Republic of the Philippines
Department of Finance
Securities and Exchange Commission
Pasay City, Philippines

Christina S. Fabian
Complainant-Appellee,

versus SEC EB Case No. 09-09-176

Lloyd's Financing Corporation,
Respondent-Appellant.

DECISION

On 18 September 2009, Lloyd's Financing Corporation (Lloyd) filed an Appeal[1] before the Commission En Banc assailing the Resolution dated 25 August 2009 issued by Director Justina F. Callangan of the Corporation Finance Department (CFD), (now Corporate Governance and Finance Department), the dispositive portion of which reads as follows:

> In view of the Respondent's non-compliance with the requirement of SEC Memorandum Circular No. 003, Series of 2001 for its failure to fully and properly disclose the true cost of credit to the borrower, Lloyd's Finance Corporation is hereby assessed a basic fine of P20,000.00 plus daily penalty of P4,900.00 computed form May 13, 2009 to July 2, 2009 computed at P100,00/day.[2]

Lloyd is directed to pay the same in cash or manager's check within five (5) days from receipt of the assessment. Lloyd is further directed to desist from defrauding its clients and to strictly comply with SEC Memorandum Circular No. 003, Series of 2001(MC 3-01), which requires full disclosure of the true cost of credit to the borrower.[3]

CFD's Resolution arose from a complaint[4] by Christina S. Fabian, seeking assistance regarding her loan application with Lloyd in the amount of P200,000.00 bearing 1% interest per month for a term of five years.[5] The loan was evidenced by promissory note,[6] and secured by a real estate mortgage.[7] Fabian claimed that Lloyd failed to provide her an itemized list of deductions/charges on the loan despite several demands.[8] She was made to pay P3,500.00 as processing fee and sign a

1 Notice of Appeal & Memo. of Appeal (18 Sept. 2009).
2 CFD Reso. (25 Aug. 2009).
3 *Id.*
4 Anx. R.
5 Anx. B.
6 Anx. D.
7 Anx. C.
8 Anx. I & J.

blank contract.[9] In a conference held by CFD, Lloyd provided a receipt for P3,500, which represents a non-refundable processing fee.[10] Lloyds further charges Fabian P15,651.84 for the expenses in the annotation of mortgage.[11] Lloyd, also stated that it will not return the title of the mortgaged property until Fabian pays for the expenses in the annotation and P3,036.20 as interests and penalty.[12]

Hence, CFD issued the assailed Resolution.

In its Memorandum of Appeal, Lloyd argues that Dir. Callangan erred in imposing the penalty because it did not violate MC 3-01. While admitting that the amount of P15,651.84 was inadvertently entered as taxes, the amount was spent as registration fees of the mortgage, payment of real estate taxes and other miscellaneous expenses for the registration of the mortgage.[13] The amount of P3,500, was spent for appraisal of Fabian's property as need not be included in the disclosure statement because it was already paid in advance.[14]

The Appeal has no merit.

The Commission in MC 3-01, requires that a Disclosure Statement on Loan/Credit Transaction be executed prior to the release of his loan:

> In order to regulate the activities of financing and leasing companies and to place their operations on a sound, competitive and stable basis as well as to curtail or prevent acts or practices prejudicial to the public interest by a <u>full disclosure of the true cost of credit to the borrower or user</u>...[15]

Lloyd admitted that they inadvertently entered the ₱15,651.84 as taxes, although it was spent in relation to the processing of the real estate mortgage. This alone proves that the true cost of credit was not disclosed to Fabian, the borrower. The defense of inadvertence and good faith cannot be sustained, because the issuance did not contain any exceptions. Knowledge or intent is immaterial in this case.

As to the ₱3,500, the fact that it was paid in advance and was paid for her own benefit is not a defense. All charges, whether to be paid or are already paid, if it is in connection with the transaction, shall be included in the disclosure statement. Otherwise, the true cost of credit will not be

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9 Anx. R.
10 Anx E.
11 Anx. S.
12 *Id.*
13 Appeal Memo. at 2–3.
14 *Id.* at 3.
15 SEC, Disclosure Statement on Loan/Credit Transaction. Memorandum Circular No. 003, series of 2001 (3 Mar. 2001).

reflected. Although it is not deductible from the loan, the fact that it was supposed to be paid, and in fact already advanced, by Fabian as processing fee renders such amount necessary to be stated in the disclosure statement. Such amount would not have been paid by Fabian, if it is not for the loan. Even if such payment was evidenced by a receipt, MC 3-01 requires such amounts to be included in the DSL and not on a separate receipt.

WHEREFORE, premises considered, the instant Appeal is hereby **DISMISSED** for lack of merit.

SO ORDERED.

Pasay City, Philippines, 3 November 2017.

TERESITA J. HERBOSA
Chairperson

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

BLAS JAMES G. VITERBO
Commissioner

EMILIO B. AQUINO
Commissioner