Supreme Court E-Library

SECOND DIVISION

[G.R. No. 146214. October 5, 2007]

RODOLFO M. CUENCA, *petitioner, vs.* **HON. ALBERTO P. ATAS, JULITO F. FABRERO, and HON. NATHANIEL A. LOBIGAS, in their capacity as Hearing Officers of the SECURITIES AND EXCHANGE COMMISSION; PHILIPPINE NATIONAL CONSTRUCTION CORPORATION, ASSET PRIVATIZATION TRUST, PHILIPPINE NATIONAL BANK, DEVELOPMENT BANK OF THE PHILIPPINES, NATIONAL DEVELOPMENT COMPANY, PHILIPPINE EXPORT AND FOREIGN LOAN GUARANTEE CORPORATION, and GOVERNMENT SERVICE INSURANCE SYSTEM,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS; ESSENCE.— Procedural due process, in gist, is the necessity for notice and an opportunity to be heard before judgment is rendered. Its essence is encapsulated in the immortal cry of Themistocles to Alcibiades: "Strike—but hear me first." Thus, as long as a party is given the opportunity to defend his/her interests in due course, the party would have no reason to complain, for it is this opportunity to be heard that makes up the essence of due process.

2. ID.; ADMINISTRATIVE LAW; ADMINISTRATIVE BODIES; QUASI-JUDICIAL POWER; ADMINISTRATIVE DUE PROCESS; REQUISITES.— In administrative and quasi-judicial proceedings where the magistrates or tribunals hearing the case are not bound by the niceties and finer points of judicial due process, the "cardinal primary" requirements of procedural due process, as gleaned by Justice Laurel from an array of American decisions, were enumerated in *Tibay v. Court of Industrial Relations,* as follows: "(1) The first of these rights is the **right to a hearing, which includes the right of the**

party interested or affected to present his own case and submit evidence in support thereof. x x x (2) Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the **tribunal *must consider* the evidence presented**. x x x (3) While the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of **having something to support its decision**. x x x (4) Not only must there be some evidence to support a finding or conclusion (*City of Manila vs. Agustin*, G. R. No. L-45844, promulgated November 29, 1937, XXXVI O.G. 1335), but the **evidence must be "substantial."** x x x (5) **The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected**. x x x (6) The [c]ourt x x x or any of its judges, therefore, **must act on its or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate in arriving at a decision**. x x x (7) [The court] should, in all controversial questions, **render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decisions rendered**. The performance of this duty is inseparable from the authority conferred upon it."

3. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; UPON THE PLAINTIFF IN A CIVIL CASE, THE BURDEN OF PROOF NEVER PARTS; CASE AT BAR.— Petitioner has not shown any proof or substantial evidence of fraud and conspiracy. Indeed, he who alleges fraud must prove it for basic is the rule that *actori incumbit onus probandi*. Differently stated, upon the plaintiff in a civil case, the burden of proof never parts. In the case at bar, the petitioner must therefore establish his allegation of fraud by a preponderance of evidence. Once again, petitioner utterly failed to do this. In addition, it is an aged-old rule in civil cases that he who alleges a fact has the burden of proving it and a mere allegation is not evidence. Fraud is never presumed, but must be established by clear and convincing evidence.

4. ID.; CIVIL PROCEDURE; APPEALS; FINDINGS OF FACT OF ADMINISTRATIVE BODIES, IF BASED ON

Supreme Court E-Library

SUBSTANTIAL EVIDENCE, ARE CONTROLLING ON THE REVIEWING AUTHORITY.— [T]he findings of facts and conclusions of law of the SEC are controlling on the reviewing authority. Indeed, the rule is that the findings of fact of administrative bodies, if based on substantial evidence, are controlling on the reviewing authority. xxx It has been held that it is not for the appellate court to substitute its own judgment for that of the administrative agency on the sufficiency of the evidence and the credibility of the witnesses. The Hearing Panel had the optimum opportunity to review the pieces of evidence presented before it and to observe the demeanor of the witnesses. Administrative decisions on matters within their jurisdiction are entitled to respect and can only be set aside on proof of grave abuse of discretion, fraud, or error of law, which have not been shown by petitioner in this case. It is well-settled that factual findings of administrative agencies are generally held to be binding and final so long as they are supported by substantial evidence in the record of the case. It is not the function of this Court to analyze or weigh all over again the evidence and credibility of witnesses presented before the lower court, tribunal, or office, as we are not a trier of facts. Our jurisdiction is limited to reviewing and revising errors of law imputed to the lower court, the latter's findings of fact being conclusive and not reviewable by this Court.

5. MERCANTILE LAW; CORPORATION LAW; SECURITIES AND EXCHANGE COMMISSION; HAS JURISDICTION OVER GOVERNMENT-ACQUIRED ASSET CORPORATIONS; CASE AT BAR.— [I]t has been settled in *Philippine National Construction Corporation v. Pabion* that PNCC is an acquired asset corporation and not a government-owned and/or controlled corporation (GOCC). In said case, we held that PNCC did not lose its status as a private corporation upon acquisition by the government through GFIs of the majority of its shares of stock. Our determination that PNCC is an acquired asset corporation removed it from the category of a GOCC. Thus, while the SEC has no jurisdiction over GOCCs with original charter or created by special law primarily because they are governed by their charters, it retains jurisdiction over government-acquired asset corporations. Therefore, the SEC may compel PNCC to hold a stockholders' meeting for the purpose of electing members of the latter's board of directors.

Supreme Court E-Library

APPEARANCES OF COUNSEL

Quisumbing Torres for petitioner.
Simon D. Victa for National Dev't. Co.
Office of the Government Corporate Counsel and *Castillo Laman Tan Pantaleon and San Jose* for PNCC.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

In this Petition for Review on *Certiorari*[1] of the adverse November 29, 2000 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 60366, petitioner Rodolfo M. Cuenca, in effect, questions the July 10, 2000 Decision[3] of the Securities and Exchange Commission (SEC) Securities Investigation and Clearing Department (SICD) in SICD SEC Case No. 05-96-5357 entitled *Rodolfo M. Cuenca v. Philippine National Construction Corporation* (*PNCC*), *et al.*, which declared defendants-government financial institutions (GFIs) as majority stockholders of the PNCC. The SICD Decision was affirmed by the SEC in SEC Case No. AC 807, which, in turn, was upheld by the CA in its assailed November 29, 2000 Decision.

The Facts

Petitioner was an incorporator, President, and Chief Executive Officer of the then Construction Development Corporation of the Philippines (CDCP), now PNCC, from its incorporation in 1966 until 1983. Sometime in 1977, CDCP was granted a franchise under Presidential Decree No. 1113 to construct, operate,

---

[1] *Rollo*, pp. 14-213.

[2] *Id*. at 215-250. The Decision was penned by Associate Justice Cancio C. Garcia, Jr. (Chairperson, now a member of this Court) and concurred in by Associate Justices Romeo A. Brawner and Andres B. Reyes, Jr.

[3] *Id*. at 519-541; per Hearing Officers Alberto P. Atas, Julieto F. Fabrero, and Nathaniel A. Lobigas.

Supreme Court E-Library

and maintain toll facilities of the North and South Luzon Expressway. In the course of its operations, it incurred substantial credit obligations from both private and government sources.

However, its unpaid obligations ballooned so much that by 1983, it became impossible for it to settle its maturing and overdue accounts with various GFIs, namely, the Philippine National Bank (PNB), Development Bank of the Philippines (DBP), National Development Company (NDC), Government Service Insurance System (GSIS), Land Bank of the Philippines (LBP), and Philippine Export and Foreign Loan Guarantee Corporation (PEFLGC), now known as the Trade and Investment Development Corporation of the Philippines.

On February 23, 1983, then President Ferdinand E. Marcos issued Letter of Instruction No. (LOI) 1295,[4] directing the

---

[4] "Directing the Measures to Expedite the Financial Rehabilitation Program of Construction and Development Corporation of the Philippines (CDCP)," which we quote *in toto*:

LETTER OF INSTRUCTION NO. 1295

DIRECTING THE MEASURES TO EXPEDITE THE FINANCIAL REHABILITATION PROGRAM OF CONSTRUCTION AND DEVELOPMENT CORPORATION OF THE PHILIPPINES (CDCP)

TO: All Concerned

Pursuant to the Government's decision to extend all the necessary assistance in the financial rehabilitation program of CDCP, the following are hereby directed and authorized to do as follows:

1. Development Bank of the Philippines (DBP)
   Government Service Insurance System (GSIS)
   Land Bank of the Philippines (LBP)
   National Development Company (NDC)
   Philippine Export and Foreign Loan
   Guarantee Corporation (PEFLGC)
   Philippine National Bank (PNB)

shall convert as of December 31, 1982 all of the direct obligations of CDCP and those of its wholly-owned subsidiaries to such government financial institutions including interests, fees and advances in any currency outstanding as of December 31, 1982 into shares of common stock of December 31, 1982 into shares of common stock of CDCP at par value. For purposes of converting the obligations of CDCP's wholly-owned subsidiaries into shares of stock of CDCP, CDCP shall assume the outstanding obligations of its concerned

Supreme Court E-Library

creditor GFIs to convert into CDCP's shares of stock the following: (1) all of the direct obligations of CDCP and those of its wholly-owned subsidiaries, including, but not limited to loans, credits, accrued interests, fees and advances in any currency outstanding as of December 31, 1982; (2) the direct obligations

---

subsidiaries to the affected financial institutions. The CDCP wholly-owned subsidiaries herein referred to are the following:

CDCP Farms Corporation
Dasmarinas Estates Development Corporation
Dasmarinas Industrial Steel Corporation
Manila Land Corporation
Marina Properties Corporation
Tierra Factors Corporation

For purposes of determining the peso equivalent of the foreign currency-denominated obligations, the conversion rate to be used shall be the Central Bank guiding rates as of January 3, 1983, as follows:

US Dollar	:	US$ 1.00 = ₱ 9.1730
Deutsche mark	:	DM 1.00 = 3.8618
Malaysian Ringgits	:	MS$ 1.00 = 3.9627

2. For the Direct obligations of CDCP to the abovenamed government financial institutions maturing in 1983, the institutions concerned shall convert on January 31, 1983 the maturities on such direct obligations into shares of common stock of CDCP at par value.

This will result in the:

a) payment by CDCP on January 31, 1983 of all the maturities for the month of January 31, 1983 on such direct obligations;
b) prepayment by CDCP on January 31, 1983 of the principal maturities from February 1, 1983 to December 31, 1983 on such direct obligations;
c) payment by CDCP on January 31, 1983 of all related interest charges up to January 31, 1983 on the total outstanding obligations;
d) prepayment by CDCP on January 31, 1983 of all related interest charges from February 1, 1983 to December 31, 1983 on the outstanding direct obligations (net of principal maturities prepaid as required in (b) hereof).

After CDCP has made the prepayments/payments required herein, CDCP shall not be required to make further payments for interest on such direct obligations up to, and inclusive of, December 31, 1983.

3. For CDCP obligations maturing in 1983 which are guaranteed by the abovenamed government financial institutions (herein referred to as government-guaranteed obligations), such government financial institution shall cause CDCP to prepay on January 31, 1983 in shares of its common stock of the following:

Supreme Court E-Library

of CDCP maturing in 1983; and (3) obligations maturing in 1983 which were guaranteed by the GFIs.

---

a) the lease rental payment and principal maturities from February 1, 1983 to December 31, 1983 on such government-guaranteed obligations;

b) all related interest charges up to January 31, 1983 on total outstanding government-guaranteed obligations, inclusive of the applicable withholding taxes on the relevant foreign remittances for interest payments; and

c) all related interest charges from February 1, 1983 to December 31, 1983 on the outstanding direct loans (net of principal maturities prepaid as required in (a) hereof).

The guarantor institution will then be responsible for paying the creditors of CDCP the 1983 maturities on such government-guaranteed obligations.

After CDCP has made the payments/prepayments herein, CDCP shall not be required to make further payments for interests on such government-guaranteed obligations to, and inclusive of, December 31, 1983.

4. With respect to CDCP obligations wherein one government financial institution guarantees another, the institution (*i.e.*, the primary creditor) which directly extended the credit facility to CDCP shall be the entity that is the subject of Items Nos. 1 and 2 above.

5. For purposes of determining the peso equivalent of the portion of the obligations referred to in Item Nos. 2 and 3 above which are foreign currency-denominated, the conversion rate to be used shall be the Central Bank guiding rates as of January 19, 1983, as follows:

US$ 1.00	=	₱ 9.305
DM 1.00	=	3.8829
M$ 1.00	=	4.1193

Furthermore, for the 1983 interest maturities for which the reference base rates (*i.e.*, Prime, London Interbank Offered, Singapore Interbank Offered, and the Manila Reference Rates) have not been determined by the concerned creditors as stipulated in their respective credit or loan agreements with CDCP, the reference base rates to be used for calculating the interest payable shall be the published rates as of January 19, 1983, as follows:

	% per annum
London Interbank Offered Rate	8-15/16%
Singapore Interbank Offered Rate	9%
U.S. Prime Rate	11%
Manila Reference Rate (180 days)	15-5/16%

6. All outstanding collaterals, securities, and guarantees related to the aforesaid direct obligations and government-related obligations, that are converted into shares of stock of CDCP in accordance with Item Nos. 1, 2, and 3 above, shall be released to CDCP by the government financial institutions concerned.

Supreme Court E-Library

On April 25, 1983, a special stockholders' meeting, presided by petitioner, was held whereby stockholders representing more than two-thirds (2/3) of the outstanding capital stock of CDCP approved the increase of its authorized capital stock from Php 1.6 to 2.7 billion in accordance with LOI 1295. Thus, the CDCP, pursuant to said letter, converted some of its obligations to GFIs into equity.

Consequently, CDCP issued common shares to DBP, NDC, GSIS, LBP, PEFLGC, and preferred "D" shares to PNB in consideration for the extinguishment of some of CDCP's outstanding loan obligations to said GFIs, all of which were duly recorded in its corporate books. Subsequently, in December 1983, the SEC approved the increase of CDCP's authorized capital stock, and the corresponding CDCP Certificates of Stock were issued in the names of DBP, GSIS, LBP, PEFLGC, and PNB, to wit:

Certificates of stock issued	Name	No. of shares issued to GFIs
Cert. of Stock No. 40269[5]	DBP	26,987,477 common shares
Cert. of Stock No. 40270[6]	PEFLGC	37,584,577 common shares
Cert. of Stock No. 40271[7]	GSIS	47,490,000 common shares
Cert. of Stock No. 40272	LBP	657,836 common shares
Cert. of Stock No. N[8]	PNB	25,500,000 Preferred Class "D"

In the event that, after conversion of the aforesaid obligations and maturities into CDCP common shares, there would be balances still remaining on the related obligations, the government financial institutions concerned shall release the covering collaterals, and securities in proportion to the reduction in amount of the related obligations.

This Letter of Instruction shall take effect immediately.

Done in the City of Manila, this 23rd day of February, in the year of Our Lord Nineteen Hundred and Eighty Three.

[Sgd.] President Ferdinand E. Marcos

[5] *Rollo*, Vol. 2, p. 1291.

[6] *Id*. at 1289.

[7] *Id*. at 1288.

[8] The records do not indicate the certificate of stock issued to PNB.

Supreme Court E-Library

The total subscription of the above issuance of shares of stock pursuant to LOI 1295 amounted to Php 1,405,202,000 or 1.4 billion.

Thus, with the implementation of LOI 1295, respondents-GFIs became the majority stockholders of CDCP to the extent of 70% of the authorized capital stocks. The change in the corporation's ownership was made public through various announcements.[9] CDCP was later renamed to PNCC to reflect the Philippine Government stockholding, and became a government-acquired asset corporation. Consequently, the various GFIs were given seats in the Board of Directors of PNCC and participated in the management of the company.

On August 19, 1987, PNCC issued Certificate of Stock No. 43032 in the name of NDC for 14,699,000 shares of common stock.

Meanwhile, sometime in 1988, pursuant to Administrative Order Nos. 14 and 64, DBP, PNB, PEFLGC, and NDC transferred their interests in PNCC to the Republic of the Philippines which in turn conveyed them to the Asset Privatization Trust (APT), now the Privatization and Management Office, for disposition to the private sector pursuant to the government's privatization program.

On May 31, 1996, more than a decade after LOI 1295 was implemented, petitioner filed a complaint before the SEC SICD docketed as SEC Case No. 05-96-5357 entitled *Rodolfo M. Cuenca v. PNCC, et al.*, for the SEC to determine and declare whether the GFIs were registered stockholders of PNCC and the number of shares held by each of them and to compel PNCC to call and hold regular stockholders' meetings and election of directors every year.

Petitioner averred that while PNCC issued the above specified certificates of stock to the GFIs pursuant to LOI 1295, the GFIs however refused to cancel and never did cancel the loans in their books as payment for the shares issued in their names

---

[9] *Rollo*, Vol. 2, p. 1877; Petitioner's Memorandum, par 2.8.

Supreme Court E-Library

by PNCC as "they considered it to be a diminution of the value of their investments." Thus, petitioner claimed that some of the GFIs refused to accept delivery of the stock certificates from PNCC while others were not even aware of the issuance of the certificates of stock in their names. Consequently, respondents-GFIs continued to charge and receive payments for their loan and interest charges from PNCC though these loans were supposed to have been converted into common stock in 1983 pursuant to LOI 1295.

In March 1998, with the idea of spinning-off its toll-way operations, PNCC scheduled a special stockholders' meeting on April 14, 1998. On March 31, 1998, petitioner filed before the SEC SICD an Urgent Application for Temporary Restraining Order (TRO) and Writ of Preliminary Injunction seeking to enjoin PNCC from allowing the GFIs to vote their shares of stock in PNCC, either issued or subscribed, pursuant to LOI 1295, and from exercising any right arising from the shares.

On April 14, 1998, the date of the special stockholders' meeting of PNCC, the SEC SICD, through its hearing officer, granted petitioner's urgent application and issued a TRO enjoining the GFIs from voting their shares of stock in PNCC.[10] Thereafter, the parties presented their respective preliminary evidence during the hearings for the issuance of a preliminary injunction.

Meanwhile, despite the pendency of SICD SEC Case No. 05-96-5357, petitioner filed a Third Amended Complaint[11] before the Makati City Regional Trial Court (RTC), Branch 142, docketed as Civil Case No. 95-1356 and entitled *Rodolfo M. Cuenca, for and in behalf of PNCC v. APT, et al.* for (1) enforcement and strict compliance with LOI 1295; (2) cancellation of all penalties, interest, and surcharges accrued after December 31, 1982; (3) enjoinment of the GFIs from receiving any real or personal properties from PNCC; and

---

[10] *Rollo*, Vol. 1, pp. 367-368; April 13, 1998 SEC SICD Order issued by Hearing Officer Rosalina Tividad-Tesorio.

[11] *Id*. at 1074-1084.

Supreme Court E-Library

(4) cancellation of the transfer of Lot 3, Block 1, RL-04-000001 covered by Transfer Certificate of Title (TCT) No. 34996 to APT.

On September 8, 1998, the SEC SICD issued an Order[12] granting the preliminary injunction. PNCC's Motion for Reconsideration was then denied in the December 21, 1998 SEC SICD Omnibus Order.[13] Thus, on January 8, 1999, PNCC filed a Petition for *Certiorari*[14] before the SEC *en banc* to review and set aside the September 8, 1998 and December 21, 1998 SEC SICD Orders, docketed as SEC-EB Case No. 640. On March 14, 2000, the SEC *en banc* issued an order dismissing PNCC's petition. Consequently, PNCC brought before the CA the SEC *en banc* March 14, 2000 Order through a Petition for Review,[15] docketed as CA-G.R. SP No. 58117.

In the meantime, on May 20, 1999, petitioner filed a Motion to Admit Amended Complaint in SEC SICD Case No. 05-96-5357, which was granted despite oppositions from PNCC and the GFIs. Respondents PNCC and GFIs then filed their respective answers to the amended complaint.

On March 23, 2000, PNCC filed a Motion to Designate Hearing Panel[16] on the ground that the instant case would be better heard and resolved by a hearing panel of three than by a sole hearing officer, considering the interests the Philippine Government holds in PNCC through the GFIs. This was opposed by petitioner. Nonetheless, while not finding any valid reason for said motion, respondent SEC SICD Hearing Officer Alberto P. Atas granted PNCC's motion through the April 6, 2000 Order[17] "to allay respondent PNCC's fear that it may not be able to obtain a sense of fairness and justness in the determination of

---

[12] *Id*. at 369-379; per Hearing Officer Paulino Q. Gallegos.

[13] *Id*. at 382-387; per Hearing Officer Alberto P. Atas.

[14] *Id*. at 936-961.

[15] *Id*. at 251-308.

[16] *Id*. at 415-419.

[17] *Id*. at 421.

Supreme Court E-Library

the merits of its claims." No Motion for Reconsideration of the April 6, 2000 Order was filed by petitioner.

Consequently, SEC SICD Director Daisy Besa-De Asis designated respondents Hearing Officers Alberto P. Atas, Julito F. Fabrero, and Nathaniel A. Lobigas as the three (3)-person Hearing Panel.

During the hearings of the instant case, through a May 4, 2000 Order, the Hearing Panel admitted almost all of petitioner's exhibits. On May 8, 2000, PNCC filed an Amended Answer[18] raising a new matter of the April 14, 2000 Deed of Confirmation and June 7, 2000 Supplement to Deed of Confirmation. On June 1, 2000, the Hearing Panel admitted PNCC's Amended Answer through an Order.[19]

On June 2, 2000, the Hearing Panel scheduled a new preliminary conference on June 13, 2000. At the hearing on June 5, 2000, due to conflicts with the schedules of some of the parties' counsels, the preliminary conference was moved to June 29, 2000. However, on June 6, 2000, PNCC filed an Urgent Motion[20] praying that the preliminary conference be reset back to the original schedule of June 13, 2000 so as to follow the proviso in the SEC Rules of Procedure. PNCC's Urgent Motion was granted through a June 8, 2000 Order,[21] and the preliminary conference was reset back to June 13, 2000.

In the preliminary conference on June 13, 2000, petitioner adopted his previous preliminary conference brief dated November 15, 1999. PNCC and APT filed their preliminary conference briefs dated June 8, 2000 and June 13, 2000, respectively; while DBP, GSIS, PNB, and PEFLGC adopted their respective preliminary conference briefs previously filed. On the same date, petitioner was barred from presenting additional evidence due to his failure to file a reply to PNCC's Amended

---

[18] *Id.* at 432-461.

[19] *Id.* at 464.

[20] *Id.* at 466-469.

[21] *Id.* at 471.

Supreme Court E-Library

Answer and to file an amended preliminary conference brief together with the affidavits of witnesses as required by the new SEC Rules.

On June 13 and 14, 2000, PNCC adopted the testimonial and documentary evidence it presented during the hearing on the preliminary injunction as part of its evidence-in-chief and adduced further additional witnesses and documentary evidence to substantiate the new matter presented in its amended answer. The GFIs adopted PNCC's evidence which was orally offered by PNCC over petitioner's objection.

The Hearing Panel scheduled the reception of petitioner's rebuttal evidence on June 19 and 20, 2000. However, on June 19, 2000, instead of presenting rebuttal evidence, petitioner filed a Motion to Admit Second Amended Complaint, but an opposition was filed to it by respondents for being dilatory.

On June 21, 2000, PNCC filed a Motion to Terminate Plaintiff's Rebuttal Evidence and to Submit the Case for Decision on the Merits[22] which was opposed[23] by petitioner. On July 3, 2000, the Hearing Panel issued an Omnibus Order[24] denying petitioner's motion to admit second amended complaint, granted PNCC's motion to terminate petitioner's rebuttal evidence, and submitted the case for resolution on the merits. Thus, the instant case was submitted for decision on the merits based on the pleadings, evidence, and other submissions of the parties.

The Ruling of the SEC SICD

On July 10, 2000, the Hearing Panel rendered its Decision dismissing petitioner's complaint for lack of merit and revoking the writ of preliminary injunction issued on September 8, 1998. The *fallo* reads:

---

[22] *Id*. at 472-480.

[23] *Id*. at 481-498.

[24] *Id*. at 508-512.

Supreme Court E-Library

WHEREFORE, plaintiff's Complaint is hereby dismissed for lack of merit and the Orders dated April 14, 1998 and September 8, 1998 are hereby revoked and set aside.[25]

The Hearing Panel found that the evidence presented by PNCC and GFIs constituted substantial proof of the implementation of LOI 1295. It reasoned that not only did PNCC issue the shares of stock as shown in its stock ledger cards but such fact was corroborated by Caval Securities Registry, Inc., PNCC's stock transfer agent, which prepared PNCC's September 15, 1987 Schedule of Subscription.[26] Moreover, prior to the filing of the instant case, the GFIs have been nominating their representatives to PNCC's Board of Directors which is an attribute of ownership of shares of stock in PNCC.

The Hearing Panel also took cognizance of the April 14, 2000 Deed of Confirmation[27] and the June 7, 2000 Supplement to Deed of Confirmation[28] executed by the GFIs, which erased all doubts on the implementation of LOI 1295 by the conversion of the GFIs' loan receivables from PNCC into the latter's equity. Thus, with the clear consideration of loan receivables for the shares of stock, the shares issued to the GFIs cannot in any way be considered "watered stocks." It cited Section 62 of the Corporation Code which expressly allows the issuance of shares of stock in consideration for previously incurred indebtedness.

Moreover, the Notes to the Financial Statements[29] on the Report on Examinations of Financial Statements[30] for comparative periods of December 31, 1982 and December 31, 1983 prepared by independent auditors from Carlos J. Valdes & Co., Certified Public Accountants, clearly show the reduction of PNCC

---

[25] *Supra* note 3, at 540.

[26] *Id*. at 529.

[27] *Rollo*, Vol. 1, pp. 986-991.

[28] *Id*. at 992-996.

[29] *Id*. at 1052-1058.

[30] *Id*. at 1048-1051.

Supreme Court E-Library

loan obligations. Specifically, Note No. 11[31] stated that as of December 31, 1983, total obligations already converted into equity amounted to Php 1,382,202 or roughly 1.4 billion representing the increase of authorized capital stock of PNCC.

On the other hand, the Hearing Panel found the pieces of evidence presented by petitioner, most of which were the same ones presented by respondents, to be inconsequential and insufficient to overthrow the weight of the evidence presented by respondents that a conversion of PNCC's debt into equity was implemented. It ratiocinated that the "badges of fraud" pointed out by petitioner are inconsequential as no clear and convincing evidence was presented by petitioner, and that allegations cannot take the place of proof. Likewise, the lack of a subscription agreement was not fatal to the shares of stock issued to the GFIs as LOI 1295 in no uncertain terms mandated such conversion of debt-to-equity which was duly approved by the stockholders of PNCC in increasing its authorized capital stock precisely pursuant to LOI 1295.

Anent the August 15, 1995 Memorandum of Agreement[32] executed by the Department of Finance (DOF), APT, and PNCC, whereby PNCC assigned to APT and the DOF Lot 3, Block 1, RL-04-000001 covered by TCT No. 34996, such did not by far prove that PNCC paid its obligations to PNB and DBP, which transferred their assets to the National Government, and the shares PNCC issued to these GFIs were without consideration. Evidence shows that PNCC owed PNB Php 1.79 billion and DBP Php 629 million, but what were converted into equity were only Php 255 million for PNB and Php 269.874 million for DBP, thus leaving outstanding balances of Php 1.535 billion for PNB and Php 359 million for DBP. These outstanding and unconverted loan credits were the subject of the assignment of receivables to APT.

---

[31] *Id*. at 1056.

[32] *Id*. at 349-355.

Supreme Court E-Library

In fine, the Hearing Panel cited the resolution of the 1992 case of *Children's Garden of the Philippines v. APT*,[33] where this Court ruled that the implementation of LOI 1295 was already a *fait accompli*; thus, there was clear recognition by the Court of the factual conversion of GFIs' loan credits to PNCC shares.

As regards NDC, the Hearing Panel dismissed the complaint against it for failure of petitioner to state a cause of action as the issuance of 14,699,000 shares of common stock of PNCC in favor of NDC in 1987 was pursuant to LOI 1136 and not LOI 1295, and the shares were issued for valuable consideration.

The Ruling of the SEC *En Banc*

With the adverse ruling against him, petitioner timely filed his Notice of Appeal[34] and Petition for Review on *Certiorari* and/or Memorandum on Appeal.[35] Aside from assailing the July 10, 2000 SEC SICD Decision, petitioner also assailed the July 3, 2000 Omnibus Order terminating the presentation of his rebuttal evidence and submitting the case for decision on the merits, and the June 27, 2000 Preliminary Conference Order[36] barring him from presenting additional witnesses as part of his evidence-in-chief. Petitioner raised before the SEC *en banc* the allegations that the Hearing Panel conspired with PNCC in railroading the trial and issuing the questioned Orders and Decision.

Among other things, petitioner assails the "speed," taking only seven (7) days from the date the case was submitted for decision, with which the Hearing Panel came out with a "grammar-perfect" decision. It concluded that it was PNCC which prepared the decision, pointing out numerous instances where the text of the assailed decision is identical to or very similar to some portions of PNCC's petitions in another case.

---

[33] G.R. No. 101057, February 7, 1992 (Resolution).

[34] *Rollo*, Vol. 1, pp. 645-647.

[35] *Id.* at 542-644.

[36] *Id.* at 515-517.

Supreme Court E-Library

Subsequently, the SEC *en banc* issued its August 8, 2000 Order denying petitioner's appeal and affirming *in toto* the July 10, 2000 Decision of the SEC SICD. The decretal portion states:

> FINDING NO REVERSIBLE ERROR, therefore, the herein Appeal should be, as it is hereby DISMISSED.
>
> The 10th July 2000 Decision in SICD Case No. 05-96-5357 is herewith AFFIRMED *in toto*.
>
> Costs adjudged against the appellant.[37]

The SEC *en banc* found that petitioner banked on sweeping speculations and assumptions except the significant and substantial proof to corroborate the serious charges leveled against the Hearing Panel. It reasoned that petitioner had not shown malice, bad faith, or corrupt purpose on the part of the Hearing Panel to warrant the reversal of the assailed Decision.

Moreover, it pointed out that petitioner failed to procedurally appreciate the import of the mandatory requirements set forth in the SEC Rules of Procedure in effect at that time, as the Hearing Panel merely adhered to Rule V, Sec. 4 of said Rules of Procedure, which provides that "hearings shall be commenced not later than 15 days from the date of the termination of the preliminary conference and completed within 20 days from the date of the first hearing." Besides, according to the SEC *en banc*, the proceedings in the SEC SICD were summary in nature; thus, "speed" seemed to ensue when the case was heard and decided.

On the issue of violation or infringement of petitioner's right to due process, the SEC *en banc* found no basis for it, as the summary nature of the proceedings below has to be followed by the Hearing Panel. Moreover, the SEC *en banc* found a dearth of evidence to lend support to petitioner's contention.

Finally, the SEC *en banc* likewise relied on the GFIs' ratification of their subscription to the shares issued by PNCC pursuant to

---

[37] *Id*. at 694.

Supreme Court E-Library

LOI 1295 to erase any doubt about its implementation and the extinguishment of PNCC's unpaid loan credits to the extent of such issuance of shares of stock.

The Ruling of the Court of Appeals

Aggrieved, on August 24, 2000, petitioner raised through a Petition for Review[38] before the CA the August 8, 2000 SEC *en banc* Order dismissing his appeal, docketed as CA-G.R. SP No. 60366. Petitioner likewise assailed in its CA petition the SEC SICD June 27, 2000 Preliminary Conference Order, July 3, 2000 Omnibus Order, and July 10, 2000 Decision.

Thereafter, through its assailed November 29, 2000 Decision,[39] the CA denied and dismissed the petition for review for lack of merit; thus, it upheld the SEC *en banc* order affirming the SEC SICD decision which dismissed petitioner's complaint. The CA found that neither the SEC *en banc* nor the SEC Hearing Panel committed grave abuse of discretion amounting to lack or excess of jurisdiction in rendering their respective orders and decision.

The appellate court failed to see any rhyme or reason in finding fault in or to disturb the findings of the SEC *en banc* on its ruling regarding the alleged suspicious and compelling badges of fraud pointing to a conspiracy between the Hearing Panel and PNCC. It quoted with approbation the quasi-judicial agency's disquisition on this matter. Moreover, it reasoned that there was nothing startling or irregular in the fact that the text of the same decision was similar in language with the text of the pleadings filed by PNCC as the Hearing Panel is allowed by the Rules to adopt any part of the position papers or draft decisions the parties had filed in their resolution or decision. As regards the constitution of the three-person Hearing Panel, the CA held that by not filing a motion for reconsideration of the order granting the constitution of the panel, petitioner could not now evoke suspicion on it.

---

[38] *Id.* at 695-877.

[39] *Supra* note 2.

Supreme Court E-Library

The CA further upheld the summary proceedings before the Hearing Panel for being in accord with the SEC's New Rules of Procedure, and, thus, such could not be prejudicial to petitioner. As regards the admission of PNCC's amended answer, the CA held that such could not be considered as a conspiratorial act as petitioner did not oppose such admission.

On the issue of the preliminary conference brief being merely permissive, the CA noted that during the June 5, 2000 hearing, it was specifically ordered by the Hearing Panel for the parties to file their respective briefs with attached affidavits of their witnesses before the actual preliminary conference. Thus, petitioner could have prepared and filed his brief before the June 13, 2000 preliminary conference. However, petitioner chose to remain silent and simply adopted his previous preliminary conference brief. Petitioner never made known to the Hearing Panel his assertion that the filing of his brief was merely permissive. Besides, it was the Hearing Panel who had the say on whether preliminary conference briefs should be filed or not.

On the issue of the limitation on the presentation of petitioner's rebuttal evidence, the CA likewise found it untenable as he could have filed a reply to traverse the new one-paragraph allegation in the amended answer or, in the alternative, referred to supporting documents and affidavits negating such new matter in his preliminary conference brief. Petitioner did neither. The CA then opined that "[petitioner] could not now cry foul over his lapses as due process is not violated where a person is given the opportunity to be heard but chooses not to give his side."

Likewise, the CA reasoned that petitioner could not assail the findings of facts and conclusions of law by the Hearing Panel as such are based on the aggregate evidence presented by the parties. It pointed out that the evidence presented during the hearings for the issuance of a preliminary injunction was preliminary or only a sample to support the issuance of the injunctive writ. Verily, the CA ruled that the findings of the Hearing Officer in the issuance of the TRO and injunctive writ could not pre-empt the conclusive findings of the tribunal after

Supreme Court E-Library

due trial and presentation of all the evidence adduced by the parties. Thus, the CA was convinced that petitioner was indeed accorded due process and given ample opportunity to ventilate his case.

In fine, the appellate court likewise held the applicability of *Children's Garden of the Philippines*[40] and the fact that the assailed issuance of shares of stock to the GFIs was for valuable consideration, that is, the existing loan credit obligations. The CA then ruled that petitioner was guilty of forum shopping for having raised substantially the same issues before the SEC and RTC.

Hence, the instant petition is now before the Court.

Parenthetically, on June 19, 2000, petitioner filed a Notice of Dismissal and Motion to Dismiss Third Amended Complaint[41] in Civil Case No. 95-1356 before the Makati City RTC, Branch 142. Petitioner reasoned that based on the position taken and the admissions made by PNCC and the GFIs in other cases, with respect to the validity of LOI 1295, he was no longer certain if it was proper for him to maintain suit for the enforcement and implementation of said law. The trial court promptly dismissed Civil Case No. 95-1356 through its June 23, 2000 Order.[42]

Similarly, sometime in September 2000, PNCC filed a motion to dismiss CA-G.R. SP No. 58117 before the CA Ninth Division, as said case had been rendered moot and academic by the July 10, 2000 Decision of the SEC SICD Hearing Panel, which lifted and revoked the preliminary injunction granted through the assailed SEC SICD September 8, 1998 Order. Consequently, CA-G.R. SP No. 58117 was dismissed through the September 19, 2000 CA Resolution.[43]

---

[40] *Supra* note 33.

[41] *Rollo*, Vol. 1, pp. 1085-1090.

[42] *Id*. at 1091.

[43] *Rollo*, Vol. 2, p. 1379.

Supreme Court E-Library

The Issues

Petitioner raises the following grounds for our consideration:

I

THE COURT OF APPEALS HAS COMMITTED REVERSIBLE ERROR IN NOT FINDING THAT THE SEC *EN BANC* GROSSLY ERRED IN NOT HOLDING THAT THE PROCEEDINGS BELOW WERE PROCEDURALLY FLAWED BECAUSE THE HEARING PANEL HAD RAILROADED THE TRIAL IN FAVOR OF RESPONDENT PNCC.

A. The Court of Appeals has committed reversible error in not finding that the SEC *en banc* grossly erred in not holding that the Hearing Panel, in issuing the Omnibus Order dated 3 July 2000 terminating the presentation of petitioner's rebuttal evidence and submitting the case for decision on the merits, committed reversible error and grave abuse of discretion.

   i. Respondent PNCC's Motion to Terminate Plaintiff's Rebuttal Evidence was a mere scrap of paper and should not have been given due course by the Hearing Panel.

   ii. The premature termination of petitioner's rebuttal evidence was a denial of his right to due process.

   iii. The cancellation of the 19 and 20 June 2000 trial sessions where petitioner was scheduled to present rebuttal evidence, [sic] was due to the lack of quorum in the Hearing Panel, which was not the fault of petitioner and for which he should not have been penalized.

   iv. The Hearing Panel grossly erred in finding that petitioner could not have presented new or significant evidence on rebuttal, and that petitioner had already presented sufficient rebuttal evidence, considering that said findings contradict each other and are presumptuous and bereft of any factual basis.

B. The Court of Appeals has committed reversible error in not finding that the SEC *en banc* grossly erred in not holding that the Hearing Panel, in issuing the Preliminary Conference

Supreme Court E-Library

Order dated 27 June 2000 (released on 3 July 2000) barring petitioner from presenting additional witnesses as part of his evidence-in-chief, committed reversible error and grave abuse of discretion.

II

THE COURT OF APPEALS HAS COMMITTED REVERSIBLE ERROR IN UPHOLDING THE SEC *EN BANC* ORDER DATED 8 AUGUST 2000 AFFIRMING THE HEARING PANEL'S DECISION DATED 10 JULY 2000.

A. Badges of fraud abound in the pages of the Decision dated 10 July 2000, indubitably showing the Hearing Panel's utter disregard of due process.

B. The SEC *en banc*'*s* and the Hearing Panel's findings of fact are inexplicably the opposite of the findings of fact previously made by Hearing Officer Gallegos and the SEC *en banc*, even though both sets of findings of fact are based on the very same evidence.

C. The Court of Appeals has committed reversible error in finding that petitioner is guilty of forum shopping.

D. The Court of Appeals has committed reversible error in not ruling that the SEC *en banc* grossly erred in not holding that the Hearing Panel committed reversible error and grave abuse of discretion in considering evidence not formally offered and admitted.

E. The Court of Appeals has committed reversible error in not ruling that the SEC *en banc* grossly erred in not holding that the Hearing Panel committed reversible error and grave abuse of discretion in making findings of fact not supported by the evidence on record and in disregarding "overwhelming" evidence.[44]

Petitioner challenges the CA decision on the ground that he was denied due process. He also claims that the CA erred in ruling that the factual findings of the SEC SICD Hearing Panel, as affirmed by the SEC *en banc*, were conclusive on it. Finally, he faults the CA for its failure to appreciate circumstances that

[44] *Rollo*, Vol. 1, pp. 41-42.

Supreme Court E-Library

would not only show denial of due process but of fraud and conspiracy in railroading the instant case against him.

The Court's Ruling

The petition is bereft of merit.

Procedural Due Process

Procedural due process, in gist, is the necessity for notice and an opportunity to be heard before judgment is rendered. Its essence is encapsulated in the immortal cry of Themistocles to Alcibiades: "Strike — but hear me first."[45] Thus, as long as a party is given the opportunity to defend his/her interests in due course, the party would have no reason to complain, for it is this opportunity to be heard that makes up the essence of due process.[46]

In administrative and quasi-judicial proceedings where the magistrates or tribunals hearing the case are not bound by the niceties and finer points of judicial due process, the "cardinal primary" requirements of procedural due process, as gleaned by Justice Laurel from an array of American decisions, were enumerated in *Tibay v. Court of Industrial Relations*, as follows:

(1) The first of these rights is the **right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof**. x x x

(2) Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the **tribunal *must consider* the evidence presented**. x x x

(3) While the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of **having something to support its decision**. x x x

---

[45] *Ynot v. Intermediate Appellate Court*, G.R. No. 74457, March 20, 1987, 148 SCRA 659, 663.

[46] *Estares v. Court of Appeals*, G.R. No. 144755, June 8, 2005, 459 SCRA 604, 623.

Supreme Court E-Library

(4) Not only must there be some evidence to support a finding or conclusion (*City of Manila vs. Agustin*, G.R. No. L-45844, promulgated November 29, 1937, XXXVI O.G. 1335), but the **evidence must be "substantial."** x x x

(5) **The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected**. x x x

(6) The [c]ourt x x x or any of its judges, therefore, **must act on its or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate in arriving at a decision**. x x x

(7) [The court] should, in all controversial questions, **render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decisions rendered**. The performance of this duty is inseparable from the authority conferred upon it.[47] (Emphasis supplied.)

Prescinding from the above requirements, it is thus clear that the proceedings before the SEC SICD Hearing Panel are bound by these requirements. To determine whether petitioner was denied due process as alleged, we will scrutinize the proceedings below.

Proceedings before the Hearing Panel

For clarity, we reiterate the significant and relevant events that transpired which are mainly being assailed by petitioner.

It is undisputed that the instant case was pending for over four (4) years before the SEC SICD, that is, from May 31, 1996 until the rendition of the SEC SICD Decision on July 10, 2000. In the intervening time, petitioner was granted a 20-day TRO on April 13, 1998 and a writ of preliminary injunction was likewise issued in his favor on September 8, 1998.

Meanwhile, on May 20, 1999, petitioner filed a motion to admit amended complaint which was granted by the Hearing Officer. Consequently, PNCC and the GFIs filed their respective

---

[47] 69 Phil. 635, 642-644 (1940).

Supreme Court E-Library

answers to the amended complaint. On May 8, 2000, PNCC in turn filed a motion for leave to admit amended answer, which was not opposed by petitioner, and duly granted by the Hearing Panel on June 1, 2000.

Likewise, PNCC's March 21, 2000 motion to designate hearing panel, while opposed by petitioner, was granted on April 6, 2000 and the Hearing Panel was constituted; however, petitioner did not assail this grant as he failed to file a Motion for Reconsideration of the April 6, 2000 Order.

Consequently, a new preliminary conference was scheduled for June 13, 2000 but was moved to June 29, 2000 due to conflict of schedules of the counsels, but was reset to the original date of June 13, 2000 upon PNCC's urgent motion to conform with the then SEC New Rules of Procedure.

During the preliminary conference of June 13, 2000, petitioner was barred from presenting additional evidence. The preliminary conference order was subsequently issued on June 27, 2000. Petitioner's presentation of rebuttal witnesses was terminated through the July 3, 2000 Omnibus Order which also denied admission of petitioner's second amended complaint and submitted the case for decision on the merits.

On July 10, 2000, the Hearing Panel rendered its Decision dismissing petitioner's case for lack of merit.

Were the foregoing proceedings procedurally flawed as alleged by petitioner? Were the proceedings of the instant case before the SEC SICD Hearing Panel railroaded? Was there a conspiracy between the Hearing Panel and respondent PNCC and the GFIs? Was petitioner's right to due process violated? A review of the then SEC New Rules of Procedure will shed light on the issue of due process.

SEC Rules prescribe a summary procedure

A cursory reading of the then prevailing SEC New Rules of Procedure shows that the proceedings before the Hearing Officers or Hearing Panel are summary in nature and to be conducted

Supreme Court E-Library

expeditiously in the "interest of just, speedy and inexpensive determination of disputes and claims."[48]

Notably, said rules provided:

RULE I

SEC. 4. Nature of Proceedings.— Subject to the requirements of due process, **proceedings before the Commission shall be summary in nature** not necessarily adhering to or following the technical rules of evidence obtaining in the regular courts. Provided, however, that the Rules of Court may apply in a suppletory manner whenever practicable.

x x x x x x x x x

RULE V
PROCEEDINGS BEFORE THE
DESIGNATED HEARING OFFICER

SECTION 1. Preliminary Conference.— In any action, the Hearing Officer shall **set the case for preliminary conference within ten (10) days after the last pleading is filed**, and the parties and their attorneys shall be directed to appear before the Hearing Officer on the dates set on the notice, to consider based on the affidavits, documents and other evidence submitted by the parties:

a. The possibility of an amicable settlement;

b. The simplification of the issues;

c. Schedule hearing which must be undertaken continuously as scheduled until completed and terminated; and

d. Such other matters as may aid in the just and speedy disposition of the case.

The Hearing Officer shall **terminate the preliminary conference ten (10) days after its commencement**, whether or not the parties have agreed to settle their differences.

x x x x x x x x x

---

[48] Introduction or preamble of the SEC New Rules of Procedure adopted and approved on July 15, 1999. It was published on August 14, 1999 in Malaya and became effective on August 29, 1999.

Supreme Court E-Library

SEC. 4. Preliminary Conference Order.— After the preliminary conference, the Hearing Officer shall issue an Order reciting the action taken at the conference; the stipulations made by the parties as to any of the matters considered; a recital of such other evidence as the parties may have agreed upon; the witnesses, if any, to be presented by all the parties; and the scheduled dates of hearing for presentation of all such witnesses. Provided, however, that the **hearings shall be commenced not later than fifteen (15) days from the date of the termination of the preliminary conference and completed within twenty (20) days from the date of the first hearing.** Provided, further, that the failure of a party to present a witness or witnesses on a scheduled hearing date shall be deemed a waiver of such hearing date. Provided, finally, that a party may present such witness or witnesses within the remaining hearing dates.

SEC. 5. Submission of Position Papers and Draft Decisions.— Within fifteen (15) days after the submission of case for resolution, the parties shall submit their position papers setting forth the law and the facts relied upon by them. They shall also be required to submit a draft of the decision or resolution they seek, stating clearly and distinctly the facts and the law upon which it is based. The **Hearing Officer may adopt, in whole or in part, either of the parties' draft decision or resolution, or reject both**.

RULE VI
DECISION

SECTION 1. Decision.— The **Hearing Officer shall render a decision within twenty (20) days from submission of the case for resolution**. (Emphasis supplied.)

No denial of due process

From the foregoing provisions, it becomes clear that petitioner was indeed accorded due process. The requirements spelled out in *Ang Tibay* have been complied with. Verily, a close examination of the proceedings in the SEC SICD in the backdrop of the above rules shows that petitioner's right to due process was not violated. He was indeed accorded ample opportunity to ventilate his position.

First, there is no cause shown for arbitrariness or ill-motive in the constitution of the Hearing Panel. While petitioner opposed

Supreme Court E-Library

PNCC's motion for its constitution, the April 6, 2000 Order granting it was not questioned nor assailed by petitioner in a motion for reconsideration. Verily, the rules allow the constitution of a hearing panel, as Sec. 2 of Rule I, SEC New Rules of Procedure on Definitions provides that a Hearing Officer is "any Commissioner, officer, **body or panel duly designated or created** by the Commission to hear and decide a particular case (emphasis supplied)."

Thus, by failing to question the Hearing Panel's constitution, and by participating in the proceedings before the panel, petitioner had indeed acquiesced to and waived any question on its constitution.

Second, the resetting of the preliminary conference back to the original schedule of June 13, 2000 is well within the authority of the Hearing Panel and pursuant to Rule V, Sec. 1 of the SEC Rules which provides that the preliminary conference be set within 10 days after the last pleading was filed.

Indeed, the last pleading filed was the amended answer to which petitioner opted not to file a reply despite the opportunity to do so. More so, when the amended answer only raised a new one-paragraph matter on the deed of confirmation and its supplement executed by the GFIs. In this setting, we find nothing out of line.

Third, petitioner contends that the SEC Hearing Panel required the submission of preliminary conference briefs for the June 13, 2000 preliminary conference when, under the SEC's Rules of Procedure, the filing of such briefs was not mandatory. In this regard, we do not fault but rather commend the SEC Hearing Panel for taking the necessary steps to ensure that the proceedings are conducted in an orderly fashion. The SEC Hearing Panel, in directing the submission of briefs, was simply mindful of the importance of pre-trial as means of facilitating the disposal of cases by simplifying or limiting the issues and avoiding unnecessary proof of facts at the trial, or exploring the possibility of an amicable settlement or of submission to arbitration, and generally to do whatever may reasonably be

Supreme Court E-Library

necessary to facilitate and shorten the formal trial.[49] Recently, we issued Resolution No. 03-1-09-SC on the Guidelines on Pre-trial and on the Use of the Different Modes of Discovery and Deposition, stressing that pre-trial, if used properly, is a very effective case management tool to obliterate case delay and expedite case processing and adjudication.

In any event, no prejudice could have been suffered by petitioner arising from his inability to file brief for the June 13, 2000 preliminary conference as he had already finished presentation of his evidence. The conference was conducted only with respect to additional matters raised in PNCC's Amended Answer which did not however alter its theory. Moreover, petitioner cannot now say that he failed to file his preliminary conference brief due to short notice as he only received the order granting the resetting on June 9, 2000, a Friday. It is undisputed that the parties were granted enough time through the June 2, 2000 Order setting the original schedule on June 13, 2000 and for the parties to file their respective briefs. Indeed, petitioner had sufficient time to prepare and file his brief.

Fourth, on the issue of not being accorded the opportunity to file an opposition to PNCC's urgent motion to reset the preliminary conference back to June 13, 2000, suffice it to say that the urgent motion was non-litigious, then it may be granted *ex-parte* as the matter raised pertains only to the schedule of the preliminary conference in accordance with the rules. Otherwise, the opposition will further delay the preliminary conference proceeding which the rules precisely obviate.

Fifth, the ruling of the Hearing Panel during the June 13, 2000 preliminary conference barring petitioner from presenting additional witnesses is within its authority and competence. Indeed, the reasons given for such curtailment were that petitioner failed to file his reply to address the sole new matter raised in the amended answer, to file an amended preliminary conference brief required by the panel, and to submit the affidavits of his witnesses required to be appended to his brief.

---

[49] *Taroma v. Sayo*, G.R. No. L-37296, October 30, 1975, 67 SCRA 508, 512.

Supreme Court E-Library

While the SEC New Rules of Procedure allows the testimony of adverse witnesses sans their affidavits, the records do not show that petitioner informed the Hearing Panel of the names of his additional witnesses, the description of their testimony, and the documentary evidence they would identify except the general description that they are adverse witnesses. Indeed, petitioner did not dispute these except to cry foul that the curtailment of presenting additional witnesses and evidence violated his right to due process. Given the fact that petitioner was hedging and was, so to say, "fishing" for evidence, it is but proper that he was barred from further presenting additional witnesses in order not to needlessly prolong the proceedings.

Sixth, in the same vein, the ruling of the Hearing Panel to terminate petitioner's presentation of rebuttal evidence in the July 3, 2000 Omnibus Order is likewise well-taken. Indeed, the Hearing Panel granted petitioner's oral motion for presentation of rebuttal evidence but limited it to the testimony of petitioner himself and Mr. Froilan V. Bacuñgan. However, on the scheduled date for their testimony, petitioner presented other witnesses and again went on a "fishing expedition." Given that no persuasive additional evidence was forthcoming, the termination of rebuttal evidence is proper. Besides, as correctly ruled by the Hearing Panel, additional evidence of the same class may be dispensed with if such would not add anything substantial or material to what has already been presented.

Petitioner however argues that by the termination of his rebuttal evidence, he was deprived of the right to prove that (1) the signatories to the Deed of Confirmation and Supplement were not authorized by their respective Boards of Directors; (2) the GFIs have not actually cancelled PNCC's loan in their books; and (3) the GFIs have likewise not cancelled the interest, penalties, adjustments for peso devaluation, and other surcharges that accrued PNCC's loan from 1982 to 2000.[50]

The records reveal that petitioner could very well have introduced evidence on the alleged non-cancellation of the loans

---

[50] *Supra* note 1, at 81.

Supreme Court E-Library

and other charges in the books of the GFIs during the presentation of his evidence-in-chief. Having failed to do so, petitioner can no longer belatedly interject such evidence into the record through the right to introduce rebuttal evidence. Such evidence, if any, can be considered as forgotten evidence which is evidence already existing at the time of the trial but was not presented at that stage of the proceedings.

Anent the authority of the signatories to the Deed of Confirmation and Supplement, petitioner could also have confronted PNCC's witnesses, especially Atty. Raul Villanueva who was presented to prove this fact, when they testified before the SEC Hearing Panel. Petitioner again failed to do this. Lastly, the SEC Hearing Panel had determined that there was sufficient evidence on record to render an informed judgment on the issues of fact before it. Thus, there is nothing irregular in the discontinuation of the presentation of rebuttal evidence.

Seventh, the disallowance of petitioner's second amended complaint is also proper as the proceedings were already at the late stage, and it was not expeditious to go back again to the stage for respondents to file their answers and set anew a fourth preliminary conference. Besides, the amendment which petitioner wanted to be incorporated refers to the sole new issue in PNCC's amended answer, which he could have addressed with a reply to the amended answer or through an amended preliminary conference brief. Petitioner did neither. He had thus waived his right to address the sole new matter raised in the amended answer; and if otherwise, the summary and expeditious nature of the proceedings below would be duly compromised. Indeed, when a party is given ample opportunity to present his case, his failure to do so is not a denial of due process.

In no uncertain terms, the CA explicated that the assailed acts of the SEC Hearing Panel considered as badges of fraud by petitioner find legal mooring either in the SEC's Rules of Procedure or are within its quasi-judicial powers. Petitioner's participation in the proceedings and actions taken by the panel or his failure to vigorously pursue his objections to them can only be construed to be an acquiescence to such actions or waiver of his rights. Petitioner cannot now be heard to complain.

No evidence of fraud and conspiracy

We now move on to the issues of fraud and conspiracy which petitioner foisted to show that the instant case was railroaded and fast-tracked against him.

Petitioner would like us to believe that the CA and the SEC *en banc* erred in not considering the badges of fraud he presented to show that the case was railroaded. First, petitioner points out that the SEC SICD only took seven (7) days to come out with a "grammar-perfect" decision. Second, petitioner strongly asserts that the proceedings were fast-tracked due to the government's action to privatize some of the assets of the GFIs which include the subject shares of stock. Third, petitioner presents numerous instances in the July 10, 2000 SEC SICD Decision which, he proffers, indubitably showed that it was not the Hearing Panel which penned the decision but respondent PNCC.

We are not persuaded.

Petitioner has not shown any proof or substantial evidence of fraud and conspiracy. Indeed, he who alleges fraud must prove it for basic is the rule that *actori incumbit onus probandi*.[51] Differently stated, upon the plaintiff in a civil case, the burden of proof never parts.[52] In the case at bar, the petitioner must therefore establish his allegation of fraud by a preponderance of evidence.[53] Once again, petitioner utterly failed to do this. In addition, it is an aged-old rule in civil cases that he who

---

[51] Upon the plaintiff lies the burden of proof.

[52] See *Acabal v. Acabal*, G.R. No. 148376, March 31, 2005, 454 SCRA 555, 569; *Citibank, N.A. MasterCard v. Teodoro*, G.R. No. 150905, September 23, 2003, 411 SCRA 577, 583; *Luxuria Homes, Inc. v. CA*, G.R. No. 125986, January 28, 1999, 302 SCRA 315, 325.

[53] See REVISED RULES OF EVIDENCE, Rule 133, Sec. 1. See *also*: *Borlongan v. Madrideo*, G.R. No. 120267, January 25, 2000, 323 SCRA 248, 255; citing *New Testament Church of God v. Court of Appeals*, G.R. No. 102297, July 14, 1995, 246 SCRA 266, 269; and *Republic v. Court of Appeals*, G.R. No. 84966, November 21, 1991, 204 SCRA 160, 168.

Supreme Court E-Library

alleges a fact has the burden of proving it and a mere allegation is not evidence.[54] Fraud is never presumed, but must be established by clear and convincing evidence.[55]

Indeed, a cursory reading of the comparative statements presented by petitioner proves nothing beyond the fact that they are similarly worded. Even granting *arguendo* that these statements in the decision were taken from the pleadings of PNCC, no ill-motive or adverse conclusion may be derived from said decision as the SEC New Rules of Procedure, specifically Sec. 5 of Rule V, allows the Hearing Officer to adopt in whole or in part a draft decision, position paper, or other pleadings for that matter filed by the parties. While it is true that the parties did not file any draft decision or position paper, yet the Hearing Panel is not barred to adopt a part or portion of any pleadings filed by the parties. If the Hearing Panel is allowed to adopt a draft decision or position paper, more so is it allowed to adopt any portion from the pleadings filed by the parties.

Moreover, Sec. 1 of Rule VI particularly provides that the decision must be rendered within 20 days from the submission of the case for resolution. Thus, by complying with the directive provided by said Rules, the Hearing Panel cannot be faulted in rendering the July 10, 2000 Decision after only seven (7) days from the submission of the instant case for resolution on the merits. In fact, the Hearing Panel must be commended for doing its job expeditiously.

Anent the issue of the government's privatization as the cause of the alleged rapid processing of the case, such is utterly specious and bereft of any factual basis. Petitioner wants us to believe that the government, through the GFIs, exerted pressure on the Hearing Panel and the SEC *en banc* for a favorable judgment. This is utterly an unfounded innuendo as petitioner has not presented even an iota of proof to substantiate his accusation. Allegations are easily leveled but proving them is another matter.

---

[54] *Luxuria Homes, Inc. v. Court of Appeals*, *supra* note 52, at 325.

[55] *Bravo-Guerrero v. Bravo*, G.R. No. 152658, July 29, 2005, 465 SCRA 244, 264.

Supreme Court E-Library

In the absence of proof, petitioner only has bare allegations and nothing more.

Findings of facts of administrative bodies accorded finality when supported by substantial evidence

On the merits of the case, suffice it to say that the findings of facts and conclusions of law of the SEC are controlling on the reviewing authority. Indeed, the rule is that the findings of fact of administrative bodies, if based on substantial evidence, are controlling on the reviewing authority.[56]

We disagree with petitioner that there was a change in the findings by the Hearing Panel *vis-à-vis* the findings of the Hearing Officer in the grant of the preliminary injunction upon the same set of evidence. It must be borne in mind that the pieces of evidence presented during the hearings for the issuance of the injunctive writ were only preliminary ones, that is, a sampling of the evidence intended to give the tribunal an idea of the justification for the issuance of the injunctive writ pending the decision of the case on the merits. As often repeated, the issuance of an injunctive writ cannot preempt the resolution of the case on the merits. Indeed, the records show that PNCC and respondent GFIs presented additional evidence aside from what were presented during the hearings for the issuance of the injunctive writ. Thus, petitioner has no basis to say that the decision was based on the same evidence presented during the hearings for the issuance of the preliminary injunction, which were held in 1998.

It has been held that it is not for the appellate court to substitute its own judgment for that of the administrative agency on the sufficiency of the evidence and the credibility of the witnesses.[57] The Hearing Panel had the optimum opportunity to review the pieces of evidence presented before it and to observe the demeanor of the witnesses. Administrative decisions on matters within

---

[56] *Bernardo v. Court of Appeals*, G.R. No. 124261, 27 May 2004, 429 SCRA 285, 299.

[57] *Id.* at 299-300.

Supreme Court E-Library

their jurisdiction are entitled to respect and can only be set aside on proof of grave abuse of discretion, fraud, or error of law,[58] which have not been shown by petitioner in this case.

It is well-settled that factual findings of administrative agencies are generally held to be binding and final so long as they are supported by substantial evidence in the record of the case. It is not the function of this Court to analyze or weigh all over again the evidence and credibility of witnesses presented before the lower court, tribunal, or office, as we are not a trier of facts. Our jurisdiction is limited to reviewing and revising errors of law imputed to the lower court, the latter's findings of fact being conclusive and not reviewable by this Court.[59]

The CA found neither reversible error nor grave abuse of discretion on the part of the SEC *en banc* in affirming the decision of the SEC SICD Hearing Panel, which was supported by substantial evidence. Thus, we find no reason to rule otherwise.

LOI 1295 has been implemented

Even without considering our factual determination in *Children's Garden of the Philippines v. APT*,[60] still we arrive at the same conclusion that LOI 1295 was indeed implemented.

First, it is undisputed that shares of stock were issued to the GFIs converting part of their outstanding loan credit to equity with PNCC. The certificates of stock issued attest to this fact. Moreover, the administrative body below had duly debunked any irregularity in the face of these certificates of stock. Second, the records and accounts of PNCC duly reflected such debt-to-equity conversion as attested to by the independent auditors from Carlos J. Valdes & Co., Certified Public Accountants, in the comparative Financial Statements covering the years 1982 and 1983. Third, the due issuance of the shares of stock in the

---

[58] *Id*. at 300; citing *Dadubo v. Civil Service Commisson*, G.R. No. 106498, June 28, 1993, 223 SCRA 747.

[59] *Id*.

[60] *Supra* note 33.

Supreme Court E-Library

names of the GFIs was corroborated by PNCC's stock transfer agent, Caval Securities Registry, Inc. Fourth, the Deed of Confirmation and its Supplement erased any doubt as to the implementation of LOI 1295. Thus, based on these reasons, there can be no doubt as to the implementation of LOI 1295. Corollarily, the shares of stock subject of the instant case issued to the GFIs were for value and thus cannot be considered as void or "watered stocks."

Petitioner guilty of forum shopping

On the issue of forum shopping, we agree with both the SEC *en banc* and the CA that petitioner is guilty of forum shopping. A close perusal of both the Amended Complaint in SICD SEC Case No. 05-96-5357 and the Third Amended Complaint in Civil Case No. 95-1356 shows that both cases are derived from the same factual issues involving substantially the same parties. Although the actions seem to be different, yet it can be seen that there is a splitting of a cause of action.

While, on the one hand, the instant case was for the determination whether the GFIs are indeed stockholders of PNCC and their respective number of shares, and on the other, Civil Case No. 95-1356 was for the enforcement and compliance of LOI 1295, yet both actions involved substantially the same parties, stemming from the same factual antecedent of the debt-to-equity conversion mandated by LOI 1295 and involved the same cause of action that petitioner anchors both complaints, that is, that LOI 1295 was not fully implemented.

In this connection, we reject petitioner's pretense that no identity exists between Civil Case No. 95-1356 and the instant case, both of which substantially involve the same parties, having the same cause of action and which stem from the same factual antecedents. The fact remains that in Civil Case No. 95-1356, petitioner prayed for the enforcement and compliance of LOI 1295, the same relief he could have asked for in the instant case before the SEC proceedings below. The fact that he made PNCC as complainant in the civil case does not alter the essence of said case in which the GFIs are made

Supreme Court E-Library

to answer substantially the same issues raised in the instant case. It is indeed revealing that petitioner withdrew his third amended complaint before the trial court on June 19, 2000 when the instant case was at its last stages before the Hearing Panel. Moreover, while petitioner informed the trial court of the pendency of the instant case, yet petitioner fatally failed to state in his verification and certification[61] the status of the instant case as required by Sec. 5, 1(b)[62] of Rule 7, 1997 Rules of Civil Procedure. Clearly, petitioner is guilty of forum shopping.

SEC has jurisdiction to compel PNCC to hold annual stockholders' meetings and election of board of directors

Finally, it has been settled in *Philippine National Construction Corporation v. Pabion*[63] that PNCC is an acquired asset corporation and not a government-owned and/or controlled corporation (GOCC). In said case, we held that PNCC did not lose its status as a private corporation upon acquisition by the government through GFIs of the majority of its shares of stock. Our determination that PNCC is an acquired asset corporation removed it from the category of a GOCC. Thus, while the SEC has no jurisdiction over GOCCs with original charter or created by special law primarily because they are governed by their charters, it retains jurisdiction over government-acquired asset corporations. Therefore, the SEC may compel PNCC to hold a stockholders' meeting for the purpose of electing members of the latter's board of directors.

WHEREFORE, the instant petition is *DISMISSED* for lack of merit and the November 29, 2000 Decision of the CA in CA-G.R. SP No. 60366 is hereby *AFFIRMED **IN TOTO***. Costs against petitioner.

---

[61] *Rollo*, p. 1084.

[62] SEC. 5. *Certification against forum shopping*.—The plaintiff shall certify under oath in the complaint or initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: x x x (b) **If there is such other pending action or claim, a complete statement of the present status thereof** x x x (emphasis supplied).

[63] G.R. No. 131715, December 8, 1999, 320 SCRA 188.

Supreme Court E-Library

SO ORDERED.

Carpio Morales (Acting Chairperson), Tinga, Nachura,[*] and *Reyes,*[*] *JJ.,* concur.

---

[*] As per September 3, 2007 raffle.