IGC SECURITIES, INC.,

Appellant,

-versus-

SEC En Banc Case No. 09-09-178

THE MARKET INTEGRITY BOARD OF THE PHILIPPINE STOCK EXCHANGE,

Appellee.

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DECISION

This refers to the Appeal to the Commission *En Banc*, pursuant to the Amended Market Regulation Rules, Article III, Section 6, from the Philippine Stock Exchange - Market Integrity Board's Resolution No. 19 (Series of 2009) dated 14 August 2009, imposing monetary sanctions against appellant for violation of SRC Rule 49.3.[1]

Appellant IGC Securities, Inc. ("IGC," for brevity) is a securities firm duly registered with the Commission, and authorized to deal in securities listed in the Philippine Stock Exchange ("PSE," for brevity), which is a registered Exchange and Self Regulating Organization under the Securities Regulation Code ("SRC," for brevity).

During the PSE's annual stockholders' meeting on 17 May 2008, Ismael G. Cruz, IGC's president, voted the respective shares of James Arnel B. Santos and Serafin Paulo V. Avecilla by virtue of individual proxies dated 02 May 2008 purportedly executed by Santos and Avecilla in favor of Cruz in his personal capacity.

From 02 February 2009 to 05 March 2009, the PSE's Market Regulation Division ("PSE-MRD," for brevity) and Trading Participants Regulation Department ("TPRD," for brevity) audited IGC as part of the regular auditing procedures for all

[1] *AMENDED IMPLEMENTING RULES AND REGULATIONS OF THE SECURITIES REGULATION CODE* (2003).

PSE trading participants for purposes of determining compliance with the exchange's rules and the laws on securities. As a result of the audit, the PSE-MRD found that Santos and Avecilla's respective signatures on the proxy forms dated 02 May 2008 appeared different from their signatures in their respective Customer Account Information Form on file with the PSE. PSE-MRD then concluded that the discrepancies in the signatures indicate that Santos and Avecilla did not give their written consent for Cruz to vote their shares, and the absence of written consent means IGC violated SRC Rule 49.3, which provides:

"(Lending and Voting Customers Securities)

A Broker Dealer which extends credit to a customer shall not without the written consent of the customer, lend the latter's securities to itself or to anyone else, or vote them as if they were its own."

Subsequently, PSE-MRD conducted an audit exit meeting where IGC agreed to submit written confirmations from Avecilla and Santos of their grant of authority to Cruz to vote their respective shares in the 2008 PSE annual stockholders' meeting, as provided in the subject proxy forms.

On 12 May 2009, IGC submitted two (2) letters dated 23 April 2009, showing the specimen signatures of Santos and Avecilla to the PSE-MRD. The letters advised Avecilla and Santos of TPRD's finding of discrepancy in the signatures, and requested them to affix their specimen signature in the space provided in the letter. To illustrate, we quote IGC's letter addressed to Avecilla:

"April 23, 2009

Serafin Paulo V. Avecilla
#79 Illinois St., Northeast Greenhills
San Juan City

Dear Mr. Avecilla,

The Philippine Stock Exchange, Inc. (PSE), in their annual audit, noted a discrepancy between your signatures in the Customer Account Information Form (CAIF) and the Proxy form for the PSE Annual Stockholders Meeting held on 17 May 2008.

We are being asked to certify the authenticity of your signatures.

In this regard, may we request you to provide your specimen signatures below:

____________________ ____________________

Thank you,

Faithfully yours,

(sgd.) DOREEN G. MIJARES
Vice President"

IGC alleged that the signatures affixed by Avecilla and Santos in the space provided in the letters sufficiently confirmed Cruz authority in the proxy forms. However, the PSE-MRD disagreed and ruled that these letters did not sufficiently confirm the authority granted by Avecilla and Santos to Cruz in the proxy forms since the letters did not contain an express confirmation of the authority. Thus, on 15 May 2009, the PSE-MRD issued a show cause letter requiring IGC to explain the audit findings on the violation of SRC Rule 49.3. On 17 June 2009, IGC submitted its explanation reiterating that the 23 April 2009 letters sufficiently confirmed the authority of Cruz in the proxy forms.

On 26 June 2009, the PSE-MRD issued its decision, which, among others, imposes a monetary sanction in the amount of Php 20,000.00 on IGC for violation of SRC Rule 49.3:

"Gentlemen:

Upon evalution of the audit findings based on your referenced examination and your letter dated 25 May 2009 and explanations during our 22 April 2009 meeting, the Market Regulation Division ("MRD") has decided to impose the following sanctions on your firm for failure to comply with the relevant provisions of the Securities Regulation Code ("SRC") and its implementing rules and regulations (the "SRC Rules"):

xxx

e) P20,000.00 monetary penalty for violation of SRC 49.3 (Lending and Voting Customers Securities) and directive to secure written authorization from clients before voting their securities. xxx"

On 15 July 2009, IGC appealed the decision to the PSE's Market Integrity Board ("MIB," for brevity). On 14 August 2009, MIB issued the assailed resolution affirming PSE-MRD's imposition of sanctions against IGC for violation of SRC 49.3, and directing the latter to secure the proper written authorization from Avecilla and Santos for the issuance of proxies:

"MIB Res. No. 19 (Series of 2009)

RESOLVED That, the finding by the Market Regulation Division ("MRD") of a violation by IGC Securities Inc. of SRC Rule 49.3 (Lending and Voting Customers Securities), the imposition of the monetary penalty in the amount of Php 20,000.00 for such violation and the directive that the trading participant secure the written authorization from its clients, Serafin Paulo V.

> Avecilla and James Arnel B. Santos for the issuance of proxies to vote securities they beneficially own be, as it is affirmed.
>
> RESOLVED Further That, in the mater of the authorization to be secured from the clients, neither the confirmation nor affirmation of third parties other than the clients themselves will be considered sufficient compliance.
>
> RESOLVED Finally That, the appeal taken therefrom by the said IGC Securities Inc. be as it is hereby denied."

IGC now appeals the resolution to the Commission *En Banc,* raising the following issues: (1) whether or not the PSE-MRD and MIB have jurisdiction over this controversy; and (2) whether or not the IGC violated SRC Rule 49.3.

Jurisdiction is conferred by law. The Securities Regulation Code[2] authorizes a self-regulating organization, such as the PSE, to discipline its participants, such as IGC, for violations of the laws and rules and regulations administered by the Commission.[3] Thus, the PSE-MRD and MIB have jurisdiction to impose monetary sanction upon IGC for the alleged violation of SRC Rule 49.3.

Regarding the second issue, we reiterate that SRC Rule 49.3 provides:

> "Lending and Voting Customers Securities [formerly SRC Rule 49.3-1]
>
> A Broker Dealer which extends credit to a customer shall not without the written consent of the customer, lend the latter's securities to itself or to anyone else, or vote them as if they were its own."

In order for a trading participant to be guilty of violating this prohibition, the following elements must concur: (1) the broker dealer extends credit to a customer; (2) the broker dealer lends the customer's securities to itself or to anyone else, or vote them as if they were its own; and (3) the broker dealer committed such acts without securing the written consent from the customer. Absent any one of these elements, there is no violation of SRC Rule 49.3.

In the present case, it was never established that IGC extended credit to Avecilla and Santos. In fact, IGC's allegation that the shares of the customers are fully paid up remains uncontroverted. The first element is absent. Thus, the prohibition under SRC Rule 49.3 does not apply in this case.

We cannot countenance the MIB's argument that SRC Rule 49.3 must be applied by analogy even to those situations where the customer has no existing credit in favor of the broker dealer. SRC Rule 49.3 is an administrative rule, the violation of which subjects the offender to administrative penalties. It is thus akin to

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[2] *REPUBLIC ACT NO. 8799 (2000).*
[3] See R.A. 8799, Sections 40.6 and 40.7.

a penal law, and so, it must also be construed strictly against the regulatory body and liberally in favor of the alleged offender. This is in accordance with the Supreme Court's ruling that:

> "For, it is a well-entrenched rule that penal laws are to be construed strictly against the State and liberally in favor of the accused. They are not to be extended or enlarged by implications, intendments, analogies or equitable considerations. They are not to be strained by construction to spell out a new offense, enlarge the field of crime or multiply felonies. Hence, in the interpretation of a penal statute, the tendency is to subject it to careful scrutiny and to construe it with such strictness as to safeguard the rights of the accused. If the statute is ambiguous and admits of two reasonable but contradictory constructions, that which operates in favor of a party accused under its provisions is to be preferred. The principle is that acts in and of themselves innocent and lawful cannot be held to be criminal unless there is a clear and unequivocal expression of the legislative intent to make them such. Whatever is not plainly within the provisions of a penal statute should be regarded as without its intendment.
>
> The purpose of strict construction is not to enable a guilty person to escape punishment through a technicality but to provide a precise definition of forbidden acts. xxx The law does not operate *in vacuo* nor should its applicability be determined by circumstances in the abstract."[4]

Thus, we cannot deviate from the text of the rule and unduly expand it to situations where the customer has no credit in favor of the broker dealer. The PSE-MRD and MIB erred in unduly expanding and applying SRC Rule 49.3 in the present controversy despite the undisputed absence of the first element.

Further, even assuming *arguendo* that IGC extended credit to Avecilla and Santos, IGC is still not guilty of violating SRC Rule 49.3 since the third element is absent. In its Memorandum on Appeal, IGC submitted duly notarized certifications executed by Avecilla and Santos confirming that they indeed gave written consent to Cruz to vote their proxies in the 17 May 2008 PSE Annual Stockholders' Meeting.[5] Consequently, the PSE-MRD's finding, that the signatures in the proxies were spurious for being different from the signatures on file, turns out to be erroneous. It would be absurd to affirm the PSE-MRD's finding in light of the fact that Avecilla and Santos themselves confirm that they indeed signed the proxy forms and authorized Cruz to vote their shares. This means there can be no doubt that Avecilla and Santos actually gave written consent to Cruz to vote their shares. Clearly, the third element is absent and thus, there can be no violation of SRC Rule 49.3.

Since, the first and third elements are absent it is of no consequence whether or not Cruz's act of voting the shares of Avecilla and Santos through the use of the

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[4] *Martin Centeno vs. Hon. Victoria Villalon-Pornillos,* G.R. No. 113092, September 1, 1994.
[5] Annexes J, and K of the Memorandum on Partial Appeal.

proxy forms constitutes the presence of the second element. Thus, we shall no longer delve on that question.

It is plain enough to see that the PSE-MRD and MIB erred in finding IGC guilty of violating SRC Rule 49.3, since not all the elements of the violation are present.

WHEREFORE, premises considered, the Appeal is hereby **GRANTED**. The Philippine Stock Exchange - Market Integrity Board's Resolution No. 19 (Series of 2009) dated 14 August 2009, in so far as it imposes the monetary sanction in the amount of Php 20,000.00 against appellant IGC Securities, Inc. for violation of SRC Rule 49.3, is hereby **REVERSED** and **SET ASIDE**.

SO ORDERED.

Mandaluyong City, 15 April 2010.

FE B. BARIN
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner