QUEENSLAND-TOKYO COMMODITIES, INC., ROMEO Y. LAU, AND CHARLIE COLLADO, PETITIONERS, VS. THOMAS GEORGE, RESPONDENT.

G.R. No. 172727. September 08, 2010

Ponente: NACHURA, J.

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NACHURA, J.:

At bar is a petition for review on certiorari under Rule 45 of the Rules of Court filed by Queensland-Tokyo Commodities, Inc. (QTCI), Romeo Y. Lau (Lau), and Charlie Collado (Collado), challenging the September 30, 2005 Decision[1] and the January 20, 2006 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 58741.

QTCI is a duly licensed broker engaged in the trading of commodity futures. In 1995, Guillermo Mendoza, Jr. (Mendoza) and Oniler Lontoc (Lontoc) of QTCI met with respondent Thomas George (respondent), encouraging the latter to invest with QTCI. On July 7, 1995, upon Mendoza's prodding, respondent finally invested with QTCI. On the same day, Collado, in behalf of QTCI, and respondent signed the Customer's Agreement.[3] Forming part of the agreement was the Special Power of Attorney[4] executed by respondent, appointing Mendoza as his attorney-in-fact with full authority to trade and manage his account.

On June 20, 1996, the Securities and Exchange Commission (SEC) issued a Cease-and-Desist Order (CDO) against QTCI. Alarmed by the issuance of the CDO, respondent demanded from QTCI the return of his investment, but it was not heeded. He then sought legal assistance, and discovered that Mendoza and Lontoc were not licensed commodity futures salesmen.

On February 4, 1998, respondent filed a complaint for Recovery of Investment with Damages[5] with the SEC against QTCI, Lau, and Collado (petitioners), and against the unlicensed salesmen, Mendoza and Lontoc. The case was docketed as SEC Case No. 02-98-5886, and was raffled to SEC Hearing Officer Julieto F. Fabrero.

Only petitioners answered the complaint, as Mendoza and Lontoc had since vanished into thin air. Traversing the complaint, petitioners denied the material allegations in the complaint and alleged lack of cause of action, as a defense. Petitioners averred that QTCI only assigned duly qualified persons to handle the accounts of its clients; and denied allowing unlicensed brokers or agents to handle respondent's account. They claimed that they were not aware of, nor were they privy to, any arrangement which resulted in the account of respondent being handled by unlicensed brokers. They added that even assuming that the subject account was handled by an unlicensed broker, respondent is now estopped from raising it as a ground for the return of his investment. They pointed out that respondent transacted business with QTCI for almost a year, without questioning the license or the authority of the traders handling his account. It was only after it became apparent that QTCI could no longer resume its business transactions by reason of the CDO that respondent raised the alleged lack of authority of the brokers or traders handling his account. The losses suffered by respondent were due to circumstances beyond petitioners' control and could not be attributed to them. Respondent's remedy, they added, should be against the unlicensed

brokers who handled the account. Thus, petitioners prayed for the dismissal of the complaint.[6]

After due proceedings, the SEC Hearing Officer rendered a decision[7] in favor of respondent, decreeing that:

> WHEREFORE, premises considered, [petitioners] Queensland Tokyo [C]ommodities, Inc., Romeo Y. Lau (aka "Lau Ching Yee") and Charlie F. Collado are hereby ordered to jointly and severally pay the [respondent] the following:
>
> 1. The amount of P138,164.00, Philippine currency, representing the x x x return of his [respondent's] peso investment, plus legal rate of interest from February 1998 until fully paid;
>
> 2. The amount of $19,820.00, American dollars, or its peso equivalent at the time of payment representing the [respondent's] return of his dollar investments, plus legal rate of interest from February 1998 until fully paid;
>
> 3. The amount of P100,000.00 as (sic) by way of moral damages;
>
> 4. The amount of P50,000.00 as and (sic) by way of exemplary damages;
>
> 5. The amount of P10,000.00 as and for attorney's fees; and
>
> 6. The amount of P2,877.00 as cost of suit.
>
> SO ORDERED.[8]

Petitioners appealed to the Commission en banc, but the appeal was dismissed because the Notice of Appeal and the Memorandum on Appeal were not verified.[9]

Petitioners then went to the CA via a petition for review[10] under Rule 43, faulting the Commission en banc for dismissing their appeal on purely technical ground. They insisted that they did not violate the rules on commodity futures trading. Thus, they faulted the SEC Hearing Officer for nullifying the Customer's Agreement and for holding them liable for respondent's claims.

On September 30, 2005, the CA rendered the now challenged Decision.[11] It declared the dismissal of petitioners' appeal by the Commission en banc improper. Nevertheless, it did not order a remand of the case to the Commission en banc because jurisdiction over petitioners' appeal had already been transferred to the Regional Trial Court (RTC) by virtue of Republic Act No. 8799 or the Securities Regulation Code. The CA thus proceeded to decide the merits of the case, affirming in toto the decision of the SEC Hearing Officer. The appellate court failed to see any reason to disturb the SEC Hearing Officer's finding of liability on the part of petitioners. It sustained the finding that petitioners violated the Revised Rules and Regulations on Commodity Futures Trading when they allowed

an unlicensed salesman, like Mendoza, to handle respondent's account. The CA also upheld the nullification of the Customer's Agreement, and the award of moral and exemplary damages, as well attorney's fees, in favor of respondent. The CA disposed, thus:

> WHEREFORE, premises considered, the petition is DISMISSED for lack of merit. The assailed decision dated February 7, 2000 is hereby AFFIRMED in toto.
>
> SO ORDERED.[12]

Petitioners filed a motion for reconsideration,[13] but the CA denied it on January 20, 2006.[14]

Hence, this recourse by petitioners arguing that:

> A.

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> THE HONORABLE COURT OF APPEALS ERRED IN CONCLUDING THAT PETITIONERS KNOWINGLY PERMITTED AN UNLICENSED TRADER TO SOLICIT AND HANDLE REPONDENT'S ACCOUNT, AND THAT PETITIONERS ARE GUILTY OF FRAUD AND MISREPRESENTATION.
>
> B.
> THE HONORABLE COURT OF APPEALS ERRED IN FINDING INDIVIDUAL PETITIONERS SOLIDARILY LIABLE FOR THE DAMAGES AND AWARDS DUE [THE] RESPONDENT.[15]

Petitioners insist that they did not violate the Revised Rules and Regulations on Commodity Futures Trading. They claim that it has been QTCI's policy and practice to appoint only licensed traders to trade the client's account. They denied any participation in the designation of Mendoza as respondent's attorney-in-fact; taking exception to the findings that they permitted Mendoza to trade respondent's account. Petitioners also assailed the weight given by the SEC Hearing Officer and by the CA to respondent's evidence.

It is evident that the issue raised in this petition is the correctness of the factual findings of the SEC Hearing Officer, as affirmed by the CA. It is well-settled that factual findings of administrative agencies are generally held to be binding and final so long as they are supported by substantial evidence in the records of the case. It is not the function of this Court to analyze or weigh all over again the evidence and the credibility of witnesses presented before the lower court, tribunal, or office, as we are not a trier of facts. Our jurisdiction is limited to reviewing and revising errors of law imputed to the lower court, the latter's findings of fact being conclusive and not reviewable by this Court.[16]

We sustain the finding of the SEC Hearing Officer and the CA that petitioners allowed unlicensed individuals to engage in, solicit or accept orders in futures contracts, and thus, transgressed the Revised Rules and Regulations on Commodity Futures Trading.[17]

We are not persuaded by petitioners' assertion that they had no hand in Mendoza's designation as respondent's attorney-in-fact. As pointed out by the CA, the Special Power of Attorney formed part of respondent's agreement with QTCI, and under the Customer's Agreement,[18] only a licensed or registered dealer or investment consultant may be appointed as attorney-in-fact. Thus:

> 2. If I so desire, I shall appoint you as my agent pursuant to a Special Power of Attorney which I shall execute for this purpose and which form part of this Agreement.
>
> x x x x
>
> 18. I hereby confer, pursuant to the Special Power of Attorney herewith attached, full authority to your licensed/registered dealer/investment in charge of my account/s and your Senior Officer, who must also be a licensed/registered dealer/investment consultant, to sign all order slips on futures trading. [19]

Inexplicably, petitioners did not object to, and in fact recognized, Mendoza's appointment as respondent's attorney-in-fact. Collado, in behalf of QTCI, concluded the Customer's Agreement despite the fact that the appointed attorney-in-fact was not a licensed dealer. Worse, petitioners permitted Mendoza to handle respondent's account.

Indubitably, petitioners violated the Revised Rules and Regulations on Commodity Futures Trading prohibiting any unlicensed person to engage in, solicit or accept orders in futures contract. Consequently, the SEC Hearing Officer and the CA cannot be faulted for declaring the contract between QTCI and respondent void.

Batas Pambansa Bilang (B.P. Blg.) 178 or the Revised Securities Act explicitly provided:

> SEC. 53. Validity of Contracts. x x x.

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> (b) Every contract executed in violation of any provision of this Act, or any rule or regulation thereunder, and every contract, including any contract for listing a security on an exchange heretofore or hereafter made, the performance of which involves the violation of, or the continuance of any relationship or practice in violation of, any provision of this Act, or any rule and regulation thereunder, shall be void.

Likewise, Paragraph 29[20] of the Customer's Agreement provides:

> 29. Contracts entered into by unlicensed Account Executives (A/E) or Investment consultants are deemed void and of no legal effect.

Clearly, the CA merely adhered to the clear provision of B.P. Blg. 178 and to the stipulation in the parties' agreement when it declared as void the Customer's Agreement between QTCI and respondent.

It is settled that a void contract is equivalent to nothing; it produces no civil effect. It does not create, modify, or extinguish a juridical relation. Parties to a void agreement cannot expect the aid of the law; the courts leave them as they are, because they are deemed in pari delicto or in equal fault.[21] This rule, however, is not absolute. Article 1412 of the Civil Code provides an exception, and permits the return of that which may have been given under a void contract. Thus:

> Art. 1412. If the act in which the unlawful or forbidden cause consists does not constitute a criminal offense, the following rules shall be observed:
>
> (1) When the fault is on the part of both contracting parties, neither may recover what he has given by virtue of the contract, or demand the performance of the other's undertaking;
>
> (2) When only one of the contracting parties is at fault, he cannot recover what he has given by reason of the contract, or ask for the fulfillment of what has been promised him. The other, who is not at fault, may demand the return of what he has given without any obligation to comply with his promise.

The evidence on record established that petitioners indeed permitted an unlicensed trader and salesman, like Mendoza, to handle respondent's account. On the other hand, the record is bereft of proof that respondent had knowledge that the person handling his account was not a licensed trader. Respondent can, therefore, recover the amount he had given under the contract. The SEC Hearing Officer and the CA, therefore, committed no reversible error in holding that respondent is entitled to a full recovery of his investments.

Petitioners Collado and Lau next fault the CA in making them solidarily liable for the payment of respondent's claim.

Doctrine dictates that a corporation is invested by law with a personality separate and distinct from those of the persons composing it, such that, save for certain exceptions, corporate officers who entered into contracts in behalf of the corporation cannot be held personally liable for the liabilities of the latter. Personal liability of a corporate director, trustee, or officer, along (although not necessarily) with the corporation, may validly attach, as a rule, only when - (1) he assents to a patently unlawful act of the corporation, or when he is guilty of bad faith or gross negligence in directing its affairs, or when there is a conflict of interest resulting in damages to the corporation, its stockholders, or other persons; (2) he consents to the issuance of watered down stocks or who, having knowledge thereof, does not forthwith file with the corporate secretary his written objection thereto; (3) he agrees to hold himself personally and solidarily liable with the corporation; or (4) he is made by a specific provision of law personally answerable for his corporate action.[22]

In holding Lau and Collado jointly and severally liable with QTCI for respondent's claim, the SEC Hearing Officer explained in this wise:

> Anent the issue of who among the individual [petitioners] are jointly liable with QTCI in the payment of the awards, the Commission took into consideration, among others, that audit report on the trading activities submitted by the Brokers and Exchange Department (BED) of this Commission (Exhibit "J"). The findings contained in the report include the presence of seven (7) unlicensed investment consultants in QTCI, and the company practice of changing deeds of Special Power of Attorney bearing those who are licensed (exhibits "J-1" and "J-2").
>
> The Commission also took into consideration the fact that [petitioner] Collado, who is not a licensed commodity salesman, himself violated the aforequoted provisions of the Revised Rules and Regulations on Commodity Futures Trading when he admitted having participated in the execution of the customers orders (p. 7, TSN dated January 21, 1999) without giving any exception thereto, which presumably includes his participation in the execution of customers orders of the [respondent].
>
> Such being the case, [Mendoza's] participation in the trading of [respondent's] account is within the knowledge of [petitioner] Collado.
>
> The presence of seven (7) unlicensed investment consultants within QTCI apart from x x x Mendoza, and [petitioner] Collado's participation in the unlawful execution of orders under the [respondent's] account clearly established the fact that the management of QTCI failed to implement the rules and regulations against the hiring of, and associating with, unlicensed consultants or traders. How these unlicensed personnel been able to pursue their unlawful activities is a reflection of how negligent [the] management was.
>
> [Petitioner] Romeo Lau, as president of [petitioner] QTCI, cannot feign innocence on the existence of these unlawful activities within the company, especially so that Collado, himself a ranking officer of QTCI, is involved in the unlawful execution of customers orders. [Petitioner] Lau, being the chief operating officer, cannot escape the fact that had he exercised a modicum of care and discretion in supervising the operations of QTCI, he could have detected and prevented the unlawful acts of [petitioner] Collado and Mendoza.
>
> It is therefore safe to conclude that although Lau may not have participated nor been aware of the unlawful acts, he is however deemed to have been grossly negligence in directing the affairs of QTCI.
>
> In all, it having been established by substantial evidence that [petitioner] Collado assented to the unlawful act of QTCI, and that [petitioner] Lau is grossly negligent in directing the affairs of QTCI, and pursuant to Section 31 of the Corporation Code, they are therefore, jointly and severally liable with QTCI for all the damages and awards due to the [respondent].[23]

We find no compelling reason to depart from the conclusion of the SEC Hearing Officer, which was affirmed by the CA. We are in full accord with his reasons for holding Lau and Collado jointly and severally liable with QTCI for the payment of respondent's claim.

Finally we sustain the awards for moral and exemplary damages in favor of respondent. Moral damages are meant to compensate the claimant for any physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injuries unjustly caused. Although incapable of pecuniary estimation, the amount must somehow be proportional to and in approximation of the suffering inflicted. Moral damages are not punitive in nature and were never intended to enrich the claimant at the expense of the defendant.[24]

Likewise, exemplary damages are properly exigible of QTCI. Article 2229[25] of the Civil Code provides that such damages may be imposed by way of example or correction for the public good. While exemplary damages cannot be recovered as a matter of right, they need not be proved,

although plaintiff must show that he is entitled to moral, temperate, or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded. Exemplary damages are

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imposed not to enrich one party or impoverish another, but to serve as a deterrent against or as a negative incentive to curb socially deleterious actions.[26]

However, the same statutory and jurisprudential standards dictate reduction of the amounts of moral and exemplary damages fixed by the SEC. Certainly, there is no hard-and-fast rule in determining what would be a fair and reasonable amount of moral and exemplary damages, since each case must be governed by its own peculiar facts.[27] Courts are given discretion in determining the amount, with the limitation that it should not be palpably and scandalously excessive. Indeed, it must be commensurate to the loss or injury suffered.[28]

In this case, we find a need to modify, by reducing the awards for moral damages from P100,000.00 to P50,000.00; and for exemplary damages from P50,000.00 to P30,000.00.

In fine, except for the modification of the awards for moral and exemplary damages, there is no justification to overturn the findings of the SEC Hearing Officer, as affirmed by the CA.

We reiterate that the findings of facts and conclusions of law of the SEC are controlling on the reviewing authority. Indeed, the rule is that the findings of fact of administrative bodies, if based on substantial evidence, are controlling on the reviewing authority. It has been held that it is not for the appellate court to substitute its own judgment for that of the administrative agency on the sufficiency of the evidence and the credibility of the witnesses. The Hearing Officer had the optimum opportunity to review the pieces of evidence presented before him and to observe the demeanor of the witnesses. Administrative decisions on matters within his jurisdiction are entitled to respect and can only be set aside on proof of grave abuse of discretion, fraud, or error of law,[29] which has not been shown by petitioner in this case.

WHEREFORE, the challenged Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 58741 are AFFIRMED with MODIFICATION that the awards for moral and exemplary damages are reduced to P50,000.00 and P30,000.00, respectively.

SO ORDERED.

Carpio, (Chairperson), Peralta, Abad, and Mendoza, JJ., concur.

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[1] Penned by Estela M. Perlas-Bernabe, with Associate Justices Remedios A. Salazar-Fernando and Hakim S. Abdulwahid, concurring; rollo, pp. 27-35.

[2] Id. at 37.

[3] Id. at 62-65.

[4] Id. at 66.

[5] Id. at 38-46.

[6] Id. at 51-58.

[7] Id. at 192-198.

[8] Id. at 198.

[9] Id. at 201-202.

[10] Id. at 216-239.

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[11] Supra note 1.

[12] Id. at 35.

[13] Rollo, pp. 240-249.

[14] Id. at 37.

[15] Id. at 301.

[16] Cuenca v. Atas, G.R. No. 146214, October 5, 2007, 535 SCRA 48, 84-85.

[17] SECTION 20. - Licensing of persons associated with futures commission merchants. It shall be unlawful for any person to be associated with any futures commission merchant as a partner, officer or employee (or any person occupying similar status or performing similar functions) in any capacity which involves (a) solicitation or acceptance of customers orders (other than in clerical capacity) or (b) the supervision of any person so engaged unless such person shall have been licensed/registered by the commission and such license shall not have expired nor have been suspended nor revoked, and it shall be unlawful for any commission merchant to knowingly permit such person to become and remain associated with him in such capacity.

x x x x

SECTION 28. Prohibited Acts. - It shall be unlawful for any person to engage in any futures transaction, or solicit, accept orders or act as conduit without being duly authorized by either SEC or the commodity futures exchange under the existing rules.

[18] Rollo, pp. 62-65.

[19] Id. at 63.

[20] Id. at 64.

[21] Menchavez v. Teves, Jr., 490 Phil. 268, 280 (2005).

[22] Powton Conglomerate, Inc. v. Agcolicol, 448 Phil. 643, 656 (2003).

[23] Rollo, pp. 196-197.

[24] Samson, Jr. v. Bank of the Philippine Islands, 453 Phil. 577, 583 (2003).

[25] Art. 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.

[26] See Del Rosario v. CA, 334 Phil. 812, 827-828 (1997).

[27] Id. at 828.

[28] Samson v. Bank of the Philippine Islands, supra note 24, at 583-584.

[29] Cuenca v. Atas, supra note 16, at 84.

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