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

MA. ANGELICA V. GO,
Appellant,

-versus- **SEC En Banc Case No. 05-19-457**

THE PHILIPPINE STOCK EXCHANGE, INC.,
Appellee.
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D E C I S I O N

For consideration of the Commission En Banc ("Commission") is the Appeal Memorandum[1] ("Appeal") filed by Ma. Angelica V. Go ("Appellant Go") through counsel, assailing the Letter-Decision dated 30 January 2018 of the Philippine Stock Exchange ("PSE"), which declared vacant and invested in the PSE Board of Directors the trading right previously issued to Appellant Go (the "Assailed Letter-Decision").

PARTIES

Appellant Go is of legal age, Filipino, married and a resident of Pasig City. She is the registered owner of a trading right covered by PSE Trading Right Certificate No. 092 (the "Trading Right").

The PSE is a corporation duly organized and existing under Philippine laws. It holds a license as a Self-Regulatory Organization ("SRO") and is registered with the Commission[2] as an exchange for securities.

RELEVANT FACTS

Appellant Go was a holder of a trading right covered by PSE Trading Right Certificate No. 092.[3]

On 2 June 2017, the PSE issued Memorandum CN-No. 2017-0028 ("Circular") informing all inactive Trading Participants and Trading Right

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[1] Filed on 07 May 2019.
[2] CN201809280.
[3] The Certification dated 29 August 2017 issued by PSE shows that the Trading Right was valued at ₱8,500,000.00 in the most recent sale approved by PSE Board of Directors. (See Annex "D" of the Appeal)

holders of the requirements for continued membership in PSE. Relative to the foregoing, the Circular, which took effect on 13 June 2017, provides:

> "(1) Inactive TPs who intend to commence or resume their brokerage operations are given three (3) months from effectivity of the policy to submit to the PSE a sworn undertaking to commence or resume brokerage operations. Otherwise, the PSE will initiate proceedings for the revocation of their status as PSE trading participants.
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> (2) Inactive TPs who signify their intention to resume or commence brokerage operations are required to increase their unimpaired paid-up capital to PhP100 Million within six (6) months from effectivity of the policy. Otherwise, the PSE will initiate proceedings for revocation of their status as PSE trading participants.
>
> (3) Inactive TPs who comply with the above conditions shall have one (1) year from effectivity of the policy to commence or resume brokerage operations. Failure to do so will result in the initiation proceedings for the revocation of their status as PSE trading participants."

On 11 September 2017, Appellant Go submitted her Letter of Intent/Sworn Undertaking (the "LOI") dated 7 September 2017 confirming her intention to commence brokerage operations within one (1) year from the effectivity of the Circular or until 13 June 2017 using the Trading Right. She also confirmed her intention to set-up a company, the majority shares of which will be owned by her, and to comply with the Php100 Million paid-up capital requirement within six (6) months from the effectivity of the Circular or until 13 December 2017.

On 14 November 2017, Appellant Go, through counsel, wrote to the PSE[4] requesting for approval to sell her Trading Right to Mr. John Christian Bisnar ("Mr. Bisnar") and submitted documents in support thereof.

On 22 December 2017, Appellant Go filed with the PSE a letter dated 21 December 2017 (Compliance Letter) informing the latter of MVG Securities, Inc.'s compliance with the PhP100Million paid-up capital requirement under the Circular. In support thereof, Appellant Go attached to the Compliance Letter (a) a Treasurer's Affidavit executed by Ma. Asuncion O. Vergara (Ms. Vergara) on 05 December 2017, which was acknowledged

[4] Letter dated 13 November 2017 which attached Mr. Bisnar's letter dated 9 November 2017.

before a Notary Public on the same date, and (b) a Certification dated 22 December 2017 issued by BDO Private Bank (BDO Certification) attesting to the maintenance by Ms. Vergara of a Joint Trust Account in the amount of Pesos: One Hundred Million (PhP100,000,000.00) as of 21 December 2017.[5]

In a letter dated 22 December 2017, the PSE informed Appellant Go that it was initiating proceedings for declaration of her Trading Right as vacant for her failure to comply with the second requirement provided in the Circular. She was directed in the said letter to submit her Position Paper,[6] which she complied with. In her Position Paper, Appellant Go requested that PSE considers the submissions made as sufficient compliance with the second requirement of the Circular, alleging that she has been compliant with the PSE Rules and that the circumstances relating to the issuance of the BDO Certification was beyond her control.

On 30 January 2018, PSE issued the Assailed Letter-Decision[7] which was received by Appellant Go on 7 February 2018, the dispositive portion of which reads:

> "In view of the foregoing, pursuant to Circular No. 2017-0028, in relation to Article II, Section 5 of the TP Rules, you are hereby notified that your trading right in the Philippine Stock Exchange, Inc. is hereby declared vacant and invested in the PSE Board of Directors which alone shall have the sole right of disposition over said trading right."

On 28 March 2018, Appellant Go filed with PSE a Motion for Reconsideration[8] praying that PSE cancels and vacates the Assailed Letter-Decision on the ground that the Treasurer's Affidavit dated 5 December 2017 should be deemed as compliance with the unimpaired paid-up requirement under the Circular.

In a Letter dated 1 April 2019, PSE denied the Motion for Reconsideration of Appellant Go which resulted in the filing of the instant Appeal.

On 11 June 2019, the PSE filed its Comment praying for the dismissal of the Appeal for alleged lack of merit. PSE maintained that Appellant Go failed to comply with the capital requirement prescribed under the Circular. PSE likewise alleged that Appellant Go was not denied due process.

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[5] Annex "H" of the Appeal.
[6] Submitted to the PSE on 29 December 2017.
[7] Annex "A" of the Appeal.
[8] Annex "C" of the Appeal.

On 24 June 2019, Appellant Go filed a Reply which essentially reiterated the arguments in the Appeal.

ISSUE

Did the PSE commit reversible error in vacating Appellant Go's Trading Right after finding that she did not timely comply with the second requirement in the Circular?

DISCUSSION

At the outset, We note that in support of her Appeal, Appellant Go presented a number of arguments to convince the Commission that she was unjustly deprived of the Trading Right despite her submission of the Treasurer's Affidavit and BDO Certification to PSE. Considering that the basis of PSE in vacating Appellant Go's Trading Right was a finding that the latter failed to comply with the second requirement in the Circular, the determination of this case would mainly focus on Appellant Go's compliance therewith based on the evidence on record.

After a careful review of the allegations and the evidence on record, the Commission finds no cogent reason to disturb the Assailed Decision. The Commission resolves to deny the Appeal for lack of merit.

Appellant Go failed to comply with the paid-up capital requirement within the prescribed period provided in the Circular.

In her Appeal, Appellant Go contended that she timely complied with the unimpaired paid-up capital requirement provided in the Circular. She maintained that for purposes of determining compliance, the reckoning dated should be the date when Ms. Vergara, the treasurer of MVG Securities received the required amount in cash i.e. 5 December 2017 pursuant to the Treasurer's Affidavit. Appellant Go likewise argued that since the Circular did not provide for any documentary requirement that would prove that a trading participant has complied with the unimpaired paid-up capital requirement, the BDO Certification which was issued on 21 December 2017 cannot be used as basis for compliance with the second requirement in the Circular since it only proves when the amount was deposited. Appellant Go finally argued that the PSE did not issue any guidelines on the implementation of the Circular, hence it cannot unilaterally determine the method of compliance with its requirements.

In its Comment, the PSE maintained that Appellant Go did not comply with the second requirement in the Circular which warranted the issuance of the Assailed Letter-Order vacating her Trading Right. In support thereof, the PSE argued that the date indicated in the Treasurer's Affidavit cannot be considered as the date of submission thereof because the records show that the same was only submitted on 22 December 2017. According to PSE, just like the deadlines set by courts, the Commission or any other agency, the dates indicated in the Circular are the dates of compliance with the PSE and not the date indicated on the documents submitted with it.

Article II, Section 5 of the Rules Governing Trading Rights and Trading Participants (the "Rules") provides:

> "<u>The rights, benefits and obligations of a trading right owner shall be limited to</u> those covered by these rules and <u>other related rules subsequently promulgated by the PSE Board</u>.
>
> <u>The continued enjoyment of a trading right</u> and/or the use of the trading facilities of the Exchange <u>shall always remain subject to the regulatory powers of the Exchange</u>." (Emphasis supplied)

In the exercise of its regulatory power and authority relative to the implementation of the Rules, PSE issued the Circular which gave trading participants and holders of trading rights who have not been operating since 24 May 2012 or earlier the opportunity to reactivate their accounts, subject to compliance with the requirements prescribed therein. **In relation to the capitalization requirement, the Circular directed trading right holders who have submitted a sworn undertaking and manifested to resume brokerage operations to increase the unimpaired paid-up capital to Pesos: One Hundred Million (PhP 100,000,000.00) within six (6) months from the effectivity of the Circular**. The Circular took effect on 13 June 2017. Being a holder of the Trading Right, **Appellant Go therefore had six (6) months from the effectivity of the Circular or until 13 December 2017 within which to comply with the capitalization requirement provided in the Circular**.

The records show that Appellant Go filed her Compliance Letter and submitted the Treasurer's Affidavit and BDO Certification to the PSE only on 22 December 2017, or nine (9) days after the deadline provided in the Circular. Given the foregoing, the PSE was correct in finding that Appellant Go did not comply with the capitalization requirement prescribed in the Circular.

Moreover, **We agree with the observation of PSE that Appellant Go expressly admitted in her Appeal the fact that there was a delay in securing the BDO Certification**, but nonetheless attributed such delay to a cause beyond her control.[9] Appellant Go in fact used this ground in support of her argument in her Motion for Reconsideration. Appellant Go is in effect telling this Commission that all applications filed with the PSE should be given due course and granted even if filed out of time if the applicant is able to show that the delay was brought about by reasons beyond his/her control. The Commission cannot give its imprimatur to Appellant Go's position as this will render the PSE inutile in implementing its own rules and effectively regulating its members.

We also note how Appellant Go changed her theory in her Appeal by insisting that she timely complied with the capitalization requirement provided in the Circular, arguing that the date of the execution of the document should be considered as the date of compliance. Considering that the Treasurer's Certificate was executed on 5 December 2017, Appellant Go argued that she timely complied with the capitalization requirement provided in the Circular.

Appellant Go's argument fails to convince.

It is not surprising for Appellant Go to use the execution date of the Treasurer's Affidavit i.e. 5 December 2017 in support of her position that she timely complied with capitalization requirement because that was the only document left for her to use. Appellant Go was apparently aware that the Compliance Letter cannot be filed on 13 December 2017 because one of its attachments i.e. the BDO Certification was belatedly issued, and specifically provides that Ms. Vergara maintains a joint account in the amount of PhP100Million "as of December 21, 2017".

When the Treasurer's Affidavit was executed on 5 December 2017, knowledge of the statements and declarations made by Ms. Vergara therein necessarily remained only with her (and probably with Appellant Go). PSE was only informed of the information contained in the Treasurer's Affidavit on 22 December 2017 when the same was submitted to and filed with it. It would be at height of injustice to compel PSE to recognize Appellant Go as having complied with the capitalization requirement provided in the Circular on 13 December 2017 when PSE was not even aware of the existence and execution of the Treasurer's Affidavit on the said date. We thus hold that the date of the submission/filing of the Treasurer's Affidavit was the date when Appellant Go complied with the capitalization requirement provided in the Circular i.e. 22 December 2017. The reason is simple; it was only on 22

[9] Paragraph 17 of the Appeal.

December 2017 that the PSE was notified of and became aware of Appellant Go's compliance with the said requirement. As far as PSE is concerned, on 13 December 2017, the Treasurer's Affidavit and the BDO Certification were both inexistent; and Appellant Go cannot thus be considered to have complied with the capitalization requirement provided in the Circular. At any rate, the undisputed fact that the BDO Certification specifically states that Ms. Vergara maintains a joint account in the amount of PhP100Million "as of December 21, 2017" further shows that as of 13 December 2017, which is the deadline set by the Circular, Appellant Go and/or MVG Securities, Inc. did not have the required P100,000,000.00 capitalization requirement in the bank. Appellant Go was thus not able to comply with the capitalization requirement provided in the Circular.

Moreover, considering that compliance with the Circular is required to be filed with the PSE, the rules on filing provided in the Rules of Court and in the 2016 Rules of Procedure of the Commission are instructive and can be used suppletorily in the absence of a specific provision on the Rules governing the same. In the *Heirs of Numeriano Miranda, Sr. v. Pablo Miranda*[10], the Court ruled that:

> "Under Section 3, Rule 13 of the Rules of Court, <u>pleadings may be filed in court either personally or by registered mail. In the first case, the date of filing is the date of receipt</u>. In the second case, the date of mailing is the date of receipt.
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> In this case, however, the counsel for petitioners filed the Notice of Appeal via a private courier, a mode of filing not provided in the Rules. Though not prohibited by the Rules, we cannot consider the filing of petitioners' Notice of Appeal via LBC timely filed. It is established jurisprudence that "the date of delivery of pleadings to a private letter-forwarding agency is not to be considered as the date of filing thereof in court;" instead, "<u>the date of actual receipt by the court x x x is deemed the date of filing of that pleading</u>." Records show that the Notice of Appeal was mailed on the 15th day and was received by the court on the 16th day or one day beyond the reglementary period. Thus, the CA correctly ruled that the Notice of Appeal was filed out of time." (Emphasis supplied)

Considering that that Appellant Go filed her Compliance Letter only on 22 December 2017, the PSE did not commit reversible error in vacating her Trading Rights on the ground of failure to comply with the capitalization requirement under the Circular.

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[10] G.R. No. 179638, July 8, 2013.

Appellant Go was not denied due process.

In her Appeal, Appellant Go alleged that she was not given by PSE a fair and reasonable opportunity to present evidence that she complied with the Circular because the PSE already allegedly decided to vacate her Trading Right prior to the submission of her Position Paper. She maintained that the same amounted to taking of property without due process.

Appellant Go's argument does not induce assent.

It is settled in jurisprudence that the essence of due process is the opportunity to be heard and, as applied to administrative proceedings, this means a fair and reasonable opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of.[11] Administrative due process cannot be fully equated with due process in the strict judicial sense, for in the former a formal or trial-type hearing is not always necessary,[12] and technical rules of procedure are not strictly applied.

In the instant case, the records show that Appellant Go was given an opportunity to be heard and was able to fully explain her side when she filed her Position Paper with the PSE. The records also show that Appellant Go filed a Motion for Reconsideration where she was able to point out and discuss the matters in the Assailed Letter-Decision which she found objectionable. The foregoing clearly militates against Appellant's argument that she was denied due process. Appellant Go is in fact estopped from raising this issue of violation of due process after she submitted her pleadings which assailed the actions/decision of PSE. In the case of *Vivo v. PAGCOR*[13], the Supreme Court explained the concept of due process in administrative proceedings, thus:

> "The essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard. In administrative proceedings, such as in the case at bar, procedural due process simply means the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of. "To be heard" does not mean only verbal arguments in court; one may be heard also thru pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process."

On a final note, it should be stressed that in the instant case, Appellant Go filed on 17 September 2017 the LOI confirming her intention to commence

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[11] Office of the Ombudsman v. Reyes, G.R. No. 170512, October 5, 2011, 658 SCRA 626, 640; citing Ledesma v. Court of Appeals, G.R. No. 166780, December 27, 2007, 541 SCRA 444, 452.
[12] Imperial, Jr. v. Government Service Insurance System, G.R. No. 191224, October 4, 2011, 658 SCRA 497, 505, cited in Pat-og, Sr. v. CSC, G.R. No. 198755, June 5, 2013.
[13] GR No. 187854, November 12, 2013

brokerage operations. Considering that the same was filed within the period provided under the Circular, the PSE gave due course to the same. However, this was not the case with regard to Appellant Go's compliance with the capitalization requirement because as correctly found by PSE, the same was not filed on time. Appellant Go cannot therefore impute partiality on the part of PSE by alleging that the latter has already decided on the matter even before her position paper was filed because the basis of the Assailed Letter-Decision is duly supported by evidence on record.

In denying Appellant Go's request to temper the application of PSE's procedural rules, the latter emphasized that the same was consistent with the policy of uniformly applying the same to avoid a situation where the PSE may be forced to grant exceptions to others who are similarly situated. To do otherwise would defeat the very purpose of the Circular which is to encourage inactive owners of trading rights to commence or resume operations, consistent with PSE's policy that trading rights should not be held as assets for speculative purposes but should be actually used to contribute to the trading activity in the Exchange. The foregoing is a policy of the PSE that deserves not only the respect from this Commission, but more importantly, one that is beyond the authority of this Commission to question in the absence of a clear showing that the same violates the SRC and/or its IRR. This is consistent with the doctrine in *PSE v. CA.*[14] where the Court upheld the power and authority of the PSE Board and Officers to make and implement policies and decisions in furtherance of the conduct of its business, thus:

> "<u>It is undeniable that the petitioner PSE is not an ordinary corporation, in that although it is clothed with the markings of a corporate entity, it functions as the primary channel through which the vessels of capital trade ply</u>. <u>The PSE's relevance to the continued operation and filtration of the securities transactions in the country gives it a distinct color of importance such that government intervention in its affairs becomes justified, if not necessarily</u>. Indeed, as the only operational stock exchange in the country today, the PSE enjoys a monopoly of securities transactions, and as such, it yields an immense influence upon the country's economy.
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> xxx xxx xxx
>
> This is not to say, however, that the PSE's management prerogatives are under the absolute control of the SEC. <u>The PSE is, after all, a corporation authorized by its corporate franchise to engage in its proposed and duly approved business. One of the PSE's main concerns, as such, is still the generation of profit for its stockholders</u>. Moreover, the PSE has all the rights pertaining to corporations, including the right to sue and be sued, to hold property in its own name, to enter (or not to enter) into contracts with third persons, and to perform all other legal acts within its allocated express or implied powers.

[14] G.R. No. 125469. October 27, 1997)

A corporation is but an association of individuals, allowed to transact under an assumed corporate name, and with a distinct legal personality. In organizing itself as a collective body, it waives no constitutional immunities and perquisites appropriate to such a body. As to its corporate and management decisions, therefore, the state will generally not interfere with the same. Questions of policy and of management are left to the honest decision of the officers and directors of a corporation, and the courts are without authority to substitute their judgment for the judgment of the board of directors. The board is the business manager of the corporation, and so long as it acts in good faith, its orders are not reviewable by the courts." (Emphasis supplied)

WHEREFORE, premises considered, *Appeal Memorandum* is hereby **DENIED** for lack of merit. The Commission En Banc **AFFIRMS** the Letter-Decision dated 30 January 2018 of The Philippine Stock Exchange, Inc. declaring vacant the Trading Right of Ma. Angelica V. Go for failure to comply with the requirements set forth in the Circular.

SO ORDERED.

Pasay City, Philippines, 13 August 2020.

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner