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

IN THE MATTER OF:

ASIAN HOSPITAL, INC. — **SEC En Banc Case No. 12-12-278**

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ASIAN HOSPITAL, INC.,
Appellant,

-versus- — **SEC En Banc Case No. 01-13-281**

ENFORCEMENT AND PROSECUTION DEPARTMENT, ATTY. LALAINE P. MONSERATE, in her capacity as **DIVISION HEAD OF THE COMPLAINTS AND INVESTIGATION DIVISION, AND ATTYS. LORNA PATAJO-KAPUNAN, IRENE JOY BESIDO-GARCIA AND RYAN V. ROMERO OF THE KAPUNAN GARCIA & CASTILLO LAW OFFICES IN BEHALF OF MS. EVELYN SINGSON,**
Appellees.

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ASIAN HOSPITAL, INC.,
Appellant,

-versus- — **SEC En Banc Case No. 08-14-339**

ENFORCEMENT AND PROSECUTION DEPARTMENT, MR. JOSE P. AQUINO, IN HIS CAPACITY AS DIRECTOR OF THE DEPARTMENT,
Appellee.

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DECISION

Before the Commission *En Banc* are (a) the Memorandum of Partial Appeal dated 18 December 2012 filed by Evelyn R. Singson in SEC *En Banc* Case No. 12-12-278, (b) Memorandum of Appeal dated 26 December 2012 filed by Asian Hospital, Inc. in SEC *En Banc* Case No. 01-13-281, both assailing the Order dated 6 December 2012[1] (the "First Assailed Order") of the Enforcement and Prosecution Department (now the Enforcement and Investor Protection Department or EIPD), and (c) the Memorandum of Partial Appeal dated 6 August 2014 filed by Asian Hospital, Inc. in SEC *En Banc* Case No. 08-14-339 which assails the Order dated 7 July 2014[2] (the "Second Assailed Order") of the EIPD.

On a procedural matter, the Commission has consolidated the Appeals of the parties pursuant to Section 1 Rule 31[3] of the Rules of Court, which applies suppletorily[4], considering that the question(s) of law being presented therein is anchored on the same factual circumstances.

RELEVANT FACTS

On 28 August 2000, a Memorandum of Agreement (the "MOA") was executed between and among Asian Hospital, Inc. (AHI), Healthcare Properties, Inc. (HPI), Vista Medical Management, Inc. (VMMI, now known as Bumrungrad International Philippines, Inc.), Insular Life Assurance Co., Ltd. (Insular), Dr. George Garcia (Dr. Garcia) and Ms. Singson (collectively, the "Significant Shareholders"), with Filinvest Alabang, Inc. (FAI), whereby the latter agreed to subscribe to such number of AHI shares equivalent to its unpaid interests on AHI's obligations.[5]

Under the MOA, it was agreed that (a) AHI will repurchase, or cause one or several other investors to purchase/acquire all of the AHI shares acquired by FAI pursuant to its provisions (the "Buy-Back Shares") within one (1) year from the agreed payment date at a price composed of

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[1] SEC – EPD Case No. 2011-1734 CID entitled *In the Matter of Asian Hospital, Inc.*,

[2] SEC – EIPD Case No. 2013-359 entitled *In the Matter of Asian Hospital, Inc.*

[3] "SECTION 1. *Consolidation. When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.*"

[4] SEC. 1-6, Rule I Part I of the 2016 Rules of Procedure of the Securities and Exchange Commission provides that: *"The pertinent provisions of the Rules of Court may, in the interest of expeditious dispensation of justice and whenever practicable, be applied by analogy or in a suppletory character and effect."*

[5] *Reply Memorandum* dated 4 February 2013. Par. 6

the par value of the shares plus premium, and (b) the Significant Shareholders shall acquire the Buy-Back Shares at an agreed percentage[6] in the event that AHI fails to comply with its obligation to purchase the Buy-Back Shares.[7]

In a letter dated 14 January 2002, FAI demanded from AHI the payment of its remaining obligations under the MOA and informed it of its continuing failure to repurchase the Buy-Back Shares. This was followed by a Statement of Account dated 15 January 2002 sent to the Significant Shareholders, demanding payment of AHI's remaining obligation under the MOA, and the purchase price of the Buy-Back Shares.[8]

In a letter dated 27 August 2004, FAI reiterated its demand for AHI to comply with its obligations to repurchase the Buy-Back Shares consisting of 114,406,150 shares.[9] However, since AHI had no retained earnings which prevented it from repurchasing the Buy-Back Shares, the Significant Shareholders (excluding Ms. Singson) entered into a Letter Agreement dated 3 December 2004 (the "Letter Agreement") where they agreed as follows:

(a) VMMI shall repurchase 13% of the Buy-Back Shares;
(b) Insular will assign to FAI its advances to AHI to satisfy its obligation to purchase 13% of the Buy-Back Shares;
(c) Dr. Garcia will assign to FAI its advances to AHI to satisfy its obligation to purchase the remaining 37% of the Buy-Back Shares;
(d) The obligation to purchase the remaining 37% of the Buy-Back Shares, which Ms. Singson was originally liable to pay for under the MOA, shall be booked as cash liability of AHI in the amount of PhP28,183,421.53 (the "AHI Liability");
(e) FAI will waive 50% of the premium accruing on the outstanding amount of AHI's obligation to FAI as of 31 August 2004, and all the premium accruing after such date, reducing AHI's liability for the premium on the outstanding amount of the obligations to PhP17,141,761, which AHI shall book as liability (the "Premium Liability");
(f) The AHI Liability and the Premium Liability shall be converted into 40,110,781 AHI shares.[10]

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[6] (a) VMMI – 13%; (b) Insular – 13%; and (c) Dr. Garcia and Ms. Singson – 74%
[7] *Ibid.* Pars. 7 and 8
[8] *Ibid.* Pars. 9 and 10
[9] *Ibid.* Par. 13
[10] *Id.* Par. 14

Pursuant to the Letter Agreement, FAI was issued shares in consideration of (i) the advances to AHI which Insular and Dr. Garcia assigned to it; and (b) the AHI Liability and the Premium Liability which AHI booked as "Accounts Receivables".[11] Consequently, the obligation to FAI by AHI and the Significant Shareholders under the MOA was extinguished, which included the 37% of the Buy-Back Shares which Ms. Singson agreed to purchase/acquire.

In February 2005, the 37% of the Buy-Back Shares which Ms. Singson agreed to purchase/acquire was then booked as accounts receivable from AHI. This entry was reflected in the books of AHI until June 2011 when it was removed pursuant to the legal opinion which confirmed that the MOA was deemed novated by the Letter Agreement. AHI's external auditor, SyCip Gorres & Velayo ("SGV) confirmed that this was an acceptable way of booking the transaction.[12]

AHI filed with the Commission its 2010 AFS and Annual Report (collectively, the "Required Reports") which disclosed, among others, that it made advances to a stockholder in the amount of PhP45,325,182.00 (the "Subject Amount"). The shareholders of AHI were furnished with a copy of the Required Reports. This disclosure, according to Ms. Singson, tarnished her reputation as she did not owe AHI the Subject Amount.[13]

Ms. Singson forthwith inspected the corporate records of AHI on different dates in July and August of 2011, and subsequently sent AHI a Letter dated 17 August 2011 demanding from it (including its past and present directors), VMMI, and SGV (a) the correction of the recording of the alleged advances to her, (b) the issuance of a public apology to her, (c) the buy-out of her shares in AHI, (d) the payment of damages, and (e) the reimbursement of her expenses.[14]

In a letter dated 23 September 2011, AHI explained to Ms. Singson the basis for the questioned entry in the books of the corporation, and informed her that the same had already been deleted in the supplementary schedules of AHI's AFS. AHI also proposed to make a clarificatory statement on the said issue at the next annual shareholders'

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[11] *Id.* Par. 15
[12] *Id.* Pars. 16, 18 and 19
[13] *Memorandum of Partial Appeal* dated 18 December 2012. Par. 4.2
[14] *Reply Memorandum* dated 4 February 2013. Par. 21

meeting, but denied Ms. Singson's claim for damages, reimbursement, and buy-out of her shares.[15]

On 16 November 2011, Ms. Singson filed a Letter-Complaint dated 16 November 2011 for "Fraudulent Manipulation of the Financial Statements of Asian Hospital" (the "Complaint") against AHI with the EIPD, praying for the conduct of an investigation and the imposition of the appropriate penalties against AHI and the relevant Significant Shareholders for alleged violation of the Corporation Code, and the relevant accounting and reporting standards.[16]

In its Answer dated 30 April 2012 (the "Answer"), AHI sought the dismissal of the Complaint for utter lack of merit, essentially arguing that the entry in its 2005 to 2010 AFS (the "Relevant AFS") relating to the accounts receivable from Ms. Singson was justified by the extinguishment of her obligation under the MOA which, according to SGV, was an acceptable way of booking the transaction.[17] However, such entry was corrected pursuant to the legal opinion issued by its external counsel (the "Legal Opinion") confirming that the MOA was novated by the Letter-Agreement.[18] Thus, AHI maintained that the Relevant AFS did not contain false or misleading statements; neither were there material misrepresentations made therein.

On 9 October 2012, Ms. Singson filed a Reply (To Counter-Manifestation dated 30 August 2012 filed by Asian Hospital, Inc.) with Motion to Involve the Office of the General Accountant of the Securities and Exchange Commission dated 18 September 2012, where she prayed that the Office of the General Account (OGA) be directed to comment and make its findings on the propriety of the issuance of the stocks corresponding to the amount of PhP45,325,182.53.

On 6 December 2012, the Complaints and Investigation Division of the EPD (CID-EPD) issued the First Assailed Order dismissing the Complaint on the grounds of mootness. The CID-EPD however endorsed to the Office of the General Accountant the evaluation of AHI's AFS from 2005 until 2011 for possible violation of Rule 68 of the SRC-IRR.[19] The dispositive portion of the First Assailed Order reads:

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[15] *Ibid.* Par. 23
[16] *Memorandum of Partial Appeal* dated 18 December 2012. Par. 4.16 (see Annex "B")
[17] *Answer* dated 30 April 2012. Pars. 10, 14
[18] *Ibid.* Par. 12
[19] *Ibid.* Par. 4.23

> "**WHEREFORE**, premises considered, this case is **DISMISSED** for being moot and academic, without prejudice to the filing of appropriate action in Court by the complainant. Furthermore, this case shall be endorsed to the Office of the General Accountant (OGA) for its review of AHI's Audited Financial Statements from 2005 to 2011 for possible violation of SEC Rule 68 of the Implementing Rules and Regulations of the Securities Regulation Code (SRC)."

(A) The Singson Appeal - SEC *En Banc* Case No. 12-12-278

On 26 December 2012, Ms. Singson filed the instant Memorandum of Partial Appeal which was docketed as SEC *En Banc* Case No. 12-12-278 (the "Singson Appeal").

On 4 February 2013, AHI filed its Reply Memorandum therein praying for the dismissal of the Singson Appeal for lack of merit, and the affirmation of the Assailed Order on the ground that Ms. Singson allegedly failed to raise new grounds that would warrant the reversal thereof. AHI essentially reiterated the allegations and arguments that it presented in its Answer.

(B) The AHI Appeal - SEC *En Banc* Case No. 12-13-281

On 10 January 2013, AHI filed its Memorandum of Appeal which was docketed as SEC *En Banc* Case No. 12-13-281 (the "AHI Appeal"). The AHI Appeal prayed for the reversal or deletion in the Assailed Order of the finding of the EPD that "*AHI has no legal basis for recording Advances to a Stockholder (Ms. Evelyn Singson) for the amount of P45,325,183.00.*" AHI maintained that with the extinguishment of the obligations of AHI and the Significant Shareholders under the MOA, after the Letter Agreement was implemented, AHI recognized a liability under such Letter Agreement to cover the 37% share attributable to Ms. Singson. AHI in effect fulfilled Ms. Singson's liability under the MOA. This justified the attribution of the amount that AHI settled on behalf of Ms. Singson as "advances" against the latter in the books of the corporation, applying Article 1236 of the Civil Code, which was allegedly confirmed by SGV.[20]

On 19 February 2013, Ms. Singson filed her Reply Memorandum where she prayed for the issuance of an order (a) denying the AHI Appeal,

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[20] *Memorandum of Appeal* dated 26 December 2012. Par. 49

and (b) upholding the finding of the EPD that AHI had no legal basis in recording the advances in the amount of Php45,325,183.00 in the name of Ms. Singson. Ms. Singson argued that the booking of an "Accounts Receivable" against her name when she was not even a party to the Letter Agreement resulted in AHI's books being materially misstated as it contained a false or misleading statement. This, according to Ms. Singson, also had the effect of watering of AHI's stocks since the non-existent advances recorded against her were allegedly used in consideration for the issuance of additional shares of stock to FAI.[21]

(C) The AHI Partial Appeal - SEC *En Banc* Case No. 08-14-339

Following the endorsement of the matter on AHI's alleged violation of Rule 68 of the SRC-IRR to the OGA and the action by the latter on the same, the EPD issued a Show Cause Letter on 16 December 2013 (the "Show Cause") directing AHI to address the findings of the OGA which showed violations of Rule 68 of the SRC-IRR in its AFS covering the years 2005 to 2011. The Show Cause specifically included, among others, (a) the finding of material misstatement of the 2004 AFS representing advances to Ms. Singson, (b) the absence of any disclosure of the terms and conditions of the "Advances to a Stockholder" in its 2004 and 2005 FS, and (c) the reason/s for the write off in the 2010 AFS.

In its letter dated 13 January 2014, AHI maintained that the acts and/or omissions relating to the preparation of its AFS for the year 2008 and earlier can no longer be cited as basis for imposing any liability against it considering that these violations, if any, have already prescribed pursuant to Sec. 62.2 of the SRC. AHI also addressed the items which the OGA found to be in violation of Rule 68 of the SRC-IRR. Specifically on the finding that AHI materially misstated in its 2004 AFS the advances made to Ms. Singson, AHI maintained a contrary position and essentially reiterated its arguments in its previous pleadings in support thereof. AHI also insisted that, assuming the absence of a legal basis, the questioned recording should not be considered a "material" misstatement since the advances did not comprise a significant portion of its receivables i.e. only around 1%.

On 7 July 2014, the EPD issued the Second Assailed Order finding AHI to have violated Rule 68 of the SRC-IRR, and imposed upon it a penalty in the amount of Pesos: Two Hundred Eighteen Thousand One

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[21] *Reply Memorandum* dated 15 February 2013. Pars. 9, 12, 14

Hundred Ninety-Seven & 32/100 (PhP218,197.32) [the "Monetary Penalty"], the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, for violating the disclosure requirements provided in Rule 68 of the SRC, as amended, **ASIAN HOSPITAL INC.** is hereby directed to pay in cash or manager's check payable to the Securities and Exchange Commission within fifteen (15) days from receipt of this Order the total amount of **TWO HUNDRED EIGHTEEN THOUSAND ONE HUNDRED NINETY-SEVEN and 32/100 PESOS (P218,197.32)** as penalty for said violations."

On 4 August 2014, AHI filed a Notice of Payment of Penalties Under Protest and with Reservation of Rights, allegedly for the purpose of ensuring the good standing of AHI with the Commission.

On 6 August 2014, AHI filed its Notice of Partial Appeal and Memorandum of Partial Appeal (the "AHI Partial Appeal"], praying for the reversal of the Second Assailed Order for being void inasmuch as it was allegedly rendered in violation of AHI's right to administrative due process; for being devoid of factual and legal bases; and on the ground of prescription.[22]

In its Reply Memorandum filed on 20 August 2014, the EPD maintained that the AHI Partial Appeal should be dismissed because (a) it was afforded every opportunity to refute the initial findings of the OGA but failed to provide an acceptable explanation for its failure to comply with the rules;[23] and (b) the prescriptive period under Sec. 62.2 of the SRC applies only to civil liability, citing the case of *Citibank vs Tanco-Gabaldon*.[24]

ISSUES

The pleadings submitted by the parties which have made the records of the instant case voluminous disclose that these consolidated cases essentially involve an intra-corporate dispute which under Section 5.2 of the SRC is now within the exclusive province of the proper Regional Trial Court sitting as commercial courts. However, considering that the Complaint equally alleged violation by AHI of Rule 68 of the SRC-IRR,

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[22] *Memorandum of Partial Appeal* dated 6 August 2014. Par. 27
[23] *Reply Memorandum* dated 20 August 2014. Pars. 12 and 13
[24] *Ibid.* Pars. 15 to 17

which the EPD correctly took cognizance of as a matter that falls within the primary and exclusive jurisdiction of this Commission, and which in turn resulted in the issuance of the Assailed Orders, the issues that will be passed upon by the Commission are as follows:

(A)

WHETHER THE EPD WAS CORRECT IN HOLDING THAT THE ACTION SUBJECT OF THE INSTANT CASE HAS NOT YET PRESCRIBED.

(B)

WHETHER THE EPD COMMITTED REVERSIBLE ERROR IN FINDING THAT AHI VIOLATED RULE 68 OF THE SRC, AND IMPOSING UPON THE LATTER THE MONETARY PENALTY.

(C)

WHETHER THE EPD WAS CORRECT IN HOLDING THAT THE INSTANT CASE HAS BECOME MOOT AND ACAMEDIC.

RULING

Preliminarily, We will determine if, in relation to the Second Assailed Order, AHI was denied of its right to due process in the sense that the findings therein are allegedly bereft of the requisite factual and legal bases.

This Commission has consistently applied the rule enshrined in jurisprudence that in administrative cases, the fundamental requirement of due process is satisfied if the parties to a case are afforded the opportunity to explain their side, or to seek reconsideration of the ruling. We find this principle being reiterated in *Articulo v. Cagayan State University*[25], where the Supreme Court ruled, thus:

> "It bears emphasis that administrative due process cannot be fully equated with due process in its strict judicial sense. In administrative proceedings, a formal or trial-type hearing is not always necessary and technical rules of procedure are not strictly applied. In fact, the right to cross-examine is not an

[25] G.R. No. 253213 (Notice), [December 2, 2020]

indispensable aspect of administrative due process. After all, due process in administrative cases, in essence, is simply an opportunity to explain one's side or to seek a reconsideration of the action or ruling. Thus, there is no basis to nullify the CSUBOR Decision for lack of due process."

In the instant case, We have carefully scrutinized the Second Assailed Order, and We find that the same adopted the findings of the OGA which laid down in detail (a) the relevant year of the subject AFS; (b) an enumeration and brief description of AHI's non-compliance; (d) AHI's responses; (d) OGA's evaluation of the company's response; and (e) the basis and amount of the penalty. These, to the mind of the Commission, sufficiently satisfied the requirement provided under Rule VI Section 6-1 of the 2006 Rules of Procedure that the decision shall contain a statement of facts and the law on which the resolution is made. In other words, this document sufficiently informed AHI of the findings of violation made by the Commission, through its relevant departments, which AHI formally addressed and responded to.

The foregoing notwithstanding, and granting *ex gratia argumenti* that the Second Assailed Order failed to substantially comply with the rule, the same does not warrant its nullification since it sufficiently informed AHI of its infractions and the legal bases for the imposition of the Monetary Penalties. In the case of *Solid Homes, Inc. vs. Laserna*,[26] the Supreme Court ruled that the requirement that a decision expresses clearly and distinctly the facts and law on which it is based does not apply in administrative cases, thus:

> "As can be seen above, among these rights are "the decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected;" and that the decision be rendered "in such a manner that the parties to the proceedings can know the various issues involved, and the reasons for the decisions rendered." **Note that there is no requirement in Ang Tibay that the decision must express clearly and distinctly the facts and the law on which it is based.** <u>**For as long as the administrative decision is grounded on evidence, and expressed in a manner that sufficiently informs the parties of the factual and legal bases of the decision, the due process requirement is satisfied**</u>**.**

[26] G.R. No. 166051, April 8, 2008.

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Thirdly, it was categorically stated in the Decision of the Office of the President that **it conducted a careful study and thorough evaluation of the records of the present case and it was fully convinced as regards the findings of the HLURB Board of Commissioners.**

And lastly, **the facts of the present case were not contested by the parties** and it can be easily determined by the hearing officer or tribunal. Even the respondents admitted that, indeed, the total purchase price for the subject property has not yet been fully settled and the outstanding balance is yet to be paid by them. In addition, this case is a simple action for specific performance with damages, thus, **there are neither doctrinal complications involved in this case that will require an extended discussion of the laws involved.**" (Emphasis supplied)

On account thereof, we therefore find that the right of AHI to due process was not violated.

A. AHI'S VIOLATION OF RULE 68 OF THE SRC-IRR HAS NOT YET PRESCRIBED.

Article 1106 of the Civil Code of the Philippines provides for extinctive prescription whereby rights and actions are lost by the lapse of time. Unlike acquisitive prescription or usucaption which vests the property and raised a new title in the occupant, extinctive prescription does nothing more than bar the right of action.[27] Relative thereto, the Supreme Court has ruled that courts and/or administrative agencies

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[27] "The differences between acquisitive and extinctive prescriptions are well-stated as follows: Prescription was a statute of limitations. Whereas usucaption expressly 'vests the property' and raised a new title in the occupant, prescription did nothing more than bar the right of action. The concept most fundamental to a system of title by possession is that the relationship between the occupant and he land in terms of possession is capable of producing legal consequences. In other words, it is the possessor who is the actor. Under a statute of stations, however, one does not look to the act of the possessor but to the neglect of the owner. In the former the important feature is the claimant in possession, and in the latter it is the owner out of possession which controls." (*De Morales v. Court of First Instance of Misamis Occidental,* G.R. No. L-52278, [May 29, 1980], 186 PHIL 596-600)

exercising quasi-judicial powers can dismiss a case *motu proprio* on the basis of a finding that prescription has set in.[28]

Given the foregoing, it is thus important and incumbent upon this Commission, at the outset, to determine if the action subject of the instant case has already been prescribed, as alleged by AHI, as this is essential to the validity of the action that We will have on the matter.

AHI maintained in the AHI Partial Appeal that any and all acts or omissions committed by it in the preparation of its AFS for 2004 or 2005 can no longer be cited as the basis for imposing any liability against it considering that these violations, if any, have already prescribed pursuant to Sec. 62.2 of the SRC. Considering that the cause of action for the alleged material misstatement accrued on the date when the AFS was filed, a prescription was already set in when the Show Cause Letter was sent to AHI as it was made almost ten (10) years thereafter.[29]

Section 62 of the SRC which AHI invoked in support of its position provides:

> "**Section 62.** *Limitation of Actions.* — 62.1. No action shall be maintained to enforce any liability created under Section 56 [**Civil Liabilities** on Account of False Registration Statement] or 57 [**Civil Liabilities** Arising in Connection with Prospectus, Communications and Reports] of this Code unless brought within two (2) years after the discovery of the untrue statement or the omission, or, if the action is to enforce a liability created under Subsection 57.1 (a), unless, brought within two (2) years after the violation upon which it is based. In no event shall an such action be brought to enforce a liability

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[28] "We therefore have no other recourse but to grant the instant petition on the ground of prescription. Even if that defense was belatedly raised before the RTC for the first time on appeal from the ruling of the MeTC, we nonetheless dismiss the complaint, seeking to enforce the civil liability of Evangelista based on the undated checks, by applying Section 1 of Rule 9 of the Rules of Court, to wit:

> Section 1. *Defenses and objections not pleaded.* — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.

While it was on appeal before the RTC that petitioner invoked the defense of prescription, we find that the pleadings and the evidence on record indubitably establish that the action to hold petitioner liable for the two checks has already prescribed." *(Evangelista v. Screenex, Inc., G.R. No. 211564, [November 20, 2017])*

[29] *Notice of Partial Appeal* dated 6 August 2014. Pars. 24 and 25

created under Section 56 or Subsection 57.1 (a) more than five (5) years after the security was *bona fide* offered to the public, or under Subsection 57.1(b) more than five (5) years after the sale.

62.2. No action shall be maintained to enforce any liability created under any other provision of this Code unless brought within two (2) years after the discovery of the facts constituting the cause of action and within five (5) years after such cause of action accrued." (Emphasis Ours)

While AHI is correct that the afore-quoted provision is a statute of limitation, the Commission holds that AHI is wrong in saying that the same is applicable to the instant case which is administrative in nature. In the case of *Citibank N.A. and the Citigroup Private Bank v. Tanco-Gabaldon, et al.*,[30] the Supreme Court explained the scope of the Sec. 62.2 of the SRC and categorically ruled that complaints for administrative liability under the SRC prescribed, not pursuant to Section 62.2 of thereof, but due to laches, thus:

"Section 62 provides for two different prescriptive periods.

Section 62.1 specifically sets out the prescriptive period for the liabilities created under Sections 56, 57, 57.1(a) and 57.1(b). Section 56 refers to Civil Liabilities on Account of False Registration Statement while Section 57 pertains to Civil Liabilities on Arising in Connection with Prospectus, Communications and Reports. Under these provisions, enforcement of the civil liability must be brought within two (2) years or five (5) years, as the case may be.

On the other hand, Section 62.2 provides for the prescriptive period to enforce any liability created under the SRC. **It is the interpretation of the phrase "any liability" that creates the uncertainty**. Does it include both civil and criminal liability? Or does it pertain solely to civil liability?

In order to put said phrase in its proper perspective, reference must be made to the rule of statutory construction that every part of the statute must be interpreted with reference to the context, i.e., that every part of the statute

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[30]G.R. No. 198444, 4 September 2013.

must be considered together with the other parts, and kept subservient to the general intent of the whole enactment.

Section 62.2 should not be read in isolation of the other provision included in Section 62, particularly Section 62.1, which provides for the prescriptive period for the enforcement of civil liability in cases of violations of Sections 56, 57, 57.1(a) and 57.1(b).

Moreover, it should be noted that the civil liabilities provided in the SRC are not limited to Sections 56 and 57. Section 58 provides for Civil Liability For Fraud in Connection With Securities Transactions; Section 59 – Civil Liability For Manipulation of Security Prices; Section 60 – Civil Liability With Respect to Commodity Future Contracts and Pre-need Plans; and Section 61 – Civil Liability on Account of Insider Trading. Thus, bearing in mind that Section 62.1 merely addressed the prescriptive period for the civil liability provided in Sections 56, 57, 57.1(a) and 57.1(b), then it reasonably follows that the other sub-provision, Section 62.2, deals with the other civil liabilities that were not covered by Section 62.1, namely Sections59, 60 and 61. This conclusion is further supported by the fact that the subsequent provision, Section 63, explicitly pertains to the amount of damages recoverable under Sections 56, 57, 58, 59, 60 and 61, the trial court having jurisdiction over such actions, the persons liable and the extent of their liability

Clearly, the intent is to encompass in Section 62 the prescriptive periods only of the civil liability in cases of violations of the SRC.

The CA, therefore, did not commit any error when it ruled that "the phrase 'any liability' in subsection 62.2 can only refer to other liabilities that are also civil in nature. The phrase could not have suddenly intended to mean criminal liability for this would go beyond the context of the other provisions among which it is found."

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Section 54 of the SRC provides for the administrative sanctions to be imposed against persons or entities

> **violating the Code, its rules or SEC orders. Just as <u>the SRC</u> did not provide a prescriptive period for the filing of criminal actions, it <u>likewise omitted to provide for the period until when complaints for administrative liability under the law should be initiated</u>**. On this score, **it is a well-settled principle of law that laches is a recourse in equity, which is, applied only in the absence of statutory law.** And though laches applies even to imprescriptible actions, its elements must be proved positively. Ultimately, the question of laches is addressed to the sound discretion of the court and, being an equitable doctrine, its application is controlled by equitable considerations." (Emphasis and underscoring supplied)

It is clear from the afore-quoted doctrine that the phrase "*any liability*" in Section 62.2 of the SRC only refers to liabilities that are civil in nature. Verily, AHI's invocation of Section 62.2 of the SRC as a basis to avoid liability has no leg to stand on. This notwithstanding, We will determine if laches has set in.

Laches is the failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier. Stated differently, it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it.[31] In *Victoriano v. Court of Appeals*[32], the Supreme Court emphasized that the neglect must be serious enough to cause prejudice to the other party, thus:

> "...such neglect or omission to assert a right taken in conjunction with the lapse of time and other circumstances causing prejudice to an adverse party, as will operate as a bar in equity."

In the instant case, Ms. Singson filed the Complaint in November 2011 which is the same year that she inspected the relevant documents of AHI, and discovered the alleged fraudulent manipulation of the AFS of AHI. Against this factual backdrop, it cannot be said that there was an unreasonable delay on the part of Ms. Singson in acting on the same that would justify a conclusion that there was an abandonment of the exercise of her rights. We thus affirm the finding of the EIPD, and so hold that the

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[31] Republic of the Philippines vs. Sundiam, G.R. No. 236381, August 27, 2020.
[32] G.R. No. 87550, February 11, 1991.

instant case has not yet been prescribed; nor is it bared by laches.

B. THE ENTRY IN THE SUBJECT AFS ON ADVANCES TO SHAREHOLDER HAD NO BASIS AND CONSTITUTES MATERIAL MISSTATEMENT WHICH RENDERS AHI LIABLE FOR VIOLATION OF RULE 68 OF THE SRC-IRR.

The main issue presented in the Complaint, as expressly admitted by Ms. Singson, relates to the alleged error in the financial entries in the books of AHI which maliciously and erroneously portrayed her as owing and refusing to pay AHI her obligation, and misleading its shareholders of this reality during the 2011 ASM.[33] These were Ms. Singson's bases in demanding from AHI (a) the correction of the recording of the alleged advances to her, (b) the issuance of a public apology to her, (c) the buy-out of her shares in AHI, (d) the payment of damages, and (e) the reimbursement of her expenses.[34]

In the First Assailed Order, the EPD found that AHI has no legal basis for recording Advances to a Stockholder (Ms. Singson) for the amount of P45,325,183.00 (the "Subject Entry") in its 2005-2010 AFS (the "Subject AFS") considering that the Legal Opinion which it relied upon and used as legal basis in correcting the entries in the Subject AFS was only issued in 2011. Moreover, as a consequence of the investigation conducted by OGA which found material misstatements in the AFS of AHI, the EPD subsequently imposed upon AHI the Monetary Penalty, through the Second Assailed Order. Specifically, the EPD, finding merit and adopting the finding of the OGA, found that AHI violated the disclosure requirements prescribed under Section 68 of the SRC, as amended.

In the AHI Partial Appeal, AHI claimed that the EPD erred in finding that there was a material misstatement in recording the advances in the amount of Php45,325,183.00 against the account of Ms. Singson, since it was able to show that such entry was made in accordance with the Philippine Financial Reporting Standards and the Philippine Standards on Accounting. AHI further claimed that the advances could not be considered material under IAS 1 (par. 7) since they did not comprise a

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[33] *Reply (To Counter-Manifestation dated 30 August 2012 filed by Asian Hospital, Inc.) with Motion to Involve the Office of the General Accountant of the Securities and Exchange Commission* dated 18 September 2012. Par. 1.9

[34] *Reply Memorandum* dated 4 February 2013. Par. 21

significant portion of the receivables and total assets i.e. it merely comprised 1% of the assets.[35] In this regard, the Commission notes that from among the violations which the EPD found to have been committed by AHI in the Second Assailed Order, only the finding on the Subject Entry was questioned and elevated on appeal. AHI is thus deemed to have accepted the other findings of the EPD.

We sustain the findings of the EPD.

The Legal Opinion expressly provided that Ms. Singson's obligation under the MOA to purchase 37% of the Buy-Back Shares was in the nature of a guarantee, which secured AHI's principal obligation to repurchase the Buy-Back Shares. The Legal Opinion proceeded to state that the subsequent execution of the Letter Agreement resulted in the extinguishment of AHI's obligation to repurchase, which equally extinguished the guarantee obligation of the Significant Stockholders including that of Ms. Singson's. This position was adopted by AHI and was used as a basis to justify its act in writing off the erroneous recognition of Advances to a Stockholder (Ms. Singson) in the Subject AFS.

Moreover, We equally note in the AHI Partial Appeal an express admission by AHI that pursuant to the Letter Agreement, the obligation to purchase the remaining 37% of the Buy-Back Shares which Ms. Singson guaranteed to pay for under the MOA, was booked as AHI's cash liability.[36] The recording of AHI's Liability was correct. **However, there should not have been a subsequent entry to recover such liability by booking a receivable – Advances to a Stockholder (Ms. Singson)**, in the light of the fact that the guarantee obligation of Ms. Singson was already extinguished with the execution of, and pursuant to the Letter Agreement.

By admitting that the position in the Legal Opinion was correct which prompted AHI to modify the succeeding AFS i.e. starting in 2011 by writing off the recognition of the Advances to a Stockholder, AHI in effect, admitted that such entry in the Subject AFS was erroneous. In other words, the Disputed Entry in the Subject AFS was wrong because, with the execution of the Letter Agreement in 2004, the extinguishment of the guarantee obligation of Ms. Singson under the MOA was consummated (a fact that was confirmed in the Legal Opinion), and should have already been reflected in the Subject AFS. It therefore matters not that the Legal Opinion, which embodied the legal basis for

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[35] *Memorandum of Partial Appeal* dated 6 August 2014. Par. 20 to 22
[36] *Ibid.* Par. 18(f)(iv). Page 10

the correct entry, was only secured in 2011 (when it should have been secured much earlier). The fact remains that prior to the Legal Opinion, the Disputed Entry in the Subject AFS was erroneously made from the start. Hence, it was only in 2011, or after the Legal Opinion was received by AHI, that the latter had caused the writing-off of the Disputed Entry from its 2010 AFS. This constitutes a material misstatement in the Subject AFS.

On the basis thereof, We agree with both the EPD and the OGA that the Subject AFS contained material misstatements which violated Sec. 68 of the SRC, and warranted the imposition of the appropriate penalties.

C. THE INSTANT CASE HAS BEEN MOOTED BY THE FINDING OF VIOLATION AND THE IMPOSITION OF THE APPLICABLE PENALTIES UPON AHI.

In the First Assailed Order[37], the EPD dismissed the Complaint on the ground of mootness after finding that the 2011 AFS of AHI did not anymore show any receivable from Ms. Singson, consequent to the writing-off of the same.

Ms. Singson did not agree with the EPD. She maintained that the violation by AHI of Rule 68 of the SRC-IRR, as well as Sec. 62 of the Corporation Code, required the EPD to conduct the proper investigation and to impose the appropriate penalties; duties, and functions which the EIPD allegedly failed to discharge. Ms. Singson was in effect saying that the EIPD committed reversible error in holding that the Complaint has become moot by the mere writing-off of the receivable because the determination on the alleged violation by AHI of the SRC and the Corporation Code which was the subject thereof remained pending.

In the case of *Peñafrancia Sugar Mill, Inc. v. Sugar Regulatory Administration*, the Supreme Court discussed when a case becomes moot and academic, thus:

> **"A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical**

[37] Dated 6 December 2012

value or use. In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition. Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness. **This is because the judgment will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced.**"[38] (Emphasis supplied)

In the instant case, the EPD has, through the Second Assailed Order, already passed upon the issue on whether the Disputed Entry made in the Subject AFS of AHI constituted a violation of Sec. 68 of the SRC. The EPD has in fact made therein a finding of violation of Section 68 of the SRC and directed AHI to pay the Monetary Penalty.

On account thereof, while We agree with Ms. Singson that the removal of the Disputed Entry in the Subject AFS after the same was written-off by AHI, We find and so hold that Second Assailed Decision mooted the Singson Appeal inasmuch as the same finally determined and disposed of the issue relating to AHI's alleged violation of Section 68 of the SRC. The Second Assailed Decision was a supervening event that will render any determination or action by this Commission on the issue presented in the Singson Appeal of no practical value because the EPD has already passed upon the same. In fact, AHI has already paid the Monetary Penalty, the imposition of which has been passed upon by this Commission in the instant Decision.

The foregoing factual circumstances effectively prevent the Commission from acting on the Singson Appeal on the ground that the compliance by AHI with the directive therein, albeit under protest, which resulted in the execution thereof, any action/decision that this Commission will make on the issue can no longer be enforced. With the issuance of the Second Assailed Order, the relief which Ms. Singson was claiming to be entitled to, or would have been deprived of has ceased to be available.

Verily, any order directing the conduct of an investigation and/or the issuance of a decision on the same matter will no longer serve any useful purpose because, in the nature of things, the Second Assailed Order has already been implemented with the payment by AHI of the Monetary Penalty, albeit under protest. The Commission is thus left with no other recourse but to dismiss the Singson Appeal on the ground of mootness.

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[38] G.R. No. 208660, March 5, 2014.

WHEREFORE, premises considered, the Memorandum of Partial Appeal dated 18 December 2012 filed by Ms. Evelyn Singson is hereby **DISMISSED** for having become moot and academic. The Memorandum of Appeal dated 26 December 2012 and Memorandum of Partial Appeal dated 6 August 2014 both filed by Asian Hospital, Inc. are hereby **DISMISSED** for lack of merit and basis.

The Order dated 7 July 2014 issued by the EPD is hereby **AFFIRMED**. The Commission sees no further need to rule on the Order dated 6 December 2012 of the EPD since the same was already mooted by the Second Assailed Order.

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*