

# A lot of explaining to do

LIKE climate change, the market has not been the same. But unlike the climate (experts have at least some logical answers to its behavior), our market can hardly be explained or given satisfactory answer on its present or future movement.

One reason that makes it difficult to explain or predict is that its current behavior has often defied conventional norms of fundamental and technical analysis.

For instance, stock prices no longer respond to encouraging corporate earnings forecasts and/or actual results or by price dynamics alone. They are more moved by emotional sentiment, as in the present case, by investors' reactions to developments on Europe's debt crises or by Wall Street investors' reactions to unfolding actions taken by decision makers in preventing the US economy from sliding back to another recession.

This new development certainly need a lot of explaining like what Aurelio R. Montinola III of listed Bank of the Philippine Islands (BPI) is now facing in connection with the administrative case filed at the Bangko Sentral ng Pilipinas (BSP) by Erlinda I. Bildner of listed Philcomsat Holdings Corp. (PHC).

Based on the formal report of the Office of Special Investigation (OSI) of the BSP dated March 3, 2011, and received by PHC on Sept. 26, 2011, it found, among others, "the existence of a prima facie administrative case against respondents Aurelio R. Montinola III and Joy B. Rodriguez for a violation of Sections 56.1 and 56.2 of R.A. No. 8791 in relation to Section 37 of R.A. 7653 be APPROVED, and that the attached FORMAL CHARGE be filed against the aforementioned respondents before the Supervised Banks and Complaints Evaluation Group."

To put it in plain context, the cited violations committed by Montinola and Rodriguez were acts that ran counter to the tenets of good governance and best business practice in connection with the exercise of their duties in the intra-corporate conflict at PHC.

Rodriguez was the assistant manager/officer-in-charge (OIC)-then-promoted branch manager of BPI Pacific Star Branch where PHC maintained the bank accounts of the subject ad-

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ministrative case.

### Case premises

The case stemmed from the then intra-corporate dispute between two contending groups that vied for mandate and control over the management of PHC. One was the so-called "Locsin Group" and the other, the so-called "Bildner Group."

On Aug. 31, 2004, PHC held its annual stockholder's meeting and election of board of directors. The Securities and Exchange Commission (SEC)-mandated Nomination Committee (Nomelec) invalidated the voting proxy submitted by the Bildner Group. The Bildner Group immediately filed an election protest before the Regional Trial Court of Makati Branch 138 (docketed as Civil Case No. 04-1049).

In February 2007, the Bildner Group received a favorable decision dated Oct. 14, 2006, declaring the voting proxy issued in favor of the Bildner Group as valid and invalidated the voting proxy issued in favor of the Locsin Group for the 2004 stockholders' meeting. The court likewise "annulled the elections held and the proclamation of members of the Locsin Group as directors in the 2004 stockholder's meeting."

On Feb. 20, 2007, the Bildner Group notified all banks of the court decision, which included BPI. The Bildner Group asked the banks to freeze PHC's accounts and not to allow any disbursements, withdrawals or encashments of checks in the said accounts, be it by the Locsin Group or any other parties for that matter.

Rizal Commercial Banking Corp., which has the same external legal counsel as that of BPI, immediately filed an interpleader suit for reasons of not wanting to be caught in the cross-fire of the two contending party's in the disposition of PHC's bank accounts.

BPI did not. Instead, BPI continued to allow the Locsin Group to have disposition of PHC's accounts in the bank based on legal grounds asserted by

Montinola and that of the bank's chief risk officer and legal services division head.

The Bildner Group sent a total of 11 letters to BPI on the subject from February 2007 to July 2008. Only nine of them receive a reply. Most of which essentially turned down the Bildner Group's requests which, in turn, effectively allowed the Locsin Group to disburse, withdraw or encash checks from PHC's BPI accounts amounting to "P102 million, more or less."

BPI averred that it did not answer the first letter of the Bildner Group (dated Feb. 23, 2007) because its position was already made clear in its letter of Feb. 20, 2007. The second letter was not also answered in view "of the TRO issued by the CA in CA-G.R.-SP No. 98399 in its resolution dated 26 April 2007."

BPI explained further that the third letter (dated July 30, 2008), again, "was not answered because the PHC accounts were already then frozen [and] BPI was already preparing its interpleader case, which was filed on 19 August 2008."

### Bottom line spin

As pointed out in the investigation of the OSI, the issue in the administrative case against Montinola and Rodriguez was if "in dealing with PHC accounts, [they] acted with manifest partiality, evident bad faith or gross inexcusable negligence, thereby causing undue injury to herein complainant and giving unwarranted benefits, advantage or preference to any other party."

As such, according to the OSI, "the failure of respondents to file the interpleader suit at the earliest opportunity exposed the banks to legal and reputational risks." "In fact," the report went on to say that, "on 11 September 2007, BPI was already sued by PHC in a complaint for specific performance and damages before the RTC-Makati, Branch 62, docketed as Civil Case No. 07-840. Further, the failure of BPI to file the interpleader suit at the first opportunity may cause material loss or damage to its depositor, PHC."

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