

SECOND DIVISION

[G.R. NO. 154131, July 20, 2006]

**SECURITIES AND EXCHANGE COMMISSION, PETITIONER, VS.
PERFORMANCE FOREIGN EXCHANGE CORPORATION,
RESPONDENT.**

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

For our resolution is the Petition for Review on Certiorari^[1] assailing the Decision^[2] dated February 11, 2002 and Resolution dated July 3, 2002 of the Court of Appeals in CA-G.R. SP No. 65217, entitled "Performance Foreign Exchange Corporation, *petitioner*, versus Securities and Exchange Commission, respondent."

The pertinent facts as found by the Court of Appeals are:

Performance Foreign Exchange Corporation, herein respondent, is a domestic corporation duly registered on June 23, 1998 under Securities and Exchange Commission (SEC) Registration No. A199808910, with the following purposes:

Primary Purpose

To operate as a broker/agent between market participants in transactions involving, but not limited to, foreign exchange, deposits, interest rate instruments, fixed income securities, bonds/bills, repurchased agreements of fixed income securities, certificate of deposits, bankers acceptances, bills of exchange, over-the-counter option of the aforementioned instruments, Lesser Developed Country's (L.D.C.) debt, energy and stock indexes and all related, similar or derivative products, other than acting as a broker for the trading of securities pursuant to the Revised Securities Act of the Philippines.

Secondary Purpose

To engage in money changer or exchanging foreign currencies into domestic currency, Philippine currency or other foreign currencies into another currencies.

After two years of operation, respondent received a letter dated November 28, 2000 from the SEC, herein petitioner, requiring it to appear before the Compliance and Enforcement Department (CED) on December 14, 2000 for a clarificatory conference regarding its business operations. Respondent's officers complied and explained before the CED the nature of their business.

On January 16, 2001, Emilio B. Aquino, Director of CED, issued a Cease and Desist

Order,^[3] in CED Case No. 99-2297, stating that his department conducted an inquiry on respondent's business operations for possible violation of Republic Act (R.A.) No. 8799 (otherwise known as The Securities Regulation Code); that the outcome of the inquiry shows that respondent is engaged in the trading of *foreign currency futures contracts* in behalf of its clients without the necessary license; that such transaction can be deemed as a direct violation of Section 11 of R.A. No. 8799^[4] and the related provisions of its Implementing Rules and Regulations; and that it is imperative to enjoin respondent from further operating as such to protect the interest of the public. The dispositive portion of the said Order reads:

WHEREFORE, pursuant to the authority vested in the Commission, PERFORMANCE FOREIGN EXCHANGE CORPORATION, its officers, directors, agents, representatives, and any and all persons claiming and acting under their authority, are hereby ordered **to immediately CEASE AND DESIST from further engaging in the solicitation of funds for foreign currency trading and operating as a foreign currency futures merchant/broker, upon receipt of this Order.**

In accordance with the provisions of Section 64.3^[5] of Republic Act 8799, otherwise known as the Securities Regulation Code, the parties subject of this Cease and Desist Order may file a request for the lifting thereof within five (5) days from receipt hereof.

SO ORDERED.

On January 25, 2001, respondent filed with petitioner SEC a motion^[6] praying for the lifting of the Cease and Desist Order, alleging that: (a) it has not violated any law or regulation in the conduct of its business; (b) it has been operating in accordance with the purposes for which it was organized, which purposes were duly approved by petitioner; (c) it has not engaged in *currency futures contracts* trading; and (d) its business involves "*spot currency trading* which is not a form of *currency futures* transaction."

On February 8, 2001, then SEC Chairman Lilia R. Bautista, **in her desire to know with certainty the nature of respondent's business**, sent a letter^[7] to the Bangko Sentral ng Pilipinas (BSP), **requesting a definitive statement** that respondent's business transactions are a form of *financial derivatives* and, therefore, can only be undertaken by banks or non-bank financial intermediaries performing quasi-banking functions.

Without waiting for BSP's determination of the matter, petitioner, the following day (February 9, 2001), issued an Order^[8] denying respondent's motion for the lifting of the Cease and Desist Order and directing that the same **stays until respondent shall have submitted the appropriate "endorsement" from the BSP that it can engage in financial derivative transactions.** The Order states that the contracts entered into, offered and sold by respondent are in the nature of *commodity futures contracts*,^[9] and that such contracts may be considered a form of *financial derivatives instruments*, the trading of which is regulated by BSP.

On February 16, 2001, respondent filed a Manifestation With Urgent Motion^[10] praying that, pending determination by the BSP of the real nature of its business,

the implementation of the February 9, 2001 Order be temporarily suspended to allow it to continue its operations.

On March 15, 2001, respondent, in compliance with petitioner's February 9, 2001 Order requiring it to submit the appropriate BSP "endorsement," presented before the BSP panel of officers a summary of its operations and its foreign exchange spot product.

On April 23, 2001, petitioner issued an Order^[11] making the Cease and Desist Order permanent, thus:

WHEREAS, on February 19, 2001, PFEC filed with the Commission its "Manifestation with Urgent Motion to Temporarily Suspend Implementation of Order dated 09 February 2001," which Manifestation was **denied by the Commission en banc** during its meeting on February 22, 2001, and the said denial was conveyed **verbally** to the corporation;

WHEREFORE, premises considered, and pursuant to the authority vested in the Commission, the Cease and Desist Order is now made **permanent**, and Performance Foreign Exchange Corporation is hereby directed to **show cause** within thirty (30) days from receipt of this Order **why its certificate of registration should not be revoked for violation of the Securities Regulation Code, and/or PD 902-A specifically on the ground of serious misrepresentation as to what the corporation can do or is doing, to the great prejudice or damage to the general public.** (Underscoring supplied)

On May 4, 2001, respondent filed a motion^[12] praying that the said Order be set aside. Petitioner, however, did not act on the motion. This prompted respondent to file with petitioner a notice^[13] dated June 14, 2001 that it is withdrawing its motion in order to seek a more appropriate and speedy remedy.

Feeling the injurious effects of petitioner's acts to its business operations, respondent, on June 20, 2001, filed with the Court of Appeals a Petition for Certiorari^[14] with prayer for a temporary restraining order and preliminary injunction, docketed as CA-G.R. SP No. 65217. Respondent alleged, among others, that petitioner SEC acted without or in excess of its jurisdiction or with grave abuse of discretion when it issued the Cease and Desist Order and its subsequent Order making the same permanent without waiting for the BSP's determination of the real nature of its business operations; and that petitioner's Orders, issued without any factual basis, violated its (respondent's) fundamental right to due process.

Meanwhile, on August 13, 2001, Amado M. Tetangco, Jr., then Officer-in-Charge, Office of the Governor, BSP, in answer to SEC Chairman Lilia Bautista's letter-request of February 8, 2001, stated that respondent's business activity "**does not fall under the category of futures trading**" and "**can not be classified as financial derivatives transactions,**" thus:

Dear Ms. Bautista,

This refers to your letter dated February 8, 2001 requesting for a

definitive statement that the foreign currency leverage trading engage in by private corporations, particularly, Performance Foreign Exchange Corporation (PFEC), is a financial derivatives transaction and that it can only be undertaken by banks or non-bank financial intermediaries performing quasi-banking functions and/or its subsidiaries/affiliates.

As indicated in your description of the transactions and the documents submitted, **the foreign currency leverage trading, subject of your query**, is essentially similar in mechanics to currency future trading, particularly with respect to the margin requirements, standard contract size, and daily market-to-market of open position. **However, it does not fall under the category of futures trading** because it is not exchange-traded. **Further, we can not classify it as being financial derivatives transactions** as we consider the transaction as plain currency margin trading, which by its mechanics, involve the set-up of margin and non-delivery of the currencies involved.

In view of the foregoing facts, the activities of the aforesaid corporation are not covered by BSP guidelines on derivative licensing.

We hope we have satisfactorily **clarified your concerns**.

Very truly yours,

(Sgd.)

AMANDO M. TETANGCO, JR.^[15]

On February 11, 2002, the Court of Appeals rendered a Decision^[16] in favor of respondent, thus:

WHEREFORE, premises considered, the instant petition is **GRANTED** and accordingly, the assailed **Orders dated January 16, 2001, February 9, 2001, February 22, 2001 and April 23, 2001** of the Securities and Exchange Commission are **SET ASIDE**.

SO ORDERED.

The Court of Appeals ruled that petitioner acted with grave abuse of discretion when it issued its challenged Orders **without a positive factual finding** that respondent violated the Securities Regulation Code.

Petitioner filed a motion for reconsideration but it was denied by the appellate court in a Resolution^[17] dated July 3, 2002.

Hence, the instant Petition for Review on Certiorari.

Petitioner, through the Solicitor General, contends that the Court of Appeals erred in not applying the rule that factual findings of quasi-judicial bodies, like the SEC, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect but even finality if such findings are supported by substantial evidence.^[18]