Republic of the Philippines
Department of Finance
Securities and Exchange Commission
PICC Secretariat Building, PICC Complex, Pasay City

COMMISSION EN BANC

IGC SECURITIES, INC.,
Appellant,

\- versus - **SEC EB Case No. 10-15-389**

CAPITAL MARKETS INTEGRITY CORPORATION,
Appellee.
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DECISION

This is an Appeal of the Decisions dated 8 July 2015 and 13 October 2015 of the Capital Markets Integrity Corporation (CMIC), where IGC Securities, Inc. was held liable for the acts of its Trader, in violation of **Article V, Section 4 (Trading for One's Personal Account)**, and its Associated Person, in violation of **Article VI, Section 2 (Failure to Supervise an Employee)** of the CMIC Rules.

RELEVANT FACTS

On **28 April 2015**, the CMIC commenced its Annual Regular Audit of **IGC Securities, Inc. (IGC)**, a Broker-Dealer.

On **8 June 2015**, the CMIC informed IGC that one of its traders, Ms. Doreen Mijares, had two active In-Trust-For (ITF) trading accounts ("HER-6138" and "HER-6139") in the names of each of her minor children. She and the children's father were named trustees. In addition, she had an active trading account ("MIJ-297") in her own name.

On **17 June 2015**, IGC submitted its written explanation, arguing that Ms. Mijares did not commit any violation and thus none can be attributed to either IGC or its Associated Person.

IGC argued that Ms. Mijares did not have more than one personal account, since the beneficial owners of the two ITF accounts are her minor children. IGC also argued that Ms. Mijares, being merely a joint-trustee, did not have full control over the accounts.

Finally, IGC argued that the opening of the two ITF accounts cannot be considered separate offenses, since they were prompted by one intention to open trading accounts for her two minor children and because both accounts were opened on the same occasion.

On **8 July 2015**, the CMIC rendered the assailed Decision. The CMIC held IGC liable for Ms. Mijares' opening of the two ITF accounts, in violation of **Article V, Section 4(c)** of the CMIC Rules, viz.

> **A trader or salesman should use and maintain only one (1) personal dealing account, and only with his firm, which should be registered under his real name.** Additionally, he is prohibited from having, opening, or using a solo or joint account with any person in any other Trading Participant for the purpose of transacting securities.

The CMIC considered the opening of each ITF account as a distinct offense, since its Rules prohibit "batching" of offenses. Thus, IGC was fined P10,000 for the 1st Violation and P30,000 for the 2nd violation.

The CMIC also held IGC liable for its Associated Person's failure to supervise, in violation of Article VI, Section 2(b) of the CMIC Rules, viz.

> 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.

IGC was thus fined P10,000 for the alleged negligence of its Associated Person.

On **5 August 2015**, IGC filed a Request for Reconsideration, reiterating that Ms. Mijares' opening of the ITF accounts do not constitute an offense, and that IGC's Associated Person was not negligent.

On **13 October 2015**, the CMIC denied IGC's Request for Reconsideration.

On **29 October 2015**, IGC filed its Appeal Memorandum to the SEC En Banc, reiterating the same arguments, viz.

> (1) That Ms. Mijares does not have more than one personal account, since the beneficial owners of the ITF are her minor children;

> (2) That Ms. Mijares does not have more than one personal account, because as a mere joint-trustee, she did not have full control over the accounts; and
>
> (3) That, since Ms. Mijares committed no offense, the Associated Person was not remiss in her duty to supervise.

On **18 November 2015**, the CMIC submitted its Reply Memorandum. It maintained that the ITF accounts are additional "personal accounts," since Ms. Mijares has control over them.

Hence this appeal.

DISCUSSION

The only issue in this case is whether or not the ITF trading accounts may be considered "personal accounts" of Ms. Mijares.

If so, Ms. Mijares' act of maintaining more than one personal account would be a violation attributable to IGC. In addition, the failure of IGC's Associated Person to supervise Ms. Mijares would be a second violation attributable to IGC.

In context, the CMIC Rule allegedly violated reads, viz :

> **ARTICLE V. CODE OF CONDUCT AND PROFESSIONAL ETHICS FOR TRADERS AND SALESMEN**
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> xxx xxx xxx
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> **Section 4. *Rules on Trading for One's Personal Account.*** The following rules govern a trader's or salesman's transactions for his own personal account:
>
> (a) The Exchange shall allow traders and salesmen to deal for their own personal account on [the] condition that they shall not abuse this privilege and that they will not enter into any transactions that would put their clients at a disadvantage.
>
> (b) To ensure effective monitoring and surveillance, all personal transactions of traders and salesmen shall be transacted only through their own firm.
>
> **(c) A trader or salesman should use and maintain only one (1) personal dealing account, and only with his firm, which should be registered under his real name.** Additionally, he is prohibited from having, opening, or using a solo or joint account with any person

> in any other Trading Participant for the purpose of transacting securities.
>
> (d) Traders' and salesmen's personal transactions shall require the prior written approval of their firm's Associated Person.
>
> (e) The Trading Participant shall trade for its account only under a "Customer First Policy," and ensure the protection of the public and its clients.

Note that **Section 4(c)** has **no counterpart** in the Securities Regulation Code (SRC) and its Implementing Rules.[1]

IGC admits that Ms. Mijares opened In-Trust-For accounts in the names of her two (2) minor children, where she and the children's father have control over the accounts and discretion to trade securities on the children's behalf. This falls squarely within the prohibition of opening additional personal accounts.

We agree with the CMIC that it is the spirit of the law which must prevail over the letter of the law, viz.

> A careful reading of [Article V, Section 4(c)] of the CMIC Rules reveals that the classification of "personal dealing account" is not—and should not be—limited to an account "which is under the name of the trader." **What holds importance, in other words, is not the literal construction of the provision, but the intent behind such account as "personal dealing account" of a trader or salesman just because it is not in the personal name of the latter.**
>
> A trust is the legal relationship between one person have an equitable ownership of property and another person owning the legal title to such property, the equitable ownership of the former entitling him to the performance of certain duties and the exercise of certain powers by the latter. Accordingly, by virtue of the trust, Ms. Mijares has equitable ownership of the subject accounts. Hence, even though accounts HER6138 and HER6139 are ITF accounts, Ms. Mijares, as trustee, has control and discretion to deal with the accounts in the same manner as if the accounts were her personal account.[2]

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[1] The 2004 SRC Amended Implementing Rules and Regulations apply to this case, since it was filed prior to 9 November 2015, the effectivity of the 2015 Implementing Rules and Regulations.

[2] Page 13 of CMIC's Reply Memorandum

> Even though it is palpable that the ITF accounts are not under the name of Ms. Mijares, what is rendered imperative in this case is the control she has over the same accounts. Conversely, considering that the trustors of the ITF accounts are minors, whose capacity to act is limited, the transactions for the said accounts are all controlled by the trustee, Ms. Mijares. This element of control is of primordial import and extant in her own personal account, which, to reiterate, is limited to only one by the securities laws.
>
> The prohibition is, therefore, clear: a trader or salesman shall use and maintain only one (1) personal dealing account. **Petitioner cannot do indirectly what it cannot do directly**, otherwise all laws would be illusory.[3]

Moreover, **SRC Rule 3.1.A** defines **"Beneficial Owner"** as "any person who, directly or indirectly, *through any contract, arrangement, understanding, relationship or otherwise*, has or shares voting power, which includes the power to vote, or to direct the voting of such security; and/or investment returns or power, which includes the power to dispose of, or to direct the disposition of such security xxx" <u>As "trustee," she has both voting rights and investment returns power. Nothing prevents her from liquidating the shares in these accounts. Therefore, she is a Beneficial Owner.</u>

The authority granted by Article V, Section 4(c) is very limited. Ms. Mijares, by opening additional accounts that she will ultimately manage, is clearly ***circumventing*** the rule. Obviously, the minor children did not open the accounts, nor will they perform any trades. Moreover, as minors, they do not possess full legal capacity. <u>It was Ms. Mijares who opened these accounts and it is she who will transact securities.</u>

The rule also does not consider the intention of the broker or salesman. Ms. Mijares' stated intention was to open stock trading accounts because they offer better returns than savings accounts;[4] by so doing, she meant to provide for her children's future. However, <u>being a licensed salesman, she should have been aware that her paramount duty is to her firm and its clients, and not to herself or to her family.</u>

Finally, IGC argues that Ms. Mijares should be absolved because she previously *disclosed* the accounts to her firm's Associated Person. <u>**Article V, Section (c)** does not have exceptions.</u> Since opening additional personal trading accounts is absolutely prohibited, the acquiescence of

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[3] Page 14 of CMIC's Reply Memorandum
[4] Page 9 of IGC Securities' Appeal Memorandum

the Associated Person will not absolve the trader; rather, it makes such Associated Person liable for failure to supervise.

WHEREFORE, the CMIC Decisions dated 8 July 2015 and 13 October 2015 are hereby **AFFIRMED**.

IGC Securities, Inc. is sternly warned not to violate the CMIC Rules, the Securities Regulation Code and its Implementing Rules and Regulations

SO ORDERED.

Pasay City, Philippines; 30 July 2019.

EMILIO B. AQUINO
Chairperson

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner