



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

SECURITIES AND EXCHANGE COMMISSION, G.R. No. 197032

Petitioner,

Present:

CARPIO, J., Chairperson,
PERALTA,
MENDOZA,
LEONEN, and
MARTIRES, JJ.

-versus-

PRICE CORPORATION, RICHARDSON
CORPORATION, CONSUELO
VELARDE-ALBERT, and
GORDON RESNICK, Respondents.

Promulgated:

12 6 JUL 2017

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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 Certiorari¹ under Rule 45 of the Rules of Court, praying that the Court of Appeals Decision² dated May 26, 2011 and the Department of Justice Resolutions dated April 12, 2005³ and July 5, 2006⁴ be reversed and set aside.⁵ The Court of Appeals affirmed the assailed

¹ Rollo, pp. 355-388.

² Id. at 391-399. The Decision, docketed as CA-G.R. SP No. 96258, was penned by Associate Justice Florito S. Macalino and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Ramon M. Bato, Jr. of the Sixth Division, Court of Appeals, Manila.

³ Id. at 400-404. The Resolution was penned by Secretary Raul M. Gonzalez.

⁴ Id. at 405-406. The Resolution was penned by Secretary Raul M. Gonzalez.

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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?

⁵ Id. at 383.

⁶ Id. at 399, 400 and 403.

⁷ Id. at 383, Petition for Review.

⁸ Id. at 407, Certificate of Incorporation.

⁹ Id. at 408, Articles of Incorporation.

¹⁰ Id. at 392, Court of Appeals Decision.

¹¹ Id.

¹² Id.

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.

....

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

¹³ Id. at 424–425, Michelle S. Avelino’s Sworn Statement.

¹⁴ Id. at 392, Court of Appeals Decision.

¹⁵ Id.

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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.

....

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”.

....

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

¹⁶ Id.

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 Division¹⁸ and the Securities and Exchange Commission¹⁹ 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 28²⁰ 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 26.3²⁵ and 28 of the Securities Regulation Code.²⁶ Baybay, La Torre, Limpin, Rupido, and Taopo (the incorporators and directors) were Price

¹⁷ Id. at 428–429, Janet C. Rillo's Sworn Statement.

¹⁸ The National Bureau of Investigation Interpol Division was represented by Agent Jeralyn Jalagat.

¹⁹ The Securities and Exchange Commission was represented by Atty. Elmira Alconaba.

²⁰ SECURITIES CODE, sec. 28.1 provides:

Section 28. Registration of Brokers, Dealers, Salesmen and Associated Persons. – 28.1. No person shall engage in the business of buying or selling securities in the Philippines as a broker or dealer, or act as a salesman, or an associated person of any broker or dealer unless registered as such with the Commission.

²¹ *Rollo*, p. 392.

²² Id.

²³ Id. at 392 and 536.

²⁴ REV. PEN. CODE, art. 315, sec. 1(b) provides:

Article 315. Swindling (Estafa). — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

....

4th. By arresto mayor in its medium and maximum periods, if such amount does not exceed 200 pesos, provided that in the four cases mentioned, the fraud be committed by any of the following means

1. With unfaithfulness or abuse of confidence, namely:

....

(b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.

²⁵ SECURITIES CODE, sec. 26.3 provides:

Section 26. Fraudulent Transactions. – It shall be unlawful for any person, directly or indirectly, in connection with the purchase or sale of any securities to:

....

26.3. Engage in any act, transaction, practice or course of business which operates or would operate as a fraud or deceit upon any person.

²⁶ *Rollo*, pp. 392–393 and 535.

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

²⁷ Id. at 535-537.

²⁸ Id. at 391-392.

²⁹ Id. at 536.

³⁰ Id. at 536-537.

³¹ Id. at 537.

³² Id.

³³ Id.

³⁴ Id.

³⁵ Id. at 537-538.

³⁶ Id. at 538.

³⁷ Id. at 535-542. The Resolution was recommended for approval by the Task force on Securities Chairman, Senior State Prosecutor Miguel F. Gudio. It was approved by Assistant Chief State Prosecutor Nilo C. Mariano.

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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 very well mean that indeed respondent Price was merely "providing administrative services of furnishing all necessary and incidental clerical, bookkeeping, mailing and billing services" pursuant to its primary purpose as embodied in its articles of incorporation. There is no evidence that indeed anyone transacted business much less purchased or sold securities with any of the respondents acting as broker or dealer in securities. In other words, the burden of proving that respondents made various offers to sell unregistered securities; that the offers were accepted; and, that agreements of sale were reached and consummated, has not been dislodged by the complainant. Independent proof of the various stages of a sale transaction is necessary to show violation of Sections 26.3 and 28 of the Securities Regulation Code.³⁹

State Prosecutor Reyes absolved the incorporators and directors from any liability considering that they already relinquished their positions as directors of Price Richardson when they transferred their shares to third parties.⁴⁰ He also found Velarde-Albert and Resnick not liable for lack of sufficient proof that they engaged in the trading of securities.⁴¹

On the allegation of conspiracy, State Prosecutor Reyes held that because the facts failed "to establish the alleged unauthorized trading, or the fraudulent investments that constitute the crime charged, there can be no basis in determining collective criminal responsibility."⁴² Finally, State Prosecutor Reyes ruled that there was no sufficient evidence to show that Price Richardson, Velarde-Albert, Resnick, and the incorporators and directors deceived investors that would constitute the crime of estafa with abuse of confidence.⁴³

³⁸ Id. at 393-394 and 540.

³⁹ Id. at 538-539.

⁴⁰ Id. at 539.

⁴¹ Id. at 539-540.

⁴² Id. at 540.

⁴³ Id.

In the meantime, individuals claiming to have agreed to purchase securities from Price Richardson and have been defrauded surfaced and executed sworn statements against it.⁴⁴ They claimed that Price Richardson engaged in illegal trade of securities.⁴⁵ They filed complaints against Price Richardson before the Department of Justice for violation of Article 315(1)(b) of the Revised Penal Code and Sections 26.3 and 28 of the Securities Regulation Code.⁴⁶

The Securities and Exchange Commission moved for reconsideration⁴⁷ of the March 13, 2002 Resolution, which was denied by State Prosecutor Reyes in a Resolution⁴⁸ dated May 31, 2002.

The Securities and Exchange Commission filed before the Department of Justice a Petition for Review⁴⁹ of State Prosecutor Reyes' March 13, 2002 and May 31, 2002 Resolutions. This was denied in the April 12, 2005 Resolution⁵⁰ of Department of Justice Secretary Raul M. Gonzalez (Secretary Gonzalez). The Securities and Exchange Commission filed a Motion for Reconsideration⁵¹ of the April 12, 2005 Resolution but this was denied by Secretary Gonzalez in his July 5, 2006 Resolution.⁵²

The Securities and Exchange Commission filed a Petition for Certiorari⁵³ against Secretary Gonzalez, Price Richardson, Velarde-Albert, and Resnick before the Court of Appeals for the annulment of Secretary Gonzalez's April 12, 2005 and July 5, 2006 Resolutions.⁵⁴

On May 26, 2011, the Court of Appeals promulgated a Decision⁵⁵ affirming the assailed Resolutions.⁵⁶ The Court of Appeals held that there was no grave abuse of discretion on the part of Secretary Gonzalez when he affirmed State Prosecutor Reyes' Resolutions, which found no probable cause to file an information.⁵⁷

The Court of Appeals found that the affidavits executed by Price

⁴⁴ Id. at 394; *rollo*, p. 613, Complaint-Affidavit of Johannes Jacob Van Prooyen; *rollo*, pp. 674-675, Complaint-Affidavit of Don Sextus Nilantha.

⁴⁵ Id.

⁴⁶ Id.

⁴⁷ Id. at 543-553.

⁴⁸ Id. at 579-582. The Resolution was recommended for approval by Assistant Chief State Prosecutor Nilo C. Mariano and was approved by Chief State Prosecutor Jovencito R. Zuño.

⁴⁹ Id. at 583-605.

⁵⁰ Id. at 400-404.

⁵¹ Id. at 606-612.

⁵² Id. at 405-406.

⁵³ Id. at 632-660.

⁵⁴ Id. at 658.

⁵⁵ Id. at 391-399.

⁵⁶ Id. at 399.

⁵⁷ Id.

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Richardson's employees were merely surmises.⁵⁸ They did not have personal knowledge of the security trading since their jobs were limited to persuading people to get newsletter subscriptions.⁵⁹ Indeed, the documents seized from Price Richardson's office showed a transaction between it and an investor.⁶⁰ However, "no clear and specific acts of buying or selling of securities were alleged and substantiated by the SEC[.]"⁶¹

The alleged investors' affidavits were not sufficient to find probable cause because the alleged transactions transpired over the phone and while these investors were not in the Philippines.⁶² Moreover, since the traded stocks were not of domestic corporations or from corporations doing business in the Philippines, Philippine penal laws could not be applied.⁶³

Lastly, there was no basis for the complaints against Velarde-Albert and Resnick because they were neither board members nor stockholders of the corporation. The complaint did not allege any particular act that can be interpreted as their direct participation in the purported illegal stock trading.⁶⁴

Hence, on July 26, 2011, the Securities and Exchange Commission filed a Petition for Review⁶⁵ before this Court against Price Richardson, Velarde-Albert, and Resnick. It assailed the May 26, 2011 Decision of the Court of Appeals and the April 12, 2005 and July 5, 2006 Resolutions of Secretary Gonzalez and prayed for the filing of an information against respondents for violation of Sections 26.3 and 28 of the Securities Regulation Code.⁶⁶

Petitioner claims that Secretary Gonzalez committed grave abuse of discretion in not finding probable cause to indict respondents.⁶⁷ The complainants who claimed to have been defrauded by respondents and the documents and equipment seized show that respondent Price Richardson was engaged in buying and selling securities without license or authority.⁶⁸ On the liability of respondents Velarde-Albert and Resnick, petitioner asserts that the seized documents sufficiently show that they acted as salesmen or associated persons under Section 28 of the Securities Regulation Code.⁶⁹

⁵⁸ Id. at 398.

⁵⁹ Id.

⁶⁰ Id.

⁶¹ Id.

⁶² Id.

⁶³ Id.

⁶⁴ Id. at 399.

⁶⁵ Id. at 355-388.

⁶⁶ Id. at 383.

⁶⁷ Id. at 371-376.

⁶⁸ Id. at 379-382.

⁶⁹ Id. at 383.

On December 7, 2011, respondent Price Richardson filed its Comment,⁷⁰ arguing that the determination of probable cause is an executive function and is reviewable by courts only upon showing of grave abuse of discretion.⁷¹ The Department of Justice did not gravely abuse its discretion when it found that there was no probable cause to indict respondents for violation of the Securities Regulation Code.⁷² Respondent Price Richardson's former employees' sworn statements contained factual claims that were outside their personal knowledge or conclusions of law that were beyond their capacity to make.⁷³

Respondent Price Richardson insists that Section 28 of the Securities Regulation Code prohibits anyone from engaging in the business of buying and selling securities without registration from the Securities and Exchange Commission if those transactions are offered "to the public within the Philippines[.]"⁷⁴ This provision does not apply in this case because the alleged buyers of securities were not citizens of or resided in the Philippines. Additionally, the allegedly sold or offered securities were registered outside the Philippines, where the alleged sales also transpired. Hence, these sales are not under the Philippine jurisdiction.⁷⁵

Respondent Resnick filed his Comment⁷⁶ on January 11, 2012 while respondent Velarde-Albert filed her Comment⁷⁷ on April 23, 2013. Both respondents argue that the complaints did not allege any act attributable to them or related to the alleged transactions involved.⁷⁸ Respondent Velarde-Albert also contends that there was no question of law raised in the Petition, which is required in a Rule 45 petition.⁷⁹

On November 4, 2013, petitioner filed its Consolidated Reply.⁸⁰ Petitioner posits that direct invocation of this Court's original jurisdiction is allowed as its petition is an exception to the rule that only questions of law may be raised in a Rule 45 petition.⁸¹ Petitioner alleges that the Court of Appeals' grave abuse of discretion and its Decision, which was based on a misapprehension of facts and was contradicted by evidence on record,⁸² make its Petition an exception to the rule.⁸³

⁷⁰ Id. at 709–726.

⁷¹ Id. at 711–712.

⁷² Id. at 712–715.

⁷³ Id. at 721–723.

⁷⁴ Id. at 717.

⁷⁵ Id. at 719.

⁷⁶ Id. at 736–742.

⁷⁷ Id. at 775–779.

⁷⁸ Id. at 738 and 776–777.

⁷⁹ Id. at 776.

⁸⁰ Id. at 797–810.

⁸¹ Id. at 807.

⁸² Id. at 808.

⁸³ Id. at 807–808.

On December 2, 2013, this Court issued a Resolution,⁸⁴ giving due course to the Petition and required the parties to file their respective memoranda.

Petitioner filed its Memorandum⁸⁵ on March 21, 2014. Respondents Velarde-Albert, Resnick, and Price Richardson submitted their Memoranda on February 24, 2014,⁸⁶ April 3, 2014,⁸⁷ and May 8, 2014,⁸⁸ respectively.

This Court resolves the following issues:

First, whether courts may pass upon the prosecutor's determination of probable cause; and

Finally, whether there is probable cause to indict respondents for violation of Sections 26.3 and 28 of the Securities Regulation Code and Article 315(1)(b) of the Revised Penal Code.

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Courts may pass upon the prosecutor's determination of probable cause only upon a showing of grave abuse of discretion.

Probable cause, in relation to the filing of an information, was explained by this Court in *Villanueva v. Secretary of Justice*:⁸⁹

Probable cause, for purposes of filing a criminal information, has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that the private respondent is probably guilty thereof. It is such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe or entertain an honest or strong suspicion that a thing is so. The term does not mean "actual or positive cause;" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus, a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged.⁹⁰

The definition of probable cause was lifted from Rule 112, Section 1, paragraph 1 of the Revised Rules of Criminal Procedure, which states:

⁸⁴ Id. at 813.

⁸⁵ Id. at 1062–1093.

⁸⁶ Id. at 823–835.

⁸⁷ Id. at 884–897.

⁸⁸ Id. at 908–922.

⁸⁹ 512 Phil. 145 (2005) [Per J. Callejo, Sr., Second Division].

⁹⁰ Id. at 159, citing *Baytan v. COMELEC*, 444 Phil. 812, 818 (2003) [Per J. Carpio, En Banc].

RULE 112
Preliminary Investigation

Section 1. Preliminary Investigation Defined; When Required. — Preliminary investigation is an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial.

Under Rule 112, preliminary investigation must be conducted to determine the existence of probable cause.⁹¹ In *Andres v. Justice Secretary Cuevas*,⁹² this Court stressed that:

[Preliminary investigation] is not the occasion for the full and exhaustive display of their evidence. The presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be passed upon after a full-blown trial on the merits.

In fine, the validity and merits of a party's defense or accusation, as well as admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level.⁹³ (Citations omitted)

It has long been established that the determination of probable cause to charge a person of a crime is an executive function,⁹⁴ which pertains to and lies within the discretion of the public prosecutor and the justice secretary.⁹⁵

If the public prosecutor finds probable cause to charge a person with a crime, he or she causes the filing of an information before the court.⁹⁶ The court may not pass upon or interfere with the prosecutor's determination of the existence of probable cause to file an information regardless of its correctness.⁹⁷ It does not review the determination of probable cause made

⁹¹ See *ABS-CBN Corporation v. Gozon*, G.R. No. 195956, March 11, 2015, 753 SCRA 1, 32 [Per J. Leonen, Second Division].

⁹² 499 Phil. 36 (2005) [Per J. Carpio Morales, Third Division].

⁹³ Id. at 49–50.

⁹⁴ *Corpuz v. Del Rosario*, 653 Phil. 36, 38 (2010) [Per J. Del Castillo, First Division]; *Unilever v. Tan*, 725 Phil. 486, 492 (2014) [Per J. Brion, Second Division]; *Mendoza v. People, et al.*, 733 Phil. 603, 610 (2014) [Per J. Leonen, Third Division], citing *People v. Castillo, et al.*, 607 Phil. 754, 764 (2009) [Per J. Quisumbing, Second Division]; *People v. Borje, Jr.*, 479 Phil. 719, 726–727 (2014) [Per J. Peralta, Third Division]; *De Lima v. Reyes*, G.R. No. 209330, January 11, 2016, 779 SCRA 1, 19 [Per J. Leonen, Second Division]; *Napoles v. De Lima*, G.R. No. 213529, July 13, 2016 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/july2016/213529.pdf>> 9–10 [Per J. Leonen, Second Division]; *Maza v. Turla*, G.R. No. 187094, February 15, 2017 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/february2017/187094.pdf>> 14 [Per J. Leonen, Second Division].

⁹⁵ *Unilever v. Tan*, 725 Phil. 486, 492 (2014) [Per J. Brion, Second Division].

⁹⁶ *Mendoza v. People, et al.*, 733 Phil. 603, 609 (2014) [Per J. Leonen, Third Division].

⁹⁷ Id. at 610, citing *People v. Castillo, et al.*, 607 Phil. 754, 764–765 (2009) [Per J. Quisumbing, Second Division].

by the prosecutor. It does not function as the prosecutor's appellate court.⁹⁸ Thus, it is also the public prosecutor who decides "what constitutes sufficient evidence to establish probable cause."⁹⁹

However, if the public prosecutor erred in its determination of probable cause, an appeal can be made before the Department of Justice Secretary. Simultaneously, the accused may move for the suspension of proceedings until resolution of the appeal.¹⁰⁰

Upon filing of the information before the court, judicial determination of probable cause is initiated. The court shall make a personal evaluation of the prosecutor's resolution and its supporting evidence.¹⁰¹ Unlike the executive determination of probable cause, the purpose of judicial determination of probable cause is "to ascertain whether a warrant of arrest should be issued against the accused."¹⁰² This determination is independent of the prosecutor's determination of probable cause and is a function of courts for purposes of issuance of a warrant of arrest.

Judicial determination of probable cause is in consonance with Article III, Section 2 of the Constitution:

ARTICLE III
Bill of Rights

. . . .

Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and *no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge* after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized. (Emphasis supplied)

Accordingly, a judge may immediately dismiss the case if he or she finds that there is no probable cause to issue a warrant of arrest based on the records.¹⁰³ To protect the accused's right to liberty,¹⁰⁴ the trial court may

⁹⁸ Id. at 611.

⁹⁹ *Unilever v. Tan*, 725 Phil. 486, 493 (2014) [Per J. Brion, Second Division].

¹⁰⁰ *Mendoza v. People, et al.*, 733 Phil. 603, 612 (2014) [Per J. Leonen, Third Division], *citing People v. Court of Appeals*, 361 Phil. 401, 421 (1999) [Per J. Panganiban, Third Division].

¹⁰¹ Id. at 609–610.

¹⁰² Id. at 610, *citing People v. Castillo, et al.*, 607 Phil. 754, 764–765 (2009) [Per J. Quisumbing, Second Division].

¹⁰³ RULES OF COURT, Rule 112, sec. 6(a) provides:
Rule 112. Preliminary Investigation

. . . .

Section 6. When Warrant of Arrest May Issue. — (a) By the Regional Trial Court. — Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution

dismiss an information based on “its own independent finding of lack of probable cause”¹⁰⁵ when an information has already been filed and the court is already set to determine probable cause to issue a warrant of arrest.

Thus, the general rule is that the determination of probable cause is an executive function which courts cannot pass upon. As an exception, courts may interfere with the prosecutor’s determination of probable cause only when there is grave abuse of discretion.¹⁰⁶ Grave abuse of discretion constitutes “a refusal to act in contemplation of law or a gross disregard of the Constitution, law, or existing jurisprudence, [accompanied by] a whimsical and capricious exercise of judgment amounting to lack of jurisdiction.”¹⁰⁷

A prosecutor gravely abuses his or her discretion in not finding probable cause by disregarding or overlooking evidence that “are sufficient to form a reasonable ground to believe that the crime . . . was committed and that the respondent was its author.”¹⁰⁸ Further, “what is material to a finding of probable cause is the commission of acts constituting [the offense], the presence of all its elements and the reasonable belief, based on evidence, that the respondent had committed it.”¹⁰⁹

In this case, grave abuse of discretion exists, which warrants this Court’s interference in the conduct of the executive determination of probable cause.

II

Petitioner provided sufficient bases to form a belief that a crime was possibly committed by respondent Price Richardson.

The complaint alleged that respondents committed violations of the following:

of the prosecutor and its supporting evidence. *He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused has already been arrested pursuant to a warrant issued by the judge who conducted the preliminary investigation or when the complaint or information was filed pursuant to section 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint of information.* (Emphasis supplied)

¹⁰⁴ See *Mendoza v. People, et al.*, 733 Phil. 603, 604–605 (2014) [Per J. Leonen, Third Division].

¹⁰⁵ *Mendoza v. People, et al.*, 733 Phil. 603, 608 (2014) [Per J. Leonen, Third Division].

¹⁰⁶ *Asetre, et al. v. Asetre, et al.*, 602 Phil. 840, 852–853 (2009) [Per J. Quisumbing, Second Division].

¹⁰⁷ *Valderrama v. People, et al.*, G.R. No. 220054, March 27, 2017 [Per J. Leonen, Second Division], citing *Republic v. Caguioa*, 704 Phil. 315, 333 (2013) [Per J. Brion, Second Division]. See also *Unilever v. Tan*, 725 Phil. 486, 493–494 (2014) [Per J. Brion, Second Division], and *Asetre, et al. v. Asetre, et al.*, 602 Phil. 840, 853 (2009) [Per J. Quisumbing, Second Division].

¹⁰⁸ *Unilever v. Tan*, 725 Phil. 486, 495 (2014) [Per J. Brion, Second Division]

¹⁰⁹ *Id.*

ℓ

SECURITIES REGULATION CODE

Section 26. Fraudulent Transactions. – It shall be unlawful for any person, directly or indirectly, in connection with the purchase or sale of any securities to:

....

26.3. Engage in any act, transaction, practice or course of business which operates or would operate as a fraud or deceit upon any person.

....

Section 28. Registration of Brokers, Dealers, Salesmen and Associated Persons. – 28.1. No person shall engage in the business of buying or selling securities in the Philippines as a broker or dealer, or act as a salesman, or an associated person of any broker or dealer unless registered as such with the Commission.

REVISED PENAL CODE

ARTICLE 315. Swindling (Estafa). — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

....

4th. By *arresto mayor* in its medium and maximum periods, if such amount does not exceed 200 pesos, provided that in the four cases mentioned, the fraud be committed by any of the following means:

- 1. With unfaithfulness or abuse of confidence, namely:

....

(b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.

An examination of the records reveals that probable cause exists to file an information against respondent Price Richardson for violating the laws.

Based on the Certification¹¹⁰ dated October 11, 2001 issued by the Market Regulation Department of the Securities and Exchange Commission, respondent Price Richardson “has never been issued any secondary license to act as broker/dealer in securities, investment house and dealer in

¹¹⁰ Rollo, p. 481.

government securities.”¹¹¹ Petitioner also certified that respondent Price Richardson “is not, under any circumstances, authorized or licensed to engage and/or solicit investments from clients.”¹¹²

However, the documents seized from respondent Price Richardson’s office show possible sales of securities. These documents include:

- a) A company brochure consisting of 8 pages which declares that it is a financial consultant geared towards portfolio investment advice and other financial services to investors . . .
- b) Detailed Quotes of OWTNF Otis-Winston Ltd. shares downloaded from the Bloomberg.com website which indicates its price, return, fundamentals and other matters . . .
- c) Confirmation of Trade issued by the respondent to its client MR. PETER VAN DER HAEGEN which indicates that he bought on Oc[to]ber 16, 2001 750 Otis-[W]inston Ltd at \$4.15 price per share for \$3,112.50 . . .
- d) Confirmation of Trade issued by the respondent to MR. RENNY NAIR who bought 500 shares of Hugo International (HGOI) at \$5.75 per share for which he paid \$2,932.50 . . . and Telegraphic Transfer from Oman U.A.E. Exchange Centre & Co. LLC made by Mr. Nair to PRICE RICHARDSON to the latter’s bank account No. 103-719221-0 in China Banking Corporation in the amount of \$2932.50 . . .
- e) Confirmation of Trade issued by the respondent to MR. JOHANNES DE KORTE who bought 500 shares of Otis-Winston Ltd (OWTNF) at \$5.05 per share for which he paid \$2,575.50 . . .
- f) Confirmation of Trade issued by the respondent to MR. JUERGEN GEIGER who bought 2500 shares of Hugo International at \$4.65 per share for which he paid \$11,857.50 . . .
- g) Confirmation of Trade issued by the respondent to MR. ZULKEPLI HAMID who bought 2000 shares of OWTNF at \$5.05 per share for which he paid \$10,302 . . .
- h) Telegraphic Transfers issued by China Banking Corporation to Union Bank of California International NY with Price Richardson as the Order Party and M.L. Vitale as the beneficiary in the amount of \$2000 and Citibank Belgium as the Beneficiary Bank . . .
- i) Confirmation of Trade issued by the respondent to MR. Junzo Watanabe who bought 2500 shares of OWTNF at \$3.90 per share and sold 1500 Geoalet (GEOA) shares for which he paid \$3,525 . . .
- j) First Hawaiian Bank check issued by Junzo Watanabe payable to the Order of Price Richardson[.]¹¹³

Petitioner further supports its charges by submitting the complaint-affidavits and letters of individuals who transacted with Price Richardson:

The SEC has submitted the complaint of Mr. Don Sextus Nilantha, a citizen of Sri Lanka who clearly named Price Richardson as selling him 1000 shares of Hugo Intl. Telecom, Inc. sometime in April 2001. At such

¹¹¹ Id.

¹¹² Id.

¹¹³ Id. at 448–450, Complaint-Affidavit.

time, and until today, Price Richardson was not authorized to act as traders or brokers o[f] securities in the Philippines.

Furthermore, there are other complainants against Price Richardson who deserve to have their complaints aired and tried before the proper court. Mr. Johannes Jacob Van Prooyen filed a complaint against Price Richardson with the National Bureau of Investigation . . . In the said complaint, Mr. Van Prooyen clearly pointed to Price Richardson as the ones who contacted him on June 12, 2001 to buy 2000 shares of Hugo Intl. Telecom, Inc. and on July 10, 2001 to buy 2000 shares of GeoAlert. At no time at such relevant dates was Price Richardson licensed to act as traders or brokers of securities in the Philippines.

Mr. Bjorn L. Nymann of Oslo, Norway wrote about Price Richardson to this very same Department of Justice, which letter was received on July 9, 2002. In his letter Mr. Nymann admitted dealing with Price Richardson. He admitted to having bought 3000 shares of Hugo Intl. Telecom, Inc. . . . Although Mr. Nymann is not a complaining witness against Price Richardson, his letter is relevant as at no time at such relevant date was Price Richardson licensed to act as traders or brokers of securities in the Philippines.¹¹⁴

In addition, respondent Price Richardson stated in its Memorandum:

If this Honorable Court were to consider the set-up of Price Richardson, it was as if it engaged in outsourced operations wherein persons located in the Philippines called up persons located in foreign locations to inform them of certain securities available in certain locations, and to determine if they wanted to buy these securities which are offered in a different country.¹¹⁵

The evidence gathered by petitioner and the statement of respondent Price Richardson are facts sufficient enough to support a reasonable belief that respondent is probably guilty of the offense charged.

III

However, respondents Velarde-Albert and Resnick cannot be indicted for violations of the Securities Regulation Code and the Revised Penal Code.

Petitioner failed to allege the specific acts of respondents Velarde-Albert and Resnick that could be interpreted as participation in the alleged violations. There was also no showing, based on the complaints, that they were deemed responsible for Price Richardson's violations. As found by State Prosecutor Reyes in his March 13, 2002 Resolution:

¹¹⁴ Id. at 607-608.

¹¹⁵ Id. at 921.



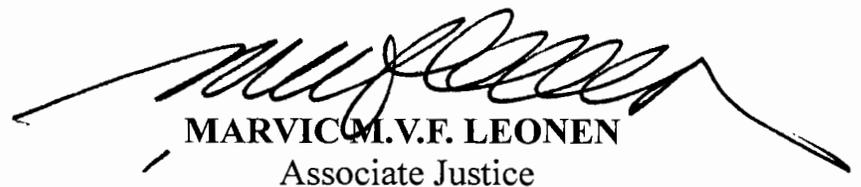
[T]here is no sufficient evidence to substantiate SEC's allegation that individual respondents, Connie Albert and Gordon Resnick, acted as broker, salesman or associated person without prior registration with the Commission. The evidence at hand merely proves that the above-named respondents were not licensed to act as broker, salesman or associated person. No further proof, however, was presented showing that said respondents have indeed acted as such in trading securities. Although complainant SEC presented several confirmation of trade receipts and documents intended to establish respondents Albert and Resnick illegal activities, the said documents, standing alone as heretofore stated, could not warrant the indictment of the two respondents for the offense charged.¹¹⁶

A corporation's personality is separate and distinct from its officers, directors, and shareholders. To be held criminally liable for the acts of a corporation, there must be a showing that its officers, directors, and shareholders actively participated in or had the power to prevent the wrongful act.¹¹⁷

WHEREFORE, premises considered, the Petition is **PARTIALLY GRANTED**. The Court of Appeals Decision dated May 26, 2011 and Department of Justice Secretary Raul M. Gonzalez's Resolutions dated April 12, 2005 and July 5, 2006 are **AFFIRMED** in so far as they find no grave abuse of discretion in the dismissal of the complaints for lack of probable cause against Consuelo Velarde-Albert and Gordon Resnick for: a) committing Estafa under Article 315(1)(b) of the Revised Penal Code and b) violating Sections 26.3 and 28 of the Securities Regulation Code.

This Court, however, finds that the dismissal of the complaint for lack of probable cause against Price Richardson Corporation for violation of Sections 26.3 and 28 of the Securities Regulation Code was rendered with grave abuse of discretion amounting to lack or excess of jurisdiction and is, thus, **ANNULLED** and **SET ASIDE**.

SO ORDERED.



MARVIC M.V.F. LEONEN
Associate Justice

¹¹⁶ Id. at 539–540.

¹¹⁷ *ABS-CBN Corporation v. Gozon*, G.R. No. 195956, March 11, 2015, 753 SCRA 1, 78–79 [Per J. Leonen, Second Division].

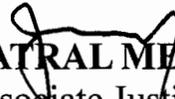
WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson



DIOSDADO M. PERALTA
Associate Justice



JOSE CATRAL MENDOZA
Associate Justice



SAMUEL R. MARTIRES
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice