

THE PHILIPPINE ADR REVIEW

AUGUST 2013

BROADENING ITS SCOPE OF ARBITRATION ADVOCACY



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PDRCI elects new trustees and officers for 2013-14 term

By Juan Paolo E. Colet



PDRCI 2013-14 BOARD OF TRUSTEES. Front row, from left: Eduardo Ong, Beda Fajardo, Miguel Varela, Victor Lazatin, Rep. Rufus Rodriguez, Custodio Parlade, Eduardo Ceniza. Second row, front left: Mario Valderrama, Edmundo Tan, Roger Nicandro, Victoriano Orocio, Greg Navarro, Roberto Dio, Gwen de Vera, Patricia-Ann Prodigalidad, Ricardo Ongkiko.

The Philippine Dispute Resolution Center, Inc. held its annual General Membership Meeting last July 17, 2013.

Members who attended the meeting elected new trustees and officers to serve for 2013-2014. The new Board of Trustees is composed of Shirley F. Alinea, Arthur P. Autea, Donemark Joseph L. Calimon, Salvador P. Castro Jr., Eduardo R. Ceniza, Gwen B. Grecia De Vera, Roberto N. Dio, Beda G. Fajardo, Victor P. Lazatin, Gregorio S. Navarro, Rogelio C. Nicandro, Eduardo G. Ong, Ricardo Ma. P. G. Ongkiko, Bernadette C. Ongoco, Victoriano V. Orocio, Salvador P. Panga, Jr., Patricia C. Prodigalidad, ASG Reynaldo L. Saldares, Atty. Edmund L. Tan, Prof. Mario E. Valderrama, Atty. Miguel B. Varela.

Orocio, Salvador P. Panga Jr., Patricia-Ann T. Prodigalidad, Reynaldo L. Saldares, Edmund L. Tan, Mario E. Valderrama, and Miguel B. Varela.

The new officers are led by Miguel B. Varela, Chairman, and Gregorio S. Navarro, President. ► **PAGE 4**

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Arbitration of business spats¹

By Raul J. Palabrica

AFTER two years of legal skirmishes, the Philippine Charity Sweepstakes Office and DFNN Inc., a listed information technology company, agreed last week to submit to arbitration their lingering business dispute.

In 2003, the parties entered into an equipment lease agreement where DFNN committed to provide the facilities needed to enable PCSO to receive lotto bets and bettors' payment from all over the country.

The project did not materialize because, among others, the two concessionaires in Luzon and Visayas-Mindanao with whom PCSO had earlier entered into similar gaming arrangements objected to the revenue sharing agreement offered to them by DFNN.

As a result, in 2008 PCSO (then

chaired by Sergio Valencia) unilaterally terminated its agreement with DFNN.

The cancellation spawned charges and counter charges between them, including the filing of criminal raps against PCSO officials for violation of the Anti Graft and Corrupt Practices Law.

Upon their agreement on arbitration, PCSO nominated former Environment Secretary Fulgencio Factoran Jr. as its arbitrator-representative in the arbitration panel.

As soon as DFNN names Factoran's

counterpart, the two arbitrators will choose the third (or deciding) member who shall, at the same time, act as chair of the panel.

Selection

Unless the parties agree otherwise, the standard practice in arbitration proceedings, especially if business or commercial issues are involved, is to make the arbitrators' decision final and immediately enforceable.

Motions for reconsideration or appeals to judicial bodies are frowned upon because they defeat the underlying objective of arbitration – the speedy resolution of disputes.

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While expeditious, arbitration does not come cheap. The parties have to pay the professional fees of their respective arbitrators and, at the same time, share in the fee of the third member, including the expenses for secretarial and other support services that may be incurred during the proceedings.

Cost-wise though, arbitration in the long run comes out less expensive compared to going through the judicial process where lawyers charge exorbitant fees every step of the way and demand reimbursement of the expenses (both legal and extra legal) they may have incurred in handling the case.

The biggest plus factor in avoiding the judicial system is the substantial savings in time and effort. A commercial dispute can take from five to seven years before it can be resolved with finality.

Add another two years if the judge or justices assigned to the case have scant background on business issues. They have to learn along the way or be “tutored” on the side to understand the intricacies of the case.

Governance

DFNN’s agreement to enter into arbitration to settle its differences with PCSO is on track with the direction the Revised Code of Corporate Governance wants listed and public companies (like DFNN) to take to resolve intra and external disputes.

The Code requires the board of directors of these companies to “establish and maintain an alternative dispute resolution system in the corporation that can amicably settle conflicts or differences between the corporation and its stockholders, and the corporation and third parties, including the regulatory authorities.”

The directive is a subtle admission by the corporate regulator that the traditional process of going to court to seek redress for grievances by and among stockholders and the corporation, including third parties, has ceased to be effective. Worse, it’s time consuming and expensive. More so now when our courts are hopelessly clogged and the Supreme Court, burdened by internal personality problems, appears to be clueless in making the justice system operate efficiently.

In business, time is gold. Every minute spent attending to the resolution or settlement of disputes is a minute taken from the opportunity to make the business run efficiently and profitably.

The existing modes of alternative dispute resolution – conciliation, mediation and arbitration – provide an avenue for companies that find themselves in situations of conflict among themselves or vis-à-vis government offices, like PCSO, to be able to immediately attend to their problems and, after resolving them one way or the other, move on.

Arbitrators

Arbitration as a means of resolving commercial or business disputes is not new in our country.


As early as 1985, an arbitration system in the construction industry was put in place by presidential fiat through the Construction Industry Arbitration Commission.

If the parties in a construction row agree to enter into voluntary arbitration, the commission has original and exclusive jurisdiction to resolve the factual questions that may arise from their dispute.

Since its creation, the commission, with its staff of technical experts in different areas of construction, has been able to expeditiously settle or arbitrate, more or less, 300 construction disputes whose aggregate value run to billions of pesos.

Depending on their need, some industry or business sectors in the country have formed their own systems for the mediation, conciliation or arbitration, as the circumstances may warrant, of commercial disputes within their areas of operation.

Understandably, there is little publicity, if at all, about these activities because of possible adverse reaction from the affected companies’ target markets, aside from avoiding the loss of face by the “guilty” party.

Indeed, the most efficient way to resolve commercial or business disputes is through arbitration, not by way of the judicial system. 

For comments, please send your email to “rpalabrica@inquirer.com.ph.”

About the Author



Prof. Raul J. Palabrica is an alumnus of the University of the Philippines College of Law and former Commissioner of the Philippine Securities and Exchange Commission. He writes a business column, Corporate & Securities Info, for *The Philippine Daily Inquirer*, a national broadsheet.

MEMBER SPOTLIGHT

Atty. Patricia-Ann T. Prodigalidad




Atty. Trina Prodigalidad is a partner at Angara Abello Concepcion Regala & Cruz's (ACCRALAW) Litigation & Dispute Resolution Department where she specializes in commercial, criminal, and intellectual property litigation, as well as in commercial and construction arbitration.

She received her undergraduate degree in Biology, *magna cum laude*, from the University of the Philippines (U.P.) in 1991. She earned her law degree, *cum laude*, from the same university in 1996, where she graduated class salutatorian. Atty. Prodigalidad was the chair of the Philippine Law Journal and a member of the honor society Order of the Purple Feather. She was inducted into the *Phi Kappa Phi* and the *Pi Gamma Mu* Honor Societies.

Atty. Prodigalidad topped the 1996 Philippine bar examinations and joined ACCRALAW as an associate. In 2004, she went to Harvard University for her Master of Laws.

She was a member of the Department of Justice's technical working group that helped drafted the Implementing Rules and Regulations of the Alternative Dispute Resolution Act of 2004. She served as a resource person of the Supreme Court's Sub-Committee on the Rule on DNA Evidence. Her various articles on arbitration were published in the *Asian International Arbitration Journal*, *Philippine Law Journal*, and *International Commercial Arbitration in Asia*.

Atty. Prodigalidad is currently the Assistant National Secretary of the Integrated Bar of the Philippines and chair of its Committee on Law Practice Management. She is also a member of the ADR Standing Committee of the Asean Law Association-Philippines Chapter; Fraudnet, an affiliate of the International Chamber of Commerce's Commercial Crime Services; U.P. Women Lawyers Circle (WILOCI); and *Federación Internacional de Abogadas* (FIDA). She also volunteers for Child Justice League, a non-governmental organization, which protects children's rights and welfare. 

PDRCI elects new trustees and officers for 2013-14 term




ORGANIZATIONAL MEETING OF NEW BOARD. The new Board of Trustees meets after the election to appoint new officers and to discuss new business. Counterclockwise, from foreground: Mario Valderama (back), Corporate Secretary Patricia-Ann Prodigalidad, immediate past President Victor Lazatin, Chairman Miguel Valera, President Gregorio Navarro, former President Eduardo Ceniza, Secretary General Roberto Dio, President Emeritus Custodio Parlade, Roger Nicandro, Victoriano Orocio, and Beda Fajardo.

◀ **PAGE 1** The other officers are Victor P. Lazatin, Vice-Chairman for Internal Affairs; Eduardo R. Ceniza, Vice-Chairman for External Affairs; Beda G. Fajardo, Vice-President for Internal Affairs; and Salvador S. Panga Jr., Vice-President for External Affairs.

Roberto N. Dio was appointed Secretary General, together with Shirley F. Alinea, Deputy Secretary General; Donemark Joseph L. Calimon, Treasurer; Eduardo G. Ong, Assistant Treasurer; Patricia-Ann T. Prodigalidad, Corporate Secretary; and Ricardo Ma. P. G. Ongkiko, Assistant Corporate Secretary.

A new Executive Committee was also elected, composed of Gregorio S. Navarro, Victor P. Lazatin, Roberto N. Dio, Eduardo R. Ceniza, and Edmund L. Tan.

The membership also honored retired Supreme Court Chief Justice Artemio V. Panganiban with the position of Chairman Emeritus. Custodio O. Parlade was previously honored as President Emeritus. 

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