

****Title: Baviera vs. Standard Chartered Bank, et al.****

****Facts:****

Manuel Baviera was formerly the HR Service Delivery and Industrial Relations head at Standard Chartered Bank-Philippines (SCB). SCB, a foreign bank licensed in the Philippines, allegedly violated the Bangko Sentral ng Pilipinas (BSP) regulations, starting as early as 1996, by selling unregistered foreign securities known as “GLOBAL THIRD PARTY MUTUAL FUNDS” (GTPMF) denominated in US dollars to local residents, amounting to approximately P6 billion from around 645 investors. These actions led to a series of administrative and legal proceedings:

1. ****1997:**** The Investment Capital Association of the Philippines filed a complaint with the SEC against SCB for violating the Revised Securities Act by selling unregistered securities. SCB defended itself by claiming its services as “purely informational” and consistent with Section 72 of the General Banking Act.
2. ****September 2, 1997:**** SEC issued a Cease and Desist Order against SCB.
3. ****October 31, 1997:**** SEC informed the Department of Finance that it withdrew the GTPMF securities from the market.
4. ****August 17, 1998:**** BSP directed SCB to exclude unregistered global mutual funds from its trust portfolio.
5. ****November 27, 2000:**** BSP fined SCB P30,000 for continued non-compliance. Baviera had invested US\$8,000 in GTPMF, upon promises of a 40% return and safety, but the investment’s value dropped significantly.
6. ****Complaints Filed:**** Baviera lodged several legal actions at the DOJ against SCB and its officers for syndicated estafa, supported by an analogous complaint at DOJ for a violation of the Securities Regulation Code.
7. ****DOJ Dismissals:**** DOJ dismissed Baviera’s complaints based on procedural grounds, citing the need for initial SEC referral.
8. ****Appeals:**** Baviera appealed to the Court of Appeals. The appeals focused on whether the DOJ’s dismissal constituted grave abuse of discretion.

****Procedural Posture:****

Baviera's complaints were dismissed by the DOJ for alleged procedural lapses, with instructions that such securities law violations should first be handled by the SEC. Attempts at certiorari to the Court of Appeals were dismissed, reinforcing the DOJ's stance. The Supreme Court reviewed the denial of the petitions for certiorari by the appellate court.

****Issues:****

1. Whether the DOJ committed grave abuse of discretion in dismissing Baviera's complaint for violation of the Securities Regulation Code (I.S. No. 2004-229).
2. Whether the DOJ committed grave abuse of discretion in dismissing Baviera's complaint for syndicated estafa against SCB and its officers (I.S. No. 2003-1059).

****Court's Decision:****

1. ****Securities Regulation Code Violation (I.S. No. 2004-229):**** The Supreme Court concurred with the appellate court that Baviera failed to comply with procedural prerequisites by not filing the criminal complaint initially with the SEC, as required by Section 53.1 of the Securities Regulation Code. The DOJ's dismissal was upheld due to the correct procedural referral process not being followed.
2. ****Syndicated Estafa (I.S. No. 2003-1059):**** The Supreme Court found no grave abuse of discretion on DOJ's part, as Baviera's evidence did not meet the threshold for probable cause. The Court emphasized prosecutorial discretion under Section 5, Rule 110 of the Revised Rules of Criminal Procedure and maintained that SCB's actions did not clearly constitute deceit or defraud Baviera to warrant criminal proceedings.

****Doctrine:****

- The doctrine of primary jurisdiction mandates that a complaint on a specialized legal issue, particularly breaking securities regulation laws, should be first evaluated by the specialized administrative agency, namely, SEC.
- Discretionary power of the prosecutor: The assessment of probable cause within a preliminary investigation is chiefly within the prosecutorial authority, and courts should not intervene unless there is a clear demonstration of grave abuse of discretion tantamount to an absence or excess of jurisdiction.

****Class Notes:****

- ****Grave Abuse of Discretion:**** An extraordinary level of arbitrariness by a public officer must be shown to challenge prosecutorial discretion.
- ****Primary Jurisdiction Doctrine:**** Administrative bodies with specific expertise must first

hear cases within their purview before the courts.

- **Prosecutorial Discretion:** Highlights the balance between protecting society through prosecution and safeguarding individuals from baseless claims.

Historical Background:

This case unfolded in the backdrop of the Asian financial crisis of the late 1990s, a period that saw increased scrutiny of banking practices and crackdown on regulatory compliance. This case illustrates the increasingly stringent interpretations of regulatory frameworks governing the banking sector, reflective of a time when the Philippines, like many other economies, was restructuring its financial sectors and ensuring compliance with international banking practices.