REPUBLIC OF THE PHILIPPINES
REGIONAL TRIAL COURT
NATIONAL CAPITAL JUDICIAL REGION
BRANCH 80 - QUEZON CITY

ABS-CBN BROADCASTING CORPORATION,

Petitioner,

Civil Case No. Q-07-61665

- versus -

AGB NIELSEN MEDIA RESEARCH (PHILIPPINES), INC.,

Respondent,

x - x

ORDER

This resolves the Petition for Relief from Judgment filed by petitioner ABS-CBN Broadcasting Corporation praying that the Certificate of Finality dated January 5, 2010 be set aside and that petitioner be allowed to file its notice of appeal.

As ground for the Petition, petitioner argues that it was prevented from taking an appeal from the Order dated January 7, 2008 dismissing its complaint because of accident, as it did not receive a copy of the Order dated June 8, 2009 denying the Motion for Reconsideration it filed which, based on the Certificate of Finality issued, was received by counsel for the petitioner on June 23, 2009. Petitioner alleges that it was only on March 17, 2010 when it learned that a Certificate of Finality was already issued by this Court when one of the associates of petitioner's counsel checked the status of the case as part of an internal audit of the firm's active cases in the Regional Trial Court of Quezon City. After securing copies of the Order dated June 8, 2009 and the Certificate of Finality, petitioner's counsel investigated the matter and confirmed that it did not receive a copy of said order. As proof thereof, petitioner attached in its Petition a copy of the "Incoming Pleadings" document[1], a document allegedly prepared and e-mailed to all lawyers of the firm daily, showing that a copy of the Court's Order dated June 8, 2009 was not among those received by the firm on June 23, 2009. Petitioner further alleges that during the period when the Order was allegedly received, there were numerous power interruptions prompting a suspension of the firm's work onsite because of a fire at the basement of the Philippine Stock Exchange Center (PSEC) which may have been a contributing factor why the Order was not properly received and logged in the firm's Incoming Pleadings. An Affidavit[2] executed by Atty. Vincent Patrick A. Bayhon attesting to the facts surrounding the Petition and discussing the merits of the case is likewise attached to the Petition. Petitioner argues that these circumstances show that petitioner did not receive a copy of the Order dated June 8, 2009 as a result of accident for which it is entitled to the relief from judgment.

1 Attached as Annex "B" of the Petition.
2 Attached as Annex "C" of the Petition.

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The Court, after reviewing the records of the case as well as the parties' respective arguments, finds the instant Petition dismissible based on both susbtantive and procedural grounds.

Anent the substantive ground, ***the records of the case clearly reveal that a copy of the Order dated June 8, 2009 was received by petitioner's counsel on June 23, 2009, as evidenced by the return card attached to the records of this case***, which date is the basis for the Certificate of Finality dated January 5, 2010 issued by the Court through its Branch Clerk of Court.

The Court also takes note that based on the Statement of Mailing,[3] a copy of the Order dated June 8, 2009 addressed to petitioner's counsel at its office in Pasig City under Registered Letter DC 2878 was deposited to and received by the Quezon City Hall Post Office on June 11, 2009. In this jurisdiction, a disputable presumption exists that a letter duly directed and mailed was received in the regular course of mail.[4] In the case at bar, not only is there a presumption, as the records reveal that a copy of the Order dated June 8, 2009 was, in fact, received by petitioner's counsel on June 23, 2009. Moreover, in a Certification dated June 9, 2010,[5] the Postmaster of Ortigas Center Post Office, certified that the afore-said registered letter "was delivered to (window delivery) and received by ALLAN S. BUSTAMANTE, authorized representative, on June 23, 2009."

It must likewise be stated that the Certificate of Finality and Certification issued by the Postmaster of Ortigas Center are public documents. Such documents are *prima facie* evidence of the facts therein stated.[6] Moreover, as these documents are issued by public officials, a disputable presumption exists that official duty has been regularly performed,[7] unless overcome by clear and convincing evidence.[8] Clear and convincing evidence has been defined thus:

> ***Clear and convincing proof is 'x x x more than mere preponderance***, but not to extent of such certainty as is required beyond reasonable doubt as in criminal cases x x x' (*fn*; Black's Law Dictionary, 5th Ed., p. 227, citing Fred C. Walker Agency, Inc. *v.* Lucas, 215 Va. 535, 211 S.E. 2d 88, 92) while substantial evidence 'x x x consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance x x x x' (*fn: Ibid.*, p. 1281, citing Marker v. Finch, D.C. Del., 322 F. Supp. 905, 910) Consequently, in the hierarchy of evidentiary

3 Attached as Annex "1" of the Answer.
4 Section 3 (v), Rule 131 of the Revised Rules of Court.
5 Attached as Annex "2" of the Answer.
6 Section 23, Rule 132 of the Revised Rules of Court.
7 Section 3 (m), Rule 131 of the Revised Rules of Court.
8 Montefalcon vs. Vasquez, G.R. No. 165016, June 17, 2008.

> values, We find proof beyond reasonable doubt at the highest level, followed by clear and convincing evidence, preponderance of evidence, and substantial evidence, in that order.[9] (emphasis supplied).

In the case at bar, the Court does not find that petitioner was able to present clear and convincing evidence as to overcome the presumption. The "Incoming Pleadings" document presented by petitioner's counsel to prove that it did not receive a copy of the Order dated June 8, 2009, besides being self-serving, cannot be said to faithfully reflect all the pleadings received by petitioner's counsel on June 23, 2009. ***As admitted by petitioner itself, the numerous power interruptions prompting a suspension of the firm's work during the subject date may have contributed to why the Order was not properly received or logged in the firm's "Incoming Pleadings."***

Moreover, in a case,[10] it was held that as between the bare denial of an attorney of his receipt of the notice of judgment and the positive assertion of a postal official whose duty it is to send such notices, the choice is not difficult, for the attorney's denial certainly cannot prevail over the contrary statement of postal officials based on official records, thus:

> As between the bare denial of an attorney of his receipt of the notice of judgment and the positive assertion of a postal official whose duty it is to send such notices, the choice is not difficult, for the attorney's denial certainly cannot prevail over the contrary statement of postal officials based on official records. For one thing, postal officials enjoy the presumption, without clear and convincing evidence to the contrary, to have regularly performed their official duty and that they have acted in good faith.[11] *Omnia praesumuntur rite et solemniter esse acta donec probetur in contrarium.* All things are presumed to have been done correctly and with due formality until the contrary is proved.[12] For another

9 Manalo vs. Roldan-Confesor, 215 SCRA 808, November 19, 1992 cited in CAURDANETAAN PIECE WORKERS UNION, represented by JUANITO P. COSTALES, JR. in his capacity as union president vs. UNDERSECRETARY BIENVENIDO E. LAGUESMA and CORFARM GRAINS, INC., G.R. No. 113542, February 24, 1998; and CAURDANETAAN PIECE WORKERS ASSOCIATION as represented by JUANITO P. COSTALES, JR., president vs. NATIONAL LABOR RELATIONS COMMISSION, CORFARM GRAINS, INC. and/or TEODY C. RAPISORA and HERMINIO RABANG, G.R. No. 114911, February 24, 1998.

10 Gold Line Transit, Inc. vs. Ramos, G.R. No. 144813, August 15, 2001.

11 Gold Line Transit, Inc. vs. Ramos citing Grafil vs. Feliciano, G.R. No. 27156, June 30, 1967, 20 SCRA 616.

12 Gold Line Transit, Inc. vs. Ramos citing U.S. vs. Escalante, 36 Phil. 746 (1917).

> reason, mails are presumed to have been properly delivered and received by the addressee "in the regular course of the mail."[13] These *juris tantum* presumptions stand even against the most well-reasoned allegations pointing to some possible irregularity or anomaly. It is petitioner's burden to overcome the presumptions by sufficient evidence, and so far we have not seen anything in the record to support petitioner and its counsel's charges of anomaly beyond their bare allegations.

In sum, the Court cannot consider that petitioner was prevented from taking an appeal because of accident. The Court cannot give credence to petitioner's alleged non-receipt of the Order dated June 8, 2009 as this is clearly contradicted by the evidence on record and for the reasons stated above.

Anent the procedural ground, it must be stated that **relief from judgment under Rule 38 is a legal remedy whereby a party seeks to set aside a judgment rendered against him by a court** whenever he was unjustly deprived of a hearing or **was prevented from taking an appeal**, in either case, **because of fraud, accident, mistake or excusable neglect.**[14]

A petition for relief is a special remedy designed to give a party a last chance to defend his right or protect his interest.[15] **It is a relief that can only be availed of in exceptional cases.** Being an act of grace, so designed as it were to give the aggrieved party a second opportunity, ***the extraordinary period fixed therefor must be considered non-extendible*** and not subject to condition or contingency.[16]

Under Section 3, Rule 38 of the Revised Rules of Court, a petition for relief from judgment must be filed within sixty (60) days after the petitioner learns of the judgment, final order or other proceeding to be set aside, and not more than six (6) months after such judgment or final order was entered or such proceeding was taken. On the other hand, under Section 2, Rule 36 of the said Rules, the date of finality of the judgment or final order shall be deemed the date of its entry.

In the case at bar, records reveal that a copy of the Order dated June 8, 2009 was received by petitioner's counsel on June 23, 2009. Petitioner then had fifteen (15) days therefrom or until July 8, 2009 to

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13 Gold Line Transit, Inc. vs. Ramos citing Rule 131, Sec. 3 (v), Revised Rules of Court.
14 Andy Quelnan vs. VHF Philippines, G.R. No. 138500, September 16, 2005 citing Sections 1 and 2, Rule 38 of the 1997 Rules of Civil Procedure.
15 DAP MINING ASSOCIATION vs. HON. COURT OF APPEALS, CHICO MINES, INC. OFFICE OF THE PRESIDENT, MIDEX (Phil.), INC., JUANITO C. FERNANDEZ, ERNESTO MACEDA, FULGENCIO FACTORAN, JR., and CATALINO MACARAIG, JR., G.R. No. 92328, June 6, 2001 citing Palomares vs. Jimenez, 90 Phil. 773.
16 DAP Mining Association vs. CA.

file an appeal which it did not. As such, the Orders dated January 7, 2008 and June 8, 2009 became final and executory after the lapsed of such 15-day period or on July 9, 2009. Thus, petitioner had six months therefrom or only until January 5, 2010 to file the petition for relief from judgment. Petitioner filed the instant Petition only on May 14, 2010, clearly beyond the 6-month period from entry of the assailed orders.

Indeed, a petition for relief from judgment cannot be granted to revive the lost right to appeal.[17]

WHEREFORE, in view of the foregoing, the Petition for Relief from Judgment is hereby **DISMISSED**.

SO ORDERED.

October 27, 2010.

CHARITO B. GONZALES
Presiding Judge

mds/

17 Guevarra vs. Spouses Bautista, G.R. No. 148435, November 28, 2008 citing Tuason vs. *Court of Appeals, 326 Phil. 169 (1996).*