



Republic of the Philippines
Department of Trade and Industry
Securities and Exchange Commission
SEC Bldg. EDSA, Greenhills, Mandaluyong City

IN THE MATTER OF:

SEC EN BANC CASE NO. 07-07-106

For: Review of CFD's 10 April 2007

**MANUEL L. QUEZON EDUCATIONAL
INSTITUTION**

**Letter-directive to pay penalty
of P391,600.00**

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DECISION

For consideration of the Commission *En Banc* is the *Appeal* dated 27 April 2007 filed by Manuel L. Quezon Educational Institution ("MLQEI", for brevity) on 2 May 2007 for the setting aside of the 10 April 2007 letter-directive of the Corporation Finance Department ("CFD") ordering the company to pay the total penalty of Three Hundred Ninety-One Thousand Six Hundred Pesos (P391,600.00) for various violations of the Securities Regulation Code ("SRC")¹.

The facts are:

CFD assessed MLQEI for the company's failure to file reports, to wit:

Communication to the Company	Reports Not Filed	Penalty
Undated Notice of Hearing (received by the company on 16 December 2004) ²	1. Annual Report (SEC Form 17-A) for fiscal year ended 31 March 2004	P100,000.00
	2. Quarterly Report (SEC Form 17-Q) for the period ended 31 December 2003	P75,000.00
	3. Quarterly Report (SEC Form 17-Q) for the period ended 30 June 2003	P75,000.00
Assessment Letter dated 17 December 2004 ³	Quarterly Report (SEC Form 17-Q) for the period ended 30 September 2003	P75,000.00
Assessment Letter dated 20 December 2004 ⁴	Annual Report (SEC Form 17-A) for the fiscal year ended 31 March 2003	P100,000.00

P425,000.00

¹Republic Act No. 8799 (2000).

²Annex "A" of the *Appeal*.

³Exhibit "F", CFD's Position Paper.

⁴Annex "C", *Appeal*.

On 17 December 2004, CFD also issued a show-cause letter ("show-cause letter")⁵ directing MLQEI to explain why it should not be held liable for failure to submit the following periodic reports:

Report (SEC Form)	Period Ended
Quarterly Report (SEC Form 17-Q)	30 June 2001
Quarterly Report (SEC Form 17-Q)	30 September 2001
Quarterly Report (SEC Form 17-Q)	31 December 2001
Annual Report (SEC Form 17-A)	31 March 2002
Information Statement (SEC Form 17-IS)	Last Saturday of August, 2002
Quarterly Report (SEC Form 17-Q)	30 June 2002
Quarterly Report (SEC Form 17-Q)	30 September 2002
Quarterly Report (SEC Form 17-Q)	31 December 2002

On 20 January 2005, MLQEI filed a *Motion for Reconsideration* dated 19 January 2005⁶, requesting the Commission "to reconsider the penalties imposed against it under an undated 'Notice of Hearing' ... and the letters dated December 17 and 20, 2004".

On 28 February 2005, CFD denied MLQEI's request for an eighty-five percent (85%) reduction, as prayed for in the *Motion for Reconsideration*. Instead, the company was granted a fifty percent (50%) reduction of the total imposed penalties of Eight Hundred Sixteen Thousand Six Hundred Pesos (P816,600.00), or the final reduced penalty of Four Hundred Eight Thousand Three Hundred Pesos (P408,300.00).⁷

In its letter dated 28 March 2005⁸, MLQEI questioned why it was now being assessed Eight Hundred Sixteen Thousand Six Hundred Pesos (P816,600.00) when it was previously assessed the amount of Two Hundred Fifty Thousand Pesos (P250,000.00) only. **CFD treated the letter as an appeal and forwarded the same to the Office of the General Counsel ("OGC")**, including the company's letters of 27 April 2005 and 12 July 2005 supplementary thereto.⁹

On 10 August 2006, OGC presented the matter to the Commission *En Banc*. **The OGC found that the *Motion for Reconsideration* covered only the violations enumerated in the first table herein, with an aggregate total penalty of Four Hundred Twenty-Five Thousand Pesos (P425,000.00)**. The OGC reasoned:

⁵Annex "B", *Appeal*.

⁶Annex "E", *Appeal*.

⁷Annex "F", *Appeal*.

⁸Annex "G", *Appeal*.

⁹Annex "H", *Appeal*.

"Based however on the records of the case submitted to the Office of the General Counsel, it was discovered that the Motion for Reconsideration sought a review of the penalties imposed on the corporation **only in the following:** (1) **undated Notice of Hearing** (a copy of which was received by MLQU on December 16, 2004) **and** the (2) **CFD Letters dated December 17, 2004 and December 20, 2004 respectively.** Said Notice of Hearing made mention of an assessment of penalty totaling only Two Hundred Fifty Thousand Pesos (**P250,000.00**) while the December 17 & 20, 2004 CFD Letters assessed the company penalties amounting only to **P75,000.00** and **P100,000.00** respectively. Nowhere was it indicated that the Motion for Reconsideration referred to an 85% reduction of penalty with P816,600.00 assessment as basis, as indicated in the February 4, 2005 Memorandum to the Commission.

xxx xxx xxx

In the case before us, it was apparent that when the CFD presented its Memorandum dated February 4, 2005 to the Commission en banc relative to the Motion for Reconsideration of MLQEI, **it was based on an assessment to which the party was not properly informed.** Although the information that there were other assessments amounting to P816,600.00 was disclosed to the MLQEI Representative in the November 23, 2004 Hearing, no copy of the latest or final formal assessment amounting to P816,600.00 was furnished to said representative as requested by and granted to the party in the same hearing by the CFD. It was not surprising therefore that the party complained of arbitrariness when the 50% reduction was granted to the Motion for Reconsideration considering that the reduction was not based on the amount of assessment contemplated by the subject motion for reconsideration.

It should be emphasized that verbal agreements or communications made during hearings or conferences should be clearly set in writing by hearing officers to avoid confusion between parties. In the situation at hand, it was not proper for the CFD to present before the en banc a Motion for Reconsideration based on verbal assumptions in the absence of a formal written assessment sufficient to inform a corporation of its violations under the law and sufficient to show that it has understood the proper assessments made against it." (Emphasis ours)

Approving OGC's recommendation, the Commission En Banc instructed CFD **"to resubmit before the Commission en banc its recommendation on the company's Motion for Reconsideration of the assessed amount of P250,000.00 as stated in the undated Notice of Hearing, and P75,000.00 and P100,000.00 as stated in its letters to the company dated December 17 and 20, 2004, respectively."**¹⁰

¹⁰SEC Resolution No. 365, Series of 2006.

Accordingly, CFD, in the Commission *En Banc* meeting of 19 October 2006, presented its Memorandum dated 13 October 2006 **recommending an 85% reduction**, or the payment of only 15% **of the imposed aggregate penalty of Four Hundred Twenty-Five Thousand Pesos (P425,000.00)**, or the amount of Sixty-Three Thousand Seven Hundred Fifty Pesos (P63,750.00). The Commission *En Banc* approved CFD's recommendation.

Thus, CFD issued SEC-CFD Order No. 142, Series of 2006¹¹, directing MLQEI to pay the reduced penalty of Sixty-Three Thousand Seven Hundred Fifty Pesos (P63,750.00). **On 13 November 2006, MLQEI paid the said amount under Official Receipt No. 0007716.**

It appears, however, that even before the resubmission of MLQEI's 19 January 2005 *Motion for Reconsideration* to the Commission *En Banc* and prior to the above-mentioned payment by the company, CFD issued an **assessment letter dated 25 September 2006**¹² imposing a penalty of Three Hundred Ninety-One Thousand Six Hundred Pesos (P391,600.00) **for the administrative charges mentioned in its 17 December 2004 show-cause letter (see second table above).**

On 6 December 2006, MLQEI's request for reconsideration of the said 25 September 2006 assessment letter was denied by CFD.¹³ On 10 April 2007, the company's second request for reconsideration was likewise denied by CFD.

Hence, this *Appeal*.

The ultimate issue to be resolved herein is whether the assessment of 25 September 2006 in the amount of Three Hundred Ninety-One Thousand Six Hundred Pesos (P391,600.00) is subject to the approved 85% penalty reduction, and hence, already included in the Sixty-Three Thousand Seven Hundred Fifty Pesos (P63,750.00) payment made by MLQEI.

We answer in the negative.

SEC-CFD Order No. 142, Series of 2006 clearly shows that the approved 85% reduction does not cover the violations subject of the imposed penalty of Three Hundred Ninety-One Thousand Six Hundred Pesos (P391,600.00), thus:

"Upon consideration of the justifications advanced by the subject company, the Commission xxx resolved to GRANT an eighty five percent (85%) reduction of penalties, to wit:

¹¹ Annex "L", *Appeal*.

¹² Annex "J", *Appeal*.

¹³ Exhibit "C", Second Set of Exhibits, CFD's Position Paper.

Report	For the Periods Ended	Amount of Penalty
1. Quarterly Report (SEC Form 17-Q)	June 30, 2003	P75,000.00
2. Quarterly Report (SEC Form 17-Q)	September 30, 2003	P75,000.00
3. Quarterly Report (SEC Form 17-Q)	December 30, 2003	P75,000.00
4. Annual Report (SEC Form 17-A)	March 31, 2003	P100,000.00
5. Annual Report (SEC Form 17-A)	March 31, 2004	P100,000.00
Total		P425,000.00
Less: 85% Reduction		(P361,250.00)
Reduced Penalty		<u>P63,750.00"</u>

Items 1,3, and 5 above comprise the violations stated in the undated *Notice of Hearing* with a total penalty of Two Hundred Fifty Thousand Pesos (P250,000.00) while items 2 and 4 are the violations mentioned in the 17 December 2004 and 20 December 2004 assessment letters, respectively.

SEC-CFD Order No. 142, Series of 2006 is in accordance with SEC Resolution No. 457, Series of 2006, which was issued pursuant to the **resubmission** by CFD of **MLQEI's 19 January 2005 Motion for Reconsideration**, to wit:

"SEC Res. No. 457, s. of 2006

RESOLVED, To **APPROVE** the request of Manuel Luis Quezon Educational Institution for an Eighty Five Percent (85%) reduction of the **aggregate penalties assessed against it amounting to P425,000.00** or a reduced penalty of P63,750.00." (Emphasis ours)

MLQEI insists in this *Appeal* that its 19 January 2005 *Motion for Reconsideration* already covers the aggregate penalty of Three Hundred Ninety-One Thousand Six Hundred Pesos (P391,600.00) subject of the 25 September 2006 assessment letter. According to MLQEI, the motion clearly stated, thus:

"COMES NOW, MANUEL L. QUEZON EDUCATIONAL INSTITUTION (MLQEI for brevity), xxx respectfully requests the Honorable Commission to **reconsider the penalties** imposed against it **under an undated 'Notice of Hearing'** xxx **and the letters dated December 17 and 20, 2004** xxx." (Emphasis ours).

The contention is bereft of merit.

Aside from the clear language of SEC-CFD 142, Series of 2006, and of SEC Resolution No. 457, Series of 2006, MLQEI's 19 January 2005 *Motion for Reconsideration* could not have validly contemplated and included the total penalty of Three Hundred Ninety-One Thousand Six Hundred Pesos (P391,600.00) because **at the time such motion was filed on 20 January 2005, there was as yet no formal assessment letter covering the said penalty, the pertinent**

assessment letter having been issued only on 25 September 2006. What was then existing was just the 17 December 2004 show cause letter.

In fine, it cannot be said that MLQEI was already seeking reconsideration of the Three Hundred Ninety-One Thousand Six Hundred Pesos (P391,600.00) penalty by virtue of its 19 January 2005 *Motion for Reconsideration*, **because such penalty was, for all legal intents and purposes, not yet considered imposed. In short, there was, in the first place, nothing to reconsider yet.**

This position has its moorings on the principle of due process, and was the very rationale for the above-referred recommendation of the OGC. Indeed, no less than a formal assessment letter is required for the valid imposition of penalties. The function of an assessment letter is to properly apprise the party of the nature, legal basis and computation of administrative penalties, so that the latter could properly respond to it. A show cause letter, on the other hand, merely affords the party an opportunity to avoid liability by explaining and/or justifying the non-compliance with the rules and regulations. Necessarily, before an assessment letter issues, the regulator must first consider the party's reply to the show cause letter.

In the case at bar, when CFD initially presented MLQEI's 19 January 2005 *Motion for Reconsideration* to the Commission *En Banc*, it already included the aggregate penalty of Three Hundred Ninety-One Thousand Six Hundred Pesos (P391,600.00) in the total penalty of Eight Hundred Sixteen Thousand Six Hundred Pesos (P816,600.00), with the latter amount forming the base of the originally approved discount of 50%. **However, as found by the OGC, the penalty of Three Hundred Ninety-One Thousand Six Hundred Pesos (P391,600.00) was, at that time, bereft of a formal written assessment;** hence, its recommendation that CFD re-submit the 19 January 2005 *Motion for Reconsideration* to the Commission *En Banc*.

MLQEI, thus, cannot complain why the penalty of Three Hundred Ninety-One Thousand Six Hundred Pesos (P391,600.00) was removed from the ambit of the 85% reduction notwithstanding that the same was already within the coverage of the previously approved 50% discount.

Besides, lest it forgets, the company itself, in its 28 March 2005 letter-appeal, requested that the previously approved 50% reduction be based "*on the original assessment*" and not on the total amount of Eight Hundred Sixteen Thousand Six Hundred Pesos (P816,600.00).¹⁴ This request belies and contradicts the company's position and/or contention that its 19 January 2005 *Motion for Reconsideration* already covers the penalty of Three Hundred Ninety-One Thousand Six Hundred Pesos (P391,600.00).

Lastly and as adverted to above, SEC-CFD Order No. 142, Series of 2006 granting the request for 85% reduction clearly specified that such discount is to be

¹⁴Supra, Note 8.

based on the total penalty of Four Hundred Twenty-Five Thousand Pesos (P425,000.00) covering only the violations therein enumerated. If MLQEI really believed that the base amount for such 85% discount should be Eight Hundred Sixteen Thousand Six Hundred Pesos (P816,600.00) such that said amount would already be inclusive of the penalty of Three Hundred Ninety-One Thousand Six Hundred Pesos (P391,600.00), **then it should have appealed SEC-CFD Order No. 142, Series of 2006. Unfortunately, it did not.** It was only when the assessment letter dated 25 September 2006 was issued that the company began questioning the base amount for the 85% reduction.

However, we feel that an 85% discount should also be applied to the penalty of Three Hundred Ninety-One Thousand Six Hundred Pesos (P391,600.00), resulting in the reduced penalty of Fifty-Eight Thousand Seven Hundred Forty Pesos (P58,740.00). This is because the offenses covered thereby were violations earlier than, and so close in point of time to, those covered by the previously approved 85% reduction, the idea being that the justifications advanced for the same¹⁵ were arguably also attendant in the case at bar.

WHEREFORE, premises considered, the letter-directive of the Corporation Finance Department dated 10 April 2007 is hereby **AFFIRMED**, with the **MODIFICATION** that the total penalty of Three Hundred Ninety-One Thousand Six Hundred Pesos (P391,600.00) therein imposed be reduced by eighty-five percent (85%). Accordingly, Manuel L. Quezon Educational Institution is hereby **DIRECTED TO PAY** herein reduced penalty of Fifty-Eight Thousand Seven Hundred Forty Pesos (P58,740.00), which amount, however, is already included in SEC Resolution No. 244, Series of 2010, that granted an 85% reduction of the sum of all the penalties against MLQEI in the amount of Nine Hundred Seventy-Eight Thousand Two Hundred Pesos (P978,200.00), or a total reduced penalty of One Hundred Forty-Six Thousand Seven Hundred Thirty Pesos (P146,730.00). The corporation is hereby admonished that a repetition of the same or similar offenses in the future will be dealt with more severely.

SO ORDERED.

Mandaluyong City, 08 July 2010.

¹⁵See CFD's Memorandum to the Commission *En Banc* dated 13 October 2006 (Annex "W", CFD's Position Paper).

F. B. Barin
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MA. JUANITA E. CUETO
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Manuel Huberto B. Gaite
MANUEL HUBERTO B. GAITE
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