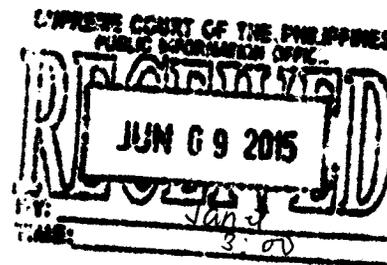




Republic of the Philippines  
Supreme Court  
Baguio City



FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated April 20, 2015 which reads as follows:*

**“G.R. No. 167435 – SECURITIES AND EXCHANGE COMMISSION, Petitioner, v. G. COSMOS PHILIPPINES, INC., Respondent.**

At issue is the amount of fine that the Securities and Exchange Commission (SEC) could impose on any person engaging in the illegal trading of securities as defined by Republic Act No. 8799 (*Securities Regulation Code*). In this appeal by petition for review on *certiorari*, the SEC itself seeks to reverse the decision promulgated on July 22, 2004,<sup>1</sup> whereby the Court of Appeals (CA) modified the order the SEC had issued on December 13, 2001 in CED Case No. 20-2488 penalizing the respondent with a fine for several counts of illegal trading in securities<sup>2</sup> by lowering the total amount of the fine imposed from ₱51,780,000.00 to ₱1,000,000.00.

**Antecedents**

The facts, as rendered in the CA’s assailed decision, are as follows:

Petitioner G. Cosmos Philippines, Inc., is a corporation duly registered with the Securities and Exchange Commission, whose primary purpose, as stated in its Articles of Incorporation is:

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<sup>1</sup> *Rollo*, pp. 50-62; penned by Associate Justice Amelita G. Tolentino (retired), with Associate Justice Roberto A. Barrios (retired/deceased) and Associate Justice Vicente E. Veloso (retired) concurring.

<sup>2</sup> *Id.* at 68-72.

April 20, 2015

To create advertising campaign plans that will transmit in an effective manner as possible the message of the advertiser's products and services through the utilization of print, television, radio, cinema and other various advertising media and to render services in terms of and/or merchandizing public relations and marketing counsel, thereby offering a complete marketing service.

Under its G. System, the petitioner invites sponsors (investors) who are willing to bear the cost of advertising the sale of products of small manufacturers all over the world, to be marketed and sold in Japan by way of the mail order sales system. In return, the sponsors are entitled to receive, as their gain 30% of the sales revenue of the products advertised and sold.

Upon two complaint-letters received by the SEC from Telford Rizarri and Ruperto Garcia requesting the said Commission to conduct an investigation of G. Cosmos Philippines, Inc., the SEC created a team to determine compliance with the provisions of RA 8799, otherwise known as the Securities Regulations Code. The petitioner was found to have violated the provision of Section 8.1 of the Securities Regulation Code, which states that:

Section 8. Requirement of Registration of Securities. – 8.1 Securities shall not be sold or offered for sale or distribution within the Philippines, without a registration statement duly filed with and approved by the Commission. Prior to such sale, information on the securities, in such form and with such substance as the Commission may prescribe, shall be made available to each prospective purchaser.

Respondent SEC contends that the petitioner's scheme of collecting from its members the advertising costs for its mail order sales in Japan falls within the purview of an investment contract which is included in the definition of securities.

Since the participation or interest of the 'sponsors'/members in the respondent corporation partakes of the nature of securities and the same have not yet been registered with the Commission, the SEC, on July 26, 2001 issued a temporary Cease and Desist Order directing the petitioner to cease and desist from engaging in the activities of selling, offering for sale or distributing securities in order to protect the interest of the investors and the public in general. This cease and desist order was made permanent in an Order dated December 13, 2001, the dispositive portion of which reads:

WHEREFORE, premises considered, the Cease and Desist Order dated July 26, 2001 is hereby declared PERMANENT, with further orders that:

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1. G. Cosmos is ordered to discontinue entry activities, and terminate operations arising out of past entry activities, in view of the letter of compliance dated October 9, 2002;

2. G. Cosmos is ordered to remit the returns due to its members as represented, meaning, the returns expected by the members as promised by G. Cosmos. To this end, G. Cosmos is required to submit to the Inspection and Surveillance Division (ISD) of the CED a list of all members of G. Cosmos, their respective investments, and the projected returns on their investments as represented by G. Cosmos, within 15 days from receipt of the Order;

3. G. Cosmos will be subject to continuous audit and monitoring to ensure compliance with the above;

4. A copy of this Order shall be posted conspicuously at the entrance of the main office and branches of G. Cosmos, as per Rule V, Article 1 of the CED Rules of Procedure (SEC Circular No. 4, s.2001), and that removal thereof will constitute a violation of the CDO;

5. The case against G. Cosmos will be deemed closed and terminated only upon full compliance with this Order and the payment of a fine of P57,180,000.00 by respondent corporation within 15 days from receipt of this order for the previous violations;

6. Failure to comply with the above will merit sanctions against G. Cosmos for violation of the CDO, including contempt procedures.

The petitioner filed a Motion for Reconsideration which was denied for lack of merit in a resolution dated March 6, 2002.<sup>3</sup>

On appeal, the respondent maintained that it had not engaged in the business of securities as defined by the *Securities Regulation Code*; and that the issuance by the SEC of the cease and desist order (CDO) was without factual and legal basis.

In contrast, the SEC argued that the appeal should be denied because the questioned ruling had already become final; and that the petition did not comply with the formal requirements specified in Section 6 and Section 7, Rule 43 of the *Rules of Court*.<sup>4</sup>

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<sup>3</sup> Id. at 51-53.

<sup>4</sup> Id. at 54.



On July 22, 2004, the CA promulgated its assailed judgment declaring that the petition for review filed on April 22, 2002 was timely filed considering that the respondent, which had received the denial of its motion for reconsideration by the SEC on March 21, 2002, had meanwhile filed a timely motion for extension of the period to file its petition for review in the CA, which the CA granted by giving it an additional 15-day period or until April 20, 2002 within which to file the petition for review, which happened to fall on a Saturday; hence, the SEC's order did not yet become final; and that although the respondent should rightfully be fined for engaging in the unauthorized selling of securities, the total fine of ₱51,780,000.00 was excessive and unconscionable because the maximum amount of fine under the *Securities Regulation Code* should not exceed ₱1,000,000.00.<sup>5</sup> The CA decreed:

WHEREFORE, premises considered, the assailed December 13, 2001 order and March 6, 2002 resolution are AFFIRMED with the modification that the fine imposed by the respondent SEC against the petitioner is reduced to only One Million Pesos (₱1,000,000.00).

SO ORDERED.<sup>6</sup>

The SEC sought the partial reconsideration of the judgment by assailing the lowering of the penalty, but the CA denied the motion.<sup>7</sup>

Hence, this appeal.

### Issues

In this appeal, the SEC submits the following issues for consideration and resolution, namely:

#### I

WHETHER OR NOT THE COURT OF APPEALS ERRED IN FINDING IN ITS DECISION DATED JULY 22, 2004 THAT THE FINE IMPOSED BY PETITIONER ON RESPONDENT FOR THE LATTER'S 5,178 VIOLATIONS OF THE SECURITIES REGULATION CODE (SRC) IS EXCESSIVE AND UNCONSCIONABLE AND CONTRARY TO THE APPLICABLE LAW AND OBTAINING CIRCUMSTANCES.

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<sup>5</sup> Supra note 1.

<sup>6</sup> Id. at 61.

<sup>7</sup> Id. at 10-13.

## II

WHETHER OR NOT THE COURT OF APPEALS ERRED IN REDUCING THE PENALTY IMPOSED BY PETITIONER ON RESPONDENT TO A FINE OF ONLY ONE MILLION PESOS FOR THE LATTER'S 5,178 VIOLATIONS OF THE SRC.

## III

WHETHER OR NOT THE COURT OF APPEALS ERRED IN FINDING IN ITS RESOLUTION DATED MARCH 11, 2005 THAT "IT IS NOT THE INTENDMENT OF THE LAW TO IMPOSE A FINE FOR EACH ACT OF SELLING OR OFFERING OF AN UNREGISTERED SECURITY."<sup>8</sup>

The SEC contends that the penalty was not excessive, unconscionable, or contrary to the applicable laws because the respondent had committed 5,178 violations of the *Securities Regulation Code*; and that the penalty should be the result of each of the violations multiplied by the minimum penalty of ₱10,000.00.

In contrast, the respondent asserts that the CA correctly lowered the fine because the CA held, in interpreting Section 54.1 (ii) of the *Securities Regulation Code*, that "it is not the intendment of the law to impose a fine for each act of selling or offering of an unregistered security. x x x"<sup>9</sup>

The decisive question is whether or not the CA erred in reducing the penalty from ₱51,780,000.00 to ₱1,000,000.00.

### Ruling of the Court

The appeal is bereft of merit.

The resolution of the appeal hinges on the proper interpretation and implementation of the following pertinent provisions of the *Securities Regulation Code*, thus:

Section 54. *Administrative Sanctions*. — 54.1. If, after due notice and hearing, the Commission finds that: (a) There is a violation of this Code, its rules, or its orders; (b) Any registered broker or dealer, associated person thereof has failed reasonably to supervise, with a view to preventing violations, another person subject to supervision who

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<sup>8</sup> Id. at 34-35.

<sup>9</sup> Id. at 66.

commits any such violation; (c) Any registrant or other person has, in a registration statement or in other reports, applications, accounts, records or documents 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, in the case of an underwriter, has failed to conduct an inquiry with reasonable diligence to insure that a registration statement is accurate and complete in all material respects; or (d) Any person has refused to permit any lawful examinations into its affairs, it shall, in its discretion, and subject only to the limitations hereinafter prescribed, impose any or all of the following sanctions as may be appropriate in light of the facts and circumstances;

(i) Suspension, or revocation of any registration for the offering of securities;

**(ii) A fine of not less than Ten thousand pesos (₱10,000.00) nor more than One million pesos (₱1,000,000.00) plus not more than Two thousand pesos (₱2,000.00) for each day of continuing violation;**

x x x x (Emphasis supplied)

To properly read and interpret Section 54.1 of the *Securities Regulation Code*, the Court is guided by its pronouncement in *Philippine International Trading Corporation v. Commission on Audit*,<sup>10</sup> viz.:

It is a rule in statutory construction that every part of the statute must be interpreted with reference to the context, *i.e.*, that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment. Because the law must not be read in truncated parts, its provisions must be read in relation to the whole law. The statute's clauses and phrases must not, consequently, be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole. Consistent with the fundamentals of statutory construction, all the words in the statute must be taken into consideration in order to ascertain its meaning.

Hence, sub-item (a) of Section 54.1 must be read together with sub-items (b) to (d) of the section. These items show that Section 54.1 penalizes the continuing acts of brokers or dealers, registrants or any other persons in failing to supervise and prevent the violation of the *Securities Regulation Code*; in making untrue statements or omitting to state material statements, or failing to conduct inquiry to ensure that the statements are accurate or

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<sup>10</sup> G.R. No. 183517, June 22, 2010, 621 SCRA 461, 469.

complete; and, finally, in refusing to permit lawful examination into their affairs. As such, sub-item (a) must be taken to mean that the violation of the *Securities Regulation Code*, rules and orders is a continuing act. We cannot consider each occasion of a violation of sub-item (a) as an act warranting the imposition of a sanction for each violation, for to do so is to read Section 54.1 in truncated parts that are detached or isolated from each other, which will run counter to the pronouncement in *Philippine International Trading Corporation v. Commission on Audit, supra*. Thereby, such a reading would penalize its violation every single time notwithstanding that Section 54.1 punishes a single continuing act.

The addition of a fine of not more than ₱2,000.00 for each day of a continuing violation supports the ruling of the CA that the SEC exceeded the intendment of the law. Indeed, imposing a fine of at least ₱10,000.00 per sale or per offer to sell will contravene such intendment of the law because otherwise the imposition of fine of not more than ₱2,000.00 for each day of a continuing violation will then not have a logical meaning or purpose. The SEC's argument is inconsistent with such intendment and results in the absurd interpretation of the law. It is logical to hold, instead, that Section 54.1 penalizes a continuing act, resulting in the one-time imposition of a fine that is not to be less than ₱10,000.00 but not to be more than ₱1,000,000.00, plus an incremental fine of not less than ₱2,000.00 for each day the violator continues to violate the *Securities Regulation Code*.

The records further show that the SEC specifically found the respondent to have violated Section 8 of the *Securities Regulation Code*, viz:

SEC. 8. *Requirement of Registration of Securities.*

8.1. Securities shall not be sold or offered for sale or distribution within the Philippines, **without a registration statement duly filed with and approved by the Commission.** Prior to such sale, information on the securities, in such form and with such substance as the Commission may prescribe, shall be made available to each prospective purchaser. (Emphasis supplied)

This legal provision specifically penalizes the sale or offer for sale of securities within the Philippines "without a registration duly filed with and approved by the Commission." Thus, in acting on the letters-complaint

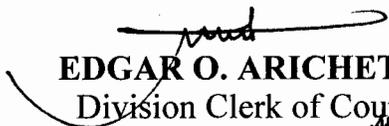
from Telford Rizarri and Ruperto Garcia, the SEC concluded that the respondent had violated the *Securities Regulation Code* by selling unregistered securities.<sup>11</sup> As long as the respondent continued to sell or to offer to sell unregistered securities, the SEC could validly impose the incremental daily fine of not more than ₱2,000.00 in addition to the main fine of not less than ₱10,000.00 nor more than ₱1,000,000.00.

**WHEREFORE**, the Court **AFFIRMS** the challenged decision of the Court of Appeals in C.A.-G.R. SP No. 69966 promulgated on July 22, 2004.

No pronouncement on costs of suit.

**SO ORDERED.”**

Very truly yours,

  
**EDGAR O. ARICHETA**  
Division Clerk of Court

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<sup>11</sup> *Rollo*, p. 51.

