



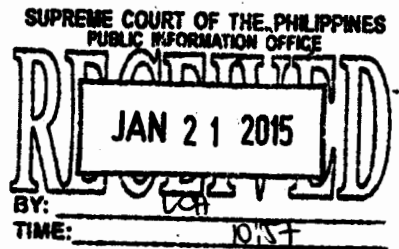
Republic of the Philippines

Supreme Court

Manila

THIRD DIVISION

NOTICE



Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated December 10, 2014, which reads as follows:*

**“G.R. No. 205616 (*Celebrity Sports Plaza, Inc. vs. Chairperson Fe B. Barin as Head of the Commission En Banc of the Securities and Exchange Commission, et al.*)**. – Celebrity Sports Plaza, Inc. (CSPI) was incorporated on June 30, 1997 with an authorized capital stock of two thousand (2,000) no par value shares. It amended its Articles of Incorporation (AOI) by increasing its authorized capital stock (ACS) to three thousand (3,000) no par value shares. The Securities and Exchange Commission (SEC) approved the registration and licensing of CSPI’s three thousand (3,000) no par value shares on May 23, 1978.

CSPI again increased its ACS from three thousand (3,000) to three thousand five hundred (3,500) propriety shares. On January 27, 1998, the SEC granted CSPI a Certificate of Permit to Offer for Sale Securities covering the additional five hundred (500) regular propriety membership certificates.

CSPI again amended its AOI on October 13, 1999 by reclassifying its three thousand five hundred (3,500) shares into three thousand (3,000) Individual and/or Corporate “A” shares, four hundred (400) Corporate “B” shares and one hundred (100) Corporate “C” shares. On the same date, the SEC Corporate and Legal Department sent a letter to CSPI directing the latter to amend its registration statement and prospectus relating to the reclassification of its shares. CSPI did not follow the foregoing directive.

On June 26, 2001, CSPI again amended its AOI by adding two hundred fifty (250) shares to its ACS, thereby increasing the same to three thousand seven hundred fifty (3,750) no par value shares. Further, the company reclassified its unissued three hundred (300) Corporate “B” shares to Corporate “C” shares. The three thousand seven hundred fifty (3,750) shares were divided into three thousand (3,000) Individual and/or Corporate “A” shares, one hundred (100) Corporate “B” shares, four hundred (400) Corporate “C” shares and two hundred fifty (250) Corporate “D” shares.

CSPI did not file any application for registration and/or amendment of its AOI relative to its additional two hundred fifty (250) Corporate "D" shares. Records reveal that as of 2006, CSPI already issued all three thousand seven hundred fifty (3,750) shares.

On April 24, 2007, CSPI submitted an Amended Registration Statement (Amended RS) declaring the following changes: (1) reclassification of five hundred (500) no par value shares into one hundred (100) Corporate "B" shares and four hundred (400) Corporate "C" shares; and (2) registration of an additional two hundred fifty (250) Corporate "D" shares.

In a letter dated May 11, 2007, the SEC Corporate Finance Department (CFD) directed CSPI to revise its Amended RS in view of omission of certain material facts and exhibits required to be stated and included therein. CSPI submitted its revised Amended RS on November 13, 2007 but upon its review, the CFD still found material deficiencies therein which were communicated to CSPI. The CFD set a number of hearings requiring petitioner to show cause why its Amended RS should not be rejected for failure to comply with its directives. Finally, on May 27, 2008, the CFD rejected CSPI's Amended RS in accordance with Section 13.1<sup>1</sup> of the Securities Regulation Code (SRC) and forfeited the filing fee paid in relation to the said application. The CFD did not act upon CSPI's motion for reconsideration filed on June 27, 2008.

In a letter dated February 18, 2009, the SEC Enforcement and Prosecution Division (EPD)<sup>2</sup> directed CSPI to pay Ten Thousand Pesos (₱10,000) and Two Million Five Hundred Thousand Pesos (₱2,500,000) for violation of Section 8<sup>3</sup> (Requirement of Registration of Securities) and Section 14<sup>4</sup> (Amendments to the Registration Statement) of the SRC.

<sup>1</sup> SECTION 13. Rejection and Revocation of Registration of Securities. — 13.1. The Commission may reject a registration statement and refuse registration of the security thereunder, or revoke the effectivity of a registration statement and the registration of the security thereunder after due notice and hearing by issuing an order to such effect, setting forth its findings in respect thereto, if it finds that:

(a) The issuer:

x x x x

(ii) Has violated any of the provisions of this Code, the rules promulgated pursuant thereto, or any order of the Commission of which the issuer has notice in connection with the offering for which the registration statement has been filed;

x x x x

(iv) Has made any false or misleading representation of material facts in any prospectus concerning the issuer or its securities;

(b) The registration statement is on its face incomplete or inaccurate in any material respect or includes any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading x x x.

<sup>2</sup> Formerly the Compliance and Enforcement Department (CED)

<sup>3</sup> 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. x x x

<sup>4</sup> Sec. 14. *Amendments to the Registration Statement.* – 14.1. If a registration statement is on its face incomplete or inaccurate in any material respect, the Commission shall issue an order directing the amendment of the registration statement. x x x

CSPI appealed to the SEC *en banc* seeking the reversal and setting aside of the February 18, 2009 letter of the EPD imposing administrative penalties. CSPI argued that it was not afforded due process because the said division did not conduct any honest to goodness investigation.

In SEC *en banc* Decision dated November 25, 2009, the Appeal of CSPI was denied for lack of merit. CSPI was ordered to pay the penalties imposed by the EPD. The said Decision stated that CSPI's failure to pay the penalty would result in the revocation of its Registration of Securities and Permit to Sell Securities without prejudice to the filing of criminal charges against persons who may be responsible for the violations.

CSPI filed a Petition for Review under Rule 43 with the Court of Appeals (CA).

CSPI's Petition was denied. On August 1, 2012, the CA<sup>5</sup> affirmed the November 25, 2009 SEC *en banc* Decision. CSPI's motion for reconsideration was likewise denied on January 22, 2013.

CSPI filed a Petition for Review under Rule 45 before this Court.

CSPI raised the following issues in its Petition:

1. Whether or not the CA erred in affirming the SEC *En Banc's* approval of the EPD's Order imposing penalties on petitioner when the records show that no investigation was conducted by the former on the latter.
2. Whether or not the CA erred in affirming the SEC-CFD's rejection of CSPI's Amended RS considering further that the issue is still *sub judice* since CSPI's MR has not been resolved by the SEC-CFD.

The records support the CA's finding that CSPI was afforded due process. CSPI's pleadings reveal that its representatives attended hearings and conferences conducted by the EPD. For example, in CSPI's Memorandum of Appeal filed before the SEC *en banc*, CSPI stated, among others, that "appellant allowed appellee's staff to examine its operations and delivered the documents they asked for. Appellant likewise honored appellee's invitations for hearings and conferences at its office at the SEC Bldg. bringing and submitting documents that were required during the course of the examination."<sup>6</sup>

Moreover, in its Comment, the SEC stressed the following:

The record shows that on at least three (3) occasions from 1999 to 2008, the CFD afforded petitioner a window to comply with the SRC's

<sup>5</sup> In a Decision of the First Division of the CA in CA-G.R. SP No. 111858, penned by Associate Justice Rodil V. Zalameda and concurred in by Presiding Justice Andres B. Reyes, Jr. and Associate Justice Ramon M. Bato, Jr.

<sup>6</sup> *Rollo*, p. 100; page 2 of CSPI's Memorandum of Appeal filed with the SEC dated March 9, 2009.

requirements on amendments and thereby avoid concomitant penalties but petitioner simply chose not to avail of this opportunity.

*First*, as early as 1999, the SEC, through its then Corporate and Legal Department, ordered petitioner to amend its Registration Statement and Prospectus to reflect the changes effected via the third amendment of its Articles of Incorporation but petitioner ignored said directive. *Second*, when petitioner finally submitted its ARS eight (8) years later, or on April 24, 2007, the CFD, notwithstanding petitioner's belated submission, informed petitioner of the deficiencies it found therein and consequently enjoined it to remedy said defects in its letter dated May 11, 2007. *Third*, petitioner did not effect the required modifications; hence, prompting the CFD to conduct hearings for the final rejection of petitioner's ARS. During the final hearing on May 15, 2008, petitioner still failed to submit its revised ARS incorporating the required modifications prompting the CFD to issue its Order dated May 27, 2008 rejecting petitioner's ARS in accordance with Section 13.1 of the SRC.

To repeat, even granting *arguendo* that the EPD indeed failed to take up the issue of petitioner's ARS, such an omission will not render its Order dated February 18, 2009 fatally defective. To be sure, the CFD, another division of the SEC, had already afforded petitioner full opportunity to comply with the SRC's registration requirements and thus avoid penalties. **With the CFD having already exhaustively heard petitioner on this matter, any investigation by the EPD would have been a mere superfluity.**

Petitioner asks how the CFD could have referred the matter of its failure to file its ARS to the EPD on February 2, 2004 when it filed the same only on April 24, 2007.

The SEC had informed petitioner as far back as 1999 of its failure to amend its registration statement to reflect the changes it made. In other words, petitioner's violation of registration regulations arose several years before it filed its ARS on April 24, 2007. If said date proves anything, it is petitioner's disregard of disclosure and registration requirements for several years and its belated compliance therewith. It will be noted that by the time petitioner filed its ARS in 2007, nearly eight (8) years had already lapsed since October 1999, when the SEC first directed it to file the same to reflect the third amendment to its Articles of Incorporation.<sup>7</sup>

The failure of CSPI to file its Amended RS for the reclassification and increase of its shares was already taken up before the SEC Corporate and Legal Department and the SEC-CFD prior to the endorsement of CSPI's case to the EPD. Considering that the relevant documents and records on the matter were already with the EPD, there was no reason to duplicate the proceedings done by the two departments.

The essence of due process is simply an opportunity to be heard, or as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of. A formal or trial type hearing is not at all times and in all

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<sup>7</sup> SEC Comment, pp. 10-11.

instances essential. The requirements are satisfied when the parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand. What is frowned upon is the absolute lack of notice or hearing.<sup>8</sup>

Clearly, CSPI violated Section 8 of the SRC when it sold its additional 250 shares before filing a registration statement therefor. CSPI also violated Section 14 of the SRC when it did not follow the SEC's order in 1999 to amend its registration statement and prospectus relating to the reclassification of its shares.

As regards the second issue, a close reading of the CA Decision shows that the CA merely resolved the issue on whether Sec. 13.1 of the SRC limits the SEC's power to *reject* registration statements to *original* registration statements only or whether the said provision covers the rejection of *amended* registrations as well. The CA did not make a finding on the soundness of the SEC's rejection and the grounds therefor.

The penalty imposed by the SEC on CSPI, however, should be modified.

Under SEC Memorandum Circular No. 6, Series of 2005, the penalty for a first time violation of Sec. 8 of the SRC is *1% of the amount of each transaction or P10,000.00 per transaction, whichever is higher*. We have misgivings on how the SEC came up with the amount of Two Million Five Hundred Thousand Pesos (P2,500,000) as CSPI's penalty for this violation. *First*, it is not clear what the SEC used as its basis in computing the penalty, whether it was fixed at one percent (1%) of each transaction or at Ten Thousand Pesos (P10,000) per transaction. *Second*, assuming that the penalty imposed was a percentage of each transaction, there is no showing how much each transaction for the sale of shares cost. *Third*, it appears that the SEC fixed the penalty with the assumption that each of the two hundred fifty (250) unregistered CSPI shares was individually sold through two hundred fifty (250) separate transactions when it is possible that one transaction covered not just one but several shares.

Moreover, CSPI is not a corporation operating primarily for profit. It is merely a private club that provides its members with a venue for functions and events as well as sports and training facilities. Hence, CSPI's payment of such a high penalty imposed by the SEC would be too burdensome on its part. Further, it must be noted that CSPI already filed its Amended RS in 2007 and demonstrated its sincere intention to comply with the SRC and obey the SEC's directives when it submitted documents required of it and attended hearings before the said agency to remedy the defects and deficiencies in its Amended RS. Considering the foregoing, the lowering of


<sup>8</sup> *Navarro III v. Damasco*, G.R. No. 101875, July 14, 1995, 246 SCRA 260.

the penalty imposed on CSPI for its violation of Section 8 of the SRC by fifty percent (50%) is fair and reasonable.

**WHEREFORE**, the Court resolves to **DENY** the petition. The CA Decision dated August 1, 2012 in CA-G.R. SP No. 111858 is hereby **AFFIRMED** with **MODIFICATION**. As modified, the Court sets the administrative penalty of petitioner Celebrity Sports Plaza, Inc. at One Million Two Hundred Fifty Thousand Pesos (₱1,250,000) and Ten Thousand Pesos (₱10,000) for its violation of Section 8 and Section 14 of the Securities Regulation Code, respectively. (Del Castillo, *J.*, Additional Member in lieu of Jardeleza, *J.* per Raffle dated December 10, 2014)

**SO ORDERED.”**

Very truly yours,

  
**WILFREDO V. LAPITAN**  
Division Clerk of Court  
12/7/15

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