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*NWPC Case No. E-13-002*

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**7. REVALUATION OF ASSETS**

**NWPC Case No. E-13-002  
(Case No. NCR-W.O. No. 17D)**

12 April 2013

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

MARY JOHNSTON HOSPITAL, INC., Applicant Appellant.

*Wage Order; Application for Exemption; Service of Notice of the Decision.* - Rule 13, Section 2 (paragraph 2) of the Rules of Court provides that service is the act of providing a party with a copy of the pleading or paper concerned. If any party has appeared by counsel, service upon him shall be made upon his counsel or one of them, unless service upon the party himself is ordered by the Court. Where one counsel appears for several parties, he shall only be entitled to one copy of any paper served upon him by the opposite side. In *Romeo Zoleta vs. The Honorable Secretary of Labor, Et. Al.*, G.R. No. 77242, October 18, 1988, the Supreme Court, citing *Palanca vs. American Food Manufacturing Co.*, 24 SCRA 819 (1968) and *J.M. Javier Logging Corporation vs. Mardo*, 24 SCRA 776 (1969), declared that it is well-settled that notice to counsel is notice to the client. On the other, notice to the client does not amount to notice to counsel. The reason for the latter rule is where a party appears by attorney, notice to the former is not a notice in law, unless service upon the party himself is ordered by the court. This rule is not a mere technicality, but one founded on considerations of fair play. A party engages an attorney of record precisely because it does not feel competent to deal with the intricacies of law and procedure. Furthermore, as the party directly served would have to communicate with its attorney and turn over to him the notice received, the net result would be noticeably

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shorten the usable period for taking the proper steps required to protect the party's interest.

*Same; Same; Capital Impairment Requirement.* - A non-stock, non-profit company may qualify for a full exemption as a distressed establishment when its accumulated net losses for the last two (2) full accounting periods immediately preceding the effectivity of the Order amount to 20% or more of the fund balance/members' contribution at the beginning of the period; or when it registers capital deficiency. It may qualify for partial exemption when its accumulated net losses for the last two (2) full accounting periods immediately preceding the effectivity of the Order amount to at least 10% but less than 20% of the fund balance/members' contribution at the beginning of the period. When the applicant's actual net loss as of the interim period immediately preceding the effectivity of the Order amounts to at least 25% of total assets, it may qualify for conditional exemption.

*Same; Same; Deduction of Revaluation Increase of Assets to Determine the Actual Financial Condition of a Company.* - To determine the actual financial condition of the Applicant-Appellant, it is but proper to consider the notes to its 2007 and 2008 AFS in relation to its 2010 and 2011 AFS and the Supreme Court decision in RCPI vs. NWC, et. al. (G.R. No. 93044, March 26, 1992) where the revaluation increments were allowed to be deducted from the retained earnings to determine the actual losses of the company. In this respect, the Applicant-Appellant may qualify for exemption from Wage Order No. NCR-17. Also, while the periods under review are 2010 and 2011, being the last two (2) full accounting periods immediately preceding the effectivity of Wage Order No. NCR-17, yet the consideration of the 2007 and 2008 AFS becomes material because the revaluation increase of assets was reflected therein which was carried over in the succeeding AFS. If the revaluation increase of assets would be deducted from the

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Applicant-Appellant's 2010 and 2011 Audited Financial Statements and 2012 Interim Audited Financial Statement, a negative fund balance for said periods would result.

*Same; Same; No Grave Abuse of Discretion.* - The Board considered the required 2010, 2011 Audited Financial Statements and 2012 Interim Financial Statements in determining whether the Applicant-Appellant was qualified for exemption as a distressed establishment from Wage Order No. NCR-17. Although, it failed to consider for purposes of exemption, the relevance of the previous Audited Financial Statements to come up with the proper fund balance taking into account the revaluation of assets undertaken.

### **FACTS:**

The Board disapproved the exemption application as a distressed establishment of Applicant-Appellant for failure of the latter to meet the criteria.

The Board also denied the Applicant-Appellant's motion for reconsideration holding that the submitted Financial Statements with the Notes to Financial Statements for the periods ending December 2009 and December 2010 stated that the revaluation increment of P129,070,429 in December 2008 was already deducted and therefore no more revaluation increment was recorded in the FS ending December 2011, one of the documents required in analyzing the financial condition of the company and the exemption granted under Wage Order No. NCR-14 was only good for 1 year effective June 14, 2008 up to June 13, 2009.

Hence, the appeal of Applicant-Appellant.

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### **ISSUES:**

1. WHETHER OR NOT THE APPEAL SHOULD BE GIVEN DUE COURSE.
2. WHETHER OR NOT THE APPLICANT-APPELLANT IS QUALIFIED FOR EXEMPTION AS A DISTRESSED ESTABLISHMENT.
3. WHETHER OR NOT THE BOARD COMMITTED GRAVE ABUSE OF DISCRETION.

### **HELD:**

Appeal granted.

On the first issue, the Commission ruled that the appeal should be given due course. The Applicant-Appellant cannot be faulted for the filing of its appeal only on 27 February 2013 since the Board did not furnish the former's counsel a copy of the Resolution. Rule 13, Section 2 (paragraph 2) of the Rules of Court provides that service is the act of providing a party with a copy of the pleading or paper concerned. If any party has appeared by counsel, service upon him shall be made upon his counsel or one of them, unless service upon the party himself is ordered by the Court. Where one counsel appears for several parties, he shall only be entitled to one copy of any paper served upon him by the opposite side. In *Romeo Zoleta vs. The Honorable Secretary of Labor, Et. Al.*, G.R. No. 77242, October 18, 1988, the Supreme Court, citing *Palanca vs. American Food Manufacturing Co.*, 24 SCRA 819 (1968) and *J.M. Javier Logging Corporation vs. Mardo*, 24 SCRA 776 (1969), declared that it is well-settled that notice to counsel is notice to the client. On the other, notice to the client does not amount to notice to counsel. The reason for the latter rule is where a party appears by attorney, notice to the former is not a notice in law, unless service upon the party himself is ordered by the court.

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This rule is not a mere technicality, but one founded on considerations of fair play. A party engages an attorney of record precisely because it does not feel competent to deal with the intricacies of law and procedure. Furthermore, as the party directly served would have to communicate with its attorney and turn over to him the notice received, the net result would be noticeably shorten the usable period for taking the proper steps required to protect the party's interest.

On the second issue, the Commission finds that the Applicant-Appellant is qualified for exemption as a distressed establishment. A non-stock, non-profit company may qualify for a full exemption as a distressed establishment when its accumulated net losses for the last two (2) full accounting periods immediately preceding the effectivity of the Order amount to 20% or more of the fund balance/members' contribution at the beginning of the period; or when it registers capital deficiency. It may qualify for partial exemption when its accumulated net losses for the last two (2) full accounting periods immediately preceding the effectivity of the Order amount to at least 10% but less than 20% of the fund balance/members' contribution at the beginning of the period. When the applicant's actual net loss as of the interim period immediately preceding the effectivity of the Order amounts to at least 25% of total assets, it may qualify for conditional exemption.

To determine the actual financial condition of the Applicant-Appellant, it is but proper to consider the notes to its 2007 and 2008 AFS in relation to its 2010 and 2011 AFS and the Supreme Court decision in RCPI vs. NWC, et. al. (G.R. No. 93044, March 26, 1992) where the revaluation increments were allowed to be deducted from the retained earnings to determine the actual losses of the company. In this respect, the Applicant-Appellant may qualify for exemption from Wage Order No. NCR-17.

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Also, while the periods under review are 2010 and 2011, being the last two (2) full accounting periods immediately preceding the effectivity of Wage Order No. NCR-17, yet the consideration of the 2007 and 2008 AFS becomes material because the revaluation increase of assets was reflected therein which was carried over in the succeeding AFS.

If the revaluation increase of assets would be deducted from the Applicant-Appellant's 2010 and 2011 Audited Financial Statements and 2012 Interim Audited Financial Statement, a negative fund balance for said periods would result.

The Supreme Court in *RCPI vs. NWC, et. al.*, (G.R. No. 93044, March 26, 1992) declared that the purpose of wage exemption is to help financially distressed companies meet their labor costs without endangering the existence or viability of the firm upon which both management and labor depend for living. Under the spirit of Wage Order No. 6, it is the actual ability of a firm to spend for its current needs and costs and not how the assets and liabilities of a firm may appear in the technical jargon of higher accounting principles which is important. For instance, no matter how solid a firm may be in terms of essential fixed assets, its ability to pay daily payrolls will depend only on actual income unless some of the fixed assets are sold for wages and salaries. It also stated that while it is true that the retained earnings account constitutes a company's accumulated profits or losses, however, it is not enough to treat said earnings as "earnings" in the real sense of the word for purposes of wage exemptions. The true nature and composition of the retained earnings account should likewise be looked into. It also said that if the transfer of portions of revaluation increment in property is not included to retained earnings, RCPI had an income deficit of P20,056.992 from 1980 to 1985. If the portion of the revaluation increment in property for the same period for a total of P28,294,520.00 is added to the retained earnings

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account, there will be a positive retained earnings balance of P8,237,528.00. Without the transfer of the revaluation increment in property to the retained earnings account, there would be no positive balance. There would be deficit. It added that to a company striving to meet daily payrolls, it is not of any comfort to say that the appraisal increment transferred to retained earning represents actual earnings which were previously deducted from the actual net income figure through additional depreciation expense resulting from appraisal. In purely technical accounting terms, they may be considered as merely being returned not to the net income account but to the retained earnings balance to which the net income account is ultimately closed. It further stated that for purpose of compliance with the law on wage exemptions, however, the retained earnings arising from appraisal increment do not represent hard cash but merely theoretical increases resulting from upward valuations of old fixed assets. There is no income or profit from the sale of goods or services. No income is realized from the reappraisal of fixed assets until such a time as the machinery, equipment, and other fixed assets are sold or disposed of in the event of a liquidation of assets.

On the third issue, the Board did not commit grave abuse of discretion. As culled from the case records, the Board considered the required 2010, 1011 Audited Financial Statements and 2012 Interim Financial Statements in determining whether the Applicant-Appellant was qualified for exemption as a distressed establishment from Wage Order No. NCR-17. Although, it failed to consider for purposes of exemption, the relevance of the previous Audited Financial Statements to come up with the proper fund balance taking into account the revaluation of assets undertaken.

The Applicant-Appellant shall be entitled an exemption from 3 June 2012 to 2 June 2013. The Decision of the Board dated

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4 October 2012 and Resolution dated 17 December 2012 are REVERSED and SET ASIDE.

*Lagunzad III (Chairman Designate), Balisacan (Vice-Chairman), Floro, Rondain Commissioners), Hornilla (OIC, Executive Director) voted to grant the appeal.*

*Bagtas, Diwa (Commissioners) dissented.*

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