

## FIRST DIVISION

[ G.R. NO. 168380, February 08, 2007 ]

**MANUEL V. BAVIERA, PETITIONER, VS. ESPERANZA PAGLINAWAN, IN HER CAPACITY AS DEPARTMENT OF JUSTICE STATE PROSECUTOR; LEAH C. TANODRA-ARMAMENTO, IN HER CAPACITY AS ASSISTANT CHIEF STATE PROSECUTOR AND CHAIRWOMAN OF TASK FORCE ON BUSINESS SCAM; JOVENCITO R. ZUNO, IN HIS CAPACITY AS DEPARTMENT OF JUSTICE CHIEF STATE PROSECUTOR; STANDARD CHARTERED BANK, PAUL SIMON MORRIS, AJAY KANWAL, SRIDHAR RAMAN, MARIVEL GONZALES, CHONA REYES, MARIA ELLEN VICTOR, AND ZENAIDA IGLESIA, RESPONDENTS.**

[G.R. NO. 170602]

**MANUEL V. BAVIERA, PETITIONER, VS. STANDARD CHARTERED BANK, BRYAN K. SANDERSON, THE RIGHT HONORABLE LORD STEWARTBY, EVAN MERVYN DAVIES, MICHAEL BERNARD DENOMA, CHRISTOPHER AVEDIS KELJIK, RICHARD HENRY MEDDINGS, KAI NARGOLWALA, PETER ALEXANDER SANDS, RONNIE CHI CHUNG CHAN, SIR CK CHOW, BARRY CLARE, HO KWON PING, RUDOLPH HAROLD PETER ARKHAM, DAVID GEORGE MOIR, HIGH EDWARD NORTON, SIR RALPH HARRY ROBINS, ANTHONY WILLIAM PAUL STENHAM (STANDARD CHARTERED BANK CHAIRMAN, DEPUTY CHAIRMAN, AND MEMBERS OF THE BOARD), SHERAZAM MAZARI (GROUP REGIONAL HEAD FOR CONSUMER BANKING), PAUL SIMON MORRIS, AJAY KANWAL, SRIDHAR RAMAN, MARIVEL GONZALES, CHONA REYES, ELLEN VICTOR, RAMONA H. BERNAD, DOMINGO CARBONELL, JR., AND ZENAIDA IGLESIAS (STANDARD CHARTERED BANK-PHILIPPINES BRANCH HEADS/OFFICERS), RESPONDENTS.**

### DECISION

**SANDOVAL-GUTIERREZ, J.:**

Before us are two consolidated Petitions for Review on Certiorari assailing the Decisions of the Court of Appeals in CA-G.R. SP No. 87328<sup>[1]</sup> and in CA-G.R. SP No. 85078.<sup>[2]</sup>

The common factual antecedents of these cases as shown by the records are:

Manuel Baviera, petitioner in these cases, was the former head of the HR Service Delivery and Industrial Relations of Standard Chartered Bank-Philippines (SCB), one of herein respondents. SCB is a foreign banking corporation duly licensed to

engage in banking, trust, and other fiduciary business in the Philippines. Pursuant to Resolution No. 1142 dated December 3, 1992 of the Monetary Board of the *Bangko Sentral ng Pilipinas* (BSP), the conduct of SCB's business in this jurisdiction is subject to the following conditions:

1. At the end of a one-year period from the date the SCB starts its trust functions, at least 25% of its trust accounts must be for the account of non-residents of the Philippines and that actual foreign exchange had been remitted into the Philippines to fund such accounts or that the establishment of such accounts had reduced the indebtedness of residents (individuals or corporations or government agencies) of the Philippines to non-residents. At the end of the second year, the above ratio shall be 50%, which ratio must be observed continuously thereafter;
2. The trust operations of SCB shall be subject to all existing laws, rules and regulations applicable to trust services, particularly the creation of a Trust Committee; and
3. The bank shall inform the appropriate supervising and examining department of the BSP at the start of its operations.

Apparently, SCB did not comply with the above conditions. Instead, as early as 1996, it acted as a stock broker, soliciting from local residents foreign securities called "GLOBAL THIRD PARTY MUTUAL FUNDS" (GTPMF), denominated in US dollars. These securities were not registered with the Securities and Exchange Commission (SEC). These were then remitted outwardly to SCB-Hong Kong and SCB-Singapore.

SCB's counsel, Romulo Mabanta Buenaventura Sayoc and Delos Angeles Law Office, advised the bank to proceed with the selling of the foreign securities although unregistered with the SEC, under the guise of a "custodianship agreement;" and should it be questioned, it shall invoke Section 72<sup>[3]</sup> of the General Banking Act (Republic Act No.337).<sup>[4]</sup> In sum, SCB was able to sell GTPMF securities worth around P6 billion to some 645 investors.

However, SCB's operations did not remain unchallenged. On July 18, 1997, the Investment Capital Association of the Philippines (ICAP) filed with the SEC a complaint alleging that SCB violated the Revised Securities Act,<sup>[5]</sup> particularly the provision prohibiting the selling of securities without prior registration with the SEC; and that its actions are potentially damaging to the local mutual fund industry.

In its answer, SCB denied offering and selling securities, contending that it has been performing a "purely informational function" without solicitations for any of its investment outlets abroad; that it has a trust license and the services it renders under the "Custodianship Agreement" for offshore investments are authorized by Section 72 <sup>[6]</sup> of the General Banking Act; that its clients were the ones who took the initiative to invest in securities; and it has been acting merely as an agent or "passive order taker" for them.

On September 2, 1997, the SEC issued a Cease and Desist Order against SCB, holding that its services violated Sections 4(a)<sup>[7]</sup> and 19<sup>[8]</sup> of the Revised Securities

Act.

Meantime, the SEC indorsed ICAP's complaint and its supporting documents to the BSP.

On October 31, 1997, the SEC informed the Secretary of Finance that it withdrew GTPMF securities from the market and that it will not sell the same without the necessary clearances from the regulatory authorities.

Meanwhile, on August 17, 1998, the BSP directed SCB not to include investments in global mutual funds issued abroad in its trust investments portfolio without prior registration with the SEC.

On August 31, 1998, SCB sent a letter to the BSP confirming that it will withdraw third-party fund products which could be directly purchased by investors.

However, notwithstanding its commitment and the BSP directive, SCB continued to offer and sell GTPMF securities in this country. This prompted petitioner to enter into an Investment Trust Agreement with SCB wherein he purchased US\$8,000.00 worth of securities upon the bank's promise of 40% return on his investment and a guarantee that his money is safe. After six (6) months, however, petitioner learned that the value of his investment went down to US\$7,000.00. He tried to withdraw his investment but was persuaded by Antonette de los Reyes of SCB to hold on to it for another six (6) months in view of the possibility that the market would pick up.

Meanwhile, on November 27, 2000, the BSP found that SCB failed to comply with its directive of August 17, 1998. Consequently, it was fined in the amount of P30,000.00.

The trend in the securities market, however, was bearish and the worth of petitioner's investment went down further to only US\$3,000.00.

On October 26, 2001, petitioner learned from Marivel Gonzales, head of the SCB Legal and Compliance Department, that the latter had been prohibited by the BSP to sell GPTMF securities. Petitioner then filed with the BSP a letter-complaint demanding compensation for his lost investment. But SCB denied his demand on the ground that his investment is "regular."

On July 15, 2003, petitioner filed with the Department of Justice (DOJ), represented herein by its prosecutors, public respondents, a complaint charging the above-named officers and members of the SCB Board of Directors and other SCB officials, private respondents, with syndicated *estafa*, docketed as I.S. No. 2003-1059.

For their part, private respondents filed the following as counter-charges against petitioner: (1) blackmail and extortion, docketed as I.S. No. 2003-1059-A; and blackmail and perjury, docketed as I.S. No. 2003-1278.

On September 29, 2003, petitioner also filed a complaint for perjury against private respondents Paul Simon Morris and Marivel Gonzales, docketed as I.S. No. 2003-1278-A.

On December 4, 2003, the SEC issued a Cease and Desist Order against SCB

restraining it from further offering, soliciting, or otherwise selling its securities to the public until these have been registered with the SEC.

Subsequently, the SEC and SCB reached an amicable settlement.

On January 20, 2004, the SEC lifted its Cease and Desist Order and approved the P7 million settlement offered by SCB. Thereupon, SCB made a commitment not to offer or sell securities without prior compliance with the requirements of the SEC.

On February 7, 2004, petitioner filed with the DOJ a complaint for violation of Section 8.1<sup>[9]</sup> of the Securities Regulation Code against private respondents, docketed as I.S. No. 2004-229.

On February 23, 2004, the DOJ rendered its Joint Resolution<sup>[10]</sup> dismissing petitioner's complaint for syndicated estafa in I.S. No. 2003-1059; private respondents' complaint for blackmail and extortion in I.S. No. 2003-1059-A; private respondents' complaint for blackmail and perjury in I.S. No. 2003-1278; and petitioner's complaint for perjury against private respondents Morris and Gonzales in I.S. No. 2003-1278-A.

Meanwhile, in a Resolution<sup>[11]</sup> dated April 4, 2004, the DOJ dismissed petitioner's complaint in I.S. No. 2004-229 (violation of Securities Regulation Code), holding that it should have been filed with the SEC.

Petitioner's motions to dismiss his complaints were denied by the DOJ. Thus, he filed with the Court of Appeals a petition for certiorari, docketed as CA-G.R. SP No. 85078. He alleged that the DOJ acted with grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing his complaint for syndicated *estafa*.

He also filed with the Court of Appeals a separate petition for certiorari assailing the DOJ Resolution dismissing I.S. No. 2004-229 for violation of the Securities Regulation Code. This petition was docketed as CA-G.R. SP No. 87328. Petitioner claimed that the DOJ acted with grave abuse of discretion tantamount to lack or excess of jurisdiction in holding that the complaint should have been filed with the SEC.

On January 7, 2005, the Court of Appeals promulgated its Decision dismissing the petition. It sustained the ruling of the DOJ that the case should have been filed initially with the SEC.

Petitioner filed a motion for reconsideration but it was denied in a Resolution dated May 27, 2005.

Meanwhile, on February 21, 2005, the Court of Appeals rendered its Decision in CA-G.R. SP No. 85078 (involving petitioner's charges and respondents' counter charges) dismissing the petition on the ground that the purpose of a petition for certiorari is not to evaluate and weigh the parties' evidence but to determine whether the assailed Resolution of the DOJ was issued with grave abuse of discretion tantamount to lack of jurisdiction. Again, petitioner moved for a reconsideration but it was denied in a Resolution of November 22, 2005.

Hence, the instant petitions for review on certiorari.

For our resolution is the fundamental issue of whether the Court of Appeals erred in concluding that the DOJ did not commit grave abuse of discretion in dismissing petitioner's complaint in I.S. 2004-229 for violation of Securities Regulation Code and his complaint in I.S. No. 2003-1059 for syndicated *estafa*.

**G.R. No 168380**  
**Re: I.S. No. 2004-229**  
**For violation of the Securities Regulation Code**

Section 53.1 of the Securities Regulation Code provides:

SEC. 53. *Investigations, Injunctions and Prosecution of Offenses.* -

53. 1. The Commission may, in its discretion, make such investigation as it deems necessary to determine whether any person has violated or is about to violate any provision of this Code, any rule, regulation or order thereunder, or any rule of an Exchange, registered securities association, clearing agency, other self-regulatory organization, and may require or permit any person to file with it a statement in writing, under oath or otherwise, as the Commission shall determine, as to all facts and circumstances concerning the matter to be investigated. The Commission may publish information concerning any such violations and to investigate any fact, condition, practice or matter which it may deem necessary or proper to aid in the enforcement of the provisions of this Code, in the prescribing of rules and regulations thereunder, or in securing information to serve as a basis for recommending further legislation concerning the matters to which this Code relates: *Provided, however,* That any person requested or subpoenaed to produce documents or testify in any investigation shall simultaneously be notified in writing of the purpose of such investigation: *Provided, further, That all criminal complaints for violations of this Code and the implementing rules and regulations enforced or administered by the Commission shall be referred to the Department of Justice for preliminary investigation and prosecution before the proper court: Provided, furthermore,* That in instances where the law allows independent civil or criminal proceedings of violations arising from the act, the Commission shall take appropriate action to implement the same: *Provided, finally;* That the investigation, prosecution, and trial of such cases shall be given priority.

The Court of Appeals held that under the above provision, a criminal complaint for violation of any law or rule administered by the SEC must first be filed with the latter. If the Commission finds that there is probable cause, then it should refer the case to the DOJ. Since petitioner failed to comply with the foregoing procedural requirement, the DOJ did not gravely abuse its discretion in dismissing his complaint in I.S. No. 2004-229.

A criminal charge for violation of the Securities Regulation Code is a specialized dispute. Hence, it must first be referred to an administrative agency of special competence, i.e., the SEC. Under the doctrine of primary jurisdiction, courts will not determine a controversy involving a question within the jurisdiction of the