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

RAMONA FAVIS-VELASCO AND ELVIRA L. YULO,
Appellants,

SEC En Banc Case No. 08-19-460
Violation of Section 28 of the Securities Regulation Code

- versus -

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT AND JAYE MARJORIE ROJAS-GONZALES,
Appellees.

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DECISION

Before the Commission En Banc is the *Appeal* dated 7 August 2019 filed on 9 August 2019 by Ramona Favis-Velasco and Elvira L. Yulo ("Appellants") assailing the Order of the Enforcement and Investor Protection Department ("EIPD") dated 28 May 2019 which dismissed the *Complaint* of the Appellants against Jaye Marjorie Rojas-Gonzales ("Appellee") for alleged violation of Section 28 of the Securities Regulation Code (SRC).

PARTIES

Appellants, Ramona Favis-Velasco and Elvira Yulo (the "Appellants") are both of legal age, Filipinos and residents of 20 San Felipe Street, Magallanes Village, Makati City, and Unit A1903 Three Salcedo Place, Tordesillas Street, Salcedo Village, Makati City, respectively. Appellants are represented in this case by Cruz Enverga and Lucero Law Offices.

Appellee, Jaye Marjorie R. Gonzales (the "Appellee") is of legal age, Filipino and a resident of 1 Thyme corner Rosemary Street, Mahogany Place 3, Taguig City.[1] Appellee is represented in this case by Mendoza and Pangan Law Offices.

[1] Par. 1.1 of the Answer dated 11 June 2015

RELEVANT FACTS

Appellants informed a common friend, a certain Marianne Onate (Ms. Onate), of their desire to invest in the stock market and asked the latter to introduce them to her broker.[2] Ms. Onate introduced Appellants to Appellee who allegedly represented herself to be a stock broker who can handle their investments relating to the buying and selling of securities in the Philippine Stock Exchange (the "Exchange") through B.A. Securities, Inc. (BASI).[3]

Consequently, sometime in 2008, Appellants started investing their funds by buying and selling stock in the Exchange through Appellee who placed/traded the same using her own account. All their purchases were allegedly settled through checks issued to BASI, to wit:

a. 9 May 2008 – payment of P200,086.40 for the purchase of 35,000 Petron Corporation (PCOR) shares;[4]
b. 8 October 2008 - payment of P1,487,537.50 for the purchase of 250,000 PCOR shares;[5]
c. 12 November 2008 - payment of P801,757.50 for the purchase of 300,000 DMCI Holdings, Inc. (DMCI) shares;[6]
d. 18 November 2008 - payment of P262,210.00 for the purchase of 100,000 DMCI shares;[7]
e. 19 November 2008 - payment of P993,372.50 for the purchase of 200,000 PCOR shares;[8]
f. 24 November 2008 - payment of P232,293.60 for the purchase of 100,000 DMCI shares;[9]
g. 26 November 2008 - payment of P105,558.00 for the purchase of 50,000 DMCI Holdings, Inc. (DMCI) shares;[10]
h. 4 June 2009 - payment of P176,228.75 for the purchase of 5,000 BDO shares;[11]
i. 22 June 2009 - payment of P188,803.13 for the purchase of 50,000 EDC shares;[12]
j. 23 June 2009 - payment of P114,790.80 for the purchase of 30,000 EDC shares;[13]

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[2] See Par. 9 of the Appeal and Par. 2.1 of the Complaint
[3] Par. 11 of the Appeal Memorandum
[4] Par. 2.6.1 of the Complaint
[5] Par. 2.6.3 of the Complaint
[6] Par. 2.6.5 of the Complaint
[7] Par. 2.6.6 of the Complaint
[8] Par. 2.6.7 of the Complaint
[9] Par. 2.6.9 of the Complaint
[10] Par. 2.6.10 of the Complaint
[11] Par. 2.6.13 of the Complaint
[12] Par. 2.6.14 of the Complaint
[13] Par. 2.6.15 of the Complaint

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k. 9 and 10 July 2009 - payment of P100,595.00, P51,255.40, and P474,808.40 respectively, for the purchase of an aggregate of 350,000 BPC shares;[14]

However, sometime in 2009, Appellee, informed Appellants in a letter dated 3 November 2009, that from then on, all transactions covering their investments will be handled by D.A. Market Securities, Inc. (DAMSI), of which she claimed to be part owner. Appellee then directed Appellants to stop issuing checks to BASI.[15] On account thereof, Appellants' thereafter bought and sold stocks in the Exchange through Appellee who placed/traded the same using her own account with DAMSI. Appellants' purchases were settled through checks issued to DAMSI, to wit:

a. 4 November 2009 - payment of P129,906.53 for the purchase of (i) 50,000 SMDC shares, (ii) 242,000 ALI shares, (iii) 5,000 BDO shares, and (iv) 100,000 SMDC shares;[16]
b. 21-23 December 2009 - payment of P580,197.90 for the purchase of 1,260,000 ACR shares;[17]
c. 7 January 2010 - payment of P816,665.50 for the purchase of 700,000 SMDC shares;[18]
d. 7 January 2010 - payment of P122,725.90 for the purchase of 100,000 ACR shares;[19]
e. 31 May 2010 - payment of P3,123.68 for the balance/difference of Appellant Velasco's (i) sale of a total of 1,600,000 ACR shares, (ii) purchase of 30,000 ALI shares, and (iii) purchase of 36,000 DMCI shares;[20]
f. 26 August 2010 – payment of P5,075,867.36 by Appellant Yulo for the purchase of (i) 1,000,000 EDC shares, and (ii) 17,000 AP shares;[21]
g. 2 September 2010 – payment of P306,690.40 by Appellant Yulo for the purchase of 160,000 Megaworld shares;[22]
h. 29 October 2010 – payment of P650,621.84 to cover the balance of the purchase of the DMCI shares less the proceeds from the sale of the ALI shares;[23]
i. 12 January 2011 – payment of P697,626.33 for the purchase of 20,000 DMCI shares;[24]

[14] Pars. 2.6.16 to 2.6.18 of the Complaint
[15] Par. 13 of the Appeal and Par. 2.2 of the Complaint
[16] Pars. 2.6.23 and 2.6.24 of the Complaint
[17] Pars. 2.6.25 to 2.6.28 of the Complaint
[18] Par. 2.6.29 of the Complaint
[19] Par. 2.6.30 of the Complaint
[20] Par. 2.6.31 of the Complaint and Par. 16.31 of the Appeal
[21] Par. 2.6.52 of the Complaint
[22] Par. 2.6.53 of the Complaint
[23] Par. 2.6.32 of the Complaint and Par. 16.32 of the Appeal
[24] Par. 2.6.33 of the Complaint

j. 17 January 2011 – payment of P274,624,626.33 for the purchase of 10,000 AP shares;[25]
k. 15 May 2012 – payment of P62,104.63 for the following transactions: (i) sale of 180,000 SMDC shares; and (ii) purchase of 21,000 DMCI shares;[26]
l. 4 and 7 June 2012 – payment of P233,865.65 and P321,518.04 for the purchase of a total of 8,000 DMCI shares;[27]

Appellants' purchases that were settled through wire transfers/deposit made to DAMSI under the same arrangement i.e. the use of Appellee's own account with DAMSI, are as follows:

a. 4 February 2011 – payment of P992,444.09 representing the remaining balance of the purchase price of 311,111 SMDC shares;[28]
b. 17 February 2011 - payment of P212,161.16 for the purchase of (i) 3,000 DMCI shares, and (ii) 4,000 AP shares;[29]
c. 26 April 2011 - payment of P330,993.00 for the purchase of 3,000 SMC shares;[30]
d. 12 December – payment of P101,511.02 for the (i) sale of 39,000 ALI shares, and (ii) purchase of 150,000 LPZ shares;[31]
e. 12 December – payment of P101,511.02 for the (i) sale of 39,000 ALI shares, and (ii) purchase of 150,000 LPZ shares;[32]
f. 19, 21 and 27 December 2011 – aggregate payment of P314,057.59 for the purchase of 60,000 LPZ shares;[33]

Appellee allegedly issued Statements of Account (SOAs) to Appellants showing the summary of the stocks they own as of statement date and the amount that Appellee charged as "broker's commissions" to wit:

a. Statement of Account as of 7 May 2008[34];
b. Statement of Account as of 6 October 2008[35];
c. Statement of Account as of 5 November 2008[36];
d. Statement of Account as of 7 November 2008[37];
e. Statement of Account as of 13 November 2008[38];

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[25] Par. 2.6.34 of the Complaint
[26] Par. 2.6.45 of the Complaint
[27] Pars. 2.6.46 and 2.6.47 of the Complaint
[28] Par. 2.6.35 of the Complaint
[29] Par. 2.6.36 of the Complaint
[30] Par. 2.6.37 of the Complaint
[31] Par. 2.6.39 of the Complaint
[32] Par. 2.6.39 of the Complaint
[33] Pars. 2.6.40 – 2.6.42 of the Complaint
[34] See Annex "F-1" of the Appeal
[35] See Annex "H-1" of the Appeal
[36] See Annex "I-1" of the Appeal
[37] See Annex "J-1" of the Appeal
[38] See Annex "K-1" of the Appeal

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f. Statement of Account as of 14 November 2008[39];
g. Statement of Account as of 18 November 2008[40];
h. Statement of Account as of 19 November 2008[41];
i. Statement of Account as of 21 November 2008[42];
j. Statement of Account as of 12 January 2009[43];
k. Statement of Account as of 27 March 2009[44];
l. Statement of Account as of 3 June 2009[45];
m. Statement of Account as of 17 June 2009[46];
n. Statement of Account as of 18 June 2009[47];
o. Statement of Account as of 6 July 2009[48];
p. Statement of Account as of 7 July 2009[49];
q. Statement of Account as of 13 July 2009[50];
r. Statement of Account as of 8 July 2009[51];
s. Statement of Account as of 20 and 22 July 2009[52];
t. Statement of Account as of 29 and 30 October 2009[53];
u. Statement of Account as of 21 December 2009[54];
v. Statement of Account as of 21 December 2009[55];
w. Statement of Account as of 4 January 2010[56];
x. Statement of Account as of 18, 19, 20, 21, 24, 27 and 31 May 2010[57];
y. Statement of Account as of 26 October 2010[58];
z. Statement of Account as of 13 January 2011[59];
aa. Statement of Account as of 14 February 2011[60];
bb. Statement of Account as of 26 April 2011[61];
cc. Statement of Account as of 15 July 2011[62];
dd. Statements of Account as of 18 July 2011[63];
ee. Statements of Account as of 7 and 8 December 2011[64];

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39 See Annex "L-1" of the Appeal
40 See Annex "M-1" of the Appeal
41 See Annex "N-1" of the Appeal
42 See Annex "O-1" of the Appeal
43 See Annex "P-1" of the Appeal
44 See Annex "Q" of the Appeal
45 See Annex "R-1" of the Appeal
46 See Annex "S-1" of the Appeal
47 See Annex "T-1" of the Appeal
48 See Annex "U-1" of the Appeal
49 See Annex "V-1" of the Appeal
50 See Annex "W-1" of the Appeal
51 See Annex "X-1" of the Appeal
52 See Annex "Y" of the Appeal
53 See Annex "BB-1" of the Appeal
54 See Annex "CC" of the Appeal
55 See Annex "DD" of the Appeal
56 See Annex "GG-1" of the Appeal
57 See Annex "HH-1" of the Appeal
58 See Annex "II-3" of the Appeal
59 See Annex "KK-1" of the Appeal
60 See Annex "MM-3" of the Appeal
61 See Annex "NN-3" of the Appeal
62 See Annex "OO" of the Appeal
63 See Annex "PP" and "PP-1" of the Appeal
64 See Annex "QQ-3" of the Appeal

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ff. Statement of Account as of 14 December 2011[65];
gg. Statement of Account as of 16 December 2011[66];
hh. Statement of Account as of 23 December 2011[67];
ii. Statement of Account as of 4 January 2012[68];
jj. Statement of Account as of 9 March 2012[69];
kk. Statement of Account as of 10, 12 and 13 April 2012[70];
ll. Statement of Account as of 8, 10, 14, 15, 30 and 31 May 2012[71];
mm. Statement of Account as of 4 and 5 June 2012[72];
nn. Statement of Account as of 1 August 2012[73];
oo. Statement of Account as of 12 October 2012[74]; and
pp. Statement of Account as of 7 and 8 January 2013[75].

Early in 2013, Appellee issued BDO Check dated 17 January 2013, payable to Appellant Yulo in the amount of P6,950,000.00, pursuant to the latter's instruction to liquidate her EDC shares. However, it was alleged that the check was dishonored when it was presented for payment for the reason that it was Drawn against Insufficient Funds (DAIF).[76] On the other hand, Appellant Velasco directed Appellee to convert her outstanding stock position into actual certificate of stocks, and to pay her the proceeds of the sale of certain shares i.e. SMDC, Bloomberry, GT Capital, DMCI.[77]

Appellants then discovered after their visit at the DAMSI office that Appellee was not a part owner of the corporation, contrary to her representation, and was all the while buying and selling securities for her own account using their money. Appellants likewise discovered that they did not have accounts with DAMSI, and that the checks that were issued to DAMSI were all deposited/credited in Appellee's account with DAMSI.[78]

Appellee's alleged failure to comply with Appellants' demands for payment of their demandable obligation and/or surrender of their stock certificates resulted in the filing of the Complaint with the Enforcement and Investor Protection Department (EIPD) on 19 May 2014 (the "Complaint") against Appellee for violation of Section 28.1 in relation to Section 73 of the Securities Regulation Code (SRC).

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[65] See Annex "RR-2" of the Appeal
[66] See Annex "SS-2" of the Appeal
[67] See Annex "TT-2" of the Appeal
[68] See Annex "UU" of the Appeal
[69] See Annex "WW" of the Appeal
[70] See Annex "WW-2" of the Appeal
[71] See Annex "XX-1" and "YY-1" of the Appeal
[72] See Annex "ZZ-3" of the Appeal
[73] See Annex "AAA-1" of the Appeal
[74] See Annex "BBB" of the Appeal
[75] See Annex "CCC" of the Appeal
[76] Par. 2.7.1 of the Complaint and Pars. 17 and 18 of the Appeal
[77] Par. 2.7.2 of the Complaint and Par. 19 of the Appeal
[78] Par. 21 of the Appeal

On 15 June 2015, Appellee filed her Answer dated 11 June 2015 praying for the dismissal of the Complaint for alleged lack of merit. Appellee maintained that she did not act as a broker, dealer, salesman or associated person, as she was using buying and selling securities using her own account at BASI and DAMSI.

On 28 May 2019, the EIPD issued the Assailed Order dismissing the Complaint for lack of merit. The EIPD found that Appellee did not violate Section 28 of the SRC because she was not acting in a manner that a registered broker is conducting its business. The EIPD took into account the fact that Appellants (a) did not have, or failed to show that they opened an account with Appellee's alleged brokerage business, and (b) directly made payments for their stock purchases to BASI and DAMSI, which showed that the transaction between Appellants and Appellee was contractual in nature where the latter facilitated Appellant's buy and sell transactions of securities using her own account with BASI and DAMSI.

The Motion for Reconsideration filed by Appellants was denied by the EIPD in its Order dated 22 July 2019 for lack of merit which resulted in the filing of the instant Appeal.

In their Appeal, Appellants maintained that the EIPD committed reversible error in dismissing their Complaint arguing that Appellee was engaged in the business of buying or selling securities as a broker or salesman of a broker without the required license from the Commission.

On 30 September 2019, Appellee filed her Reply praying for the dismissal of the Appeal for lack of merit.

ISSUE

The sole issue presented to the Commission is whether Appellee was engaged in the business of buying or selling securities as broker in the Philippines.

DECISION

We reverse the Assailed Order of the EIPD and grant the Appeal.

In their Appeal, Appellants maintained that Appellee had been engaged in the business of buying and selling securities as a broker without the required license from the Commission which violates Section 28.1 of the SRC, and should thus be penalized pursuant to Section 73 of the SRC. In support thereof, Appellants posit that Appellee's acts of allegedly (a) representing that she is a licensed broker who handled their numerous buy and sell transactions and that she is a part owner of DAMSI[79], (b) providing advice and recommending the stocks to buy and sell[80], (c) sending notices of stock rights offering which rights were allegedly exercised by Appellants[81], and (d) charged broker's fee for her services as broker,[82] constitute selling and buying of securities for the account of others.

In the Assailed Order, the EIPD anchored the dismissal of the Complaint on (a) the failure of Appellants to show and establish that they opened and maintained an account with Appellee's brokerage, and (b) the finding that Appellants directly paid BASI and DAMSI the amounts covering their stock purchases, and that the proceeds of the sale of Appellants' shares were likewise deposited directly to their respective accounts. The EIPD is of the position that a person who sells or buys securities for the account of others cannot be held liable for violation of Section 28 of the SRC if such person is not adopting the procedure prescribed for, and used by registered brokers and/or is carrying out such transaction informally.

The Commission does not agree with the EIPD.

Stock market transactions affect the general public and the national economy. The rise and fall of stock market indices reflect to a considerable degree the state of the economy. Trends in stock prices tend to herald changes in business conditions. Consequently, securities transactions are impressed with public interest, and are thus subject to public regulation.[83] It is in this context that persons who buy or sell securities, directly or indirectly, for the account of others are required to secure a license from the Commission under the pain of administrative and/or criminal liability.

Section 28 of the SRC expressly provides:

> SEC. 28. *Registration of Brokers, Dealers, Salesmen and Associated Persons*. - 28.1. No person shall **engage in the business of buying or selling securities in the Philippines as a broker** or dealer, or act as a salesman, or an associated person of any broker or dealer **unless registered as such with the Commission**." (Emphasis supplied)

The afore-quoted provision categorically provides the rule that the act of selling or buying securities as a broker i.e. for the account of others can only be made or carried out by a person who is duly licensed by the

[79] Par. 48 (a), (b) and (e) of the Appeal
[80] Par. 48 (c) of the Appeal
[81] Par. 48 (d) of the Appeal
[82] Par. 48 (g) of the Appeal
[83] Abacus Securities Corporation vs Ampil (G.R. No. 160016, February 27, 2006)

Commission. Consequently, any person, juridical or natural, who engages in the business of buying and selling of securities as a broker, directly or indirectly and/or formally or informally, sans the required license violates Section 28 of the SRC and can be held administratively and/or criminally liable.

Relative thereto, the Supreme Court laid down the elements that must be present to support a finding of violation of Section 28 of the SRC in the case of *SEC vs Santos*[84], to wit:

> "To determine whether the DOJ Secretary's Resolution was tainted with grave abuse of discretion, we pass upon the elements for violation of Section 28 of the Securities Regulation Code: (a) **engaging in the business of buying or selling securities in the Philippines as a broker** or dealer; **or** (b) acting as a salesman; or (c) acting as an associated person of any broker or dealer, **unless registered as such with the SEC.**" (Emphasis supplied)

Sections 3.3 of the SRC defines a broker as "*a **person engaged in the business of buying and selling securities for the account of others***". In *Palanca vs RCBC Securities, Inc.*[85], the Supreme Court held that in the ordinary course of a brokerage business, clients deposit funds to the bank account of their broker for credit to their trading accounts, and the broker buys and sells securities on behalf of the clients, and remits payments from transactions directly to the bank accounts of the clients. Moreover, to be engaged in business connotes a certain regularity of participation in purchasing and selling activities rather than a few isolated transactions.[86]

In other jurisdictions specifically the United States where our securities laws and regulations were patterned[87], persons are considered to be acting as brokers not only if they execute transactions for others on a securities exchange, but also if they make referrals to broker-dealers, find investors for registered issuers, effect securities transactions for the account of others for a fee, or act as independent contractors" without being an associated person or agent.[88]

In the instant case, Appellee maintains that she cannot be considered a broker because she was buying and selling stocks thru her broker using her own account at BASI or DAMSI[89], and Appellants were the ones directly transacting with the registered brokers i.e. BASI and DAMSI in buying and

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[84] G.R. No. 195542, March 19, 2014
[85] G.R. No. 241905, March 11, 2020

[87] Rafael A. Morales, *The Philippine Securities Regulation Code (Annotated), 2005,* pp. 2-6. See also PSE vs CA (G.R. No. 125469, October 27, 1997)
[88] "Guide to Broker-Dealer Registration"; U.S. Securities and Exchange Commission (URL: https://www.sec.gov/reportspubs/investor-publications/divisionsmarketregbdguidehtm.html)
[89] Par. 6.1 of the Answer dated 11 June 2015

selling securities. Appellee also maintained that she cannot be considered a broker and penalized for violation of Section 28 of the SRC because only juridical persons can trade in the Exchange.[90] The EIPD sustained the position of Appellee by holding that the latter cannot violate Section 28 of the SRC because her acts did not show that she was operating and conducting a brokerage business. The EIPD heavily relied on the failure of Appellants to show that they opened and maintained an account with Appellee, and the absence of the conduct of "know-your-customer" process. The EIPD thus concluded that the transaction carried out and maintained by Appellants and Appellee "*was a special arrangement where Respondent Jaye, for a consideration, will facilitate the buy and sell transactions of securities of the Complainants, through her account with B.A and D.A.*"[91]

Appellee and the EIPD are wrong.

Our securities laws were designed not only to provide investors with adequate information upon which to base their decisions to buy and sell securities, but also to protect legitimate business seeking to obtain capital through honest presentation against competition from crooked promoters and to prevent fraud in the sale of securities.[92] This purpose is embodied in Section 2 of the SRC which provides for the state policies designed to "*establish a socially conscious, free market that regulates itself, encourage the widest participation of ownership in enterprises, enhance democratization of wealth, promote the development of the capital market, protect investors, ensure full and fair disclosure about securities, minimize if not totally eliminate insider trading and other fraudulent or manipulative devises.*"

Relative thereto, it should be emphasized that what Section 28 of the SRC prohibits and punishes is the act of engaging in the business of buying or selling securities in the Philippines as a broker i.e. for the account of others without the requisite license from the Commission. More importantly, Section 28 and the other relevant provisions of the SRC which regulate brokers, are intended to apply to any person, natural or juridical, who intends to, or is actually engaged in the business of buying or selling securities for the account of others. These persons are mandated and required by law to register with the Commission under the pain of administrative or criminal liabilities.

The foregoing is supported by the express mandate of the Commission *to regulate, investigate or supervise the activities of persons to ensure compliance*[93] with the provisions of the SRC and its implementing

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[90] *Ibid*
[91] Par. 1 (page 14) of the Assailed Order
[92] See *Philippine Stock Exchange vs Court of Appeals and Securities and Exchange Commission* (G.R. No. 125469, October 27, 1997)
[93] Section 5(d) of the SRC

regulations, and the express grant of power and authority to impose sanctions for the violation of laws, rules, regulations or orders issued pursuant thereto.[94]

On account thereof, the argument espoused by Appellee and the EIPD that persons who are engaged in buying or selling securities for the account of others using their own accounts without the requisite registration, and who are receiving fees for the said transactions, cannot be considered a broker under the SRC is without legal basis. The said argument will sanction an absurd situation that persons who are acting as brokers without the required license are placed in a more advantageous position compared to registered brokers whose business are closely monitored and strictly regulated, and will encourage the conduct of unregistered activity to the detriment of the investing public and the integrity of the market. This is clearly contrary to both the letter and intent of Section 28 of the SRC which seeks to prevent the conduct of brokerage activities by any person who is not licensed by the Commission.

The established and admitted facts borne in the records of the instant case show that Appellee was using her account with BASI and DAMSI in executing the buy and sell transactions of Appellants.[95] This was affirmed by DAMSI, through Ms. Fe. Caling, that as its client, Appellee was trading using her own account and that Appellants have no individual accounts with DAMSI.[96]

However, while Appellee was indeed trading using her own account with the registered brokers i.e. BASI and DAMSI, the Commission finds that she was simultaneously acting as a broker in relation to Appellants when she agreed and actively used her account to facilitate their buy and sell transactions for a fee, so much so that her participation in the execution and consummation of the same was indispensable i.e. without Appellee who had the account with BASI and DAMSI, Appellants could not have possibly effected any trade in the Exchange. This arrangement was affirmed by the EIPD which found Appellee to have facilitated the securities transactions of Appellants pursuant to a "*special arrangement where Respondent Jaye, for a consideration, will facilitate the buy and sell transactions of securities of the Complainants, through her account with B.A and D.A.*"[97]

Pursuant to the foregoing arrangement, Appellants issued checks and made payments directly to BASI and DAMSI for the stocks that they purchased. Considering that it was Appellee who had the account with BASI and DAMSI, Appellee used Appellants' checks in carrying out the buy and

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[94] Section 5(f) of the SRC
[95] Pars. 6.1 (page 8), 6.5(ii) [page 10], and 6.7 of the Answer
[96] Par. 6.4 of the Answer
[97] Par. 1 (page 14) of the Assailed Order

sell transactions and made it appear on record that she was personally trading. Appellee also effected payment of the sell transactions made for and on behalf of Appellants by depositing the amount received from BASI and DAMSI to Appellants' bank accounts. This arrangement was then used by Appellee in arguing that she cannot be considered a broker either because she was trading for her own account or Appellants were directly dealing with BASI or DAMSI. In reality however, Appellee was trading for and on behalf of Appellants using her own account with BASI and DAMSI because the latter have no accounts with these brokers.

Moreover, the records also show that Appellee was regularly providing information on the status of registered securities, and in fact admitted having an arrangement of sharing to Appellants her experience relating to her transacted shares.

More importantly, the evidence on record shows that Appellee charged Appellants "brokers fee" for the transactions that were executed pursuant to their arrangement. The EIPD found that the statements of account that were issued personally by Appellee contained not only their stock transactions and positions, but also her broker's fee. Relative thereto, the Commission notes that in the Statements of Account that Appellee issued to Appellants, it indicated in the upper right portion the "Account Name" of the client i.e. Ramona Favis and the "Statement Date". This is substantial evidence that as Appellee personally albeit informally established and maintained Appellants' accounts that were "housed" in her accounts with BASI and DAMSI. Appellee in fact did not controvert this finding of the EIPD which was based on substantial evidence.

The number and frequency of the buy and sell transactions that were effected by Appellee for and on behalf of Appellants during the span of four (4) years using her own account with BASI and DAMSI, and the aggregate amount of "brokers fee" that she collected from Appellants further amplifies the nature of the transaction that Appellee agreed to perform and do i.e. buy and sell securities for Appellants using her own account. Appellee was undoubtedly a broker as defined under Section 3.3 of the SRC who was required under Section 28 to be registered with the Commission. The first element for violation of Section 28 of the SRC i.e. engaging in the business of buying or selling securities in the Philippines as a broker, is thus present.

Finally, the records show that Appellee did not obtain any license from the Commission because she is of the position that she was not required to register since she is not a broker and did not act as one.[98] Considering, however, that Appellee was in fact engaged in the business of buying and selling securities for the account of Appellant as established earlier, the second

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[98] Par. 12.1 of the Answer

element for violation of Section 28 of the SRC i.e. absence of registration, is likewise present.

Section 54 of the SRC provides for administrative sanctions for violation of its provisions, to wit:

> "**Section 54.** *Administrative Sanctions.* – 54.1. **If, after due notice and hearing, the Commission finds that: (a) There is a violation of this Code**, its rule, or its orders; (b) Any registered broker or dealer, associated person thereof has failed reasonably to supervise, with a view to preventing violations, another person subject to supervision who commits any such violation; (c) Any registrant or other person has, in a registration statement or in other reports, applications, accounts, records or documents required by law or rules to be filed with the Commission, made any untrue statement of a material fact, or omitted to state any material fact required to be stated their or necessary to make the statements therein not misleading; or, in the case of an underwriter, has failed to conduct an inquiry with reasonable diligence to insure that a registration statement is accurate and complete in all material respects; or (d) Any person has refused to permit any lawful examinations into its affairs, **it shall, in its discretion**, and subject only to the limitations hereinafter prescribed, **impose any or all of the following sanctions as may be appropriate in light of the facts and circumstances**:
>
> (i) Suspension, or revocation of any registration for the offering of securities;
> (ii) **A fine of no less than Ten thousand pesos (P10,000.00) nor more than One million pesos (P1,000,000.00) plus not more than Two thousand pesos (P2,000.00) for each day of continuing violation**;
> (iii) In the case of a violation of Sections 19.2, 20, 24, 26 and 27, disqualification from being an officer, member of the Board of Directors, or person performing similar functions, of an issuer required to file reports under Section 17 of this Code or any other act, rule or regulation administered by the Commission;
> (iv) In the case of a violation of Section 34, a fine of no more than three (3) times the profit gained or loss avoided as result of the purchase, sale or communication proscribed by such Section, and
> (v) **Other penalties within the power of the Commission to impose**." (Emphasis supplied)

In the instant case, the evidence on record reveals that Appellee, being a client of registered brokers who was actively trading on the Exchange, was aware that the act of buying and selling securities for the account of others requires a license from the Commission. This notwithstanding, Appellee nonetheless agreed to use her account with BASI and DAMSI to facilitate and execute the trades of Appellants for a fee. The aggregate buy and sell transactions that Appellee executed for Appellants amounted to Pesos: Twenty Three Million Two Hundred Twenty Three Thousand Six Hundred Ninety-nine & 68/100 (P23,223,699.68), while the estimated aggregate brokers fee that she collected from Appellants amounted to P228,640.61.

On account thereof, the Commission hereby imposes upon Appellee a fine in the amount of P228,640.61 for violation of Section 28.1 in relation to Section 3.3 of the SRC which was duly established by the evidence on record. The penalty imposed which is the same amount that Appellee collected as brokers fee is based on and justified by the principle that a person should not be allowed to profit and/or benefit from an act that violates the SRC.

WHEREFORE, premises considered, the instant *Appeal* is hereby **GRANTED**. The Assailed Order of the Enforcement and Investor Protection Department is hereby **REVERSED and SET ASIDE.** Appellee JAYE MARJORIE ROJAS-GONZALES is hereby found to have violated Section 28 in relation to Section 3.3 of the SRC for engaging in the sale and purchase of securities for the account of others without license from the Commission. Accordingly a monetary penalty in the amount of Pesos: Two Hundred Twenty Eight Thousand Six Hundred Forty & 61/100 (P228,640.61) is hereby imposed upon Appellee JAYE MARJORIE ROJAS-GONZALES pursuant to Section 54 of the SRC.

Finally, pursuant to the power and authority granted under Section 53.3 of the SRC, Appellee JAYE MARJORIE ROJAS-GONZALES is also directed to immediately **CEASE and DESIST** from further engaging in the act/business of buying and selling securities, directly or indirectly and/or formally or informally, for the account of others.

SO ORDERED.

Pasay City, Philippines; 09 August 2021

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner