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FIRST DIVISION

[G.R. No. 159008. January 23, 2007]

QUEENSLAND-TOKYO COMMODITIES, INC. and CHARLIE COLLADO, *petitioners, vs.* **MARGIE MATSUDA,** *respondent.*

SYLLABUS

MERCANTILE LAW; SECURITIES AND EXCHANGE COMMISSION (SEC); RULES OF PROCEDURE; AN APPEAL TO THE SEC *EN BANC* WHEN BELATEDLY MADE WILL NOT PROSPER EITHER IN THE NEW OR THE OLD SEC RULES OF PROCEDURE. — The Court of Appeals rightly disposed of petitioners' contentions. x x x Under Sec. 8, Rule XV of the August 31, 1999 New Rules of Procedure a Motion for Reconsideration is a prohibited pleading. Such being the case, the judgment of the Hearing Officer has become final and executory pursuant to Sec. 1 of Rule XVI of said Rule. More so under the old rule. Under Sec. 3, Rule XVI of the old rules, the time during which [the] Motion for Reconsideration is pending shall be deducted from the period for perfecting an appeal. Pursuant to said Rule petitioners were twelve (12) days late in filing the appeal. Either way, therefore, under the old or the new Rule, the dismissal of the appeal by the respondent Commission is proper and valid. x x x From the point of procedure, it is clear that petitioners' appeal to the Securities and Exchange Commission *en banc* was late, for petitioners found themselves in a catch-22 situation: either a motion for reconsideration is allowed under the rules or not. If it is allowed, the same rules that allow it provide for a timeframe that has lapsed. On the other hand, if it is not allowed, then the timeframe becomes irrelevant. Petitioners cannot selectively apply one set of rules favorable to them and another when the one chosen works against them.

APPEARANCES OF COUNSEL

Alberto L. Sales for petitioners.
Cesar Y. Salera for respondent.

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D E C I S I O N

AZCUNA, *J.*:

This is an appeal by *certiorari* under Rule 45 of the Rules of Court to annul and set aside the Decision and Resolution of the Court of Appeals (CA) dated January 8, 2003 and July 3, 2003 in CA-G.R. SP No. 60878, entitled "*Queensland-Tokyo Commodities, Inc. and Charlie Collado v. Margie Matsuda*."

The facts are as follows:[1]

This is a case for recovery of investments with damages filed by the [complainant (respondent)] Margie Matsuda against Queensland-Tokyo Commodities, Inc. ("QTCI" for brevity), a corporation then engaged as a commodity futures broker, and its officers and directors, citing as grounds therefor the alleged nullity of complainant's spot/futures contracts for having been allegedly traded and supervised by unlicensed employees of QTCI, in violation of Section 20 and 33-A of the Revised Rules and Regulations on Commodity Futures Trading.

The complainant alleged, among others, that on July 13, 1995, she agreed to invest with QTCI on the basis of its officers' representations that investments in currency contracts are very profitable, and that her account would be handled by licensed investment consultants. Complainant further alleged that [petitioner] Charlie Collado induced her to immediately sign the [Customer's] Agreement and Risk Disclosure Statement without explaining the contents thereof; that she made investments in QTCI on July 13, 1995 in the amount of ₱150,000.00 and an additional amount of ₱2,000,000.00 on July 24, 1995[;] that she was required to execute a Special Power of Attorney authorizing Felix Sampaga and that within the same period complainant's account incurred substantial losses; and that sometime in April 1996, upon verification with the [Securities and Exchange Commission (SEC)], complainant learned for the first time that Felix Sampaga and Charlie Collado were not licensed by the SEC; that she demanded the return of her investments but the [petitioners] refused to comply, and that since her currency contracts are null and void for having been traded and supervised by unlicensed

[1] *Rollo*, pp. 49-52; CA Decision, pp. 2-5.

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employees, she is entitled to the return of her investments in the total amount of ₱2,150,000.00; that she should be entitled [to] moral and exemplary damages due to the fraud employed by the [petitioners] and to compensate her [for] mental anguish, frustration, and sleepless nights; and that she was forced to engage the services of counsel for a free (sic) of ₱50,000.00; and that the corporate directors and officers are implead[ed] pursuant to Section 31 of the [Corporation] Code.

In their Answer, the [petitioners] denied having made misrepresentations and false pretenses to the complainant, alleging, among others, that it was the complainant together with her Japanese husband who came [to] the office of [QTCI] on July 13, 1995 to pen an account with an initial deposit of ₱150,000.00. The [petitioners] further alleged that [petitioner] Charlie Collado did not induce the complainant to sign the [Customer's] Agreement and Risk Disclosure Statement; that Collado is not involved in the marketing of investments because he is only in [charge] of operations; that Collado did not misrepresent himself as a licensed consultant and that he signed in behalf of QTCI on the [Customer's] Agreement as part of his official function which does not however require a license; that complainant deposited ₱2,000,000.00 on July 24, 1995 to open a second account after she made a profit in the amount of ₱67,978.61 under her first account; and that the attorney-in-fact of the complainant is Jose "Joel" Colmenar and not Felix Sampaga; that Felix Sampaga is the brother of complainant; that the SPA submitted by the complainant carries a typographical error naming Felix Sampaga as her attorney-in-fact while the signature appearing under the word "conforme" and above the word "attorney-in-fact" is that of Jose "Joel" Colmenar; that all copies of the SPA have been corrected of this error but the complainant refused to surrender her copy for correction despite several requests for this purpose; that Jose "Joel" Colmenar was duly licensed by the SEC as Commodity Futures salesman; that Felix Sampaga has nothing to do with the account of the complainant; that the various instructions attached to the complaint were ordered by Jose Colmenar and not by Felix Sampaga; that Collado did not supervise the complainant's accounts and that the complainant has no basis for the return of her investments; that by reason of the filing of the suit, [petitioner] corporation suffered besmirched reputation together with the individual [petitioner] who also suffered mental anguish, fright, serious anxiety and moral shock and for which reason they are entitled to an award of ₱150,000.00 each; that to deter other

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persons similarly inclined as the complainant in filing grossly unfounded suits, the [petitioners] are entitled to recover from the complainant exemplary and corrective damages of at least ₱50,000.00 each; and that to protect their interest, the [petitioners] were compelled to retain the services of counsel and agreed to pay attorney's fees in the amount of ₱150,000.00.

The SEC Hearing Officer rendered his decision on May 18, 1999, the decretal portion of which reads:

WHEREFORE, premises considered, [petitioners] Queensland Tokyo Commodities Inc. and Charlie Collado and Felix Sampaga are hereby ordered to jointly and severally pay the complainant the following:

1. The amount of ₱2,082,021.40 representing the complainants return of investments.

2. The amount of ₱50,000.00 as and by way of attorney's fees and

3. Cost of this suit.

SO ORDERED.[2]

Having received the decision on May 24, 1999, petitioners filed their Motion for Reconsideration on June 22, 1999, but this was denied on November 25, 1999.[3]

They appealed to the SEC *en banc*, but their appeal was also denied and ordered dismissed on August 29, 2000.[4] Petitioners then elevated the case to the Court of Appeals (CA), which rendered its assailed decision with the following dispositive portion:

WHEREFORE, premises considered, the Petition is hereby ORDERED DISMISSED, having no merit in fact and in law and the challenged decision [AFFIRMED], with costs to petitioners.

SO ORDERED.[5]

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[2] *Id*. at p. 341; SEC Decision, p. 9.

[3] *Id*. at p. 350; SEC Order, p. 1.

[4] *Id*. at p. 418; *id*. at p. 2.

[5] *Id*. at p. 55; CA Decision, p. 8.

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Again, petitioner's Motion for Reconsideration of the CA Decision was denied.

The issues in this appeal are:

A

WHETHER THE TIMELINESS OF AN APPEAL AND THE FILING OF PLEADINGS, AS WELL AS THE SUFFICIENCY OF THE CONTENTS THEREOF, ARE GOVERNED BY THE RULES OF PROCEDURE IN EFFECT AT THE TIME OF THE FILING THEREOF

B

WHETHER THE COURT OF APPEALS MAY REVIEW AND, IF WARRANTED, REVERSE AND SET ASIDE THE FINDINGS OF FACT OF AN ADMINISTRATIVE AGENCY PERFORMING QUASI-JUDICIAL FUNCTIONS, INCLUDING THE SECURITIES AND EXCHANGE COMMISSION

C

WHETHER A CORPORATE OFFICER MAY BE HELD PERSONALLY LIABLE FOR AN ACT PERFORMED IN AN OFFICIAL CAPACITY AND[,] IF SO, UNDER WHAT CIRCUMSTANCES

Petitioners argue, thus:

The Court of Appeals only addressed the issue of timeliness of the appeal, but did not rule on the propriety of the dismissal on the ground of non-compliance with the formal requirement. A review of the antecedent proceedings and the different rules of procedure implemented by the SEC during the pendency of these proceedings will readily show that petitioners were not selective in their choice of procedural rules to apply. Petitioners maintain that the timeliness of the filing, as well as the sufficiency of the contents of a pleading should be governed by the Rule in effect at the time of its filing. While procedural laws may be given retroactive effect, this may not be done if it will work injustice to the affected party. Petitioners' motion for reconsideration was pending resolution when, on August 31, 1999, the Commission's 1999 Rules of Procedure took effect. However, the 1993 Rules should apply, allowing the filing of a

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motion for reconsideration within thirty days from receipt of the decision of the hearing officer.

Section 1, Rule XV of the 1999 Rules does not make any qualification or distinction as to what decision, ruling or order (of the Hearing Officer) may be appealed. Thus, an order denying a motion for reconsideration is undoubtedly included in this class. It is elementary that when a law or rule does not make a distinction or qualification, none can be made.

Had the framers of the 1999 Rules intended to require a certification even of pleadings filed with the Commission *en banc*, said requirement could have been easily included in Rule XV governing Appeals. Its non-inclusion leaves no doubt on the limits of its application to the initiatory pleadings under Rule III.

Even assuming that the requirement of certification under Section 3, Rule III of the 1999 Rules is applicable to petitioners' memorandum on appeal filed before the Commission *en banc*, the absence of such certification alone does not warrant an outright dismissal of petitioners' appeal. The outright dismissal deprived them of an opportunity to question and contest the findings of the Hearing Officer, tantamount to deprivation of due process.

The absence of a certification in petitioners' memorandum on appeal did not prejudice respondent. If anything, the allowance of petitioners' appeal would have given the Commission *en banc* the chance to review the findings of the Hearing Officer. While findings of fact of administrative agencies are entitled not only to great respect but even finality when supported by substantial evidence, this general rule does not find application here. The Court of Appeals did not state what evidence it considered substantial enough to support the findings of the Hearing Officer. The findings of fact that became the bases for the Hearing Officer's conclusions were obviously biased and completely unfounded, betraying a strained effort to build a case against petitioners.

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Before a futures commodity merchant can be held liable under Section 20 of the Revised Rules and Regulations on Commodity Futures Trading, there must be proof that it "knowingly" permitted an unlicensed person to commit the prohibited acts. The law, therefore, prescribed an additional element to the offense. In this case, there is absolutely no evidence to show that Queensland knowingly allowed these unlicensed persons to participate in the trading.

The Hearing Officer read Collado's statement out of context and stretched it to ensure that it fell within the acts prohibited by the Rules. A closer examination of Collado's statement shows that while it was in response to a question on the scope of his duties and function as operations manager, the answer was more of a description of the functions of the Operations Department as a unit than an enumeration of the work of any specific individual, including Collado. When he mentioned in his testimony the acceptance of orders from the clients or the traders "once they want to execute orders from the company to the exchange," he was simply referring to that phase in the proceedings where the company, through its Operations Department (not necessarily Collado himself), verifies or confirms with the MIFF whether a specific order of a client can be given due course or may push through. Certainly, this step is not part of the "trading" as envisioned by the Rules which refers to the action taken on the specific position of a certain account after an evaluation of the different factors that may affect the action. Under the policies and rules of corporate respondent, this important phase is handled strictly by a licensed trader and, in some cases, with the help of the clients themselves.

The conclusion of the Hearing Officer is also not supported by and is in fact contrary to some of the evidence presented. It was a licensed salesman who actually traded complainant's account. Finally, the Hearing Officer's conclusion that Collado is presumed to have assented to such unlawful act of QTCI consisting of associating with an unlicensed salesman is completely baseless.

The Court of Appeals rightly disposed of petitioners' contentions, thus:

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Anent the first assigned error, the commission *en banc* did not err in dismissing the petitioners' appeal. Petitioners' argument [is] that pursuant to the August 31, 1999 New Rules of Procedure, particularly Sec. 1 of Rule XV it had fifteen (15) days from December 6, 1999 the date they received the denial of their Motion for Reconsideration or up to December 21, 1999. And since they filed their appeal on December 20, 1999, [so] then it was filed on time.

Such argument is misplaced. Petitioners would invoke the new rules if favorable to them but would disregard a clear one if adverse to their stand. Petitioners should be consistent. If they want to have the July 15, 1999 rule apply to them, then they should not be selective in its application. Under Sec. 8, Rule XV of the August 31, 1999 New Rules of Procedure a Motion for Reconsideration is a prohibited pleading. Such being the case, the judgment of the Hearing Officer has become final and executory pursuant to Sec. 1 of Rule XVI of said Rule.

More so under the old rule. Under Sec. 3, Rule XVI of the old rules, the time during which [the] Motion for Reconsideration is pending shall be deducted from the period for perfecting an appeal. Pursuant to said Rule petitioners were twelve (12) days late in filing the appeal. Either way, therefore, under the old or the new Rule, the dismissal of the appeal by the respondent Commission is proper and valid.

The other grounds relied upon questions [of] the finding of facts and conclusions of the Hearing Officer. Petitioners ought to be minded that in reviewing administrative decisions, the findings of fact made therein must be respected as long as they are supported by substantial evidence. (*Lo v. CA*, 321 SCRA 190). We have carefully read the decision sought to be [reviewed] and We are convinced that the same is supported by substantial evidence. In fact the issues raised herein are the same issues raised by Petitioners in its Motion for Reconsideration filed with the Hearing Officer. (Pp. 232 to 238, Records).

In his November 25, 1999 Order (p. 248, Records), the Hearing Officer denied the Motion for Reconsideration after reasoning thus:

> *"After a careful evaluation of the parties arguments in the Motion and the Opposition thereto, we find no cogent reason to modify, alter, much less reverse the previous Order considering that the issues raised therein have already been passed upon in the aforesaid Decision."* **(ORDER**, p. 248 **RECORDS.)**

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We likewise find no cogent reason to disregard the clear findings and conclusion of the Hearing Officer. Thus, We are in accord with its conclusion quoted as follows:

> *"In sum, it was sufficiently proven that only respondent Charlie Collado and Felix Sampaga had in fact, assented to the unlawful acts of respondent corporation, [and they] should jointly and severally [be] liable for the payment of all damages sustained and which are sufficiently proven by the complainant. The claims against respondents Joyce K. Tan-Chua, Wendell Golangco, Josephine M. Cristobal and Henry Reyes are hereby dismissed. The counterclaim of respondents is likewise dismissed for lack of evidence."* **(DECISION, p. 9, p. 259, Records)**

WHEREFORE, premises considered, the Petition is hereby ORDERED DISMISSED, having no merit in fact and in law and the challenged decision AFFIRMED, with costs to petitioners.

SO ORDERED.

From the point of procedure, it is clear that petitioners' appeal to the Securities and Exchange Commission *en banc* was late, for petitioners found themselves in a catch-22 situation: either a motion for reconsideration is allowed under the rules or not. If it is allowed, the same rules that allow it provide for a timeframe that has lapsed. On the other hand, if it is not allowed, then the timeframe becomes irrelevant. Petitioners cannot selectively apply one set of rules favorable to them and another when the one chosen works against them.

Furthermore, on the substantive part, the issues are factual in nature and the findings of the hearing officer have not been shown to be unsupported by substantial evidence.

WHEREFORE, the petition is *DENIED*. No costs.

SO ORDERED.

Puno, C.J. (Chairperson), Sandoval-Gutierrez, Corona, and *Garcia, JJ.,* concur.