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..... THE PHILIPPINE .....  
**ADR REVIEW**

*Broadening its scope of arbitration advocacy*

**AUGUST 2015**



PDRCI SECRETARY GENERAL ROBERTO DIO SPOKE ON PRE-HEARING CONSIDERATIONS.

## PDRCI holds 9th arbitration training seminar

PDRCI successfully trained 49 new arbitrators during its four-day training seminar held on July 13 to 16, 2015.

The training, held at PDRCI's office at the Trade & Commerce Plaza at Fort Bonifacio in Taguig City, covered (a) introduction to arbitration by Atty. Arthur P. Autea, (b) pre-arbitration issues by Atty. Salvador S. Panga, Jr., (c) commencing the arbitration by Atty. Eduardo R. Ceniza, (d) pre-hearing considerations by Secretary General Atty. Roberto N. Dio, (e) conducting arbitration hearings by Atty. Victor P. Lazatin, and (f) recognition, enforcement, challenge and vacation of awards by Dean Custodio O. Parlade.

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ATTY. EDUARDO CENIZA DURING THE OPEN-FORUM FOLLOWING HIS LECTURE ON COMMENCING THE ARBITRATION.

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# Supreme Court: Special ADR Rules applies to execution of confirmed Award

By Ricky A. Sabornay

The Special Rules of Court on Alternative Dispute Resolution (“Special ADR Rules”) applies not only to the confirmation of an arbitral award but by implication necessarily extends to the execution of the confirmed award. This was the ruling of the Supreme Court in the recent case of Department of Environmental and Natural Resources v. United Planners Consultants, Inc. (UCPI), G.R. No. 212081, February 23, 2015.



for extension but gave it another chance to submit its draft decision before May 7, 2010, to which DENR complied.

On May 7, 2010, the Tribunal rendered an Award in favor of UCPI. It directed DENR to pay UCPI the amount of (a) its unpaid progress billings, with 12% interest per annum from the date of finality of the Award upon confirmation by the RTC, until fully paid; (b) accrued interest; (c)

exemplary damages; (d) attorney’s fees; and (e) its proportionate share of the arbitration costs.

## The dispute

On July 26, 1993, the Land Management Bureau (LMB) of the Department of Environment and Natural Resources (DENR) of the Philippine government entered into a Consultancy Agreement with UCPI for the Land Resource Management Master Plan Project. Under their Agreement, DENR undertook to pay UCPI’s fees based on progress or stage billing. UCPI completed the work, which and DENR accepted. However, LMB paid UCPI only 47% of the contract price.

Due to DENR’s failure to pay the balance of its fee despite demands, UCPI filed a collection case with the Regional Trial Court, Branch 222, Quezon City (RTC). The case was subsequently referred to arbitration in accordance with the arbitration clause of the Agreement.

During the preliminary conference before the Arbitral Tribunal (“Tribunal”), both parties agreed to adopt the Revised Rules Governing Construction Arbitration of the Construction Industry Arbitration Commission (CIAC Rules) to govern their arbitration proceedings. They also agreed to submit their respective draft decisions on or before April 21, 2010 in lieu of oral hearing.

The DENR moved for extension of the deadline and requested that it be given until May 11, 2010 to submit its draft decision. The Tribunal denied the DENR’s motion

DENR moved for reconsideration of the Award but the Tribunal did not act on it and instead submitted to the RTC its report together with a copy of the Award.

DENR then filed a motion for reconsideration with the RTC, asserting that it was denied the opportunity to be heard when the Tribunal failed to consider its draft decision and merely noted its motion for reconsideration.

Meanwhile, UCPI moved the RTC to confirm the Award pursuant to the Special ADR Rules. The RTC confirmed the Award and ordered DENR to pay UCPI the costs of confirming the award, which the DENR did not challenge.

On June 15, 2011, UCPI moved the RTC to issue a writ of execution, which the court granted. Instead of complying with the writ, however, DENR moved to quash it, claiming that its issuance was premature since the RTC should have first resolved DENR’s motion for reconsideration.

The RTC denied DENR’s motion to quash, ruling that its motion for reconsideration was a prohibited pleading under Rule 17, Section 17.2 of the CIAC Rules. The court reasoned that DENR should have filed a motion for correction of final award and not a motion for reconsideration of the Award itself. As a result, the court ruled that the Award became final and executory.



Aggrieved, DENR filed a petition for certiorari with the Court of Appeals (“CA”), asserting that the RTC acted with grave abuse of discretion in confirming and ordering the execution of the Award. The CA, however, dismissed the petition, holding that (a) the petition, which assailed the merits of the Award is prohibited under Rule 19.7 of the Special ADR Rules; and (b) it was filed out of time, having been filed way beyond the 15 days from notice of the RTC’s Order.

Dissatisfied, the DENR elevated the case to the Supreme Court.

**Application of Special ADR Rules on execution**

In its 14-page Decision, the Supreme Court noted that “[b]y its referral to arbitration, the case fell within the coverage of the Special ADR Rules. However, with respect to the arbitration proceedings itself, the parties agreed to adopt the CIAC Rules before the Arbitral Tribunal in accordance with Rule 2.3 of the Special ADR Rules.”

The Supreme Court explained that under Rule 17, Section 17.2 of the CIAC Rules, no motion for reconsideration or new trial may be sought but any of the parties may file a motion for correction of the final award. Under the same rules, the parties may appeal the final award to the CA through a petition for review under Rule 43 of the Rules of Court. The DENR failed to avail of any of these remedies. Instead it filed a Motion for Reconsideration, which was a prohibited pleading, thus rendering the Award final and executory.

The Supreme Court also noted that under Rule 19.26 of the Special ADR Rules, a party may only file a special civil action for certiorari to annul or set aside a ruling of the RTC when there is no appeal or any plain, speedy,

and adequate remedy in the ordinary course of law. The DENR, instead of filing a petition for certiorari should have opposed the RTC’s confirmation by filing a petition to vacate the Award under Rule 11.2(D) of the Special ADR Rules or sought reconsideration of the confirmation order in accordance with Rule 19.1(h) of the same rules. Hence, the Supreme Court found that the CA correctly dismissed the DENR’s petition for failure to avail of the appropriate remedies before resorting to certiorari.

Even assuming that DENR could have filed the petition for certiorari, the Supreme Court noted that still it was filed beyond the 15-day rperiod prescribed in Rule 19.28 of the Special Rules. The Supreme Court rejected the DENR’s position that Rule 65 of the Rules of Court and not the Special ADR Rules applies in this case.

It explained that while the Special ADR Rules does not explicitly provide a procedure for execution of a confirmed arbitral award, the Special ADR Rules extends to a confirmed award’s execution in light of the doctrine of necessary implication, which states that every statutory grant of power, right or privilege is deemed to include all incidental power, right or privilege, and the principle of ratio legis est anima, which provides that a statute must be read according to its spirit or intent.

The execution of the Award is but a necessary incident to the court’s confirmation of an arbitral award. Thus, the court’s power to confirm an award includes the power to order its execution. Consequently, the Special ADR Rules should be made to apply not only to the proceedings on confirmation but also to the confirmed award’s execution. The Supreme Court clarified that resort to the Rules of Court even in a suppletory manner is not allowed by the Special ADR Rules. Hence, It denied DENR’s petition. 🇵🇭

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**About the Author**

*Atty. Sabornay is a litigation associate at Castillo Laman Tan Pantaleon & San Jose. His practice focuses on arbitration, commercial and construction litigation, real estate, labor and criminal law. He graduated from the University of the Philippines College of Law in 2012, where he received the Dean’s Medal for academic excellence.*

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## ARBITRATOR SPOTLIGHT



**J. Felix de Luis** studied law at the Universidad CEU San Pablo in Madrid, Spain. He received his Master of Laws while a Fulbright scholar at the Columbia University Law School. He is a product of the Advanced Management Program of the Harvard Business School.

Mr. de Luis was an attorney in Spain's Ministry of Economy, Ministry of Public Works, and Ministry of Public Administration. He also served as a member of the Board and the head of the International Department of Spain's Securities and Exchange Commission, the Comision Nacional del Mercado de Valores.

He worked as an associate attorney for Davis Polk & Wardwell, a law firm in New York, U.S.A., and as Chief Compliance Officer and Assistant General Manager of Banco Santander in Madrid, Spain.

Mr. de Luis is a well-known expert in the field of international arbitration and has served as an arbitrator in various panels and tribunals of several international arbitral institutions, such as Corte Civil y Mercantil de Arbitraje, Corte Española de Arbitraje, Corte de Arbitraje de Madrid, Tribunal Arbitral de Futbol, London Court of International Arbitration, China International Economic and Trade Arbitration Commission, Hong Kong International Arbitration Centre, Weihai Arbitration Commission, and Singapore International Arbitration Centre.

At present, Mr. de Luis is the Managing Director of Legal 21 Abogados, a Spanish law firm that provides legal services in the fields of corporate and commercial law, administrative, banking and insurance litigation, mediation and arbitration.

## PDRCI holds 9th arbitration training seminar

From page 1



BATCH 2015-A, 9TH PDRCI ARBITRATION TRAINING SEMINAR, JULY 13-16, 2015.

The participants watched a training video and took part in a mock arbitration facilitated by Attys. Donemark Calimon and Ricardo Ongkiko. They also took an accreditation examination on the last day of the training.

Based on a survey of the participants, the training rated good to excellent overall. According to the participants, the speakers were knowledgeable, the content was organized and easy to follow, the materials distributed were pertinent and useful, and there was adequate time provided for questions and discussions. The training met the participants' expectations, who said that they would be able to apply the knowledge learned.

However, the time allotted to the daily take-home assignments were not adequate given the workloads of the participants. There were also constructive suggestions offered to improve the training and the style of each speaker.

PDRCI will hold its 10th arbitration training seminar in November 2015. For next year, it plans to roll out three training seminars. Beginning 2017, PDRCI aims to hold quarterly training seminars, including two in Cebu and Davao.



PARTICIPANTS TAKING THE ASSESSMENT EXAMINATIONS FOR ACCREDITATION AS ARBITRATORS.

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