

PHILIPPINE ASSOCIATION OF STOCK TRANSFER AND REGISTRY AGENCIES, INC., PETITIONER, VS. THE HONORABLE COURT OF APPEALS; THE HONORABLE SECURITIES AND EXCHANGE COMMISSION; AND SEC C...

G.R. NO. 137321. October 15, 2007

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This is a petition for review on certiorari seeking to reverse the Decision[1] dated June 17, 1998 of the Court of Appeals in CA-G.R. SP No. 41320, as well as its Resolution[2] dated January 13, 1999, denying the motion for reconsideration.

The facts are as follows.

Petitioner Philippine Association of Stock Transfer and Registry Agencies, Inc. is an association of stock transfer agents principally engaged in the registration of stock transfers in the stock-and-transfer book of corporations.

On May 10, 1996, petitioner's Board of Directors unanimously approved a resolution allowing its members to increase the transfer processing fee they charge their clients from P45 per certificate to P75 per certificate, effective July 1, 1996; and eventually to P100 per certificate, effective October 1, 1996. The resolution also authorized the imposition of a processing fee for the cancellation of stock certificates at P20 per certificate effective July 1, 1996. According to petitioner, the rates had to be increased since it had been over five years since the old rates were fixed and an increase of its fees was needed to sustain the financial viability of the association and upgrade facilities and services.

After a dialogue with petitioner, public respondent Securities and Exchange Commission (SEC) allowed petitioner to impose the P75 per certificate transfer fee and P20 per certificate cancellation fee effective July 1, 1996. But, approval of the additional increase of the transfer fees to P100 per certificate effective October 1, 1996, was withheld until after a public hearing. The SEC issued a letter-authorization to this effect on June 20, 1996.

Thereafter, on June 24, 1996, the Philippine Association of Securities Brokers and Dealers, Inc. registered its objection to the measure advanced by petitioner and requested the SEC to defer its implementation. On June 27, 1996, the SEC advised petitioner to hold in abeyance the implementation of the increases until the matter was cleared with all the parties concerned. The SEC stated that it was reconsidering its earlier approval in light of the opposition and required petitioner to file comment. Petitioner nonetheless proceeded with the implementation of the increased fees.

The SEC wrote petitioner on July 1, 1996, reiterating the directive of June 27, 1996. On July 2, 1996, following a complaint from the Philippine Stock Exchange, the SEC again sent petitioner a second letter strongly urging petitioner to desist from implementing the new rates in the interest of all participants in the security market.

Petitioner replied on July 3, 1996 that it had no intention of defying the orders but stated that it could no longer hold in abeyance the implementation of the new fees because its members had already put in place the procedures necessary for their implementation. Petitioner also argued that the imposition of the processing fee was a management prerogative, which was beyond the SEC's authority to regulate absent an express rule or regulation.

On July 8, 1996, the SEC issued Order No. 104, series of 1996, enjoining petitioner from imposing the new fees:

WHEREFORE, pursuant to the powers vested in the Commission under Sec. 40 of the Revised Securities Act, PASTRA is hereby enjoined to defer the implementation of the new rates. Further, the members of its Board of Directors and officers are hereby directed to appear before the Commission on Thursday, July 11, 1996 at 2:00 o'clock in the afternoon at the Commission Room, 5th Flr., SEC Bldg., EDSA, Mandaluyong City to show cause why no administrative sanctions should be imposed upon them.[3]

During the hearing, petitioner admitted that it had started imposing the fees. It further admitted that aside from the questioned fees, it had likewise started imposing fees ranging from P50 to P500 for report of shareholdings or list of certificates; certification of shareholdings or other stockholder information requested by external auditors and validation of status of certificates, all without prior approval of the Commission. Thus, for violating its orders, the SEC ordered petitioner to pay a basic fine of P5,000 and a daily fine of P500 for continuing violations:

In view of the foregoing, PASTRA is hereby declared as having defied a lawful Order of the Commission for which it is imposed a basic fine of P5,000.00 plus a daily fine of P500.00 for continuing violations payable to the Commission within five days from actual receipt of this Order and it is hereby ordered to immediately cease and desist from imposing the new rates for issuance and cancellation of stock certificates, until further orders from this Commission.

SO ORDERED.[4]

Aggrieved, petitioner went to the Court of Appeals on certiorari contending that the SEC acted with grave abuse of discretion or lack or excess of jurisdiction in issuing the above orders. The appellate court issued a temporary restraining order on July 26, 1996, and a writ of preliminary injunction on August 26, 1996.

On June 17, 1998, the appellate court dismissed the petition. It ruled that the power to regulate petitioner's fees was included in the general power given to the SEC under Section 40[5] of The Revised Securities Act to regulate, supervise, examine, suspend or otherwise discontinue, the operation of securities-related organizations like petitioner.

The appellate court likewise denied petitioner's motion for reconsideration. Hence, this appeal.

While this case was pending, The Revised Securities Act by authority of which the assailed orders were issued was repealed by Republic Act No. 8799 or The Securities Regulation Code,[6] which became effective on August 8, 2000. Nonetheless, we find it pertinent to rule on the parties' submissions considering that the effects of the July 11, 1996 Order had not been obliterated by the repeal of The Revised Securities Act and there is still present a need to rule on whether petitioner was liable for the fees imposed upon it.

Petitioner submits that the Court of Appeals committed reversible error:

I.

WHEN [IT] FAILED TO RULE THAT THE SEC AND CHAIRMAN YASAY, IN ISSUING THE COMMISSION'S CONTROVERTED ORDERS DATED JULY 8 AND JULY 11, 1996, VIOLATED PASTRA'S CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW;

II.

WHEN [IT] FAILED TO RULE THAT THE SEC AND CHAIRMAN YASAY COMMITTED GRAVE ABUSE OF DISCRETION AND IN EXCESS OF THEIR JURISDICTION WHEN THEY ISSUED THE COMMISSION'S CONTROVERTED ORDERS DATED JULY 8 AND JULY 11, 1996; AND,

III.

WHEN [IT] RULED THAT THE SEC AND CHAIRMAN YASAY HAVE LEGAL BASIS IN ISSUING THE COMMISSION'S CONTROVERTED ORDERS DATED JULY 8 AND JULY 11, 1996.[7]

Essentially, the issue for our resolution is whether the SEC acted with grave abuse of discretion or lack or excess of jurisdiction in issuing the controverted Orders of July 8 and 11, 1996.

Petitioner argues that the SEC violated petitioner's right to due process because it issued the July 8, 1996 cease-and-desist order without first conducting a hearing. Petitioner likewise laments that while said order required petitioner's board of directors to appear before the SEC to show cause why no administrative sanctions should be imposed on them, petitioner's board of directors attended the hearing without the assistance of counsel because the Director of the SEC Brokers and Exchanges Department had allegedly assured them that the order was only a standard order and nothing to worry about. Petitioner also contends that even if its board did attend with counsel or present evidence, its evidence would not have been considered anyway because the Order of July 11, 1996 had allegedly been prepared as early as July 8, 1996. In support of this suspicion, petitioner points out that the date "July 8, 1996" was replaced with the date "July 11, 1996" before it was signed by Chairman Perfecto R. Yasay, Jr., who did not attend the meeting.

Petitioner adds that the SEC cannot restrict petitioner's members from increasing the transfer and processing fees they charge their clients because there is no specific law, rule or regulation authorizing it. Section 40 of the then Revised Securities Act, according to petitioner, only lays down the general powers of the SEC to regulate and supervise the corporate activities of organizations related to or connected with the securities market like petitioner. It could not be interpreted to justify the SEC's unjustified interference with petitioner's decision to increase its transfer fees and impose processing fees, especially since the decision involved a management prerogative and was intended to protect the viability of petitioner's members.[8]

For its part, the Office of the Solicitor General (OSG) counters that petitioner's allegations of denial of due process are baseless. The OSG cites that petitioner was given ample opportunity to present its case at the July 11, 1996 hearing and was adequately heard through the series of letters it sent to the SEC to explain its refusal to obey the latter's directives. Also, there is no evidence to support its allegation that the July 11, 1996 Order was prepared in advance or that it was issued without considering the evidence for the parties.

As regards the SEC's power over petitioner's stock transfer fees, the OSG argues that the power to determine said fees was necessarily implied in the SEC's general power under Section 40 of The Revised Securities Act to regulate and supervise the operations of transfer agents such as petitioner's member-corporations. The OSG adds that petitioner's discretion to increase its fees was not purely a management prerogative and was properly the subject of regulation considering that it significantly affects the market for securities.[9]

We find the instant petition bereft of merit. The Court notes that before its repeal, Section 47 of The Revised Securities Act clearly gave the SEC the power to enjoin the acts or practices of securities-related organizations even without first conducting a hearing if, upon proper investigation or verification, the SEC is of the opinion that there exists the possibility that the act or practice may cause grave or irreparable injury to the investing public, if left unrestrained. Section 47 clearly provided,

SEC. 47. Cease and desist order.—The Commission, after proper investigation or verification, motu proprio, or upon verified complaint by any aggrieved party, may issue a cease and desist order without the necessity of a prior hearing if in its judgment the act or practice, unless restrained may cause grave or irreparable injury or prejudice to the investing public or may amount to fraud or violation of the disclosure requirements of this Act and the rules and regulations of the Commission. (Emphasis supplied.)

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Said section enforces the power of general supervision of the SEC under Section 40 of the then Revised Securities Act.

As a securities-related organization under the jurisdiction and supervision of the SEC by virtue of Section 40 of The Revised Securities Act and Section 3 of Presidential Decree No. 902-A,[10] petitioner was under the obligation to comply with the July 8, 1996 Order. Defiance of the order was subject to administrative sanctions provided in Section 46[11] of The Revised Securities Act.

Petitioner failed to show that the SEC, which undoubtedly possessed the necessary expertise in matters relating to the regulation of the securities market, gravely abused its discretion in finding that there was a possibility that the increase in fees and imposition of cancellation fees will cause grave or irreparable injury or prejudice to the investing public. Indeed, petitioner did not advance any argument to counter the SEC's finding. Thus, there appears to be no substantial reason to nullify the July 8, 1996 Order. This is true, especially considering that, as pointed out by the OSG, petitioner's fee increases have far-reaching effects on the capital market. Charging exorbitant processing fees could discourage many small prospective investors and curtail the infusion of money into the capital market and hamper its growth.

Furthermore, there is no merit in petitioner's contention that even if it had appeared at the hearing of July 11, 1996 with counsel and presented its evidence, the SEC would not have considered it because the Order of July 11, 1996 was in fact prepared earlier on July 8, 1996. It is clear from the order itself that the July 11, 1996 Order was edited from the computer file of the July 8, 1996 Order, and that the error in the date was merely an oversight in editing the softcopy before it was printed.

Similarly, there is no merit to petitioner's claim that it was misled into attending the July 11, 1996 hearing without counsel. Whether the Director of the SEC Brokers and Exchanges Department assured petitioner's board that the July 8, 1996 Order was only a standard order and nothing to worry about, is a question of fact which this Court cannot entertain considering that this Court is not a trier of facts.[12] Needless to stress, the assurance could not be interpreted as outright prohibition to bring in petitioner's counsel.

Moreover, it devolved upon petitioner to protect its interests adequately considering the clear implications of the Order of July 8, 1996. Petitioner had only itself to blame for its failure to present its evidence during the July 11, 1996 hearing.

In *Philippine Stock Exchange, Inc. v. Court of Appeals*,[13] the Court held that the SEC is without authority to substitute its judgment for that of the corporation's board of directors on business matters so long as the board of directors acts in good faith. This Court notes, however, that this case involves, not whether petitioner's actions pertained to management prerogatives or whether petitioner acted in good faith. Rather, this case involves the question of whether the SEC had the power to enjoin petitioner's planned increase in fees after the SEC had determined that said act if pursued may cause grave or irreparable injury or prejudice to the investing public. Petitioner was fined for violating the SEC's cease-and-desist order which the SEC had issued to protect the interest of the investing public, and not simply for exercising its judgment in the manner it deems appropriate for its business.

The regulatory and supervisory powers of the Commission under Section 40 of the then Revised Securities Act, in our view, were broad enough to include the power to regulate petitioner's fees. Indeed, Section 47 gave the Commission the power to enjoin *motu proprio* any act or practice of petitioner which could cause grave or irreparable injury or prejudice to the investing public. The intentional omission in the law of any qualification as to what acts or practices are subject to the control and supervision of the SEC under Section 47 confirms the broad extent of the SEC's regulatory powers over the operations of securities-related organizations like petitioner.

The SEC's authority to issue the cease-and-desist order being indubitable under Section 47 in relation to Section 40 of the then Revised Securities Act, and there being no showing that the SEC committed grave abuse of discretion in finding basis to issue said order, we rule that the Court of Appeals committed no reversible error in affirming the assailed orders. For its open and admitted defiance of a lawful cease-and-desist order, petitioner was held appropriately liable for the payment of the penalty imposed on it in the SEC's July 11, 1996 Order.

WHEREFORE, the instant petition for review on certiorari is DENIED for lack of merit. The Decision dated June 17, 1998 and Resolution dated January 13, 1999, of the Court of Appeals in CA-G.R. SP No. 41320 are AFFIRMED. Costs against petitioner.

SO ORDERED.

Carpio, Carpio-Morales, Tinga, and Velasco, Jr., JJ., concur.

[1] Rollo, pp. 110-121-A. Penned by Associate Justice Bernardo Ll. Salas, with Associate Justices Eloy R. Bello, Jr. and Candido V. Rivera concurring.

[2] *Id.* at 130.

[3] *Id.* at 52.

[4] *Id.* at 58.

[5] SEC. 40. Power of the Commission with respect to securities related organizations. — The Commission shall have the power to grant license as a condition for, and to regulate, supervise, examine, suspend or otherwise discontinue, the operation of organizations whose operations are related to or connected with the securities market such as but not limited to clearing houses, securities depositories, transfer agents, registrars, fiscal and paying agents, computer services, news disseminating services, proxy solicitors, statistical agencies, securities rating agencies, and securities information processors which are engaged in the business of: (1) collecting, processing, or preparing for distribution or publication, or assisting, participating in, or coordinating the distribution or publication of, information with respect to transactions in or quotations for any security or (2) distributing or publishing, whether by means of a ticker tape, a communications network, a terminal display device, or otherwise, on a current and continuing basis, information with respect to such transactions or quotations.

[6] Approved on July 19, 2000.

[7] Rollo, pp. 14-15.

[8] *Id.* at 18.

[9] *Id.* at 162-165.

[10] REORGANIZATION OF THE SECURITIES AND EXCHANGE COMMISSION WITH ADDITIONAL POWERS AND PLACING THE SAID AGENCY UNDER THE ADMINISTRATIVE SUPERVISION OF THE

OFFICE OF THE PRESIDENT

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SEC. 3. The Commission shall have absolute jurisdiction, supervision and control over all corporations, partnerships or associations, who are the grantees of primary franchise and/or a license or permit issued by the government to operate in the Philippines;...

[11]SEC. 46. Administrative sanctions.—If, after proper notice and hearing, the Commission finds that there is a violation of this Act, its rules, or its orders or that any registrant has, in a registration statement and its supporting papers and other reports required by law or rules to be filed with the Commission, made any untrue statement of a material fact, or omitted to state any material fact required to be stated therein or necessary to make the statements therein not misleading, or refused to permit any lawful examination into its affairs, it shall, in its discretion, impose any or all of the following sanctions:

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(b) A fine of no less than two hundred (P200.00) pesos nor more than fifty thousand (P50,000.00) pesos plus not more than five hundred (P500.00) pesos for each day of continuing violation;

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[12] Springfield Development Corporation, Inc. v. Hon. Presiding Judge of Regional Trial Court of Misamis Oriental, G.R. No. 142628, February 6, 2007, 514 SCRA 326, 343.

[13] G.R. No. 125469, October 27, 1997, 281 SCRA 232.

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