporate Governance Self-Rating Form (the "Self-Rating Form") with the CFD on 12 January 2006 should be considered as substantial compliance with the requirement of filing the 2005 Sworn Certification, for the contents of the two are substantially the same.

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19 such as the Investment Company Act (ICA), ICA Rule 35-1, Pre-Need Rules, and the Financing Company Act and its Implementing Rules, as stated in the Reply Memorandum filed on 28 February 2008, p.7.

20 CFD Letter to MATI dated 10 August 2007, note 1.

Therefore, MATI should have been considered to have complied with the Amended IRR.[21]

MATI is grossly mistaken. The two documents required to be filed with the Commission are dissimilar in form and substance. Thus, the filing of one cannot be deemed as a substitute for filing the other.

As to form, the Self-Rating Form need not be notarized, while the Sworn Certification on Extent of Compliance is required to be notarized.

As to substance or contents, the Self-Rating Form is an assessment by covered companies of their level of compliance with leading practices and principles on good governance on the company's: A) Board of Directors – their roles, responsibilities, and skills; B) Management – their Code of Conduct, Strategy Setting and Planning, Financial and Operational Reporting; C) Organizational and Procedural Controls; D) Independent Audit Mechanism; E) Disclosure and Transparency; F) Shareholders' Benefits; and G) Compliance system and others. [22] Here, the company rates itself on the level of compliance from zero (0) to five (5).

The submission of the Self-Rating Form is prescribed by SEC Memorandum Circular No. 05, Series of 2003 ("SEC Memo Circular No. 05-03"). [23] Its purpose is precisely, to assess the level of compliance with the leading practices and principles on good corporate governance by companies enumerated therein, such as the issuers of registered securities to the public whether or not listed in the Philippine Stock Exchange,[24] like MATI. SEC Memo Circular No. 05-03 also prescribes a one-time submission of the duly accomplished Self-Rating Form which shall not be later than July 31, 2003. Any change therein shall be disclosed in a current report (SEC Form 17-C) by companies covered.

On the other hand, MA TI's Sworn Certification on the Extent of its Compliance with its Manual on Corporate Governance dated 21 December 2006[25] states that compliance with SEC Memorandum Circular No. 02-02[26] as well as all relevant Circulars on Corporate Governance have been monitored; that MATI, its directors, officers and employees, complied with all the practices and principles on good corporate governance embodied in the Corporation's Manual; and that there were no major deviations from the adopted Manual.

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[21] Memorandum on Appeal dated 05 September 2007, p. 9.
[22] Reply Memorandum, 28 February 2008 Annex "M."
[23] Issued on 3 April 2003.
[24] *Id.*, par. a).
[25] Reply Memorandum, 28 February 2008 Annex "N."
[26] Code of Corporate Governance April 5, 2002, applicable to corporations whose securities are registered or listed, corporations which are grantees of permits/licenses and secondary franchise from the Commission and public companies.

Therefore, CFD's observation that the Self-Rating Form may be considered as mere facts to support the over-all assessment found in the 2005 Sworn Certification[27] is correct. But the two documents are not identical or substantially the same, as alleged by MATI. Moreover, the submission of the 2005 Sworn Certification is prescribed in the company's Manual on Corporate Governance, that is, every 30 January of each year. On the other hand, the date of submission of the Self-Rating Form is prescribed by SEC Memo Circular No. 05-03 that is to be submitted not later than July 31, 2003, and any change therein shall be disclosed in a current report (SEC Form 17-C).

Lastly, MATI relied on the liberal application of the Commission's 2006 Rules of Procedure in trying to convince the Commission that it should not be made to pay what it described as "too harsh a penalty" for the late submission of the 2005 Sworn Certification.[28]

While MATI is right that Section 1-3[29] of the 2006 Rules of Procedure provides for a liberal interpretation of the same, said rules of procedure govern *actions and proceedings before the Commission,*[30] and NOT the rules on the imposition of penalty under the SRC and the Amended IRR. On the interpretation of the rules regarding the imposition of penalty, SRC Rule 2 of the Amended IRR on the interpretation rules is appropriate:

> Any doubt in the interpretation of these Rules shall be resolved by the Commission in a manner which would establish a socially conscious free market that regulates itself, encourage the widest participation of ownership in an enterprise, enhance the democratization of wealth, promote the development of the capital market, *protect investors, ensure full and timely disclosure of material information,* and/or minimize, if not eliminate, insider trading and other fraudulent or manipulative devices and practices which create distortions in the free market. (Italics supplied)

CFD has aptly summarized the reasons why the penalty against MATI in the amount of ONE HUNDRED EIGHTY EIGHT THOUSAND PESOS (Php188,000.00) should be imposed: 1) The delay in the submission of MATI's 2005 Sworn Certification on the Extent of its Compliance with the Code of Corporate Governance is its second (2nd) violation of Section 54 (c) of the SRC; 2) The magnitude of delinquency of MATI considering that it submitted the

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[27] *Op. cit.,* p.10.

[28] Memorandum on Appeal dated 05 September 2007, p. 2, pp. 9-11.

[29] SECTION 1-3.Construction. — These rules shall be liberally construed in order to promote public interest and assist the parties in obtaining a just, prompt, expeditious, and inexpensive resolution, settlement, and/or disposition of all actions brought before the Commission and to carry out the objectives of the laws it is mandated to implement.

[30] 2006 Rules of Procedure, 1st paragraph.

document on December 22, 2006 instead of 30 January 2006, the delay consisting of THREE HUNDRED TWENTY-SIX (326) days; and 3) The legal justifications raised by MATI in its Memorandum of Appeal are erroneous and unconvincing.[31]

WHEREFORE, premises considered, the instant appeal is hereby **DENIED** for lack of merit. The Letter-Order dated 10 August 2007 issued by the Corporation Finance Department is **AFFIRMED**. Consequently, MEDICAL ARTS TOWER, INC. is **ORDERED** to pay the assessed penalty in the amount of ONE HUNDRED EIGHTY EIGHT THOUSAND PESOS (Php188,000.00), within five days from receipt of this decision.

SO ORDERED.

Mandaluyong City, 24 February 2011.

FE B. BARIN *
Chairperson

MA. JUANITA E. CUETO**
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner

[31] Reply Memorandum dated 28 February 2008, p. 13.
* On official travel
** On leave