

**PHILIPPINE VETERANS BANK, PETITIONER, VS. JUSTINA CALLANGAN, IN HER CAPACITY AS DIRECTOR OF THE CORPORATION FINANCE DEPARTMENT OF THE SECURITIES AND EXCHANGE COMMISSION AND/OR T...**

*G.R. No. 191995. August 03, 2011*

Ponente: BRION, J.

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**BRION, J.:**

We resolve the motion for reconsideration[1] filed by petitioner Philippine Veterans Bank (the Bank) dated August 5, 2010, addressing our June 16, 2010 Resolution that denied the Bank's petition for review on certiorari.

**Factual Antecedents**

On March 17, 2004, respondent Justina F. Callangan, the Director of the Corporation Finance Department of the Securities and Exchange Commission (SEC), sent the Bank a letter, informing it that it qualifies as a "public company" under Section 17.2 of the Securities Regulation Code (SRC) in relation with Rule 3(1)(m) of the Amended Implementing Rules and Regulations of the SRC. The Bank is thus required to comply with the reportorial requirements set forth in Section 17.1 of the SRC.[2]

The Bank responded by explaining that it should not be considered a "public company" because it is a private company whose shares of stock are available only to a limited class or sector, i.e., to World War II veterans, and not to the general public.[3]

In a letter dated April 20, 2004, Director Callangan rejected the Bank's explanation and assessed it a total penalty of One Million Nine Hundred Thirty-Seven Thousand Two Hundred Sixty-Two and 80/100 Pesos (P1,937,262.80) for failing to comply with the SRC reportorial requirements from 2001 to 2003. The Bank moved for the reconsideration of the assessment, but Director Callangan denied the motion in SEC-CFD Order No. 085, Series of 2005 dated July 26, 2005.[4] When the SEC En Banc also dismissed the Bank's appeal for lack of merit in its Order dated August 31, 2006, prompting the Bank to file a petition for review with the Court of Appeals (CA).[5]

On March 6, 2008, the CA dismissed the petition and affirmed the assailed SEC ruling, with the modification that the assessment of the penalty be recomputed from May 31, 2004.[6]

The CA also denied the Bank's motion for reconsideration,[7] opening the way for the Bank's petition for review on certiorari filed with this Court.[8]

On June 16, 2010, the Court denied the Bank's petition for failure to show any reversible error in the assailed CA decision and resolution.[9]

**The Motion for Reconsideration**

The Bank reiterates that it is not a "public company" subject to the reportorial requirements under Section 17.1 of the SRC because its shares can be owned only by a specific group of people, namely, World War II veterans and their widows, orphans and compulsory heirs, and is not open to the investing public in general. The Bank also asks the Court to take into consideration the financial impact to the cause of "veteranism"; compliance with the reportorial requirements under the SRC, if the Bank would be considered a "public company," would compel the Bank to spend approximately P40 million just to reproduce and mail the "Information Statement" to its 400,000 shareholders nationwide.

#### The Court's Ruling

We DENY the motion for reconsideration for lack of merit.

To determine whether the Bank is a "public company" burdened with the reportorial requirements ordered by the SEC, we look to Subsections 17.1 and 17.2 of the SRC, which provide:

Section 17. Periodic and Other Reports of Issuers. -

17.1. Every issuer satisfying the requirements in Subsection 17.2 hereof shall file with the Commission:

a) Within one hundred thirty-five (135) days, after the end of the issuer's fiscal year, or such other time as the Commission may prescribe, an annual report which shall include, among others, a balance sheet, profit and loss statement and statement of cash flows, for such last fiscal year, certified by an independent certified public accountant, and a management discussion and analysis of results of operations; and

b) Such other periodical reports for interim fiscal periods and current reports on significant developments of the issuer as the Commission may prescribe as necessary to keep current information on the operation of the business and financial condition of the issuer.

17.2. The reportorial requirements of Subsection 17.1 shall apply to the following:

x x x x

c) An issuer with assets of at least Fifty million pesos (P50,000,000.00) or such other amount as the Commission shall prescribe, and having two hundred (200) or more holders each holding at least one hundred (100) shares of a class of its equity securities: Provided, however, That the obligation of such issuer to file reports shall be terminated ninety (90) days after notification to the Commission by the issuer that the number of its holders holding at least one hundred (100) shares is reduced to less than one hundred (100). (emphases supplied)

We also cite Rule 3(1)(m) of the Amended Implementing Rules and Regulations of the SRC, which defines a "public company" as "any corporation with a class of equity securities listed on an Exchange or with assets in excess of Fifty Million Pesos (P50,000,000.00) and having two hundred (200) or more holders, at least two hundred (200) of which are holding at least one hundred (100) shares of a class of its equity securities."

From these provisions, it is clear that a "public company," as contemplated by the SRC, is not limited to a company whose shares of stock are publicly listed; even companies like the Bank, whose shares are offered only to a specific group of people, are considered a public company, provided they meet the requirements enumerated above.

The records establish, and the Bank does not dispute, that the Bank has assets exceeding P50,000,000.00 and has 395,998 shareholders.<sup>[10]</sup> It is thus considered a public company that must comply with the reportorial requirements set forth in Section 17.1 of the SRC.

The Bank also argues that even assuming it is considered a "public company" pursuant to Section 17 of the SRC,

the Court should interpret the pertinent SRC provisions in such a way that no financial prejudice is done to the thousands of veterans who are stockholders of the Bank. Given that the legislature intended the SRC to apply only to publicly traded companies, the Court should exempt the Bank from complying with the reportorial requirements.

On this point, the Bank is apparently referring to the obligation set forth in Subsections 17.5 and 17.6 of the SRC, which provide:

Section 17.5. Every issuer which has a class of equity securities satisfying any of the requirements in Subsection 17.2 shall furnish to each holder of such equity security an annual report in such form and containing such information as the Commission shall prescribe.

Section 17.6. Within such period as the Commission may prescribe preceding the annual meeting of the holders of any equity security of a class entitled to vote at such meeting, the issuer shall transmit to such holders an annual report in conformity with Subsection 17.5. (emphases supplied)

In making this argument, the Bank ignores the fact that the first and fundamental duty of the Court is to apply the law.[11] Construction and interpretation come only after a demonstration that the application of the law is impossible or inadequate unless interpretation is resorted to.[12] In this case, we see the law to be very clear and free from any doubt or ambiguity; thus, no room exists for construction or interpretation.

Additionally, and contrary to the Bank's claim, the Bank's obligation to provide its stockholders with copies of its annual report is actually for the benefit of the veterans-stockholders, as it gives these stockholders access to information on the Bank's financial status and operations, resulting in greater transparency on the part of the Bank. While compliance with this requirement will undoubtedly cost the Bank money, the benefit provided to the shareholders clearly outweighs the expense. For many stockholders, these annual reports are the only means of keeping in touch with the state of health of their investments; to them, these are invaluable and continuing links with the Bank that immeasurably contribute to the transparency in public companies that the law envisions.

WHEREFORE, premises considered, petitioner Philippine Veterans Bank's motion for reconsideration is hereby DENIED with finality.

**SO ORDERED.**

Carpio, (Chairperson), Leonardo-De Castro,[\*] Perez, and Sereno, JJ., concur.

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[\*] Designated as Acting Member of the Second Division per Special Order No. 1006 dated June 10, 2011.

[1] Rollo, pp. 172-183.

[2] Id. at 32.

[3] Ibid.

[4] Id. at 33.

[5] Id. at 40-47.

[6] Penned by Associate Justice Magdangal M. de Leon, and concurred in by Associate Justices Rebecca de Guia-Salvador and Ricardo R. Rosario; id. at 31-37.

[7] Id. at 38-39.

[8] Id. at 3-26.

[9] Id. at 167.

[10] Id. at 36.

[11] People v. Mapa, G.R. No. L-22301, August 30, 1967, 20 SCRA 11.

[12] Lizarraga Hermanos v. Yap Tico, 24 Phil. 504 (1913).

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