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

THE ROYAL NORTHWOODS GOLF CLUB, INC.,
Appellant,

- *versus* - **SEC En Banc Case No. 05-14-332**

CORPORATE GOVERNANCE AND FINANCE DEPARTMENT AND DIRECTOR JUSTINA F. CALLANGAN,
Appellee.
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D E C I S I O N

For consideration of the Commission En Banc ("Commission") is the *Memorandum of Appeal* dated 14 May 2014 (the "Appeal") filed by The Royal Northwoods Golf Club, Inc. ("Royal Northwoods") with the Commission through the Office of the General Counsel ("OGC")[1] assailing the Letter-Decision of the Corporate Governance and Finance Department (CGFD) dated 26 March 2014 (the "Assailed Decision"), which affirmed the Order of the then Investor Protection and Surveillance Department (IPSD)[2] directing Royal Northwoods to pay a penalty of Php550,000.00 based on a finding of its failure to comply with Rule 68 of the Securities Regulation Code[3] (SRC).

PARTIES

Royal Northwoods is a stock corporation duly registered and existing under Philippine laws having been issued a Certificate of Incorporation with SEC No. A199609230. Its principal business address is at Barangay Coral Na Bato, San Rafael, Bulacan. The primary purpose for which it was established is to promote social, recreational, and athletic activities among its stockholders, the main objective and undertaking of which is the construction, development and maintenance of an 18-holes golf course, the main clubhouse and its amenities.[4]

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[1] On 15 May 2014.
[2] Now the Enforcement and Investor Protection Department (EIPD).
[3] Republic Act No. 8799.
[4] Article SECOND of the Articles of Incorporation of Royal Northwoods.

The CGFD is one of the operating departments of the Commission which monitors and exercises regulatory authority over issuers of resorts or club shares, memberships, certificates/shares, timeshares/commercial papers, among others; and initiates and pursues administrative actions for violation of the Revised Corporation Code[5] (RCC), SRC, its implementing rules and regulations.

RELEVANT FACTS

The Office of the General Accountant ("OGA") issued a letter dated 28 August 2012 (the "OGA Letter") informing Royal Northwoods of its finding of deficiencies in its 2011 Audited Financial Statement ("AFS") and directing it to address the same within ten (10) days from receipt of the same.

The OGA Letter was received by one Ado Villegas for Royal Northwoods on 4 October 2012.[6]

In a Letter-Order dated 28 August 2013 issued by the IPSD (the "IPSD Order"), the latter imposed on Royal Northwoods a monetary penalty of Pesos: Four Hundred Three Thousand & 00/100 (Php403,000.00) after finding that it failed to comply with the Financial Reporting Requirements prescribed under Section 68 of the SRC. The IPSD Order was received by Royal Northwoods on 28 August 2013.[7]

On 7 January 2014, the CGFD issued the Letter-Order which affirmed the IPSD Order and directed Royal Northwoods to pay the assessed penalty. The issuance of the Assailed Decision was made pursuant to SEC Office Order No. 512, series of 2013 which transferred to CGFD the function of monitoring issuers of proprietary and non-proprietary shares.

On 22 January 2014, Royal Northwoods filed a letter-reply to CGFD informing the latter that it sought for a reconsideration of the IPSD's assessment on the alleged ground that it did not receive the OGA Letter.[8] In the same letter-reply, Royal Northwoods likewise submitted to CGFD its explanation regarding the discrepancies in the 2011 AFS.

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[5] Republic Act No. 11232
[6] Annex "A" to CGFD's 27 January 2014 Letter
[7] See Par. 2 (page 3) of the Appeal
[8] In its Letter-reply dated 18 January 2014 addressed to IPSD, Royal Northwoods sought for a reduction of the total assessed penalty for the following reasons:

> "1. It was its first violation or non-compliance;
> 2. The records of the corporation indicate that it is compliant with the rules;
> 3. The imposition of the fine will deplete and affect it considering that it has limited financial resources."

In a letter dated 27 January 2014, the CGFD, in response to the foregoing letter of Royal Northwoods, denied the latter's request for reconsideration on the ground that: (a) based on the Return Slip presented by OGA, the OGA Letter was shown to have been received by Royal Northwoods, and (b) the justifications presented by Royal Northwoods did not merit the reversal of the findings of the OGA.

On 24 March 2014, the CGFD issued the Assailed Order which increased the penalty from Php403,000.00 to Php550,000.00[9] for its non-compliance with the Financial Reporting Requirements under SEC Memorandum Circular No. 8, series of 2009. The letter dated 26 March 2014 of Royal Northwoods seeking reconsideration of the Assailed Order was denied by the CGFD. Hence, the instant Appeal.

On 10 June 2014, CGFD filed its Reply Memorandum dated 5 June 2014 (the "Reply") praying for the dismissal of the Appeal for lack of merit. In its Reply, the CGFD maintained that it did not err using 4 October 2012 as the reckoning date in computing the penalty arguing that it was the date when the OGA Letter was received by Royal Northwoods.

On 16 June 2014, Royal Northwoods filed a Rejoinder praying that CGFD's Reply Memorandum be expunged from the records of the case for having been filed out of time; and that the assessed penalties be waived or be reduced to Pesos: Seventy-Five Thousand (Php75,000.00).

Subsequently, Royal Northwoods filed a Manifestation with Motion to Admit Affidavit.[10] The Affidavit was executed by one Amado Villegas who declared that he retrieved and collected the mails for Royal Northwoods at the Bulacan Post Office 4 October 2012. Mr. Villegas also declared that he merely signed the return slips because of their considerable number and relied on the PhilPost's list of mails.

ISSUE

Whether the CGFD committed reversible error in holding that Royal Northwoods received the OGA Letter on 4 October 2012 which was the basis in computing the penalty of Php550,000.00.

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[9] Additional assessment of Php147,000.00 was based on the daily penalty from 29 August 2013 until 22 January 2014.
[10] On 8 October 2014.

DISCUSSION

In its Appeal, Royal Northwoods argued that although the return bore the signature of Ado (sic) Vargas, its employee, the OGA Letter cannot be considered to have been received by it as the same was not in fact delivered by the Bulacan Post Office to its office address. Royal Northwoods insists that the OGA should have endeavored to check with it the reason/s for its non-compliance with its directive.

On the basis thereof, Royal Northwoods argued that since it was only informed of its deficiency on 15 January 2014, the date of its receipt of the IPSD Order, the penalty should be reckoned from this date and not from 4 October 2012.

The Commission denies the Appeal for want of merit and basis.

A. CGFD's Reply should be admitted based on the principle that in administrative proceedings, technical rules of procedure should not be used to defeat substantial justice.

We will deal with the procedural issue first.

In its Rejoinder, Royal Northwoods prayed, among others, for the striking off from the records, the Reply of CGFD for allegedly having been filed out of time. Royal Northwoods argued that under the 2006 Rules of Procedure[11] (the "Rules"), a delay of one (1) day in the filing of the Reply constitute a waiver on the part of CGFD to file the same.

Given the fact that the delay in the submission of the Reply was only one (1) day, the Commission is constrained to relax the strict application of the Rules and, in the interest of substantial justice, admit the same. This is consistent with the principle that administrative agencies are not bound by the technical rules of procedure which was applied by the Supreme Court in *Palao vs. Florentino International, Inc.*,[12] thus:

> "[A]dministrative bodies are not bound by the technical niceties of law and procedure and the rules obtaining in courts of law. Administrative tribunals exercising quasi-judicial powers are unfettered by the rigidity of certain

[11] Paragraph 2, Section 11.5, Rule XI of the 2006 Rules of Procedure of the SEC.
[12] January 18, 2017. G.R. No. 186967

> procedural requirements, subject to the observance of fundamental and essential requirements of due process in justiciable cases presented before them. In administrative proceedings, technical rules of procedure and evidence are not strictly applied and administrative due process cannot be fully equated with due process in its strict judicial sense."

The reason behind the foregoing principle was explained by the Court in *Malixi et. al. vs. Baltazar,*[13] to wit:

> "In *Durban Apartments Corporation v. Catacutan*, petitioner also failed to attach certified true copies of the assailed decisions of the Labor Arbiter and of the National Labor Relations Commission in their petition before the Court of Appeals. The Court of Appeals dismissed the petition on procedural grounds; but this Court, upon review, decided the case on its merits. This Court held:
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> > **[I]n the exercise of its equity jurisdiction, the Court may disregard procedural lapses so that a case may be resolved on its merits. Rules of procedure should promote, not defeat, substantial justice**. Hence, the Court may opt to apply the Rules liberally to resolve substantial issues raised by the parties.
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> > It is well to remember that this Court, in not a few cases, has consistently held that **cases shall be determined on the merits, after full opportunity to all parties for ventilation of their causes and defense, rather than on technicality or some procedural imperfections. In so doing, the ends of justice would be better served**. The dismissal of cases purely on technical grounds is frowned upon and **the rules of procedure** ought not to be applied in a very rigid, technical sense, for they **are adopted to help secure, not override, substantial justice, and thereby defeat their very ends. Indeed, rules of procedure are mere tools designed to expedite the resolution of cases and other matters pending in court**. A strict and rigid application of the rules that would result in technicalities that tend to frustrate rather than promote justice must be avoided." (Emphasis supplied)

B. Royal Northwoods received the OGA Letter on 4 October 2012.

A careful review of the arguments of the parties will show that the sole issue presented for the consideration of the Commission is the reckoning date used by the CGFD in computing and imposing the monetary penalty. This is supported by the fact that Royal Northwoods has admitted the finding of violation of Section 68 of the SRC for which reason it sought, on separate instances, the reconsideration of the CGFD's decision and/or prayed for the

[13] November 22, 2017. G.R. No. 208224

reduction of penalties on equitable grounds i.e. this is its first violation and that payment of the assessed penalties will adversely affect its finances.[14]

Memorandum Circular No. 1, series of 2011 provides:

> "The **daily penalty shall be computed from the date of receipt of the letter informing the company of its non-compliance with** the reporting requirements of Section 141 of the Corporation Code of the Philippines, **Section 68 of the Securities Regulation Code**, the Investment Company Act, Financing Company Act, the Lending Company Act and the Investments Houses Law, up to the time that the company has submitted the following documents: (a) sufficient explanation for the non-compliance; (b) an audit committee or board resolution taking cognizance of the non-compliance; (c) corrective measures the company shall undertake to prevent future violations of SEC Memorandum Circular No. 8, Series of 2009. The Commission may, in addition, require the company to submit the revised financial statements or an addendum to the financial statements." (Emphasis supplied)

In its Rejoinder, Royal Northwoods alleged that the OGA Letter dated 28 August 2012 which was received by Ado Villegas on 4 October 2012 relates to the AFS of 2010 which is not the subject of the instant case. On the basis thereof, it argued that it cannot thus be deemed to have been informed of the deficiencies of the AFS of 2011 on 4 October 2012.

The Commission is not convinced.

The Return Slip which bore the signature of Ado Villegas showed that the same was received on 4 October 2012. A copy of the Return Slip which was furnished to Royal Northwoods in the Letter dated 27 January 2014 of the CGFD shows that the same relates to the OGA Letter. The OGA Letter **dated 28 August 2012 on record specifically relates to the finding of deficiencies to Royal Northwoods' 2011 AFS**. This constitutes substantial evidence that Royal Northwoods received the OGA Letter on 4 August 2012.

The allegation of Royal Northwoods that the OGA Letter dated 28 August 2012 received by Ado Villegas relates to the AFS of 2010 which is unsupported by evidence, cannot overturn the finding of CGFD. The same is true with the bare allegation of Royal Northwoods that the OGA Letter was not delivered by the Bulacan Post Office to its address. The Commission takes notice of the fact that based on its records, the OGA did not issue a letter dated 28 August 2012 that relates to finding of deficiencies in Royal Northwoods' 2010 AFS. In *Morales vs. Ombudsman Carpio-Morales*[15], the Court had the occasion to emphasize the foregoing rule, to wit:

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[14] See Royal Northwoods' Letters dated 28 January 2014 and 4 April 2014
[15] July 27, 2016. G.R. No. 208086.

> "**The basic rule is that mere allegation is not evidence and is not equivalent to proof**. Charges based on mere suspicion and speculation likewise cannot be given credence. **When the complainant** relies on mere conjectures and suppositions, and **fails to substantiate his allegations, the complaint must be dismissed for lack of merit**. (Emphasis supplied)

At any rate, the fact of receipt of the OGA Letter by Royal Nortwoods' staff, Ado Villegas, was admitted in the Appeal.

It bears emphasis that in administrative proceedings, the quantum of evidence required to sustain a finding of violation is substantial evidence or that which, to a reasonable mind, is adequate to support a conclusion, even if other minds equally reasonable might opine otherwise. The foregoing finds support in *Office of the Ombudsman-Visayas vs. Castro,*[16] where the Supreme Court categorically ruled that:

> "In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. The standard of substantial evidence is satisfied when there is reasonable ground to believe that a person is responsible for the misconduct complained of, even if such evidence might not be overwhelming or even preponderant."

In the instant case, the OGA Letter and Return Slip constitutes substantial evidence which is sufficient to sustain a conclusion that Royal Northwoods received the same on 4 October 2012. The bare allegation of Royal Northwoods that the Return Slip signed by Ado Villegas pertains to a different OGA Letter (which interestingly bore the same date) is self-serving.

Moreover, the Commission takes note of Royal Northwoods' recognition, albeit implied, of Ado Villegas' authority to receive letters and correspondences on its behalf. The foregoing finds support in the Affidavit of Mr. Villegas which was submitted in evidence by Royal Northwoods. In his Affidavit, Mr. Villegas declared that he collected the mail matters from the PhilPost on 4 October 2012[17] and signed the return receipts of the same.[18] Considering that Royal Northwoods failed to substantiate its claim that the OGA Letter dated 28 August 2012 that was signed by Mr. Villegas covers and relates to its 2010 AFS, the OGA Letter of the same date on record i.e. the one that relates to its 2011 AFS, prevails.

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[16] G.R. No. 172637. April 22, 2015.
[17] Par. 5 of the Affidavit.
[18] Par. 4 of the Affidavit.

Finally, the Commission cannot accede to Royal Northwoods' position that it cannot be held liable in the instant case because it behooves the Commission to check with and follow-up with its regulated entities their failure to act on its letters/show cause orders instead of merely relying on Return Receipts. To sustain Royal Northwoods' position that the Return Receipts can be disregarded if the regulated entities denies/disputes having received the Commission's letters and process, would put the Commission at the mercy of its regulated entities and render it inutile in performing its mandate.

C. In imposing penalties prescribed by law, rules or regulations, the Commission is not bound by the financial condition of the regulated entity.

In its Appeal, Royal Northwoods faults the CGFD for failing to consider the impact of the assessed penalty on its financial condition. Royal Northwoods is asking the Commission to reverse and set aside the Assailed Decision as the same will result in "reverse financial dislocation". Royal Northwoods is in effect suggesting that the Commission or any of its departments should not proceed to impose the penalties provided by law, its implementing rules or regulation, if the same will result in a corporation's financial distress.

Royal Northwoods' argument has no legal basis.

It bears emphasis that the decision of the CGFD which is being assailed in the in the instant Appeal, relates to the performance by the Commission of its authority to regulate the activities of juridical persons to ensure compliance with the provisions of the SRC, specifically Section 68 thereof. The SRC authorized and empowered the Commission to impose sanctions for violation of its provisions, including its Implementing Rules and Regulations[19] without regard for the financial condition of the erring corporation.

There is nothing in the SRC which supports Royal Northwoods' argument that the Commission should not proceed to penalize or should at all times adjust the monetary penalty to consider the capability of the erring corporation to pay, based on its financial documents. To sustain Royal Northwoods' argument that the imposition of monetary penalty should be made dependent on the corporation's financial health, on the ground that the

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

purpose of imposing penalties is corrective in nature, will promote abuses on the part of entities who are financially distressed to violate the laws and rules with impunity.

WHEREFORE, premises considered, the ***Memorandum of Appeal*** is DENIED for lack of merit and basis. The Decision of the Corporate Governance and Finance Department is hereby AFFIRMED. The Royal Northwoods Golf Club, Inc. is hereby **ORDERED** to pay PESOS: FIVE HUNDERED FIFTY THOUSAND (Php550,000.00) within fifteen (15) days from receipt of this **DECISION**.

Let a copy of this **DECISION** be furnished to the Corporate Governance and Finance Department (CGFD) and to the Company Registration and Monitoring Department (CRMD) for their information and appropriate action.

SO ORDERED.

Pasay City, Philippines; 01 September 2020.

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner