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

HERNANDO VITAS and JACQUES FILIBA DE ROMI,
Complainants-Appellants,

-versus-

SEC En Banc Case No. 12-13-312

PAPA SECURITIES CORPORATION AND IGNACIO JOSE SORIANO,
Respondents-Appellees.
X---x

DECISION

Before the Commission En Banc (Commission) is the *Memorandum on Partial Appeal*[1] filed by Hernando Vitas (Vitas) and Jacques Filiba de Romi (De Romi), collectively referred to as *complainants-appellants,* appealing the Decision[2] of the Capital Markets Integrity Corporation Board (CMIC Board) which affirmed the Decision[3] rendered by officer-in-charge Daisy Arce (OIC Arce).

THE PARTIES

Vitas is of legal age and a Filipino citizen while De Romi is of legal age and a Spanish national. De Romi is being represented by his attorney-in-fact, Vitas, evidenced by Special Power of Attorney.[4]

Respondent-Appellee Papa Securities Corporation (Papa Securities) is a corporation registered with the SEC with SEC Registration Number 0000087873 and with a secondary license to act as broker/dealer of securities.[5] Its primary purpose is to engage in the business of stock and bond brokers and dealers in securities and in all activities directly or indirectly connected therewith or incidental therein.

Respondent-Appellee Ignacio Jose Soriano (Soriano) is the head of the Research Department and a registered salesman of Papa Securities.

[1] Filed on 19 December 2013.
[2] Dated 12 November 2013.
[3] Dated 20 August 2013.
[4] Annex "AA" of the Memorandum on Partial Appeal
[5] 01-2004-00100

RELEVANT FACTS

According to complainants-appellants, sometime in September 2011, Soriano offered to them four million shares of East Asia Power (PWR shares) at one peso (₱1.00) per share. At that time, the shares were being traded at the Philippine Stock Exchange (PSE) for two pesos and seventy-three centavos (₱2.73).

Complainants-appellants agreed to purchase two million (2,000,000) shares each, for which they issued RCBC checks totaling four million pesos (₱4,000,000) payable to Papa Securities. The receipt for the checks is signed in the name of "Papa Securities Inc., by respondent Soriano".[6]

Complainants-appellants claim that the checks were deposited to Papa Securities' account and despite the provision in the receipt[7] that Papa Securities will issue an invoice pertaining to the transaction, no invoice was delivered to them.[8] Complainants-appellants demanded for the immediate issuance of the shares so that they can sell it at the going price. Papa Securities offered to sell the shares at more than two pesos (₱2.00) per share on or before 26 September 2011. Of the proceeds, ₱2.00 per share will be paid to complainants-appellants while Papa Securities will keep the excess aside from its commission. Complainants-appellants agreed to the proposal because they had trust and confidence in Papa Securities.

According to complainants-appellants, they were neither issued any notice or acknowledgment that Papa Securities were holding the shares for and in their behalf nor did Papa Securities give any notice about the shares. They were informed later on that the shares were sold at Two Million One Hundred Sixty-Three Thousand One Hundred Eighty pesos (₱2,163,180) which was deposited to their respective accounts.

Complainants-appellants are claiming for a deficiency of Three Million Six Hundred Seventy-Three Thousand Six Hundred Forty pesos (₱3,673,640) since the transaction should have yielded Eight Million Pesos (₱8,000,000). Complainants-appellants sent several demand letters to Papa Securities demanding for the payment of the balance.

Papa Securities responded through a letter[9] stating that complainants-appellants dealt with Soriano in his personal capacity. Further, Papa

[6] Paragraphs 3.1 and 3.2 of the Memorandum on Partial Appeal.
[7] Annex "D" of the Complaint which is Annex "C" of the Memorandum on Partial Appeal.
[8] Confirmed by a Confirmation Letter dated 15 August 2012.
[9] Dated 23 July 2012.

Securities claims that it is not a party to the transaction made by complainants-appellants and Soriano.

Since complainants-appellants' demands were not heeded by Papa Securities, they decided to file a *Complaint*[10] with the SEC-IPSD which the latter referred to the Capital Markets Integrity Corporation (CMIC).

The CMIC dismissed complainants-appellants' *Complaint.* In the Decision,[11] OIC Arce ruled that complainants-appellants dealt with Soriano in his personal capacity, as such, they did not deal with Papa Securities. It held that "...the declarations expressed in the receipt itself attest to the finding that the subject transaction did *not* involve PSC (Papa Securities)."[12]

The CMIC also held that Papa Securities and Soriano did not unlawfully obtain money from complainants-appellants. It held that Papa Securities and Soriano "... have substantially proven the absence of fraud, or bad faith implying a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity, in the subject transaction."[13] Further, the absence "of any express provision in the receipt as to the exact amount to be realized by the Complainants and the distinctively speculative nature of the transaction, the allegation of fraud must inevitably fail."[14]

Lastly, the CMIC held that Papa Securities did not violate the Ethical Standards Rule and the rules on confirmation of customer orders and client agreement provided in the Implementing Rules and Regulations of the Securities Regulation Code (SRC IRR). However, it found Soriano liable for violating the SRC IRR.

Unsatisfied with the Decision of OIC Arce, complainants-appellants moved for a reconsideration to the CMIC Board. The CMIC Board in a Resolution[15] denied the same after finding no sufficient reason to reverse OIC Arce's Decision. Hence, the present appeal.

Complainants-appellants argue that the transaction was between them and Papa Securities with Soriano as the latter's agent. The receipt expressly provided that the amount was payable to Papa Securities and the checks were issued in the name of the latter. Had the transaction been in the personal capacity of Soriano, complainants-appellants would have not issued the checks payable to Papa Securities. According to them, since Soriano is a

[10] Dated 15 October 2012.
[11] Decision dated 20 August 2013 Annex "B" of the Memorandum on Partial Appeal.
[12] Page 18 of Annex "B" Memorandum on Partial Appeal.
[13] Page 22 of Annex "B" Memorandum on Partial Appeal.
[14] Page 23 of Annex "B" Memorandum on Partial Appeal.
[15] Dated 12 November 2013.

salesman and employee of Papa Securities, Papa Securities is bound by the acts and omissions of Soriano for which it must be held liable.

Papa Securities, in their Reply Memorandum,[16] reiterated that it had no knowledge and was not a privy to the private placement transaction between complainants-appellants and Soriano. According to Papa Securities, it did not give Soriano the authority to deal in private placements and complainants-appellants knew that it does not engage in private placements. In fact, Soriano informed complainants-appellants that the private placement is in the nature of speculative stocks and Papa Securities does not recommend speculative stocks.[17] For Papa Securities, the fact that they never asked for an official receipt indicated that complainants-appellants were aware that they were not dealing with Papa Securities.[18]

Soriano, in his Reply Memorandum,[19] recounted that Vitas introduced De Romi to him at the RCBC, Carlos Palanca Branch for the possible opening of a trading account. Soriano explained to complainants-appellants the risks involved in speculative stock trading but complainants-appellants still signified their interest to the transaction.

Soriano then offered to complainants-appellants a private placement opportunity involving PWR shares which was offered to him by an RCBC Securities trader, Mary Grace Valbuena (Valbuena). Soriano told complainants-appellants that the deal will be through him and not through Papa Securities.[20] After Soriano received the checks and executed the Receipt, he immediately deposited the funds to a bridge account to facilitate the transfer of funds to RCBC Securities.

He then observed the trading and was in constant communication with Vitas. After a few weeks, he observed that the shares were not being traded as planned; hence, he demanded for the return of the investment. Thereafter, RCBC issued checks in favor of complainants-appellants in the amounts of ₱691,500 on 4 October 2011 and ₱1,471,680 on 24 November 2011 each was able to gain ₱163,180 from the transaction.

Shortly after Soriano's withdrawal of the investments of complainants-appellants, newspapers reported about the misappropriation of funds and securities entrusted to Valbuena by RCBC's clients. According to Soriano, Vitas continued transacting with Papa Securities and him until December 2012 as evidenced by the account ledgers of Vitas.[21]

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[16] Dated 20 January 2014.
[17] Paragraph 31, page 14 of the Reply Memorandum.
[18] Paragraph 35, page 18 of the Reply Memorandum.
[19] Dated 21 January 2014.
[20] Paragraph 7, of Soriano's Reply Memorandum.
[21] Paragraph 15 of Soriano's Reply Memorandum.

Soriano contends that complainants-appellants are well aware that the transaction was a private placement between them and did not involve Papa Securities. Further, the fact that each complainant-appellant gained ₱163,180 from the transaction belies their allegation that he unlawfully obtained money from them.

To aid the Commission in the disposition of this case and to render its technical expertise on the complex issues that need to be resolved, the Markets and Securities Regulation Department (MSRD) was ordered to give its comment to the Memorandum on Partial Appeal filed by complainants-appellants.[22]

ISSUES

The appeal has the following issues to resolve:

1. Whether or not the purchase of shares is a transaction between complainants-appellants and Soriano only or also involved Papa Securities;

2. Whether Papa Securities and Soriano fraudulently and in bad faith obtained money from complainants-appellants;

3. Whether Papa Securities violated the Ethical Standards Rule and other related rules;

The Commission finds the *Partial Appeal* partially meritorious and resolves to partially reverse the Decision of the CMIC Board.

DISCUSSION

THE TRANSACTION BETWEEN COMPLAINANTS-APPELLANTS AND SORIANO INVOLVED PAPA SECURITIES

The Receipt dated 01 September 2011 explicitly provided for the nature of the transaction. The Receipt is reproduced as follows:

> "Re: Backdoor Listing/Listed of TWR [sic] now owned by Century Properties of Mr. Joey Antonio

[22] Order dated 29 July 2019.

Current Price now at the PSE Stock Market is: P2.73 more or less.

The above mentioned shares with a total of 4 million shares is now being offered to the undersigned, HERNANDO M. VITAS and JAQUES FILIBA DE ROMI at the price of P1.00 per share, by IGNACIO SORIANO, Head Research Dept., Papa Securities Corp., Dela Rosa Street cor. Esteban Street Makati City. ***This is shares of stocks under private placement offered*** to IGNACIO SORIANO AND/OR MARY GRACE VALBUENA, Director RCBC Securities, Inc. RCBC Plaza, Ayala Ave., cor. Buendia Streets Makati City, ***which IGNACIO SORIANO in turn offered to the aforesaid buyers, HERNANDO M. VITAS and JAQUES FILIBA DE ROMI who accepted the offer by SORIANO***.

In consideration of P2,000,000.00 from JAQUES FILIBA DE ROMI and P2,000,000.00 from HERNANDO M. VITAS in cash and full payment of the 4 million shares of TWR [sic] ***private placement*** owned by Century Properties, I hereby acknowledge receipt of P2,000,000.00 in Manager's Check issued by RCBC C. Palanca Branch in **the name of PAPA SECURITIES CORP.** and another P2,000,000.00, Manager's Check, same Bank both dated September 1, 2011 in full payment of the 4 million placement shares of TWR [sic] owned by Century Properties. ***Invoice for this purchase shall be issued in favor of the two aforesaid buyers, HERNANDO M. VITAS and JAQUES FILIBA DE ROMI on Friday, September 2, 2011, by Papa Securities Corp./ IGNACIO SORIANO.***

Received by: PAPA SECURITIES, INC.

sgd
BY: IGNACIO SORIANO

sgd
JAQUES FILIBA DE ROMI
Buyer

sgd
HERNANDO M. VITAS
Buyer

City of MAKATI, SEPTEMBER 1, 2011" (emphasis, underscoring supplied)

Contrary to the allegations of Papa Securities that it does not have any involvement to the transaction, the evidence on record substantially leads to the conclusion that the transaction involved Papa Securities.

First, the receipt containing the agreement of the parties is direct, categorical and explicit in saying that the checks paid for the transaction were ***issued in favor of Papa Securities***. Second, the invoice for the transaction will be issued in favor of complainants-appellants ***by Papa Securities***. Third, the Receipt was ***received by Papa Securities*** through and by its salesman, ***Soriano***. Fourth, ***the money was channeled through the facilities and account of Papa Securities***.

Complainants-appellants argue that they will not issue checks in favor of Papa Securities if the latter was not involved in the transaction. This argument is consistent with common human experience. The presumption "*that money paid by one to another was due to the latter*"[23] applies in this case. Complainants-appellants would have not issued the receipts in favor of Papa Securities if the money was not due to the latter. Checks of huge amount as in this case would not be made payable to party if that party was not privy to the transaction.

Further, "*a person intends the ordinary consequences of his voluntary act*"[24] complainants-appellants issued the checks payable to Papa Securities because they intended that the checks be delivered to Papa Securities as payment for the transaction. If at all, that the transaction did not involve Papa Securities, then complainants-appellants could have easily issued the checks in the name of Soriano.

Soriano's explanation[25] that the amount was deposited in a bridge account, under Rosamarie Javier (Javier), who is also a client of Papa Securities and whose account ledger reflects the transaction cannot be given credence as the ledgers were in the possession of Papa Securities.

As between the ledgers and assertions of Soriano and Papa Securities regarding the transfer of funds through a bridge account and the statements made in the receipt and the checks, the latter must be given more evidentiary weight and credence. The money was transferred through the facilities of Papa Securities. While Javier's ledger reflects the same, no written document was presented by Papa Securities to prove that it was Javier who ordered the transfer of funds. Furthermore, commingling of transaction and account is prohibited under Article V, Section 6 of the CMIC Rules.

The receipt was executed voluntarily by both parties, as such, ***the agreements written thereon are what the parties agreed to; otherwise, they would have not signed the document nor issued the checks in favor of another***. Parol Evidence Rule dictates that:

> "when the **terms of an agreement** have been **reduced to writing**, it is **considered as containing all the terms agreed upon** and there can be, between the parties and their successors in interest, **no evidence of such terms <u>other than the contents of the written agreement</u>**"[26] (emphasis and underscoring supplied)

None of the excepting circumstances is present in this case; hence, ***more evidentiary weight is being given to the Receipt which indicates the involvement of Papa Securities to the transaction***.

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[23] Rule 131, Section 3(f) of the Rules of Court
[24] Rule 131, Section 3(c) of the Rules of Court
[25] Affidavit of Soriano, Annex "1" Papa Securities' Reply Memorandum
[26] Rule 130, B (3), Section 9 of the Rules of Court.

Soriano as a salesman of Papa Securities is an agent of the latter. The contract of agency is based on representation. Papa Securities as the principal of Soriano is bound by the latter's acts and/or omissions in buying and selling of securities; the ruling of the CMIC Board that "owing to the discrete personalities and obligations of the trading participant and its officers and/or employees, it cannot be automatically presumed that acts made by a trader or salesman are tantamount to acts of the trading participant" is erroneous and inconsistent with the Sections 51 and 28 of the Securities Regulation Code.

Therefore, the transaction between complainants-appellants and Soriano also involved Papa Securities because of this, ***Papa Securities should also be held liable for the acts and omissions made by its salesman, Soriano***.

PAPA SECURITIES AND SORIANO DID NOT UNLAWFULLY OBTAIN MONEY FROM COMPLAINANTS-APPELLANTS

Proceeding from the finding that the transaction involved Papa Securities, the next question is, whether or not Papa Securities through Soriano unlawfully and fraudulently obtained money from complainants-appellants.

The *answer is in the negative.*

It is established and undisputed that each complainant-appellant was able to recover his ₱2,000,000 investment, on top of this, each of them received ₱163,180.

Complainants-appellants are claiming the deficiency of ₱3,673,640 because the transaction should have yielded ₱8,000,000. ***The failure of complainants-appellants to obtain the proceeds of the supposed sale of the PWR shares does not per se mean that they were defrauded.*** Complainants-appellants are both experienced traders engaged in trading of stocks. The very nature of the transaction implies that the gains are not definite and depends on the volatility of the market. As correctly pointed by Soriano, brokers, dealers, or salesmen are not insurers of the investments being made in the market.

The receipt itself does not provide that the shares will be sold at a specific amount by Soriano for the complainants nor does the receipt provide for the exact amount of profit to be realized from the transaction. Other than the bare assertions of complainants-appellants that the transaction should have yielded ₱8,000,000, they did not provide any documentary evidence to prove that the transaction indeed yielded ₱8,000,000 or that this was the amount promised to them. Hence, as correctly pointed out by the CMIC,

> "Firstly, the receipt dated 1 September 2011 did *not* "clearly" state that the subject shares were being traded at the Exchange at P2.73 per share on even date. *In actuality,* the receipt expressly provided: "Current Price now at the PSE Stock Market (sic) is: P2.73 more or less." (Underscoring supplied.) The receipt itself, therefore, did *not* establish the precise value of the PWR shares at the time of the parties' agreement and, as a necessary consequence, the exact amount to be received by the Complainants after the purchase and subsequent sale of the PWR shares.
>
> In other words, the receipt, apart from conclusively establishing a sheer estimation of the PWR shares' value, is an attestation of the fact that the transaction itself was of an ***inherently speculative nature.*** As correctly pointed out by Mr. Soriano, citing two cases decided by the High Court, "the value of a specific share may vary from time to time depending on several factors which may affect the market" and "the rise and fall in the value of shares" is "difficult to predict with a degree of certainty."
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> Xxx
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> Xxx
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> In sum, bearing in mind the foregoing, particularly, the ***want of any express provision in the receipt as to the exact amount to be realized by the Complainants and the distinctively speculative nature of the transaction, the allegation of fraud must inevitable fail.***" (emphasis supplied).

In fact Vitas, in his testimony before the Metropolitan Trial Court of Makati City, Branch 66,[27] stated that "***nowhere in the same document (receipt) that states at what price the shares are to be sold…that nowhere in the said agreement that indicates the selling price.***" The court in acquitting Soriano for Other Deceits under Article 318 of the Revised Penal Code ruled that:

> "In the case at bar, records bared that the accused has been candid and forthcoming with the nature of their transactions, particularly as to the profitability of the investment of the private complainants. With that said, ***fraud as defined above is not existing in the case at bar***. Inversely, the private complainants cannot barefacedly feign ignorance on how stock trading business is conducted when they parted with their money; that no risk whatsoever was involved; and that they were simply induced on an alleged guaranty on the part of the accused." (emphasis and underscoring supplied)

Since the transaction is speculative in nature, the amount of return is also uncertain. ***The uncertainty of the amount of return necessarily implies that the demand for the unrealized profits is baseless***. Also, fraud cannot be ascribed to Soriano and Papa Securities since the transaction was speculative.

[27] Annex "A" of the Manifestation filed by Soriano dated 28 May 2019.

Soriano and complainants-appellants freely entered into the transaction knowing the risks that come with it. As stated by Soriano, he explained to complainants-appellants that the transaction was speculative but still complainants-appellants pushed through with the transaction.

Complainants-appellants, by pushing through with the transaction knowing its nature and the risks involved, *intended the ordinary consequences of their voluntary act.*[28] The consequences of their acts is the possibility of not realizing any profit and losing everything they invested. Essentially, engaging in stock trading is gamble for which traders bear the risk of loss.

PAPA SECURITIES VIOLATED THE ETHICAL STANDARDS RULE and OTHER RELATED RULES

The Flow of Transactions for Buying Stocks and Memorandum dated 21 December 2011, issued by Papa Securities, are not comprehensive and not sufficient to ensure that the public and the capital market are protected from any unlawful or negligent acts and/or omissions of brokers and its salesmen. The SRC IRR mandates that brokers and dealers must adhere to the prescribed Ethical Standards Rule, Confirmation of Customer Orders and Client Agreement Rule as provided in SRC IRR.

Papa Securities failed to observe the necessary diligence in its supervision of Soriano neither did it sufficiently establish any internal control procedures and financial operational capabilities that are expected of it to protect its operations and clients. ***The belated issuance of the Memorandum and Flow of Transactions cannot be taken as sufficient nor substantial compliance with the Rules.*** Further, Papa Securities did not even impose any sanction against Soriano despite CMIC's finding of the latter's liability. In fact, Soriano remains as a salesman of Papa Securities as of this writing.

Having established that Soriano violated the SRC Rules, the liability of Papa Securities as the registered person is provided under Section 51 of the SRC which provides:

> Section 51. Liabilities of Controlling Persons, Aider and Abettor and Other Secondary Liability. 51.1. Every person who, by or through stock ownership, agency, or otherwise, or in connection with an agreement or understanding with one or more other persons, ***controls any person liable under this Code or the rules or regulations*** of the Commission thereunder, ***shall also be liable jointly and severally with and to the same extent as such controlled persons*** to any person to whom such controlled person is liable, unless the controlling person proves that, despite the exercise of due diligence on his part, he has no knowledge of the existence of the facts by

[28] Rule 131, Section 3(c) of the Rules of Court

reason of which the liability of the controlled person is alleged to exist. (emphasis and underscoring supplied)

Papa Securities' belated issuance of the Memorandum and the Flow of Transactions is insufficient to prove that it exercised due diligence in supervising Soriano. This is *indicia* that Papa Securities was in remiss of its mandates provided in the SRC and its IRR for which it should be penalized.

IMPOSABLE PENALTIES

Finding that the transaction involved Papa Securities through its salesman Soriano, for determination now are the imposable penalties against Papa Securities and Soriano.

The present proceeding is an appeal from the CMIC Board's Decision which constrains the Commission to follow the prescribed penalty therein. The CMIC Rules classifies violation of the Ethical Standards Rule as a major violation[29] the penalty prescribed for first violation is a "fine of at least Php.10,000.00 but not more than Php.30,000.00."[30]

The CMIC Board imposed upon Soriano a "**PENALTY OF WRITTEN REPRIMAND** and a **FINE OF THIRTY THOUSAND PESOS (30,000.00)** for violation of the Ethical Standards Rule.

WHEREFORE, premises considered, the *Memorandum on Partial Appeal* is **PARTIALLY GRANTED**. The Decision of the CMIC Board that Papa Securities and Soriano did not unlawfully obtain money from complainants-appellants through fraud in connection with the purchase of the shares is hereby **AFFIRMED**. The written reprimand and fine of thirty thousand pesos (₱30,000.00) imposed against Soriano is hereby **AFFIRMED.**

The Decision of the CMIC Board is **PARTIALLY MODIFIED** as follows:

A. A fine of **THIRTY THOUSAND PESOS** (₱30,000.00) is hereby imposed to Papa Securities Corp. for violation of the Ethical Standards Rule.

[29] Article XII, Section 3 (b)(ii) of the Rules of the CMIC.
[30] Article XII, Section 4 (b) of the Rules of the CMIC.

B. The **MSRD** is hereby **ORDERED** to conduct further investigation pertaining to this case and determine whether there are other violations of the SRC and other laws.

SO ORDERED.

Pasay City, Philippines; 26 September 2019.

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner