



Republic of the Philippines
SECURITIES AND EXCHANGE COMMISSION
SEC Bldg. EDSA, Greenhills, Mandaluyong City

IN THE MATTER OF:

VANTAGE EQUITIES, INC.

SEC En Banc Case No. 02-09-155

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DECISION

For consideration is the appeal filed on 2 February 2009 by Vantage Equities, Inc. ("VEI") praying that the Commission grant its petition to *cancel the assessment* in the amount of ONE HUNDRED FOUR THOUSAND PESOS (Php 104,000.00) issued by the Corporation Finance Department ("CFD") of the Commission *or reduce the penalty* to be imposed, for its non-compliance with the *Amended Rules Governing Pre-Emptive and Other Subscription Rights and Declaration of Stock or Cash Dividends of Corporations whose Securities are Registered under the Revised Securities Act or Listed in the Stock Exchanges*¹ (the "Rules").

FACTS OF THE CASE

VEI is a publicly listed corporation. On 4 June 2008, VEI's Board of Directors ("BOD") declared a twenty-five percent (25%) stock dividend to its shareholders. On June 27, 2008, during its Annual Stockholders' Meeting, VEI presented to its stockholders the proposal to declare a twenty-five percent (25%) stock dividend, including the necessary amendment to its Articles of Incorporation to accommodate the stock dividend declared. Stockholders owning at least two-thirds (2/3) of the outstanding capital stock ("OCS") approved the proposals.

During the pre-processing of VEI's application for increase of the authorized capital stock ("ACS") from Php ONE BILLION NINE HUNDRED MILLION (P1, 900,000,000) to TWO BILLION TWO HUNDRED FIFTY MILLION (P2, 250,000,000), by way of stock dividends declaration, the Company Registration and Monitoring Department ("CRMD") of the Commission informed VEI that it had *violated Section 5 of the Rules for its failure to submit the requirements within the time prescribed.*

¹ Dated April 12, 1991.

Since the date of approval by the stockholders was 27 June 2008, the last day² of filing of the application with all requirements necessary for approval was 11 August 2008.

The matter was also referred by CRMD to the CFD, because VEI is a listed company under CFD's supervision. The CFD denied the request,³ and VEI was assessed and directed to pay the penalty mentioned above, stating that the company is strictly mandated to comply with the requirements of the Securities Regulation Code,⁴ its implementing rules and regulations, including the subject Rules.

ISSUE

Whether there is valid ground to cancel or reduce the penalty to be imposed upon VEI for non-compliance with the Rules.

RULING

The petition is unmeritorious.

Section 5 of the Rules provides:

"SECTION 5: Notwithstanding the provision of Sec. 2 hereof, in cases where the stock dividend is declared in connection with an increase in authorized capital stock, the following rules shall apply:

- b) *Within forty-five (45) days from the date of approval by the stockholders, the application for increase in authorized capital stock and for the registration of the securities must be filed with the Commission together with all requirements necessary for approval, within the same period the application for listing of shares to cover the dividend declaration shall be filed with the Exchanges.(Emphasis supplied)"*

² **Rule 22 of the Rules of Court** is pertinent, to wit: **How to compute time.** — In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day

³ In its letters dated November 24, 2008 and January 6, 2000, CRMD Comment dated March 18, 2009, p. 2.

⁴ R.A. No. 8799 (2000).

The Rules provide the penalty for late filing, as well:

"SECTION 11: Violation of any of the provisions of these rules shall be subject to any of the following sanctions:

- a) A fine of no less than two hundred (P200.00) pesos nor more than fifty thousand pesos (P50,000.00) plus not more than five hundred (P500.00) pesos for each day of continuing violation."

The main objective of the Rules is: "xxx to closely monitor the offering of the pre-emptive and other subscription rights; to curb delays in the issuance of rights or the distribution of stock dividends and in the payment of cash or property dividends xxx"

VEI alleged that the filing of the complete requirements necessary for the application for increase in authorized capital stock and for the registration of the securities was on 3 October 2008, fifty-three (53) days after the prescribed period. VEI emphasized that the main reason for the delay was the required special audit report that had to be prepared by its external auditors which included an analysis of the retained earnings account for the last five (5) years, hence, the preparation took more than forty-five (45) days to be signed and finalized by the external auditors.⁵

However, the formal acceptance for filing of the same was on 26 November 2008, causing *additional penalties* to be imposed. The filing was *suspended* because VEI wrote CRMD a letter dated 6 November 2008 requesting the reduction or cancellation of the penalties to be imposed against it for violation of the Rules.

On the other hand, the CRMD in its Comment dated 18 March 2009 states that:

"This emphasizes the importance of the procedural requirement in filing of the application. The procedure is mandatory in nature. xxx If we allow the late filing of the application at the will of the external auditor, it would contravene the very purpose for which the rule was created because it will prolong the time of the disposition of stock dividends. The 45 day period is reasonable enough to prepare all the documentary requirements to be submitted in support of the application."

CRMD stressed that Sections 5 (b) and 11(a) of the Rules are specific. Section 5 (b) prescribes the time frame within which the filing of the

⁵ Petition for Review dated 6 February 2009, p. 4.

application must be made, while Section 11 (a) prescribes the penalty for infractions of the Rules and *does not provide any exception.* (Emphasis supplied) Indeed, nowhere in the Rules are there any exceptions. On the contrary, Section 11 (c) provides: "other penalties within the power of the Commission to impose."

The power of the Commission to impose penalties stems from Section 144⁶ of the Corporation Code⁷ which authorizes the Commission to impose penalties for violations of any of the required reportorial requirements.⁸

Moreover, CRMD underlined the fact that it is the policy of the Commission to receive applications for increase of capital only with complete supporting documents.

The allegation of VEI that the days after 3 October 2008 until the eventual acceptance of the filing of the application on 26 November 2008 should not be attributed to it⁹ is unacceptable. Precisely, the filing was suspended and the running of the period continued because of its own act of writing CRMD for the cancellation or reduction of penalties.

WHEREFORE, premises considered, the instant appeal is hereby **DISMISSED** for lack of merit.

SO ORDERED.

Mandaluyong City, 10 June 2010.


E. B. BARIN
Chairperson

⁶ SECTION 144. Violations of the Code. — Violations of any of the provisions of this Code or its amendments not otherwise specifically penalized therein shall be punished by a fine of not less than one thousand (P1,000.00) pesos but not more than ten thousand (P10,000.00) pesos or by imprisonment for not less than thirty (30) days but not more than five (5) years, or both, in the discretion of the court. If the violation is committed by a corporation, the same may, after notice and hearing, be dissolved in appropriate proceedings before the Securities and Exchange Commission: Provided, That such dissolution shall not preclude the institution of appropriate action against the director, trustee or officer of the corporation responsible for said violation: Provided, further, That nothing in this section shall be construed to repeal the other causes for dissolution of a corporation provided in this Code.

⁷ Batas Pambansa Blg.68 (May 1, 1980).

⁸ L. M. Decasa, Handbook on Private Corporations 66 (2009).

⁹ Reply filed May 19, 2009, p. 3.

MA. JUANITA E. CUETO*
Commissioner



RAUL J. PALABRICA
Commissioner



MANUEL HUBERTO B. GAITE
Commissioner



ELADIO M. JALA
Commissioner

*on leave