

**8. AUDITED FINANCIAL STATEMENTS
CONSTITUTE THE NORMAL METHOD OF PROFIT
AND LOSS PERFORMANCE OF A COMPANY**

NWPC Case No. E-13-003

25 April 2013

(Case No. NCR-W.O. No. 17D[80])

**IN RE: APPLICATION FOR EXEMPTION FROM
WAGE ORDER NO. NCR-17**

COATS MANILA BAY, Applicant-Appellant

**PINAG-ISANG LAKAS NG MGA MANGGAGAWA SA
MANILA BAY AT COATS, Union-Oppositor.**

Wage Order, Application for Exemption; Capital Impairment and Documents Required. - In order for an applicant establishment to qualify for exemption as a distressed establishment, it must submit proof of deficit or capital deficiency as of the last full accounting period or interim period, immediately preceding the effectivity of the Wage Order, showing that its paid-up capital has been impaired by at least 20% or more or that it registers capital deficiency. To determine the alleged distressed condition of the Applicant-Appellant, the following documents must be submitted: the Audited Financial Statements (together with the Auditor's opinion and the notes thereto) for the years 2011 and 2010; 1st and 2nd Quarter Interim Audited Financial Statements (together with the Auditor's opinion and notes thereto) for 2004.

Same; Same, Audited FS the Normal Method of Profit and Loss Performance of a Company. - The Supreme Court in *Waterfront Cebu City Hotel vs. Ma. Melanie P. Jimenez, et al*, G.R. No. 174214, June 13, 2012; *Virgilio G. Anabe vs. Asian*

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Construction, et al, G.R. No. 183233, December 23, 2009; FASAP vs. PAL, et al, G.R. No. 178083, July 22, 2008; Marine Corp. vs. NLRC, et al, G.R. No. 152039, April 8, 2005; Cajucom VII vs. TPI Philippine Cement Corporation, G.R. No. 149090, February 11, 2005; DLSU vs. DLSU Employees Association, G.R. No. 109002, April 12, 2000; Juan Saballa, et al, vs. NLRC and Camarines Sur III Electric Cooperative, Inc., G.R. Nos. 102472-84, August 22, 1996, declared that the financial statements audited by independent external auditors constitute the normal method of profit and loss performance of a company.

FACTS:

Applicant-Appellant filed with the Board an exemption application from Wage Order No. NCR-17 as a distressed establishment submitting incomplete documents. The Board directed the Applicant-Appellant to submit within 10 days from receipt, the lacking supporting documents. For failure to submit the required documents, the Board dismissed the Applicant-Appellant's application.

The Board also denied the motion for reconsideration of Applicant-Appellant for failure of the latter to submit the required documents.

Hence, the Applicant-Appellant filed an appeal.

ISSUES:

1. WHETHER OR NOT THE APPLICANT-APPELLANT IS QUALIFIED FOR EXEMPTION AS A DISTRESSED ESTABLISHMENT.
2. WHETHER OR NOT THE BOARD COMMITTED GRAVE ABUSE OF DISCRETION.

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HELD:

Appeal denied.

In order for an applicant establishment to qualify for exemption as a distressed establishment, it must submit proof of deficit or capital deficiency as of the last full accounting period or interim period, immediately preceding the effectivity of the Wage Order, showing that its paid-up capital has been impaired by at least 20% or more or that it registers capital deficiency. To determine the alleged distressed condition of the Applicant-Appellant, the following documents must be submitted: the Audited Financial Statements (together with the Auditor's opinion and the notes thereto) for the years 2011 and 2010; 1st and 2nd Quarter Interim Audited Financial Statements (together with the Auditor's opinion and notes thereto) for 2004.

In the case at bar, the Applicant-Appellant failed to submit the required supporting documents, particularly the 2010 and 2011 Audited Financial Statements and 2012 1st and 2nd Quarter Interim Audited Financial Statements, even on appeal. Therefore, the Board and the Commission have no basis for determining the alleged distressed condition of the Applicant-Appellant.

The Supreme Court in *Waterfront Cebu City Hotel vs. Ma. Melanie P. Jimenez, et al*, G.R. No. 174214, June 13, 2012; *Virgilio G. Anabe vs. Asian Construction, et al*, G.R. No. 183233, December 23, 2009; *FASAP vs. PAL, et al*, G.R. No. 178083, July 22, 2008; *Marine Corp. vs. NLRC, et al*, G.R. No. 152039, April 8, 2005; *Cajucom VII vs. TPI Philippine Cement Corporation*, G.R. No. 149090, February 11, 2005; *DLSU vs. DLSU Employees Association*, G.R. No. 109002, April 12, 2000; *Juan Saballa, et al, vs. NLRC and Camarines Sur III Electric Cooperative, Inc.*, G.R. Nos. 102472-84, August 22, 1996, declared that the financial

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statements audited by independent external auditors constitute the normal method of profit and loss performance of a company.

The Board did not commit grave abuse of discretion as the denial of the application for exemption on 28 November 2012 was due to the failure of the Applicant-Appellant to submit the required documents, particularly the 2010 and 2011 Audited Financial Statements and 2012 1st and 2nd Quarter Interim Audited Financial Statements.

The Board's Decision dated 28 November 2012 and Resolution dated 12 February 2013 are AFFIRMED.

Lagunzad III (Chairman Designate), Balisacan (Vice-Chairman), Bagtas, Floro, Diwa Jr., Rondain (Commissioners), Hornilla (OIC Executive Director) unanimously voted to deny the appeal.

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