Republic of the Philippines
Department of Finance
Securities and Exchange Commission
Commission En Banc

**PUBLIC SECURITIES CORPORATION,**

*Appellant,*

-versus-

**MARKET INTEGRITY BOARD OF THE PHILIPPINE STOCK EXCHANGE, INC.**

*Appellee.*

**SEC En Banc Case No. 07-11-239**

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# DECISION

This resolves the Memorandum on Appeal dated July 11, 2011 (the "Memorandum") filed by appellant Public Securities Corporation (now known as "Salisbury BKT Securities Corporation" or **"BKT"**) before the Commission *En Banc* on July 19, 2011 assailing the following resolutions of the Philippine Stock Exchange Market Integrity Board (now known as the Capital Markets Integrity Corporation or **"CMIC"**) which imposed the penalty of a written reprimand against BKT, thus:

a.) MIB Resolution No. 17 (Series of 2010) – For violation of SRC Rule 49.2.4. Special Reserve Bank Account for the Exclusive Benefit of Customers.

b.) MIB Resolution No. 22 (Series of 2010) – For failure to secure work permits for Messrs. Hamish G. Cruden and Simon B. Bailey.

c.) MIB Resolution No. 26 (Series of 2010) – For violation of SRC Rule 52.1-1 (Books and Records Rule) and directive to record the correct value of the Condominium Unit.

## THE PARTIES

Appellant **BKT**, formerly known as Public Securities Corporation, is a corporation duly organized and registered under the laws of the Philippines, primarily engaged in the business of brokering and dealing with securities, and with office address at Unit 1214 Tower One & Exchange Plaza, Ayala Avenue, Makati City.

Appellee MARKET INTEGRITY BOARD (MIB) of the Philippine Stock Exchange, Inc.[1] is a corporation duly organized and registered in accordance with the laws of the Philippines, the primary purpose of which is to function as the independent audit, surveillance and compliance unit of the Philippine Stock Exchange, Inc. (the Exchange) to reinforce the confidence of the investing public through the adoption and enforcement of, as well as the implementation and interpretation of securities laws, rules, regulations and guidelines relating to and governing the operations and dealings of trading participants and other market participants of the Exchange, and to register and act as a self-regulatory organization in accordance with existing and applicable laws of the Philippines.

## RELEVANT FACTS

**MIB Resolution No. 17. Series of 2010**

On 25 February 2010, the Market Regulation Division of the Exchange (PSE-MRD) issued a show-cause letter against BKT after finding that the latter knowingly failed to make an additional deposit of One Million Seven Hundred Twelve Thousand Nine Hundred Fifty-Two Pesos (Php 1,712,952.00) to its Special Reserve Bank Account, as required under SRC Rule 49.2-4.[2] In its letter-reply dated 25 February 2010 filed with PSE-MRD on 26 February 2010[3], BKT alleged that it made an additional deposit of Five Million Pesos (Php 5,000,000.00) to its Special Reserve Bank Account on February 10, 2010 and stated that the belated replenishment of the same was due to time constraints. On 21 April 2010, PSE-MRD issued a letter finding that BKT violated SRC Rule 49.2-4 and imposed a penalty of a written reprimand.

BKT appealed the 21 April 2010 ruling of the PSE-MRD to Appellee MIB which denied the same through Resolution No. 17 dated 25 June 2010 after finding that there was no sufficient basis to disturb the ruling of PSE-MRD, thus:

> "RESOLVED That, the finding by the Market Regulation Division ("MRD") of a violation by the Public Securities Corp. of SRC Rule 49.2.4, *Special Reserve Bank Account for the*

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[1] Pursuant to Resolution No. 91, Series of 2010 of the Philippine Stock Exchange, the MIB became what is now known as the Capital Markets Integrity Corporation

[2] Reply-Memorandum, Annex "A'.

[3] *Id.*, Annex "B".

*Exclusive Benefit of Customers* and the imposition by the MRD of the sanction of a written reprimand be as it is hereby affirmed and the appeal take therefrom by said trading participant be, as it is hereby, denied."

**MIB Resolution Nos. 26 and 22, Series of 2010**

On 28 May 2010, PSE-MRD issued an audit finding relative to BKT's non-compliance with SRC Rule No. 52.1.1 i.e. there was a discrepancy/inconsistency between the values entered in BKT's system generated Trial Balance with those reflected in its RBCA Trial Balance. PSE-MRD also found that two (2) foreign directors of BKT i.e. Messrs. Hamish G. Cruden and Simon B. Bailey (collectively, the "Directors"), were performing functions more than that of director without the necessary Alien Employment Permit (**"AEP"**).

In its letter-reply dated 01 June 2010[4], BKT provided PSE-MRD with an explanation on how the values of the condominium unit appearing in the system generated Trial Balance and the RBCA Trial Balance were arrived at. BKT however denied the allegations of CMIC with respect to the Directors. Finding the explanations proffered by BKT unmeritorious PSE-MRD issued a letter-order dated 09 July 2009 (sic) and imposed a sanction of written reprimand on two (2) counts[5].

On 22 July 2010, BKT filed an appeal with Appellee MIB assailing the order of PSE-MRD relating to its alleged failure to secure work permit for its Directors, arguing that the latter are not gainfully employed by BKT.[6] In two (2) separate letters both dated 28 April 2010, MIB affirmed the findings of PSE-MRD and issued Resolutions No. 26 and 22, thus:

> "RESOLVED That, the finding by the Market Regulation Division ("MRD") of a violation by the Public Securities Corp. of SRC Rule 52.1.1 (Books and Records Rule) and, the imposition by the MRD of the sanction of a written reprimand for such violation and the directive that the trading participant record the correct value of its Condominium Unit be, as it is hereby affirmed"
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> "RESOLVED That, the finding by the Market Regulation Division ("MRD") of a violation by the Public Securities Corp. of employment laws for its failure to secure work permits for

[4] *Id.*, Annex "G".
[5] *Id.*, Annex "H".
[6] *Id.*, Annex "I".

Messrs. Hamish G. Cruden and Simon B. Bailey and, the imposition by the MRD of the sanction of written reprimand for such violation be, as it is hereby affirmed."

Not satisfied with the ruling of the Appellee MIB, Appellant BKT elevated the matter to this Commission to assail Resolution Nos. 17, 26 and 22.

On 25 August 2011, Appellee MIB filed its Reply Memorandum in compliance with the Order dated 10 August of the Commission praying that the latter denies the appeal of BKT and affirms Resolution Nos. 11, 22, and 26.

## ISSUE/S

1. Whether MIB committed a reversible error in holding that PSE-MRD was correct in finding that BKT violated Rule 49.2-4 of the Implementing Rules and Regulations of SRC;

2. Whether MIB committed a reversible error in holding that PSE-MRD was correct in requiring from BKT the submission of AEPs for the Directors; and

3. Whether MIB committed a reversible error in holding that PSE-MRD was correct in finding that BKT violated Rule 52.1-1 of the Implementing Rules and Regulations of SRC.

## DECISION

After careful consideration of the facts and circumstances, as well as the evidence presented by both parties, this Commission finds the appeal not meritorious and resolves to deny the same.

As to the first issue, Rule 49.2.4.3(i) of the Implementing Rules and Regulations of the SRC (Special Reserve Rule for Broker-Dealers) provides that:

> "Computations necessary to determine the amount required to be deposited pursuant to paragraph 4(A) above shall be made weekly, as of the close of the last business day of the week and **the deposit so computed shall be made no later than one (1) hour after the opening**

**of banking business on the second following business day**; Provided, however, a Broker Dealer which has aggregate indebtedness not exceeding eight hundred percent (800%) of net capital as defined in SRC Rule 49.1 and which carries aggregate customer funds as computed at the last required computation pursuant to this rule, not exceeding Twenty Five Million Pesos (Php 25,000,000.00), may, in the alternative, make the computation monthly, as of the close of the last business day of the month, and in such event, shall deposit not less than one hundred five percent (105%) amount so computed no later than one (1) hour after the opening of banking business on the second following business day." (Emphasis supplied)

The afore-quoted provision categorically mandates that the "*the deposit so computed* **SHALL** *be made no later than one (1) hour after the opening of the banking business on the second following day*". The mandatory nature of the directive to immediately replenishment of the Special Reserve Account is specially designed to protect the interests of, and to benefit the customers. Failure to comply with the same already constitutes a violation of said provision. The rationale of said provision is to protect public investors from risks occasioned by or resulting from the lack or shortage of funds of their broker-dealers, by ensuring that investors can withdraw their holdings on demand even if a firm becomes insolvent.

In the instant case, appellant BKT admitted that as early as 31 January 2010, it was already obliged to make an additional deposit in the amount of Php 1,712,951.95. It likewise admitted that it was only on 10 February 2010 that BKT complied with Rule 49.2.4.3(i), IRR of the SRC by depositing PhP5 Million to its Special Reserve Bank Account which covered the deficiency of Php 1,712,951.95. It is thus clear that when BKT failed to deposit Php 1,712,951.95 to its Special Reserve Bank Account on 31 January 2010 it violated Rule 49.2.4.3(i), IRR of the SRC which justified the imposition of the prescribed penalty of written reprimand.

On the basis thereof, the argument of BKT that the Commission should give due consideration to its act of subsequently depositing PhP5Million to its Special Reserve Bank Account as it was a display of its due regard for its obligations to the investors does not persuade. BKT's violation of Rule 49.2.4.3(i), IRR of the SRC warranted the imposition of the penalties prescribed therein, and its act of subsequently complying in good faith with the same does not operate to negate its liability. The foregoing is based on the principle governing liabilities for violation of special laws which was expounded by the Supreme Court in the case of Antonio Tan vs Amelito Ballena et.al.[7], thus:

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[7] G.R. No. 168111, July 4, 2008

> "The law has long divided crimes into acts wrong in themselves called acts *mala in se*; and acts which would not be wrong but for the fact that positive law forbids them, called acts *mala prohibita*. This distinction is important with reference to the intent with which a wrongful act is done. The rule on the subject is that in acts *mala in se,* the intent governs; but in acts *mala prohibita*, the only inquiry is, has the law been violated? When an act is illegal, the intent of the offender is immaterial."

On account of the foregoing, this Commission hereby affirms MIB Resolution No. 17 imposing a penalty of written reprimand against BKT for its failure to deposit Php 1,712,951.95 to its Special Reserve Bank Account in violation of Rule 49.2.4.3(i), IRR of the SRC.

Going now to the second issue, this Commission finds that Appellee MIB was correct in finding that BKT was under obligation to submit the AEP of the Directors.

In its Memorandum, BKT categorically admitted that Mr. Cruden was the corporation's Treasurer and authorized bank signatory although he is not gainfully employed by the corporation.[8]

Rule 28.1.2.4, IRR of the SRC provides that:

> "Every application for registration as a Broker Dealer shall be filed on SEC Form 28-BD and be accompanied by the following papers of or documents:
>
> xxx xxx xxx
>
> Rule 28.1.2.4.3. **Certified true copy of valid work permit of foreigners who are** employees or **officers** of the applicant corporation duly issued by the Department of Labor and Employment (DOLE) or any appropriate agency." (Emphasis supplied)

The designation and appointment of Mr. Cruden as Treasurer of BKT triggered the compliance of the requirement provided in afore-quoted provision of the SRC-IRR as he effectively became an officer of BKT.[9] The fact that Mr. Cruden's appointment came after BKT secured its license as broker-dealer did not exempt it from complying with the requirement prescribed in the afore-quoted provision. To hold a contrary position will in effect sanction an indirect circumvention of the said provision as it will

[8] See Paragraph 10, page 3 of the Memorandum
[9] Section 24 of Republic Act No. 11232 (the "Revised Corporation Code") provides that a treasurer who must be a resident is considered a corporate officer.

encourage broker-dealer corporations to engage foreign nationals as officers only after securing its license from the Commission.

Records reveal that BKT did not submit the AEP of the Directors. This fact constitutes a violation of Rule 28.1.2.4.3., IRR of the SRC which warrants the imposition of the penalty of written reprimand. The Commission does not subscribe to BKT's argument that the imposition of penalty for requiring the submission of the Director's AEP will discourage and adversely affect the government thrust to encourage foreign investment. The the policy of promoting foreign investment should and must not be used as a convenient excuse to violate the law, rules and regulations.

On account of the foregoing, the Commission therefore sees no reason to reverse or nullify MIB Resolution No. 17.

Finally, the Commission finds that MIB did not commit a reversible error in imposing a penalty of written reprimand on BKT for violation of Rule 52.1-1, IRR of SRC. The said rule provides that:

> "A. Every Broker Dealer shall make and keep current the following books and records relating to its business and shall be maintained in the principal office of the Broker Dealer:
>
> xxx
>
> ii. Ledgers reflecting all assets, liabilities, income and expenses and capital accounts."

The afore-quoted provision, which is also known as the "Books and Records Rule" require that, as a general rule, entries in the corporation's RBCA Trial Balance should be the same as those in the computer generated Trial Balance. An accepted exception to the foregoing rule is a circumstance where audited statements or appraisal reports are factored in the computer generated Trial Balance after the RBCA Trial Balance has been submitted.

In its Memorandum, BKT admitted that the figures/values in its computer-generated Trial Balance and RBCA Trial Balance with regard to the condominium unit and its improvements were different.[10] BKT attributed the difference to the entries in the working paper adjustments[11] and the fixed asset appraisal increase of the unit as of 31 July 2008.[12]

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[10] Computer Generated Trial Balance = Cost: Php15,123,973.88 and Acc. Dep.: Php9,411,767.59
RBCA Trial Balance = Cost: Php6,227,844.00 and Acc. Dep. 4,245,246.03
[11] See Paragraph 16 (b) and (c), which made reference to Annex "E-1" and "E-2" of the Memorandum
[12] See Paragraph 16 (d) and (e), which made reference to Annex "F" of the Memorandum

In its Reply Memorandum, MIB pointed out and emphasized that the correctness of the valuation of the condominium unit and its corresponding accumulated depreciation were not in question. The violation which resulted in the imposition of the penalty consisted in the clear discrepancy or inconsistency between the values entered by BKT in the system generated Trial Balance with those reflected in its RBCA Trial Balance, to wit:

| | | | Condominium Unit | Accumulated Depreciation |
|---|---|---|---|---|
| **A** | Per system-generated Trial Balance | | 15,123,973.88 | 9,411,767.59 |
| | As per appraisal | | 7,760,000.00 | |
| | Difference | (15,123,973.88 - 7,760,000.00) | **7,363,973.88** | |
| **B** | Per RBCA Trial Balance | | 10,473,090.03 | 4,760,884.18 |
| | Appraisal Report | | 7,760,000.00 | |
| | Difference | | **2,713,090.03** | |
| | Discrepancy | (9,411,767.59 - 4,760,884.18) | | **4,650,883.41** |

After a careful review of the arguments and positions of the parties, the Commission finds that BKT was not able to justify the difference or the inconsistency of the values entered in the system generated Trial Balance with those reflected in its RBCA Trial Balance. We cannot close our eyes to the glaring fact that the documents which BKT used to justify the discrepancy i.e. working paper adjustments and the fixed asset appraisal increase of the unit as of 31 July 2008, were not audited and made by a third party appraiser, respectively. Such being the case, the said documents are self-serving, to say the least, and cannot therefore be used to justify the difference or the inconsistency of the values entered in the system generated Trial Balance with those reflected in its RBCA Trial Balance.

Moreover, the records also show that while MRD's letter-order dated dated 9 July 2009 (sic) imposed the penalty of written reprimand after finding of (a) violation of SRC Rule 52.1-1, (b) failure to secure work permits for the Directors, BKT appealed and assailed only the latter finding of MRD i.e. the subject of its letter dated 22 July 2010 reads: "*Appeal to the Written Reprimand on Foreign Directors Without Work Permit.*" The foregoing simply means that BKT has accepted the correctness of the finding of MRD relating to its violation of the Books and Records Rule, and the justification that BKT proffered in its Memorandum was only an afterthought. On account of the foregoing, the Commission hereby sustains MIB Resolution No. 26.

**WHEREFORE**, premises considered, the Memorandum of Appeal filed by appellant BKT is hereby DENIED for lack of merit. MIB Resolution Nos. 17, 22 and 26 are hereby **AFFIRMED.**

**SO ORDERED.**

Pasay City, Philippines, 10 December 2019.

**EMILIO B. AQUINO**
Chairperson

**EPHYRO LUIS B. AMATONG**
Commissioner

**JAVEY PAUL D. FRANCISCO**
Commissioner

**KELVIN LESTER K. LEE**
Commissioner

**KARLO S. BELLO**
Commissioner