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

ROYALE TAGAYTAY COUNTRY CLUB INC., represented by its General Manager, Mr. Ruben B. Encinas,
Appellant,

SEC En Banc Case No. 01-14-314
Promulgated: 23 January 2025

CORPORATE GOVERNANCE AND FINANCE DEPARTMENT, represented by Acting Director Justina F. Callangan,
Appellee.
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DECISION

Before this Commission is the "*Appeal with Prayer For Condonation of Penalty of P42,000.00 As A Measure of Social Justice and Responsibility As There Had Been Actual and Prompt Compliance After Having Been Notified of Deficiency, Thus, The Imposition of P42,000.00, Penalty is Oppressive and Unjust and Will Bring About Irreparable Injury to the Financially Sick Appellant*" (the "Appeal")[1] filed by Royale Tagaytay Country Club, Inc. (Royale Tagaytay) praying for the reversal and setting-aside of the Letter dated 4 December 2013 (the "Assailed Letter-Order") issued by the Corporate Governance and Finance Department (CGFD) which denied its Letter of Reconsideration. The Assailed Letter-Order reads:

> This refers to your Letter of Reconsideration filed on September 11, 2013 with regard to the former Investor Protection and Surveillance Department's (IPSD) assessment letter on the findings of the Office of the General Accountant (OGA) on the Company's 2011 Audited Financial Statements.
>
> Please be advised that the justification cited in your letter, i.e. the fine of P42,000.00 would magnify and drive the company into deeper present economic difficulties in view of the very poor collection from its members of their Monthly Dues, is without merit.
>
> The company is hereby directed to pay within five (5) days from receipt of this letter the total penalty of Forty-Two Thousand Pesos

[1] Dated 28 August 2013.

(PhP42,000.00) by way of cash, Manager or Cashier's Check payable to the Securities and Exchange Commission.

THE RELEVANT FACTS

Royale Tagaytay is a domestic corporation which was incorporated for the primary purpose of promoting the social, educational, and athletic activities among its stockholders, through the construction and maintenance of golf course, tennis courts, squash courts, swimming pools and other indoor and outdoor related sports and recreational facilities. As a grantee of a license to sell its shares of stock to members, more particularly, proprietary shares, Royale Tagaytay is considered a reporting company under Section 17.2 of the Securities and Regulation Code (SRC).

In a Letter dated 28 August 2012 (the "OGA Letter"), the Office of the General Accountant (OGA), after reviewing Royale Tagaytay's Audited Financial Statements as of 31 December 2011 (the "2011 AFS"), officially informed the latter of its findings on to wit: (a) failure to indicate accreditation category of external auditor; (b) incomplete disclosures on receivables, inventories, and property and equipment; (c) incorrect classification of liabilities; (d) incomplete discussion on equity; (e) no specific revenue recognition policy on "Other Receipts" amounting to P8.53 Million; (f) double recognition of "Salaries and Wages" amounting to P4.6 Million, among others; and (g) absence of any discussion on the negative liquidity position of the company and how it addressed the same. On the basis thereof, the OGA directed Royale Tagaytay to provide its response and/or to comment on the said findings.

In its Letter-Compliance which was filed on 22 October 2012 (the "Letter-Compliance"), Royale Tagaytay proffered the following explanations on the findings of the OGA, to wit: (a) the accreditation category will be provided in its succeeding report considering that this is a new requirement; (b) the writing-off of impaired receivables chargeable to allowance under "Receivables" is conditioned upon the approval of the Board; (c) all liabilities are considered current liabilities since the company's payables are trade payables; (d) since there was no movement of the shares during the period covered, the discussion/disclosure on the number of shares paid-up and outstanding is adequate; (e) other receipts consists of service fees, thus revenues are recognized when rendered; (f) there is not double recognition since the salaries included under direct cost are salaries of personnel directly involved in the operation, while those included under administrative expenses pertain to salaries of administrative personnel; and (g) more discussion will be provided on the negative liquidity position of the company in the future FS.[2]

Acting on the response and findings of the OGA[3] to the justifications proffered by Royale Tagaytay, the IPSD issued a Letter-Order on 28 August 2013 where it imposed upon Royale Tagaytay a penalty of Forty-Two Thousand Pesos (PhP42,000.00) [the "Monetary Penalty"] pursuant to SEC Memorandum Circular No. 8, Series of 2009, on the basis of a finding that its AFS contained material disclosure deficiencies.

On 11 September 2013, Royale Tagaytay filed its Letter of Reconsideration where it prayed for the setting-aside of the Monetary Penalty on the ground that it has already addressed the comments/findings in the OGA Letter, and paying the Monetary Penalty will drive the company to deeper economic difficulties considering its very poor collection of monthly dues.

The Corporate Governance and Finance Department (CGFD) took cognizance of and resolved the Letter of Reconsideration pursuant to SEC Office Order No. 512 which transferred the monitoring of Issuers of Proprietary and Non-Proprietary shares to the CGFD. The CGFD found Royale Tagaytay's justification to be without merit and ordered it to pay the Monetary Penalty.

Thus, the filing of the instant Appeal.

In its Reply Memorandum filed on 14 February 2014, the CGFD prayed for the dismissal of the Appeal on the ground that Royal Tagaytay was allegedly unable to refute the findings of the OGA.

On 9 June 2023, the CGFD filed a Manifestation where it stated that to date, the Monetary Penalty remains unpaid by Royale Tagaytay.

In its Compliance and Manifestation, Royale Tagaytay reiterated its plea for the Commission to apply social justice and responsibility, and condone the Monetary Penalty considering that it has promptly complied with the OGA Letter after it was notified of the deficiency, and it has not yet triumphed over its financial woes.

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[2] Appeal. See Annex "E-4"
[3] *Ibid.* see Annex "F"

ISSUE

Whether the CGFD committed reversible error in sustaining the finding of OGA that the AFS submitted by Royale Tagaytay contained material disclosure deficiencies.

RULING

We find the Appeal to be bereft of merit.

In its Appeal, Royale Tagaytay maintained that the CGFD (which sustained the finding of the IPSD and the OGA) committed reversible error in imposing the Monetary Penalty, arguing that its submission of the 2011 AFS constituted compliance with the law, rules and regulations of the Commission, while its submission of the Letter-Compliance was *per se* a manifestation of good faith, obedience and compliance with the directive in the OGA Letter.[4] Considering that the main issue in the instant case, according to Royale Tagaytay, relates to its compliance with the filing of the its 2011 AFS and the directive in OGA Letter, the CGFD is wrong in maintaining that the imposition of the Monetary Penalty is warranted.

The position and argument of Royale Tagaytay are clearly misguided.

In our jurisdiction, our corporate laws[5] require corporations to submit to the Commission, among others, an annual financial statement certified/audited by an independent certified public accountant. This requirement is, however, supplemented by, and should thus be read in relation to Section 68 of the Securities Regulation Code (SRC), which aims to protect the investing public with the adoption of international best practices and accepted accounting standards, to wit:

> Section 68. *Special Accounting Rules.* – The Commission shall have the authority to make, amend, and rescind such accounting rules and regulations as may be necessary to carry out the provisions of this Code, including rules and regulations as may be necessary to carry out the provisions of this Code, including rules and regulations governing registration statements and prospectuses for various classes of securities and issuers, and defining accounting, technical and trade

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[4] Appeal. Par 10
[5] See Section 141 of BP Blg. 68 (the law in effect when the instant case was filed), which was essentially adopted under Section 177 of Republic Act No. 11232 (the Revised Corporation Code of the Philippines)

> terms used in this Code. Among other things, **the Commission may prescribe the form or forms in which required information shall be set forth, the items or details to be shown in the balance sheet and income statement, and the methods to be followed in the preparation of accounts, appraisal or valuation of assets and liabilities, determination of depreciation and depletion, differentiation of recurring and non-recurring income, differentiation of investment and operating income**, and in the preparation, where the Commission deems it necessary or desirable of consolidated balance sheets or income accounts of any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with the issuer. (Emphasis supplied)

To ensure, among others, that all covered entities discloses and provides true and fair view of their financial performance and position, consistent with the objectives of the afore-quoted provision, Part I(2)(C)(ii) of SRC Rule 68, as amended, in part provides:

> Financial statements shall be filed in such form and order, and shall use such generally accepted terminology as will best indicate their significance and character in the light of the provisions applicable thereto. **The information required with respect to any statement shall be furnished as a minimum requirement to which shall be added such further material information is necessary to make the required statements, in the light of the circumstances under which they are made, not misleading**. (Emphasis supplied)

Relative thereto, it bears emphasis that Memorandum Circular No. 8, series of 2009 (MC No. 8-09) was issued by this Commission to promote and ensure the prompt and proper compliance by corporations with the financial reporting requirements, thereby providing teeth to the foregoing regulation. MC No. 8-09 specifically penalizes a corporation whose financial statement is found to contain material deficiency, applying the test of materiality provided in Sec. III (A)(iv), to wit:

> III. Test of Materiality
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> A. The following shall be considered a material deficiency in the financial statements (FS) or significant non-compliance with SRC Rule 68:
>
> (iv) The required disclosures or presentations under the applicable financial reporting framework and SRC Rule 68/68.1 for a significant account are not provided in the financial statements xxx.

Thus, contrary to the position of Royale Tagaytay, the afore-quoted provisions of the securities laws and its implementing regulations clarify the established rule that mere submission of financial statements is not enough as it only constitutes compliance with the provisions of the corporate law. All corporations that are submitting financial statements are equally required, under pain of being held administratively and even criminally liable, to make sure that the financial statements submitted to the Commission do not contain any material deficiency, material misstatement, and false or misleading information, as they will be relied upon by the public. It was therefore incumbent upon Royale Tagaytay to make sure that its 2011 AFS is free of any material deficiency considering that the mere filing of the same only constitutes compliance with the corporation law.

In the instant case, the records show that despite the justifications/comments adduced by Royale Tagaytay in its Letter-Compliance, the OGA found that the following items/entries in its 2011 AFS were not addressed, and were in fact admitted, to wit:

> *First*, under the "Equities" section, Royale Tagaytay failed to provide a complete discussion on the company's track record of registration of securities as of the year end which is required of companies which issued securities to the public under the SRC Rule 68;
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> *Second*, under the "Revenue" section, Royale Tagaytay's failure to provide/show a specific recognition policy on "Other Receipts" amounting to P8.53 Million, was affirmed by the inconsistencies in its admission i.e. the "Other Receipts" comprises service fees, however, Note 16 provides that "Other Receipts" represents rental of indoor and outdoor sports and recreational facilities; and
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> *Third*, under the "Financial Risk management" section, Royale Tagaytay admitted that it failed to provide a discussion on the Negative Liquidity position of the company and the proposed steps to address the same;

The foregoing constitutes material deficiencies in the 2011 AFS of Royale Tagaytay in the sense that they failed to provide, or comply with the disclosures or presentations required under the applicable financial reporting framework and SRC Rule 68. In this regard, We have exhaustively considered and examined the arguments, as well as evidence presented by Royale Tagaytay and found nothing therein which negated or overcome the findings of the OGA, which the CGFD used as a basis in sustaining the imposition of the Monetary Penalty.

Royale Tagaytay's plea of good faith, and the alleged absence of intent on its part to violate any law, rule, or regulation,[6] which essentially constitutes an implied admission of its violation of SRC Rule 68, will not operate to absolve it from paying the Monetary Penalty provided under MC No. 8-09. In our jurisdiction, the rule established in jurisprudence is that acts/omissions which are prohibited under special laws, which include the SRC and its IRR, are classified as *mala prohibita,* and renders the perpetrator liable, regardless of the intent.[7]

Finally, We do not agree with Royale Tagaytay that the Commission's mandate to encourage investing in corporations for economic development[8] prevents it from imposing the appropriate penalties on the basis of finding of violation of the laws, rules and regulations administered by it. The integrity of the capital market is anchored, to a large extent, on the proper implementation of the securities laws, rules and regulations, which assures investors that covered entities, market participants and issuers will fully comply with the requirements prescribed therein. The fact that jurisprudence has recognized and affirmed that investor protection is the unifying principle of our securities regulation laws,[9] more than justifies the exercise by this Commission of its power and authority to regulate the activities of persons to ensure compliance, and to impose sanctions for violation of laws, rules and regulations.[10] Without an enforcement action, the investing public will become easy prey of issuers and even con artists or scammers alike who can conveniently avoid punishment for the

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[6] Appeal. See page 10

[7] "On the other hand, in *mala prohibita* crimes, the criminal acts are not inherently immoral but become punishable only because the law says so. With these crimes, the sole issue is whether the law has been violated; criminal intent is not necessary, for the acts are prohibited for reasons of public policy.40 In *mala prohibita* crimes, there is no need to prove criminal intent, for the same is conclusively presumed to exist from the commission/omission of an act prohibited by law.41 To hold the offender guilty or accountable for the offense, it is sufficient that there is a conscious intent to perpetrate the act prohibited by the special law. The essence of *mala prohibita* is voluntariness in the commission of the act constitutive of the crime." (Gallano vs People, G.R. No. 230147, February 21, 2024 [Per J. Caguioa, Third Division])

[8] Appeal. See page 11

[9] "**It has been observed that the afore-quoted provision lays down seven core principles of our securities regulation laws**: self-regulation, encouragement of the widest participation of ownership in enterprises, enhancement of the democratization of wealth, promotion of capital market development, protection of investors, ensuring full and fair disclosure about securities, and minimization, if not total elimination, of insider trading and other fraudulent or manipulative devices and practices that create distortions in the free market, **with the unifying principle being the protection of investors. These core principles animate the whole of the SRC; and as such, any doubt or conflict in the interpretation of the SRC and its implementing rules must be resolved in a manner that will carry out the foregoing principles.** We therefore resolve the issues before Us with these principles in mind, giving particular attention to the principles of full disclosure, investor protection, and the elimination of fraudulent or manipulative devices and practices." (Emphasis supplied) (*Palanca IV v. RCBC Securities, Inc*., G.R. No. 241905, March 11, 2020, [Per J. Reyes, Jr. Second Division]

[10] Section 5(d) and (f) of the SRC.

violation(s) committed. In other words, the development of the capital market and the exercise by this Commission of its enforcement power are not mutually exclusive as what Royale Tagaytay is suggesting. By ensuring that laws, rules and regulations are fully complied with (with the imposition of the appropriate penalties on persons/entities found to have violated the same, among others), the confidence of the investing public in the capital market increases which in turn, promotes, and stirs economic development.

On account of the foregoing, We find and so hold that the CGFD did not commit reversible error in imposing the Monetary Penalty, which was anchored on the unrebutted finding of the OGA that the 2011 AFS of Royale Tagaytay contained material deficiencies.

WHEREFORE, premises considered, the instant Appeal is hereby **DENIED** for lack of merit.

SO ORDERED.

Makati City, Philippines.

EMILIO B. AQUINO
Chairperson

JAVEY PAUL D. FRANCISCO
Commissioner

KARLO S. BELLO*
Commissioner

MCJILL BRYANT T. FERNANDEZ*
Commissioner

ROGELIO V. QUEVEDO
Commissioner

***On Official Business**