

SECOND DIVISION

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

PHILIPPINE ASSOCIATION OF STOCK TRANSFER AND REGISTRY AGENCIES, INC., PETITIONER, VS. THE HONORABLE COURT OF APPEALS; THE HONORABLE SECURITIES AND EXCHANGE COMMISSION; AND SEC CHAIRMAN PERFECTO R. YASAY, JR., RESPONDENTS.

DECISION

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