Republic of the Philippines
SECURITIES AND EXCHANGE COMMISSION
SEC Bldg. EDSA, Greenhills, Mandaluyong City

In the Matter of the Petition for Rehabilitation with Prayer for Suspension of Action and Proceedings against Petitioners,

ST. FRANCIS SQUARE HOLDINGS, INC., ST. FRANCIS SQUARE DEVELOPMENT CORPORATION, ST. FRANCIS SQUARE REALTY CORPORATION, (formerly ASB Group of Companies)
Petitioners-Appellees,

Deutsche Bank AG London,
Creditor-Appellant.
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Sec En Banc Case No. 02-10-197
(Sec Case No. 05-00-6609)

For: Appeal to the Commission *En Banc*

RESOLUTION

This refers to Creditor-Appellant Deutsche Bank AG London's appeal from the Special Hearing Panel's Order dated 02 February 2010. Appellant filed its Notice of Appeal and Memorandum of Appeal with the Commission on 22 February 2010.

At the outset, we find that the accompanying Verification and Certificate of Non-Forum Shopping was executed by Jose Salvador Y. Mirasol and Ronaldo Modesto J. Ventura, purportedly as appellant's duly authorized representatives. They depose in part:

> "1. That we are the authorized representatives of Appellant to initiate and file the instant Appeal, and accordingly, to execute this Verification and Certificate of Non-Forum Shopping, as evidence by the Power of Attorney dated 21 November 2008, attached hereto as Annex `1'; xxx"

The said Power of Attorney, executed by appellant's director Johan Sudiman and managing director Tod Macri, provides, in part, that:

> "We, DEUTSCHE BANK AKTIENGESELLSCHAFT, a corporation duly organised and existing under the law of the Federal Republic of Germany and having its principal place of business at Taunusanlage 12 in the City of Frankfurt (Main), by

our London Branch at Winchester House, 1 Great Winchester Street, London, EC2N 2DB (the "Company") HEREBY APPOINT the persons set out in Schedule 1 to be each severally our true and lawful attorney (the "Attorney") to execute and deliver in our name and on our behalf the documents described in Schedule 2 and to do any and all other acts and things as may be deemed necessary or incidental in relation thereto AND we hereby undertake to ratify everything which the Attorney shall lawfully do or purport to do in connection therewith. This Deed shall cease to have effect from the date given in Schedule 3. This Deed shall be governed and construed in accordance with English law.

Schedule 1

Name of authorised attorneys:

Beaux Richard Joseph Pontak;
Marco Jayme;
Jacinto D. Jimenez;
Louie T. Ogsimer;
Jaime Raphael C. Feliciano,
and any of the lawyers of the Romulo Mabanta Buenaventura Sayoc & de los Angeles law office

Schedule 2

Description:

1. To represent the Company in SEC EN BANC Case No. 10-08-146 entitled "St. Francis Square Holdings, Inc., St. Francis Square Development, Inc., St. Francis Square Realty Corporation, (formerly ASB Group of Companies) v. The SEC Hearing Panel and Deutsche Bank AG London" ("Certiorari Proceedings") and in any appeal of the decision or orders rendered by the Securities and Exchange Commission in connection with, relating to or arising out of the Certiorari Proceedings;

2. To cause, the preparation and filing of any pleading, petition or document in all proceedings in any tribunal, court or agency in the Republic of the Philippines in connection with, relating to or arising out of the Certiorari Proceedings;

3. To execute and sign any pleading, petition or document in all proceedings in any tribunal, court or agency in the Republic of the Philippines in connection with, relating to or arising out of the Certiorari Proceedings, including any required verification and certification of non-forum shopping. If and when a pleading, petition or document is required to be verified, any 2 of the signatures of the authorized persons in Schedule 1 shall be required; and

4. To do, execute and perform all acts and deeds which the Company could

legally do and perform in order to protect its interest as creditor of the Obligor.

xxx"

Crucially, Schedule 2 of the Power of Attorney expressly provides that the authority to execute and sign, for and on behalf of the appellant, any pleadings, including the verification and certification of non-forum shopping, extends only to such papers required in connection with, relating to or arising out of SEC EN BANC Case No. 10-08-146 entitled "St. Francis Square Holdings, Inc., St. Francis Square Development, Inc., St. Francis Square Realty Corporation, (formerly ASB Group of Companies) v. The SEC Hearing Panel and Deutsche Bank AG London."

The present appeal arose from SEC Case No. 05-00-6609, and not from SEC EN BANC Case No. 10-08-146 referred to by the Power of Attorney. As stated earlier, the present case is an appeal from the Special Hearing Panel's Order, dated 03 February 2010, in SEC Case No. 05-00-6609. On the other hand, SEC EN BANC Case No. 10-08-146 concerns the distressed corporation's Petition for Review on Certiorari with Prayer for Issuance of Temporary Restraining Order/Injunction, seeking to annul and set aside the Special Hearing Panel's Order, dated 03 October 2008, in SEC Case No. 05-00-6609. In other words, the present appeal cannot be considered as connected with, relating to or arising out of SEC EN BANC Case No. 10-08-146 since the two cases are in fact separate and independent of each other arising as they are from two distinct orders issued by the Special Hearing Panel, i.e., the 03 February 2010 Order and the 03 October 2008 Order, respectively.

The fact that the two cases are distinct from each other is even asserted in the Verification and Certificate of Non-Forum Shopping, wherein the affiants deposed:

> "5. That St. Francis Square Holdings, Inc., St. Francis Square Development Corporation, and St. Francis Square Realty Corporation filed a Petition for Certiorari with the SEC En Banc to question the 3 October 2008 Order issued by the former SEC Hearing Panel. The case, docketed as SEC En Banc Case No. 10-08-146, is entitled "St. Francis Square Holdings, Inc., St. Francis Square Development, Inc., St. Francis Square Realty Corporation, (formerly ASB Group of Companies) v. The SEC Hearing Panel and Deutsche Bank AG London." **That case, however, does not involve identical issues and reliefs prayed for as in this Appeal."** (Emphasis added.)

Clearly, the Power of Attorney pertains only to SEC EN BANC Case No. 10-08-146, and is irrelevant for purposes of the present appeal. Thus, the Verification and Certificate of Non-Forum Shopping is defective for not having been executed by the duly authorized representatives of the appellant. And such defect is fatal to the appeal. The Commission's procedural rules provide:

"SECTION 11-2. How Appeal is Taken. — Appeal may be taken by serving upon the adverse party and filing with the Commission En Banc within fifteen (15) days from notice of Decision, Order or Ruling, a Notice of Appeal and a Memorandum on Appeal and paying the corresponding docket fee therefor. Provided, that **no appeal shall be given due course unless it includes a certification of non-filing of multiple petitions and complaints** provided for in Section 3-5 hereof."[1] (Emphasis added.)

Further, it is well-settled that an appeal is subject to dismissal if the certification on non-forum shopping was submitted unaccompanied by proof of the signatory's authority for and in behalf of the juridical entity person.[2] We find no compelling reason to depart from this well-settled principle, and disregard the procedural rules.

WHEREFORE, premises considered, the appeal is hereby **DISMISSED.**

SO ORDERED.

Mandaluyong City, Philippines, 14 October 2010.

FE B. BARIN
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner

[1] 2006 Rules of Procedure of the Securities and Exchange Commission, Rule XI, Section 11-2.
[2] *Philippine Airlines, Inc., et al. vs. Flight Attendants and Stewards Associations of the Philippines, et al.*, G.R. No. 143088, January 24, 2006; *Shipside Incorporated v. Court of Appeals*, G.R. No. 143377, February 20, 2001, 352 SCRA 334.