

EN BANC

[G.R. No. 252198, April 27, 2021]

SECURITIES AND EXCHANGE COMMISSION, PETITIONER, VS. COMMISSION ON AUDIT, RESPONDENT.

D E C I S I O N

LAZARO-JAVIER, J.:

The Case

This Petition for *Certiorari*^[1] assails the following dispositions of the Commission on Audit (COA) in *Subject: Automatic Review of Commission on Audit National Government Sector – Cluster 2 Decision No. 2013-004 dated April 1, 2013, on the appeal of Securities and Exchange Commission (SEC) from Notice of Disallowance No. 11-003-101-(10) dated December 10, 2011 on SEC's monthly share in the Provident Fund contribution of its employees, amounting to P19,723,444.66:*

- 1) Decision No. 2018-010^[2] dated January 17, 2018 insofar as it disallowed the Securities and Exchange Commission's (SEC's) payment of contribution to the provident fund for its officers and employees, using its retained earnings in the amount of P19,723,444.66, and holding the approving, certifying and authorizing officers solidarily liable to return the entire amount; and
- 2) Resolution No. 2020-180^[3] dated January 29, 2020 which denied petitioner's motion for reconsideration.

Antecedents

By Resolution No. 31, Series of 2002,^[4] petitioner Securities and Exchange Commission (SEC) established a provident fund for its officials and employees pursuant to the following provisions of the Securities Regulation Code^[5] (SRC), viz.:

SEC. 7. Reorganization. – x x x

x x x

7.2. All positions of the Commission shall be governed by a compensation and position classification systems and qualification standards approved by the Commission based on a comprehensive job analysis and audit of actual duties and responsibilities. The compensation plan shall be

comparable with the prevailing compensation plan in the Bangko Sentral ng Pilipinas and other government financial institutions and shall be subject to periodic review by the Commission no more than once every two (2) years without prejudice to yearly merit reviews or increases based on productivity and efficiency. **The Commission shall, therefore, be exempt from laws, rules, and regulations on compensation, position classification and qualification standards.** The Commission shall, however, endeavor to make its system conform as closely as possible with the principles under the Compensation and Position Classification Act of 1989 (Republic Act No. 6758, as amended). (Emphasis supplied)

x x x x

SEC. 75. Partial Use Of Income. - To carry out the purposes of this Code, the Commission is hereby authorized, in addition to its annual budget, to retain and utilize an amount equal to one hundred million pesos (P100,000,000.00) from its income.

The use of such additional amount shall be subject to the auditing requirements, standards and procedures under existing laws.

In its subsequent SEC-EXS Resolution No. 144, Series of 2003,^[6] the SEC En Banc approved an across-the-board fifteen percent (15%) increase of its counterpart contribution to the provident fund based on the basic salaries of its officials and employees. This increase will be sourced from its retained income per Section 75 of the SRC. As for its officials and employees, three percent (3%) shall be deducted from their respective salaries as their contribution. Thus:

RESOLVED, To APPROVE the 15% of the basic salary of the members(employees) as the Commission's counterpart contribution to the SEC Provident Fund which shall be taken from the SEC's retained income under Section 75 of the SRC in addition to the service fees received by the Commission (e.g. GSIS service fees, LRF service fees, rebates from publication and rebates from building insurance premiums, etc.) **subject to the DBM's approval and the agreement by the employees on the 3% reduction from their salary as their personal contribution to the fund.** (Emphases supplied)

Meantime, the SEC got hold of a Letter^[7] dated August 19, 2004 from the Department of Budget and Management (DBM) informing that there was no need for SEC to secure a Notice of Cash Allocation (NCA) for the use of the sum of P2,000,000.00 to cover capital outlays, specifically for the purchase of furniture, fixtures, and equipment, since the sum will be sourced from its retained income for Fiscal Year 2001, thus:

Under Section 75 of R.A. No. 8799, the Securities and Exchange Commission is authorized, in addition to its annual budget, to retain and utilize an amount equal to One Hundred Million Pesos (P100,000,000) from the income to carry out the purposes of the Securities Regulation Code. Since the retained income of the Commission is an "off budget" account, meaning we do not release an allotment for the purpose, then the release of NCA is not necessary.

The utilization of the retained income is left to the discretion of the Commission subject to the usual accounting and auditing rules and regulations. (Emphasis supplied)

Encouraged by this pronouncement that "*[t]he utilization of the retained income is left to the discretion of the Commission,*" the SEC En Banc, on December 21, 2004, issued SEC-EXS Resolution No. 137, series of 2004.^[8] The same approved the annual allocation of its provident fund contribution from its retained income starting 2004, viz:

RESOLVED, To APPROVE the annual allocation from the SEC Retention Income of the amount equivalent to fifteen percent (15%) of the annual payroll of the SEC employees computed monthly starting CY 2004 as the Commission's 15% counterpart contribution to the SEC Provident Fund.

RESOLVED FURTHER, That the P20.7 Million Counterpart contribution of the Commission for 2004 shall be used as seed money of the Fund and the employee-members of the Fund shall be deducted of their 3% counterpart contribution starting January 2005.

Thereafter, pursuant to Section 93,^[9] General Provisions of the General Appropriations Act for FY 2010 (GAA 2010), the SEC, on February 26, 2010, submitted to the DBM the following documents: a) Annual Operating Budgets for Retained Income for FY2010; and b) 2009 Financial Statements. These documents showed that P81,000,000.00 was allocated for salary differentials and other personnel benefits. **Out of this amount, P19,723,444.66** was disbursed as its counterpart contribution to the provident fund, viz.:

Check			
No.	Date	Amount	Particulars
360370	01-26-10	P1,652,025.45	For the month of January 2010
360415	02-22-10	1,409,170.95	For the month of February 2010
360420	02-24-10	243,925.95	For the month of February 2010
360459	03-16-10	4,242.33	For the month of January

			2010
360465	03-19-10	1,651,763.83	For the month of March 2010
360502	04-14-10	7,975.68	For the month of February 2010
360507	04-22-10	1,647,026.80	For the month of April 2010
360556	05-20-10	9,748.31	For the month of March & April 2010
360557	05-20-10	1,617,723.17	For the month of May 2010
360596	06-10-10	1,613,743.08	For the month of June 2010
360665	07-27-10	1,617,872.91	For the month of July 2010
360696	08-24-10	1,609,714.79	For the month of August 2010
360698	09-01-10	15,941.63	For the months of June & July 2010
360730	09-20-10	1,625,945.87	For the month of September 2010
360795	10-12-10	1,635,985.11	For the month of October 2010
361180	12-23-10	23,533.83	For the months of Sept. and Nov. 2010
361214	12-23-10	9,027.85	For the month of August 2010
361213	12-23-10	1,819.04	For the month of October 2010
361212	12-23-10	4,761.75	For the month of December 2010
361235	12-30-10	36,274.92	For the months June to August 2010
361234	12-30-10	1,631,418.51	For the month November 2010
361233	12-30-10	1,623,433.70	For the month of December 2010
361228	12-30-10	16,661.97	For the months of June & July 2010
361285	12-30-10	13,707.23	For the months of Sept.& Oct.2010
Total		P19,723,444.66	

Under **Notice of Disallowance No. 11-003-101-(10)**^[11] dated **December 10, 2011**, however, COA-SEC Audit Team Leader Milagros Torres-Songsong and Supervising Auditor Manuel Saes disallowed the disbursement of P19,723,444.66,

thus:

The amount of P19,723,444.66 was disallowed in audit for the following reasons:

- (a) The disbursement from retained income under the account Personal Services- Other Personnel benefits is not in accord with Section 1 of the Special Provisions for the SEC of Republic Act No.9970-General Appropriations Act for Fiscal Year 2010, since the purpose of the retained income is to augment the MOOE and CO requirements of the Commission. (Exhibit Y)
- (b) The grant of personnel benefits authorized by law but not supported by specific appropriation is deemed unauthorized as Section 23 (*should be Section 37*) of Presidential Decree (PD) 1177 states that all moneys appropriated for functions, activities, projects and programs shall be available solely for the specific purpose for which these are appropriated; and,
- (c) Though the compensation plan of the Commission shall be comparable with the prevailing compensation plan of the Bangko Sentral ng Pilipinas and other government financial institutions, the same is still subject to the approval of the Office of the President pursuant to Sections 34 & 35 of Chapter 5, Book VI of the Administrative Code. Hence, the letter dated August 20, 2008 (Exhibit Z1-2) from the Office of the President showed such approval of the pay scale of SEC officials and the compensation plan for the SEC for CY 2008 and which specified that "Additional funding requirement of P11.8 Million shall be sourced from SEC's retention income. For succeeding years estimated at P15.7 Million annually shall be included in the PS appropriation for SEC."^[12] (*italics supplied*)

Consequently, the following persons were directed to immediately settle the disallowed amount, namely: 1) Atty. Ma. Juanita E. Cueto (Commissioner); 2) Atty. Manuel Huberto B. Gaite (Commissioner); 3) Eladio M. Jala (Commissioner); 4) Adelaida C. Navarro-Banaria (Director, Financial Management Department); 5) Thoureth I. dela Cruz (Assistant Director, Budget and Fiscal Division, Fiscal Management Department); 6) Renato A. Santos (Assistant Director, Accounting Division, Fiscal Management Department); and 7) all Payees.^[13]

Proceedings before the COA-National Government Sector (COA-NGS) Cluster 2

In its Appeal Memorandum^[14] dated June 22, 2012, the SEC essentially argued:

First. The COA-SEC auditors erred in treating the retained income of SEC as a fund within the GAA 2010 when in fact, this retained income is an "off-budget" account.