

EXHIBIT A

COMMONWEALTH OF PUERTO RICO
COURT OF APPEALS
PANEL IX

FIRST FINANCE
INTERNATIONAL
BANK, INC.

Appellant

v.

OFFICE OF THE
COMMISSIONER OF
FINANCIAL
INSTITUTIONS

Appellee

KLRA202300209

*ADMINISTRATIVE
REVIEW*

from the
Office of the
Commissioner of
Financial
Institutions

Case No.:
C-22-D00S

Regarding:
Violations of Law
273-2012

Panel composed of its president, Judge Rivera Colon, Judge Ronda Del Toro, and Judge Diaz Rivera.

Ronda Del Toro, Presiding Judge

JUDGEMENT

In San Juan, Puerto Rico, on June 26, 2023.

First Finance International Bank, Inc., hereinafter referred to as First Finance, FFIB, or the appellant, filed an Administrative Review Petition for us to review the Final Resolution and Order issued by the Office of the Commissioner of Financial Institutions [OCIF] on March 27, 2023, notified on that same day. Through said determination, OCIF ordered the cessation of First Finance's business as an international financial entity, imposed various fines, and appointed a trustee.

For the reasons set forth below, we modify the contested *Resolution and Order*.

I.

On October 27, 2022, the Office of the Commissioner of Financial Institutions ("OCIF") filed a Complaint and Order to Cease and Desist and Provisional Order for the Appointment of

Trustee against First Finance International Bank as an emergency action to avert the danger to the safety of the international financial entities industry. Through this action, OCIF issued an ORDER for First Finance to cease and desist from conduction business as an international financial entity due to:

1. Failure to comply with the requirements established in the license renewal process, omitting to present conclusive evidence that it maintains the capital required by the commissioner.
2. Failure to comply with the minimum capital required by Article 2(g) of Law No. 273-2012;
3. Failure to comply with the terms and conditions established in the issued *Consent Order*, and
4. Failure to disclose relevant information about the Audited Financial Statements of 2021 to OCIF for a period of two (2) months.

Furthermore, OCIF required the payment of several fines amounting to \$775,000.00, as well as for First Finance to undergo a process of dissolution and liquidation ensuring the deposits of its clients and the delivery to the Secretary of the Department of Treasury of the money corresponding to a Certificate of Deposit in the amount of \$300,000.00. Likewise, it issued a provisional order for the appointment of a trustee.¹

On November 4, 2022, First Finance filed the *Amended Reponse to the Complaint and Order to Cease and Desist and Provisional Order for Appointment of Trustee*.

The administrative hearings before the Examining Officer were held on November 7 and 9, 2022. Testifying for OCIF were Karem Rosario Melendez, Assistant Commissioner of

¹ Complaint and Order to Cease and Desist and Provisional Order for Appointment of Trustee, Appendix 1 of First Finance.

OCIF, and Wigberto Lugo Mender, Trustee appointed by OCIF. As witnesses for First Finance, Silvino Cepeda Ortiz, Senior Accountant of First Finance, María de los Ángeles Franco Casellas, Office Manager, and Ismael Torres, President of First Finance, testified.

On December 16, 2022, First Finance submitted a *Post-Hearing Memorandum*, and OCIF did the same with a *Legal Memorandum*.

On January 12, 2023, First Finance filed a reply to OCIF's Legal Memorandum. Among other issues, it explained that the \$775,000 fine imposed by OCIF was *ultra vires* and not authorized by any law or regulation. On February 28, 2023, OCIF submitted a *Memorandum in compliance with the order*.

After evaluating the matter, on March 27, 2023, the Commissioner of Financial Institutions issued a Final Resolution and Order confirming the previous Order. In this, she made 94 findings of fact and decreed to adopt the Examiner's Report. Among the key facts, she stated the following:

77. As of December 31, 2021, FFIB's Audited Financial Statements reflect accumulated losses from operations amounting to \$4,545,333.00 and a net capital of \$872,809.00.86. FFIB's net capital as of December 31, 2020, was below the amount of \$1,750,000.00, and therefore, as a result of this capital position, FFIB is insolvent.

78. First Finance's Audited Financial Statements for the year 2021 were completed by external auditors on June 30, 2022. OCIF received both physical and digital copies of said statements on August 23, 2022.

79. The financial statements should have been delivered immediately to the Board of Directors of First Finance and to OCIF after their issuance. However, that was not the case as they were received approximately 45 days after being signed by Valdes, Garcia, Martinez & Marin.

80. On March 10, 2022, First Finance sent a letter to OCIF requesting a ninety (90) day extension to submit the audited financial statements for the year 2021. First Finance is obligated to submit its audited financial statements within a period of ninety (90) days after the close of operations each year.

After setting forth the applicable law, OCIF issued the following Conclusion and Order:

Based on the aforementioned grounds, the powers and faculties conferred to the Commissioner by Law No. 4, Law No. 273-2012, Section 3.9 of Law No. 38-2017, and the regulations issued, as well as the evaluation of all the evidence in the record which demonstrates that the financial and operational situation of FFIB is uncertain, precarious, and of such a nature that it is causing or could cause irreparable harm to its interests, or to the persons and entities with funds or values in the institution, the ORDER issued for FFIB is CONFIRMED:

- (A) cease and desist from conducting business as an international financial entity
- (B) immediately pay a fine of FIVE THOUSAND DOLLARS (\$5,000.00) for failing to meet the solvency level and/or minimum capital required by Article 2(g) of Law No. 273-2012;
- (C) pay a fine of FIFTY THOUSAND DOLLARS (\$50,000.00), the maximum established in the Consent Order, for non-compliance with the same from March 2, 2022, to the present.
- (D) **pay a fine of FIVE THOUSAND DOLLARS (\$5,000.00) for each day from April 1, 2022, until the final delivery of the aforementioned audited financial statements on August 23, 2022. Said fine amounts to SEVEN HUNDRED TWENTY THOUSAND DOLLARS (\$720,000.00).**
- (E) undergo a process of dissolution and liquidation ensuring the deposits of its clients; and
- (F) deliver to OCIF by certified check made payable to the Secretary of the Department of Treasury the money corresponding to the Certificate of Deposit, as aforementioned, in the total amount of \$300,000.00.

The total fine amounts to SEVEN HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$775,000.00) and must be payable by certified check made payable to the Secretary of the Department of Treasury within the

next ten (10) days from the date of being notified with a copy of the ORDER. In accordance with Section 3.20 of Law No. 38-2017, said fine will include interest on the amount imposed therein from the date when payment was ordered until it is satisfied, at the rate of 8.00% per annum, which is the rate set by the Financial Board for civil judgments by regulation, as certified by the Commissioner of Financial Institutions of Puerto Rico and in effect at the time of the decision.

(G) [...]

OCIF also decreed the permanent appointment of a trustee. To that end, it ordered the following:

In view of the insolvency scenario facing FFIB, which creates a risk of irreparable harm to the public interest as described above, and to the operational safety and financial adequacy of FFIB, and in accordance with the broad powers and faculties conferred to the Commissioner by Law No. 4, Law No. 273-2012, Section 3.9 of Law No. 38-2017, and the regulations issued to enforce said statutes, **THE PERMANENT APPOINTMENT OF THE TRUSTEE, Wigberto Lugo Mender, IS ORDERED.**

Regarding this matter, it was warned that the determination of OCIF to appoint a trustee may be reviewed by filing an appeal with the Court of Appeals within a period of ten (10) days from the date of notification of said determination.

As instructed, on April 5, 2023, First Finance filed an administrative review appeal before this Court of Appeals, which was assigned case number KLRA202300158. It contested the decision of March 27, 2023, regarding the permanent appointment of the trustee due to insolvency. It requested that this determination be set aside, as it believed that OCIF acted ultra vires by issuing an order appointing the trustee when the bank was not in a state of insolvency, as

defined in Law 243-2012, Article 2(g). It added that in October 2022, it was not insolvent.²

Upon examining the aforementioned appeal, the panel noticed that the appeal did not comply with Rule 59 of the Court of Appeals Regulations³. After giving the appellant time to perfect the appeal, which they failed to do so, on May 8, 2023, this forum dismissed the action for failure to comply with Rule 59 (d) and (f)⁴ of the Court of Appeals Regulations.

Meanwhile, on April 12, 2023, First Finance requested reconsideration from OCIF regarding the agency's decision on March 27, 2023. The request was not addressed⁵. Therefore, on May 10, 2023, it initiated the present appeal. In this, it alleged the commission of the following errors:

First: OCIF erred by acting ultra vires in appointing the trustee and issuing the order when FFIBI was solvent.

Second: OCIF erred in determining that FFIBI had surrendered its license.

The respondent OCIF presented its position regarding the appeal.

With the benefit of both submissions, we make our decision.

II.

A.

Jurisdiction "is the power or authority that a court has to consider and decide the cases and controversies before it." Metro Senior v. AFV, 2022 TSPR 47; 209 DPR (2022); Beltran Cintron et al. v. ELA et al., 204 DPR 89, 101 (2020). As such, the first factor to consider in any

² We take notice of case KLRA202300158. See also Opposition to Administrative Review Appeal, page 11. First Finance did not include the reconsideration request in its appendix.

³ Rule 59 of the Court of Appeals, 4 LPRA Ap. XXII-B, R. 59.

⁴ *Supra*.

⁵ Opposition to Administrative Review Appeal, page 11, paragraph 69; See Motion in Compliance with Order filed by First Finance on June 20, 2023.

legal situation presented to an adjudicative forum is precisely the jurisdictional aspect. Torres Alvarado v. Madera Atilés, 202 DPR 495 (2019); Ruiz Camilo v. Trafan Group, Inc., 200 DPR 254 (2018); Horizon v. Jta. Revisora, RA Holdings, 191 DPR 228, 233-234 (2014). When the jurisdiction of a court is questioned by any of the parties or even when it has not been raised by them, the court will examine and evaluate the jurisdictional issue rigorously as part of its ministerial duty because it directly affects the power to adjudicate a dispute. Torres Alvarado v. Madera Atilés, *supra*; Ruiz Camilo v. Trafan Group, Inc., *supra*; Yumac Home v. Empresas Masso, 194 DPR 96, 103 (2015); Souffront v. A.A.A., 164 DPR 663, 674 (2005). If the court lacks jurisdiction, it must dismiss the claim without delving into its merits. Metro Senior v. AFV, *supra*; Beltran Cintron et al. v. ELA et al., *supra*, pag. 102; Torres Alvarado v. Madera Atilés, *supra*, pag. 501.

B.

The doctrine of res judicata requires the most perfect identity between the case resolved by judgment and the case in which it is invoked, including the things, causes, the litigants, and the capacity in which they were involved. Fonseca et al. v. Hosp. HIMA, 184 DPR 281, 294 (2012); Mendez v. Fundación, 165 DPR 253, 267 (2005); Pagan Hernandez v. UPR, 107 DPR 720, 732 (1978). In the context of administrative law, the doctrine of res judicata could apply in three ways: (1) within the same agency; (2) inter-agency, meaning from one agency to another; and (3) between agencies and courts. Mun. of San Juan v. Bosque Real S.E., 158 DPR 743, 770 (2003); Pagan Hernandez v.

UPR, *supra*, pag. 733. When an administrative agency acts in a judicial capacity and resolves factual disputes before it, which the parties have been able to litigate in a timely and adequate manner, the courts have not hesitated to apply the doctrine of res judicata to impose finality in the controversy. Pagan Hernandez v. UPR, *supra*, pag. 734. Thus, the doctrine of res judicata prevents the same parties from relitigating in a subsequent lawsuit the same causes of action and matters, the controversies already litigated and adjudicated, and those that could have been litigated. Fonseca et al. v. Hosp. HIMA, *supra*, pag. 294; Mun. of San Juan v. Bosque Real, S.E., *supra*, pag. 769; Acevedo Santiago v. Western Digital, 140 DPR 452, 464 (1996). This is so due to considerations of public order and necessity. Fonseca et al. v. Hosp. HIMA, *supra*, pag. 294. At the same time, it safeguards the government's interest in finalizing lawsuits and giving due dignity to court judgments. Fonseca et al. v. Hosp. HIMA, *supra*, pag. 294.

In this way, the principle of res judicata, when applicable, is conclusive even regarding issues that could have been raised but were not. S.L.G. Font Bardon v. Mini-Warehouse, 179 DPR 322, 333 (2010). Therefore, when a determination becomes final and conclusive, it will have the effect of res judicata and will close the doors to the aggrieved party to bring subsequent lawsuits for the same facts or causes of action. Sanchez Rodriguez v. Adm. Of Correction, 177 DPR 714, 721 (2009). However, its application does not proceed in a rigid and automatic manner if doing so would defeat the ends of justice or considerations of public order. Fonseca et al. v. Hosp. HIMA, *supra*.

C.

The primary objective of judicial review focuses on ensuring that administrative agencies act within the powers granted by law. Hernandez Feliciano v. Municipality of Quebradillas, 211 DPR __, 2023 TSPR 6, res. January 25, 2023; OEG v. Martfnez Giraud, 2022 TSPR 93, 210 DPR _(2022); Perez Lopez v. Dept of Correction, 208 DPR 656 (2022). It is a reiterated norm that courts are called upon to grant broad deference to determinations of administrative agencies. Moreno Lorenzo y otros v. Depto. Fam., 207 DPR 833 (2021); Graciani Rodriguez v. Garage Isla Verde, LLC, 202 DPR 117, 126 (2019).

Of course, deference yields when administrative determinations are not based on substantial evidence, when the agency erred in applying the law, or when the agency's actions have been arbitrary, unreasonable, or contrary to law.

Moreno Lorenzo et al v. Fam. Dept., *supra*; The Sembler Co. v. Mun.of Carolina, 185 DPR 800, 822 (2012); Otero v. Toyota, 163 DPR 716, 729 (2005). Also when their actions constitute an abuse of discretion. Calderon Otero v. CFSE, 181 DPR 386 (2011). Similarly, if the administrative action violated fundamental constitutional rights. Torres Rivera v. Puerto Rico, 196 DPR 606, 627-628 (2016).

The guiding principle in judicial reveiw of administarative determinations Will be the criterion of reasonableness in the action of the agency under review.. Hernandez Feliciano v. Municipio de Quebradillas, *supra*; Torres Rivera v. Polida de PR, *supra*, pag. 626. Thus, judicial review Will be limited to determining whether the agency acted arbitrarily or

unlawfully, or in such an unreasonable manner that its actions constitute an abuse of discretion.

For this task of judicial review, Section 4.5 of the Uniform Administrative Procedure Act, 3 LPRa sec. 9675, provides that the courts will adhere to evaluating these three (3) aspects: (1) whether the remedy granted was appropriate; (2) whether the factual determinations are supported by substantial evidence in the administrative record viewed as a whole, and (3) whether the agency's legal conclusions are supported. Hernandez Feliciano v. Municipality of Quebradillas, *supra*; Moreno Lorenzo y otros v. Fam. Dept., *supra*, pags. 839-840; Capo Cruz v. Planning Board et al, 204 DPR 581, 591 (2020); Torres Rivera v. Police of PR, *supra*, pags. 626-627.

While the aforementioned deference does not automatically extend to the legal conclusions made by the agency, as these are subject to full judicial review. See Sec. 4.5 of the APAU., *supra*; Hernandez Feliciano v. Municipality of Quebradillas, *supra*; ECP Incorporated v. OCS, 205 DPR 268, 281-282 (2020). This means that the court can review them without being bound by any rule or criteria. Hernandez Feliciano v. Municipio de Quebradillas, *supra*; Batista, Nobbe v. Board of Directors, *supra*, pag. 217. Of course, judicial review is not equivalent to an automatic substitution of the criteria and interpretation of the administrative entity. Hernandez Feliciano v. Municipality of Quebradillas, *supra*; Capo Cruz v. Planning Board et al., *supra*, pag. 591. On the contrary, "reviewing courts will discard the criteria of administrative bodies when 'no rational basis can be found to explain or justify the administrative decision'". Hernandez Feliciano v. Municipality of

Quebradillas, supra; Rolon Martfnez v. Supte. Polida, 201 DPR 26, 36 (2018).

In the exercise of our reviewing function, appellate courts must differentiate between matters of statutory interpretation, where courts are specialists, and matters within the realm of administrative discretion or expertise.

Hernandez Feliciano v. Municipality of Quebradillas, supra; OCS v. Point Guard Ins., 205 DPR 1005, 1028 (2020).

D.

Through Law No. 4 of October 11, 1985, as amended, (Law 4-1985), the Office of the Commissioner of Financial Institutions was created, with the primary responsibility of oversight and supervision of financial institutions operating or doing business in Puerto Rico. Article 3, 7 LPRA sec. 2003.

According to Article 10 of Law 4-1985, the Legislature delegated to the Commissioner of said agency the power and authority to, among other matters,

Address, investigate, and resolve the complaints filed with the Board or the Office of the Commissioner.

Initiate any remedies, actions, or legal proceedings necessary or convenient to enforce the purposes of this law or any other law or regulation within its jurisdiction, whether represented by its attorneys or by the Secretary of Justice, upon prior request for such purposes.

Initiate any remedies, actions, or legal proceedings necessary or convenient to enforce the purposes of this law or any other law or regulation within its jurisdiction, whether represented by its attorneys or by the Secretary of Justice, upon prior request for such purposes.

When any of the laws and regulations it administers do not provide otherwise, issue, upon prior notice and hearing, cease and desist orders, and prescribe the terms and conditions it determines to be in the public interest. Article 10 (a), clauses 3, 4, and 9, 7 LPRA sec. 2010.

Regarding the appointment of a trustee, Article 10 (b) of Law 4-1985, 7 LPRA sec. 2010, indicates that,

If as a result of an audit, examination, or inspection or a report submitted by an examiner, it is demonstrated that the financial institution lacks a sound economic and financial situation or that it is operated or managed in such a way that the public or individuals and entities with funds or securities under its custody are in danger of being defrauded, and in the absence of a specific provision in the law regulating the financial institution in question that similarly empowers it, the Commissioner may assume the direction and administration of the financial institution and promptly appoint a trustee, who in the case of insured financial institutions may be its insurer. The Commissioner must hold a hearing before issuing an order to place a financial institution under its direction or that of a trustee.

[...]

The determination of the Commissioner to assume the administration and direction of a financial institution or to appoint a trustee may be reviewed by the Circuit Court of Appeals, through a petition filed within ten days from the date of the determination. (Emphasis added).

On the other hand, the aforementioned Article 20 of Law 4-1985, 7 LPRA sec. 2020, provides as follows:

Penalties.

(a) Any financial institution or person who violates the provisions of this law or regulations promulgated thereunder shall be subject to an administrative fine to be determined by the Commissioner, **which in no case shall exceed five thousand dollars (\$5,000)**. Any financial institution or person who violates the provisions of other laws and regulations under the administration and jurisdiction of the Commissioner shall be subject to the penalty provided for such violation in the applicable law or regulation.

[...]

(c) The Commissioner may impose an administrative fine not exceeding five thousand dollars (\$5,000) **for each day that a financial institution fails to comply with the orders issued under the provisions of this law; Provided, that in no case shall the accumulation of fines exceed fifty thousand dollars (\$50,000)**. The Commissioner

may initiate a civil action to collect such administrative fine in the Court of First Instance of Puerto Rico, San Juan Division, which shall have exclusive jurisdiction to hear such proceeding.

On the other hand, Law Number 273 of September 25, 2012, known as the *International Financial Center Regulatory Act* (Law 273-2012), was created to regulate the organization and operation of international financial entities in Puerto Rico authorized by the Office of the Commissioner of Financial Institutions.

The Law 273-2012 grants the Commissioner the authority to review and conduct investigations regarding all applications for licenses to operate international financial entities; approve, grant conditional approval, or deny applications for permits and licenses to operate international financial entities; any person whose application has been denied or conditionally approved may request a hearing in accordance with the regulations provided in Article 20 of this Law. It may also revoke or suspend a license to operate an international financial entity or impose other sanctions that it may deem necessary and appropriate under the Commissioner's Regulations. Article 3 a, clauses (4), (5), (9), 7 LPRA sec. 3082.

Article 15 of Law 273-2012, 7 LPRA sec. 3094, establishes reporting requirements. It provides that,

Every international financial entity shall submit to the Commissioner all reports required by the Commissioner's regulations, including an annual financial statement prepared by certified public accountants licensed to practice in Puerto Rico, as well as interim financial statements.

On the other hand, Article 16 of Law 273-2012, 7 LPRA sec. 3095, provides that the license issued under this Law

may be revoked or suspended by the Commissioner, upon notification and a hearing in accordance with the regulations provided in Article 20 of this Law, if the conditions mentioned in the article are met.

In such cases, the Commissioner may, among other alternatives, appoint a receiver and order the dissolution of an international financial entity if the license of such international financial entity or the person of which such international financial entity is a unit is revoked or surrendered, pursuant to Article 16 of this Law. Article 17 of Law 273-2012, 7 LPRA sec. 3096.

Regarding penalties, Article 18 of Law 273-2012, 7 LPRA sec. 3097 grants the Commissioner the authority to impose administrative fines for violations of this Law or the Commissioner's regulations.

Finally, the OCIF applied in this case Regulation No. 5653 adopted by the agency under Law No. 52-1989, for the purpose of implementing the "Regulatory Law of the International Banking Center," as amended.

Article 11 of Regulation 5653 provides that every International Banking Entity ("IBE") must submit to the Commissioner:

- a. [...]
- b. Its annual audited financial statements at the close of its fiscal year or those of the entity of which it is a unit, if applicable, prepared consistently with the quarterly condition reports. [...] The financial statements must be received by the Commissioner within ninety (90) days of the close of the IBE's fiscal year and must comply with Generally Accepted Accounting Principles ("GAAP") or, with the Commissioner's approval, with equivalent requirements of other jurisdictions with the necessary adjustments, notes, and explanations to conform with

Generally Accepted Accounting Principles in the United States of America.

On the other hand, Article 13 on Remedies and Penalties expresses the following:

2. Penalties

Any violation of the Law or this Regulation shall be penalized with the penalties established by the Law, and if the Law does not provide a penalty for any violation, the Commissioner may impose an administrative fine that it deems appropriate, not less than five hundred dollars **(US \$500) nor more than five thousand dollars (US \$5,000) for each separate violation.** (Emphasis supplied).

Having presented the legal framework that frames the disputes, we proceed.

III.

In the first error raised, First Finance alleges that OCIF erred in appointing the trustee despite its solvency. They argued that this point was raised in case KLRA202300158 but was dismissed. However, they indicate that since their central argument is that OCIF acted *ultra vires* and the entire order is void, they repeated it in this action.⁶

The respondent, OCIF, requests the dismissal of this part of the claim based on the doctrine of res judicata. They indicated that First Finance exercised its right to object to the permanent appointment of a trustee in the administrative review case KLRA202300518. They stated that in that action, First Finance outlined the same arguments as in the first allegation of the present case; however, that action was dismissed. They argued that if there is already a decision confirming a permanent receivership over the bank, that same determination affects the revocation of the bank's license. They mentioned that both issues have the same underlying thread, which was proven by OCIF. Therefore,

⁶ Administrative Review Appeal, pages 3 and 4.

the decision to appoint a trustee, revoke the bank's license, and proceed with the liquidation of First Finance is final and binding, in accordance with the doctrine of res judicata.

We assess. The OCIF is empowered to appoint a receiver when, among other reasons, it is demonstrated that a financial institution lacks a solid economic and financial situation⁷. In this case, the OCIF issued a permanent order to appoint a receiver in view of the "insolvency scenario faced by FFIB"⁸. Note that the agency decreed that First Finance was insolvent, which is why it appointed the receiver. To challenge this determination before this appellate forum, the appellant had a period of ten days.

Accordingly, First Finance appealed to this review forum through the administrative review process assigned to KLRA202300158. That action was dismissed by judgment on May 8, 2023, because First Finance failed to comply with the provisions of Rule 59 (d) and (f) of the Rules of the Court of Appeals⁹. As a result, the issue related to the receivership due to insolvency was duly addressed and resolved.

Now, through this present action, First Finance reproduced, in the first error assertion, the same arguments related to the receivership and solvency that it had raised in the administrative review request KLRA202300158. As we mentioned, that action was dismissed, so there is nothing left for us to decide, as the doctrine of res judicata prevents parties from relitigating

⁷ See Article 10(b) of Law 4-1985.

⁸ Final Resolution and Order.

⁹ 4 LPRA Ap. XXII-B, R.59(e) y (f)

in a subsequent lawsuit the same causes of action and issues that have already been litigated and adjudicated, as well as those that could have been litigated. Fonseca et al. v. HIMA Hosp., *supra*, pag. 294.

So, everything related to the appointment of the trustee and the insolvency of First Finance was settled in a previous lawsuit, which deprives us of jurisdiction to consider this issue again due to the doctrine of res judicata.

In the second allegation, First Finance claims that there is no evidence that it has relinquished its license. They also indicated that the fine imposed by OCIF for the late submission of the financial statement for the year 2021 has no legal basis. They explained that the report was promptly delivered to them as soon as the state was available, according to the uncontested testimony of Ms. Mariangie Lozada. They added that the fine only exacerbates the economic situation of First Finance.

Regarding this allegation, OCIF countered, firstly, that nowhere in the Final Resolution and Order does it conclude that First Finance relinquished its license. Regarding the fines, they indicate that the audited financial statements for the year 2021 were issued as of June 30, 2022, or at least were available, yet First Finance chose to delay the submission of the audited financial statement.

We review.

It emerges from the Final Resolution and Order that, "given the non-compliance with the timely submission of the Financial Statement at the close of the year 2021, the OCIF imposed a fine of five thousand dollars (\$5,000.00) for **each day**, from April 1, 2022, in which the institution had not complied with the submission of the

audited financial statement for the year 2021, which was finally submitted on August 23, 2022. The total amount of the fine amounts to seven hundred twenty thousand dollars (\$720,000.00) and is supported by Article 13 of Regulation No. 5653, cited above."

We see that the Commissioner imposed a fine of \$5,000 **per day**, from April 1, 2022, until August 23, 2022, the date on which First Finance supplied the audited financial statement for 2021. This fine amounted to \$720,000.00. However, this determination is not supported by the facts outlined here. Let me explain.

Article 11 of Regulation 5653 stipulates that audited financial statements must be submitted within a period of ninety (90) days after the close of operations for each year. That is, by the end of March 2022. On March 10, 2022, First Finance sent a letter to the OCIF requesting a ninety (90) day extension to submit the audited financial statements for the year 2021¹⁰. If the extension had been granted, this deadline would have expired on June 30, 2022. Now, it emerges from finding of fact number 78 that the Audited Financial Statement for the year 2021 was completed by the external auditors on June 30, 2022. The OCIF received physical and digital copies of said statement on August 23, 2022. These facts are not in dispute. Therefore, if the extension had been granted, the deadline for submitting the report would have been June 30, 2022, the date it was completed. However, the report was submitted on August 23,

¹⁰ In the Final Resolution and Order, finding of fact number 80.

2022. Therefore, the days counted for delays should have elapsed from June 30, 2022, and not from April 1, 2022. Consequently, the computation of days for delays is incorrect.

Regardless of the above, the fine of \$720,000, equivalent to \$5,000 **per day** for the delay of First Finance in providing the audited financial statements for the year 2021, is contrary to what is established by the legislation and Regulation 5653.

The OCIF referred to Article 13 of Regulation Number 5653 to impose a daily fine, from April 1, 2022, until August 23, 2022, for the late submission of First Finance's audited financial report for the year 2021.

However, upon reviewing Article 13 of Regulation Number 5653, we noticed that nowhere does it allow for the imposition of daily fines. This provision states that "the Commissioner may impose an administrative fine that he deems appropriate, not less than five hundred dollars (**US \$500**) nor more than five thousand dollars (**US \$5,000**) for each separate violation."

Similarly, Article 20 of Law No. 4-1985 states that "[a]ny financial institution or person who violates the provisions of this law or the regulations promulgated thereunder shall be subject to an administrative fine to be determined by the Commissioner, **in no case exceeding five thousand dollars (\$5,000).**"

From the above, it is clear and precise that fines for violations of the regulations or the law should **not** exceed **\$5,000**. Therefore, the fine imposed by the OCIF of \$720,000, at a rate of \$5,000 per day, is not within the powers delegated to the OCIF under Law No. 4-1985, nor is it within Regulation 5653 administered by the agency.

Consequently, for the violation of not timely supplying the Audited Financial Report of 2021, the fine is reduced to \$5,000, which is the maximum amount allowed per violation under the Regulation.

On the other hand, the only daily fine permitted by Article 20 of Law No. 4-1985 is for non-compliance with orders issued by the agency. These fines also have a cap, in no case exceeding fifty thousand dollars (\$50,000). This reaffirms that the fine of \$720,000 is excessive and contrary to Regulation 5653 and Article 20 of Law No. 4-1985.

We conclude that the determination of the OCIF to impose a fine of \$720,000 exceeded its powers conferred by Law and Regulation to impose sanctions. Therefore, we reduce it to \$50,000.00.

Finally, the petitioner proposed, alternatively, that they be allowed to sell shares or interests to potential new investors or to continue operating as a debtor in possession with the trustee, among other options.

Regarding this request, the OCIF argues that it is an apparent settlement offer that does not include factual elements and rights to the disputes in this case, so it should be stricken from the record.

We reviewed it and cannot make any decisions on this particular matter since it pertains to internal administrative affairs, which are beyond the scope of our jurisdiction.

IV.

For the reasons expressed above, which are hereby made part of this judgment, we modify the Final Resolution and Order to reduce the fine imposed on First

Finance from \$720,000 for failing to submit the audited report for the year 2021 on time to \$50,000.00, and as modified, it is affirmed.

So ordered and decreed by the Court, and certified by the Court Clerk.

Leda. Lilia M. Oquendo Solfs
Appeals Court Clerk



IN THE SUPREME COURT OF PUERTO RICO
CHAMBER II

First Finance International
Bank, Inc.

Petitioner

v.

Office of the Commssioner of
Financial Institutions

Respondent

CC-2023-604

Certiorari

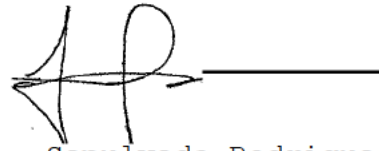
Chamber composed of Associate Justice Mr. Martinez Torres as its President, Associate Justices Mr. Kolthoff Caraballo, Mr. Feliberti Cintrón, and Mr. Colón Pérez.

RESOLUTION

In San Juan, Puerto Rico, on November 3, 2023.

The petition for certiorari is denied for lack of jurisdiction (premature).

So decided by the Court and certified by the Supreme Court Clerk.



Javier O. Sepulveda Rodriguez
Supreme Court Clerk



[COMMONWEALTH OF PUERTO RICO,
GENERAL COURT OF JUSTICE,
SUPREME COURT]

COMMONWEALTH OF PUERTO RICO
COURT OF APPEALS
PANEL IX

FILED
CLERK
COURT OF APPEALS
DEC-8-2023 AT 10:26

FIRST FINANCE
INTERNATIONAL BANK, INC.
Party, Appellant

V.

OFFICE OF THE COMMISSIONER
OF FINANCIAL INSTITUTIONS OF
PUERTO RICO
Appellee Parties

KLRA202300209

MATTER: Administrative
Review from the Office of the
Commissioner of Financial
Institutions

Case No.: C-22-D008

REGARDING: Violations of
Law No. 273-2012

MOTION REGARDING ISSUES MANDATE

TO THE HONORABLE APPELLATE COURTS:

The Office of the Commissioner of Financial Institutions (hereinafter "OCIF") appears through the undersigned legal representation, and respectfully states and requests:

1. On June 26, 2023, with notification on June 27, 2023, this Honorable Court issued a Judgment denying consideration of the substantive arguments of First Finance International Bank, Inc. (hereinafter, the "Appellant"), pursuant to the doctrine of res judicata. Furthermore, it amended the contested final resolution to reduce the fines imposed by the OCIF and determine that the correct period to begin counting the fine was from June 30, 2022, the date on which the extension requested from the OCIF expired (which was not granted).

2. On the same date the Judgment was issued, June 26, 2023, the Appellant filed a Motion for Reconsideration regarding the determination on the applicability of the doctrine of res judicata. Subsequently, on July 12, 2023, the OCIF filed a Partial Motion for Reconsideration regarding the issue of fines and the date from which they began to accrue.

3. On August 1, 2023, this Honorable Court issued a *Resolution* declaring the Motion for Reconsideration of the Appellant to be **Denied**. However, the Partial Motion for Reconsideration filed by the OCIF remained pending adjudication by this Honorable Court.

4. As a result of the denial of their request, the Appellant prematurely filed a petition for *Certiorari* before the Supreme Court of Puerto Rico. On November 3, 2023, the Supreme Court declared the petition to be **Denied** due to prematurity. This was because the Appellant notified said Court that the OCIF's request for reconsideration before this Honorable Court was still pending. The Supreme Court issued a Mandate, and subsequently, on December 6, 2023, this Honorable Court also issued a Mandate in the aforementioned case.

5. According to the provisions regarding the figure of the mandate, "while it is true that lower courts must obey and faithfully comply with the judicial mandate of a higher-ranking court, they retain discretion to reconsider issues that were not expressly or implicitly decided by the issuing court." 18 J. W. Moore, Moore's Federal Practice, 3rd ed., Ed. Mathew Bender & Company, Inc., sec. 134.23(4), pp. 134-161 (2011). Therefore, "it must be understood that **only those issues that are unrelated to the judicial mandate** may be reviewed by this lower court. Namely, those issues that do not arise explicitly or implicitly. [With the explicit ones being] those that arise from the sentence clearly and without room for ambiguity." Mejias Montalvo v. Carrasquillo, 185 D.P.R. 288, 302-303 (2012). (Emphasis added.)

6. As of today, the Partial Reconsideration Motion filed by the OCIF, limited to the issue of the amount of fines and the date on which the fines imposed on the Respondent Party should begin to be counted, is still pending adjudication. In light of the above, we respectfully argue that the Partial Reconsideration Motion filed is still awaiting its corresponding adjudication by this Honorable Tribunal since it is a matter unrelated to the judicial mandate issued by this Distinguished Forum.

RESPECTFULLY SUBMITTED.

THEREFORE, we respectfully request that this Honorable Tribunal take note of the foregoing and make any determination it deems appropriate in law.

CERTIFIED: That a true and accurate copy of this document will be served to **Attorney Ismael Torres-Pizarro** at his email address ismaeltorres22@yahoo.com simultaneously with this filing.

in Guaynabo, Puerto Rico, today, December 8, 2023.

H. LOPEZ LAW, LLC

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COMMONWEALTH OF PUERTO RICO
COURT OF APPEALS
PANEL IX

FIRST FINANCE
INTERNATIONAL
BANK, INC.

Appellant

v.

OFFICE OF THE
COMMISSIONER OF
FINANCIAL
INSTITUTIONS

Appellee

KLRA202300209

*ADMINISTRATIVE
REVIEW*

from the Office of the
Commissioner of
Financial Institutions

Case Number:
C-22-D008

Regarding:
Violations of Law
273-2012

Panel composed of its president, Judge Rivera Colón, Judge Ronda Del Toro, and Judge Díaz Rivera.

RESOLUTION

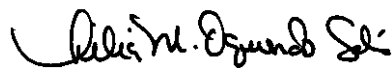
In San Juan, Puerto Rico, on December 13, 2023.

Motion for Partial Reconsideration and Motion Regarding

Issued Mandate are declared **Denied**.

Refer to our resolution dated August 1, 2023.

The Court so orders and certifies the Court of Appeals Clerk.



Lcda. Lilia M. Oquendo Solís
Appellate Court Clerk

Identifier Number

RES2023 _____



EXHIBIT B

IN THE SUPREME COURT OF PUERTO RICO

First Finance International
Bank, Inc.

Petitioner

v.

CC-2024-0022

Office of the Commissioner
of Financial Institutions

Respondent

Chambers composed of Associate Judge Mr. Martinez Torres as President, Associate Judge Mr. Kolthoff Caraballo, Associate Judge Mr. Feliberti Cintron, and Associate Judge Mr. Colon Perez.

RESOLUTION

In San Juan, Puerto Rico, on April 5, 2024.

Considering the first motion for reconsideration filed by the petitioner, it is hereby Denied.

So resolved by the Court and certified by the Supreme Court Clerk.



Javier O. Sepulveda Rodriguez
Supreme Court Clerk

[COMMONWEALTH OF PUERTO RICO,
GENERAL COURT OF JUSTICE,
SUPREME COURT]

Electronic Notification CC-2024-0022

From: noreply@poderjudicial.pr

To: ismaeltorres2002@yahoo.com

Date: Wednesday, April 10, 2024 at 02:23 PM GMT-4

COMMONWEALTH OF PUERTO RICO
GENERAL COURT OF JUSTICE
SUPREME COURT

FIRST FINANCE INTERNATIONAL BANK, INC.
PETITIONER

VS.

OFFICE OF THE COMMISSIONER OF
FINANCIAL INSTITUTIONS

RESPONDENT

ATTORNEY TORRES PIZARRO, ISMAEL
ISMAELTORRES2002@YAHOO.COM

CASE NUMBER: CC-2024-0022
ORIGINAL: C-22-D008
APPEALS: KLRA202300209
CIVIL ACTION

CIVIL ACTION OR CRIME

NOTIFICATION

I CERTIFY THAT REGARDING THE MOTION FOR RECONSIDERATION, THE COURT ISSUED THE RESOLUTION ACCOMPANYING THIS NOTICE.

[Click here to access the electronic document subject to this notification. The document will be available through this link for 45 days from the issuance of this notification.](#)

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ATTORNEY CLERK OF THE SUPREME COURT OF PR
NOTIFICACIONESTSPR@GMAIL.COM

IN SAN JUAN, PUERTO RICO ON APRIL 10, 2024.

ATTORNEY JAVIER O. SEPÚLVEDA RODRÍGUEZ

SUPREME COURT CLERK

BY: F/ ROSALIA PABÓN RIVERA

ASSISTANT CLERK

EXHIBIT C

Fw: FFIB v OCIF - Application to Extend Time to File Petition for Certiorari

Kevin Myer <kevin@krm legal.com>

Tue 6/25/2024 5:21 PM

To:HLOPEZ@HLOPEZLAW.COM <HLOPEZ@HLOPEZLAW.COM>;jbs@bonillasilvalaw.com <jbs@bonillasilvalaw.com>

Cc:WLUGO@LUGOMENDER.COM <WLUGO@LUGOMENDER.COM>

Bcc

📎 1 attachments (738 KB)

2024 06 26 [REDACTED] Motions App to Ext Pet for Cert until Sep 6.pdf;

Counsel -

Please let us know if you will consent to this Application. If we do not hear from you by Wednesday, June 26, 2024, we will file the Application without your consent.

Háganos saber si acepta esta Solicitud. Si no recibimos noticias suyas antes del miércoles 26 de junio de 2024, presentaremos la Solicitud sin su consentimiento.

Please contact us if you have any questions.

Por favor, póngase en contacto con nosotros si tiene alguna pregunta.

KRMLegal, LLC

1155 S. Power Rd., Ste. 114

PMB 1047

Mesa, AZ 85206-3715

Phone: (602) 456-2243

Fax: (602) 297-6970

kevin@krm-legal.com