

SECOND DIVISION

[G.R. No. 197032, July 26, 2017]

**SECURITIES AND EXCHANGE COMMISSION, PETITIONER, VS.
PRICE RICHARDSON CORPORATION, CONSUELO VELARDE-
ALBERT, AND GORDON RESNICK, RESPONDENTS.**

DECISION

LEONEN, J.:

The determination of probable cause for purposes of filing an information is lodged with the public prosecutor. It is not reviewable by courts unless it is attended by grave abuse of discretion.

This is a Petition for Review on Certiorari^[1] under Rule 45 of the Rules of Court, praying that the Court of Appeals Decision^[2] dated May 26, 2011 and the Department of Justice Resolutions dated April 12, 2005^[3] and July 5, 2006^[4] be reversed and set aside.^[5] The Court of Appeals affirmed the assailed Resolutions of the Department of Justice, which denied the Petition for Review filed by the Securities and Exchange Commission (petitioner).^[6] Petitioner prays for the filing of an Information against Price Richardson Corporation, Consuelo Velarde-Albert, and Gordon Resnick (respondents) for violating Sections 26.3 and 28 of the Securities Regulation Code.^[7]

Respondent Price Richardson Corporation (Price Richardson) is a Philippine corporation duly incorporated under Philippine laws on December 7, 2000.^[8] Its primary purpose is "[t]o provide administrative services which includes but is not limited to furnishing all necessary and incidental clerical, bookkeeping, mailing and billing services."^[9]

On October 17, 2001, its former employee, Michelle S. Avelino, (Avelino) executed a sworn affidavit at the National Bureau of Investigation's Interpol Division,^[10] alleging that Price Richardson was "engaged in boiler room operations, wherein the company sells non[-]existent stocks to investors using high pressure sales tactics."^[11] Whenever this activity was discovered, the company would close and emerge under a new company name.^[12] Pertinent portions of her sworn statement read:

Q03: State your reason why you are here at the NBI Interpol?

A: I am here to give a statement about the "boiler room" operation of PRICE RICHARDSON CORPORATION.

Q04: What do you mean by "boiler room"?

A: A boiler room is a company which sells non-existent stocks

to investors by using high pressure sales tactics. They had no intention of paying the duped investors and when their operation ha[s] been discovered this company would close and would spring up under a new name. I know this for a fact because I used to work before with New Millennium Market Research, Inc. which was shut down after the duped victims reported to authorities [its] illegal activities. New Millennium Market Research, Inc. eventually became Price Richardson. Boiler Room operation is an illegal activity considering that the company has no license from the Securities and Exchange Commission to deal on securities or stocks.

Q05: Why do you know that Price Richardson is a "boiler room"?

A: I used to work there as a telemarketer from September 3, 2001 to October 15, 2001.

Q06: As telemarketer at Price Richardson what do you do?

A: Our supervisor would give "leads" for me to call. "Leads" are names of prospective investors. Upon contracting a prospective investor, I would read a prepared "script" or presentation of the company's profile and the services it offers. If the prospect is interested, I will write all the information about this person and would forward the same to our supervisor JOVY AGUDO. All our leads or prospects are foreigners.

Q07: As a telemarketer, how many calls do you make in a day and how many investors do you qualify?

[A:] I average 100 calls a day and I can qualify an average of six (6) would[-]be investors daily.

. . . .

Q10: After you qualify a prospective investor, what happens next?

A: The company will send him a newsletter and then the salesman would contact him and [use] high-pressure sales tactics to make a sale of non-existent stocks. The salesmen would use the data and information gathered by the telemarketers and would make reference to the calls or initial contact made by telemarketers. If the investor agreed, the salesman would give him instructions on how to send the money to the company. Usually, the payment is made through telegraphic transfers. After the payment has been received, a confirmation receipt would then be sen[t] by the courier to the investor indicating therein the name of the company where the alleged investment was made, the number of shares, the amount per share, the tax and commissions paid. However, no hard copy of the stocks or certificates will be issued for in truth and in fact there was no

actual sale or transfer of stocks or certificates for they are non-existent. In the event that the investor would then sell his certificates or stocks, the salesman would try to convince the investor not to sell in order not to release the money. Eventually, the company would disappear and would spring up under a new name.

Q11: Who are these salesmen?

A: The salesmen are all foreigners of various nationalities. They used also a prepared script to induce the prospective client to invest.

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Q13: Do you know if these salesmen are licensed stockbrokers duly authorized by the Securities and Exchange Commission?

A: They are not licensed by the Securities and Exchange Commission. They are tourists here in the country and they used aliases to hide their identities.^[13]

Janet C. Rillo corroborated Avelino's claims.^[14] She was a former employee of Capital International Consultants, Inc. (Capital International), a corporation that allegedly merged with Price Richardson.^[15] She claimed that their calls to prospective investors should be in Price Richardson's name.^[16] Pertinent portions of her sworn statement read:

07. Q: You said that **CAPITAL INTERNATIONAL CONSULTANTS CORP.** has just merged with Price Richardson Inc., can you elaborate on this?

A: Yes, just this September, we have been informed of the [merge]. In fact we have been instructed to use the name of Price Richardson in our calls starting September 2001.

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09. Q: Can you describe the process in, as you said – "qualify clients as possible investors"?

A: I make overseas calls to individuals listed in our Client Leads. The "Client Leads" contains a list of the names of the top-level personnel of international companies, it includes their address and telephone numbers. From these leads, we select clients to call and offer them a free subscription of our "Financial News Letter".

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11. Q: What does these "Financial News Letter" contain?

A: It contains the current status of the worldwide stock market.

12: Q: So what happens when a client agrees to subscribe in your news letter?

A: We then check from our list if the information we have regarding their address and telephone numbers [is] correct. This is to check their mail preference - where they would like us to send the news letter.

13. Q: What happens after that?

A: Those who agree to receive the subscription are considered as qualified clients. We then fill out a "SALES LEAD" card, which reflects the information of the client. We then forward these cards to the marketing department, consisting of the encoders and other telemarketers. These people are the ones who send the newsletters and transaction receipts to clients. Their office is located at the Price Richardson Office, 31st Floor Citibank Tower, Paseo De Roxas, Makati. It is from these cards that our foreigner salesmen could get possible investors. These possible investors would then be sold with non-existent stocks.

. . . .

15. Q: So are you saying that CAPITAL INTERNATIONAL CONSULTANTS CORP and/or PRICE RICHARDSON, Inc. is engaged in the illegal trading of stocks to clients?

A: Yes. When I applied for the job, I was briefed by ANNE BENWICK, the Operations Manager, about the nature of their [b]usiness. She said that the company is engaged in trading stocks, and my job as a Telemarketer would be to "qualify clients" who might become possible investors. I am also aware of the nature of their business since I have been employed in a similar company.^[17]

Upon application of the National Bureau of Investigation Interpol Division^[18] and the Securities and Exchange Commission^[19] on November 15, 2001, Branch 143, Regional Trial Court, Makati City issued three (3) search warrants against Capital International and Price Richardson for violation of Section 28^[20] of the Securities Regulation Code.^[21] The Regional Trial Court ordered the seizure of Price Richardson's and Capital International's office equipment, documents, and other items that were connected with the alleged violation.^[22]

On November 16, 2001, the search warrants were served and Price Richardson's office equipment and documents were seized.^[23]

On December 4, 2001, the Securities and Exchange Commission filed before the Department of Justice its complaint against Price Richardson, Clara Arlene Baybay (Baybay), Armina A. La Torre (La Torre), Manuel Luis Limpin (Limpin), Editha C. Rupido (Rupido), Jose C. Taopo (Taopo), Consuelo Velarde-Albert (Velarde-Albert), and Gordon Resnick (Resnick) for violation of Article 315(1)(b)^[24] of the Revised Penal Code and Sections 26.3^[25] and 28 of the Securities Regulation Code.^[26]

Baybay, La Torre, Limpin, Rupido, and Taopo (the incorporators and directors) were Price Richardson's incorporators and directors.^[27] Velarde-Albert was its Director for Operations and Resnick was its Associated Person.^[28]

The Securities and Exchange Commission alleged that Price Richardson was neither licensed nor registered "to engage in the business of buying and selling securities within the Philippines or act as salesman, or an associated person of any broker or dealer."^[29] As shown by the seized documents and equipment, Price Richardson engaged in seeking clients for the buying and selling of securities, thereby violating Sections 26.3 and 28 of the Securities Regulation Code.^[30]

The Securities and Exchange Commission claimed that Velarde-Albert and Resnick should be liable for acting as brokers or salesmen despite not being registered.^[31] Meanwhile, the incorporators and directors' liability was based on being responsible "for the corporate management with the obligation to ensure that [Price Richardson] operate[d] within the bounds of law."^[32]

Price Richardson, Velarde-Albert, Resnick, and the incorporators and directors were also charged with Estafa under Article 315(1)(b) of the Revised Penal Code. The Securities and Exchange Commission averred that they obtained their investors' confidence by comporting themselves as legitimate stock brokers.^[33] Thus, when they failed to return the investments they received, their act "constitute[d] misappropriation with abuse of confidence."^[34]

In defense, the incorporators and directors denied knowing or agreeing to the offenses charged. They countered that they already transferred their respective shares to various individuals in December 2000, as shown by their registered Deeds of Absolute Sale of Shares of Stock.^[35] Velarde-Albert denied the Securities and Exchange Commission's allegations against her while Resnick did not submit any evidence refuting the charges.^[36]

On March 13, 2002, State Prosecutor Aristotle M. Reyes (State Prosecutor Reyes) issued a Resolution,^[37] dismissing the Securities and Exchange Commission's complaint "for lack of probable cause."^[38] He found that:

[C]omplainant SEC failed to adduce evidence showing respondent Price's alleged unauthorized trading. While it is true that based on the certification issued by the SEC, respondent-corporation has no license to buy or sell securities, it does not, however, follow, that said corporation had indeed engaged in such business. It is imperative for complainant to prove the respondent-corporation's affirmative act of buying and selling securities to constitute the offense charged. It cannot be established on the expedient reason that a corporation is not license[d] or authorize[d] to trade securities. He who alleges a positive statement has the burden of proving the same.

The various "confirmation of trade" receipts . . . taken singly, does not prove violation of Sections 26.3 and 28 of the Securities Regulation Code. Far from proving the offense charged, those confirmation of trade could