

Ferdinand Marcos and Imelda Marcos / Arelma Deposit Case

Case ID:

ARW-64

Jurisdiction of Origin of Public Official or Entity Allegedly Involved:

Philippines

Position of Public Official(s) (yrs in office):

President (F. Marcos, 1965-1986); First Lady, Governor of Metro Manila and Minister of Human Settlements (I. Marcos. Governor and Minister from 1978-1986)

Jurisdiction of Asset Recovery:

United States

Jurisdiction of Asset Recovery ? Description:

Location of Recovery Effort, Asset Location / Alleged Asset Location

Asset Recovery Start:

1990

Asset Recovery End:

Ongoing

UNCAC Offenses Implicated:

Art.15

Art.16

Art.17

Art.18

Art.19

Art.20

Art.23

Money laundering Implicated:

Yes

Legal Basis for Asset Recovery:

Private Civil Action

Intl.Cooperation: MLAT/Letter of Request?:

No

Basis for Intl Cooperation:

NA

Contributing Factors in Asset Recovery:

Ongoing Case

Status of Asset Recovery :

Ongoing

Stage in Asset Recovery Chain:

Final Judgment (No Appeal)

Assets Frozen or Seized (USD):

\$40,000,000 (approximate)

Agreement for Returned Assets:

Ongoing

Agreement for Returned Assets - Description:

NA

Case Summary:

According to a decision by the U.S. Supreme Court, in 1972, Ferdinand Marcos formed the Arelma S.A. entity under the laws of Panama and around the same time, opened an account under its name at the brokerage firm of Merrill, Lynch, Pierce, Fenner & Smith, Inc. in New York and deposited \$2 million. A class action by the Marcos' human rights victims resulted in a nearly \$2 billion judgment for the "Pimentel class," which claimed a right to enforce its judgment by attaching the Arelma assets. (The cases brought by the human rights victims have been consolidated and is now referred to as "Estate of Ferdinand E. Marcos Human Rights Litigation.") The ownership in Arelma was represented by two bearer share certificates that are held in escrow by the Philippine National Bank (PNB), after being transferred there in 1990 by an order of the Swiss Federal Supreme Court. (Source: In the Supreme Court of the United States, Brief for the United States as Amicus Curiae in Estate of Roger Roxas et al v. Pimentel, et. al. and Republic of the Philippines v. Pimentel, et. al. Nos. 06-1039 and 06-1042). The Philippines claimed ownership of the Arelma deposit of approximately \$35 million based on its custody of the Arelma shares, but citing claims to the funds by the Marcos' human rights victims, Merrill Lynch filed an interpleader motion to request the courts to settle ownership of the funds. Litigation is ongoing in the United States, as of early March 2011. In April 2012, the Philippines Supreme Court upheld a previous ruling by the Sandiganbayan anti-graft court, forfeiting the Arelma assets to the Republic of Philippines. The Supreme Court denied petitions filed by Mrs. Marcos and her son who had challenged the Sandiganbayan's decision. (Source: Republic of the Philippines Supreme Court, Ferdinand R. Marcos, Jr. v. Republic of the Philippines, G.R. No. 189434 and Imelda Romualdez-Marcos v. Republic of Philippines, G.R. No. 189505, Decision, April 25, 2012; reaffirmed in Decision of March 12, 2014.) In June 2012, the New York Court of Appeals upheld the New York State Appellate Court decision a year earlier which held that the case of Swezey (representing the class of human rights victims) v. Merrill Lynch, et al, cannot proceed without the participation of the Republic of Philippines, making reference to the Philippines' Supreme Court ruling that the Arelma assets belonged to the People of the Philippines and should be returned to them. (Sources: Swezey v. Merrill Lynch, Pierce, Fenner, et al, National Bank of Philippines, et al (Intervenor), New York Court of Appeals, No. 88 (June 26, 2012); 2011 NY Slip Op 05208 [appellate court decision].) The New York Court of Appeals decision noted that the Arelma assets, now approximately \$40 million, were transferred, pursuant to a court order, by Merrill Lynch to the custody of the New York City's Commissioner of Finance. (Swezey v. Merrill Lynch, Pierce, Fenner, et al, National Bank of Philippines, et al (Intervenor), New York Court of Appeals, No. 88 (June 26, 2012), at fn 6.)

Disposition of Criminal Case(s):

A trial in the U.S. District Court for the Southern District of New York on criminal racketeering and fraud charges concluded in an acquittal for Mrs. Marcos. Mr. Marcos had also been indicted in the case, but the court had deemed him too ill to stand trial. (Sources: US v. Tantoco, et al, Case No. 1-87-cr-598-JFK (S.D.N.Y.), Docket Report accessed on January 2, 2011 and Indictment of October 22, 1988, obtained from US National Archives; Craig Wolff, "The Marcos Verdict; Marcos Is Cleared of All Charges In Racketeering and Fraud Case," New York Times, July 3, 1990.) On April 21, 2010, the GMA News reported that "According to records of the Philippine anti-graft court Sandiganbayan as of 2005, Mrs. Marcos continues to face 11 criminal charges and 25 civil cases." (Source: Sophia Regina M. Dedace, "Imelda Marcos and her road to vindication," GMA News, April 21, 2010, accessed at <http://www.gmanews.tv/story/188960/imelda-marcos-and-her-road-to-vindica...>)

Jurisdiction of Origin: Investigative Agency:

Presidential Commission on Good Government

Jurisdiction of Origin: Prosecuting Authority/Civil Attorney(s):

Presidential Commission on Good Government

Jurisdiction of Origin: Courts Involved:

Sandiganbayan, Supreme Court of the Republic of the Philippines

Jurisdiction of Asset Recovery: Investigative Agency:

NA

Jurisdiction of Asset Recovery: Prosecuting Authority/Civil Attorney(s):

Kohn Swift & Graf PC (Attorney Robert A. Swift, on behalf of Human Rights Victims)

Jurisdiction of Asset Recovery: Courts Involved:

U.S. District Court for the District of Hawaii; Ninth Circuit Court of Appeals; Supreme Court

Documents:

Marcos_Imelda_Road_Vindication_GMANEWS_Apr_20_2010.pdf

Marcos_US_Hawaii_AP_Feb_24_2011.pdf

Marcos_US_Hawaii_Judgment_Civil_Jan_25_2011.pdf

Marcos_US_Hawaii_Judgment_Contempt_Jan_25_2011.pdf

Marcos_US_Hawaii_Notice_Appeal_Feb_24_2011.pdf

Marcos_US_Hawaii_NYT_Mar_1_2011.pdf

Marcos_US_Hawaii_Order_Atty_Fees_Jan_13_2011.pdf

Marcos_US_Hawaii_Order_Distribution_Jan_13_2011.pdf

Marcos_US_Hawaii_Order_Finders_Fee_Jan_13_2011.pdf



Marcos_US_Texas_Del_Prado_Complaint_Apr_8_2005.pdf

Marcos_US_Texas_Del_Prado_Order_Settlement_Nov_16_2010.pdf

Marcos_US_Texas_Fifth_Circuit_Apr_5_2010.pdf

Marcos_Arelma_NY_Appellate_Court_Decision_Jun_16_2011

Documents:

Attachment	Size
 Marcos_Arelma_Deposit_NYS_Appellate_Decision_2012.pdf	438.97 KB
 Marcos_Arelma_Phil_Supreme_Ct_Decision_Apr_25_2012.pdf	581.1 KB
 Marcos_Arelma_Phil_Supreme_Ct_Decision_Mar_12_2014.pdf	162.78 KB

Other Sources:

Republic of the Philippines, et al v. Pimentel, et al, 128 S.Ct. 2180 (2008) and subsequent decisions in Merrill Lynch, Fenner & Smith v. ENC Corp., 535 F.3d 1010; 2008 U.S. App. LEXIS 16468 (9th Cir. 2008); Appeal after remand at, Remanded by Merrill Lynch, Pierce, Fenner & Smith v. Arelma 2009 U.S. App. LEXIS 25051 (9th Cir., Nov. 13, 2009) at <http://claimants1081.wordpress.com/arelma-case/>; Republic of the Philippines Supreme Court, Ferdinand R. Marcos, Jr. v. Republic of the Philippines, G.R. No. 189434 and Imelda Romualdez-Marcos v. Republic of Philippines, G.R. No. 189505, Decision, April 25, 2012, accessed at <http://sc.judiciary.gov.ph/jurisprudence/2012/april2012/189434.htm> and March 12, 2014 decision at <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/...> See also Dr. Jaime S. Bautista, "Recovery of the Marcos Assets," accessed at http://www.unafei.or.jp/english/pdf/PDF_ThirdGGSeminar/Third_GGSeminar_P... Swezey v. Merrill Lynch, Pierce, Fenner, et al, National Bank of Philippines, et al (Intervenor), New York Court of Appeals, No. 88 (June 26, 2012). Swezey v. Merrill Lynch, Pierce, Fenner, et al, National Bank of Philippines, et al (Intervenor), 2011 NY Slip Op 05208, accessed at <http://iapps.courts.state.ny.us/lawReporting/Search> (and also available at <http://law.justia.com/cases/new-york/appellate-division-first-department....>)