

THIRD DIVISION

[G.R. No. 138949, June 06, 2001]

**UNION BANK OF THE PHILIPPINES, PETITIONER, VS.
SECURITIES AND EXCHANGE COMMISSION, RESPONDENT.**

DECISION

PANGANIBAN, J.:

The mere fact that petitioner, in regard to its banking functions, is already subject to the supervision of the Bangko Sentral ng Pilipinas does not exempt the former from reasonable disclosure regulations issued by the Securities and Exchange Commission (SEC). These regulations -- imposed on petitioner as a banking institution listed in the stock market -- are meant to assure full, fair and accurate information for the protection of investors. Imposing such regulations is a function within the jurisdiction of the SEC.

The Case

Before us is a Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court, challenging the November 16, 1998 Decision^[2] of the Court of Appeals (CA) in CA-GR SP No. 48002. The dispositive portion of the assailed Decision reads as follows:

"GIVEN THE FOREGOING, the assailed Orders dated November 5, 1997 and April 14, 1998 are hereby AFFIRMED, with the MODIFICATION that petitioner is assessed a single fine of FIFTY THOUSAND (P50,000.00) PESOS plus FIVE HUNDRED (P500.00) PESOS beginning July 21, 1997, for each day of continuing violation."^[3]

Likewise assailed is the May 31, 1999 CA Resolution,^[4] which denied petitioner's Motion for Reconsideration.

The Facts

The court *a quo* summarized the antecedents of the case as follows:

"Records show that on April 4, 1997, petitioner, through its General Counsel and Corporate Secretary, sought the opinion of Chairman Perfecto Yasay, Jr. of respondent Commission as to the applicability and coverage of the Full Material Disclosure Rule on banks, contending that said rules, in effect, amend Section 5 (a) (3) of the Revised Securities Act

which exempts securities issued or guaranteed by banking institutions from the registration requirement provided by Section 4 of the same Act. (Annex "C", p. 20, Rollo).

"In reply thereto, Chairman Yasay, in a letter dated April 8, 1997, informed petitioner that while the requirements of registration do not apply to securities of banks which are exempt under Section 5(a) (3) of the Revised Securities Act, however, banks with a class of securities listed for trading on the Philippine Stock Exchange, Inc. are covered by certain Revised Securities Act Rules governing the filing of various reports with respondent Commission, i.e., (1) Rule 11(a)-1 requiring the filing of Annual, Quarterly, Current, Predecessor and Successor Reports; (2) Rule 34-(a)-1 requiring submission of Proxy Statements; and (3) Rule 34-(c)-1 requiring submission of Information Statements, among others. (Annex D, P, U, Rollo).

"Not satisfied, petitioner, per letter dated April 30, 1997, informed Chairman Yasay that they will refer the matter to the Philippine Stock Exchange for clarification. (Annex E, p. 22, Rollo)

"On May 9, 1997, respondent Commission, through its Money Market Operations Department Director, wrote petitioner, reiterating its previous position that petitioner is not exempt from the filing of certain reports. The letter further stated that the Revised Securities Act Rule 11(a) requires the submission of reports necessary for full, fair and accurate disclosure to the investing public, and not the registration of its shares. (Annex F, p. 23, Rollo).

"On July 17, 1997, respondent Commission wrote petitioner, enjoining the latter to show cause why it should not be penalized for its failure to submit a Proxy/Information Statement in connection with its annual meeting held on May 23, 1997, in violation of respondent Commission's 'Full Material Disclosure Rule.' (Annex 6, p. 24, Rollo).

"Failing to respond to the aforesaid communication, petitioner was given a '2nd Show Cause with Assessment' by respondent Commission on July 21, 1997. Petitioner was then assessed a fine of P50,000.00 plus P500.00 for every day that the report [was] not filed, or a total of P91, 000.00 as of July 21, 1997. Petitioner was likewise advised by respondent Commission to submit the required reports and settle the assessment, or submit the case to a formal hearing. (Annex H, p. 25, Rollo).

"On August 18, 1997, petitioner wrote respondent Commission disputing the assessment. (Annex I, pp. 26-27, Rollo).

"Thus, on November 5, 1997, respondent issued the assailed Order, the dispositive portion of which provides:

"In view of the foregoing, the appeal filed by the Union Bank of the Philippines is hereby denied. The penalty imposed in the amount of P91,000.00 as of July 21, 1997, for failure to

file SEC Form 11-A excludes the fine accruing after the cut-off date until the final submission of the report. Further, the amount of P50,000.00 shall be collected for the violation of RSA Rule 34(a)-1 or Rule 34 (c)(1)." (p. 17, Rollo).

"Petitioner sought a reconsideration thereof which was denied by respondent Commission per assailed Order dated April 14, 1998, the dispositive portion of which reads:

"There being no new matters raised in the motion for reconsideration to overcome the denial of the Appeal by the Commission En Banc in its Order of November 5, 1997, and considering that the reasons advanced are [a] mere rehash of its defenses duly addressed in the Appeal, the Motion for Reconsideration is hereby, DENIED. (p. 19, Rollo)."^[5]

Petitioner then elevated its case to the Court of Appeals which, as already stated, affirmed the questioned Orders.

The CA Ruling

In its well-written 10-page Decision, the Court of Appeals cited the expertise of Respondent SEC on matters within the ambit of the latter's mandate, as follows:

"To begin with, it is already well-settled that the construction given to a statute by an administrative agency charged with the interpretation and application of that statute is entitled to great respect and should be accorded great weight by the courts, unless such construction is clearly shown to be in sharp conflict with the governing statute or the Constitution and other laws. (*Nestle Philippines, Inc. v. Court of Appeals, 203 SCRA 504* [1991], *at page 510*) The rationale for this rule relates not only to the emergence of the multifarious needs of a modern or modernizing society and the establishment of diverse administrative agencies for addressing and satisfying those needs; it also relates to accumulation of experience and growth of specialized capabilities by the administrative agency charged with implementing a particular statute. (*Nestle Philippines, Inc. v. Court of Appeals, ibid., at pp. 510-511*)

"In this regard, the Supreme Court, in *Philippine Stock Exchange v. Securities and Exchange Commission, et. al., G.R. No. 125469, October 27, 1998*, already upheld the power of respondent Securities and Exchange Commission to promulgate rules and regulations, as it may consider appropriate, for the enforcement of the Revised Securities Act and other pertinent laws. Thus, pursuant to their regulatory authority, respondent Securities and Exchange Commission adopted the policy of 'full material disclosure' where all companies, listed or applying for listing, are required to divulge truthfully and accurately, all material information about themselves and the securities they sell, for the protection of the investing public, and under pain of administrative,

criminal and civil sanctions. While the employment of the 'full material disclosure' policy is sanctioned and recognized by the laws, nonetheless, the Revised Securities Act sets substantial and procedural standards which a proposed issuer of securities must satisfy.

"Moreover and perhaps most importantly, the construction given by respondent Commission on the scope of application of the 'Full Material Disclosure' policy permits greater opportunity for respondent Commission to implement [its] statutory mandate of protecting the investing public by requiring public issuers of securities to inform the public of the true financial conditions and prospects of the corporation."^[6]

The court *a quo* stressed that Rules 11(a)-1, 34(a)-1, and 34(c)-1 were issued by respondent to implement the Revised Securities Act (RSA). They do not require the registration of petitioner's securities; thus, it cannot be said that the SEC amended Section 5(a)(3) of the said Act.

Hence, this Petition.^[7]

Issues

Petitioner submits for our resolution the following issues:

"A. Whether or not petitioner is required to comply with the respondent SEC's full disclosure rules.

"B. Whether or not the SEC's full disclosure rules [are] contrary to and effectively [amend] section 5(a)(3) of the Revised Securities Act.

"C. Whether or not Respondent Court of Appeals gravely erred in holding that petitioner violated three (3) Rules, namely: Rule 11(A)-1, Rule 34(A)-1 and Rule 34(C)-1 of the full disclosure rule.

"D. Whether or not Respondent Court of Appeals erred in affirming with modification the imposition of excessive fines in violation of the Philippine Constitution."^[8]

In the main, the Court will determine (1) the applicability of RSA Implementing Rules 11(a)-1, 34(a)-1 and 34(c)-1 to petitioner; and (2) the propriety of the fine imposed upon the latter.

The Court's Ruling

The Petition is not meritorious.

First Issue:

Applicability of the Assailed RSA Implementing Rules