Republic of the Philippines
Department of Finance
Securities and Exchange Commission
COMMISSION EN BANC

**In the matter of:**

**GRACELAND PROPERTIES AND DEVELOPMENT, INC. AND ICON DEVELOPMENT CORPORATION**

**SEC Admin. Case No.08-11-130**
**For:** *Revocation of Corporate Registration due to Serious Misrepresentation*

**ENFORCEMENT AND PROSECUTION DEPARTMENT**
*Petitioner.*
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# DECISION

This resolves the Petition for the Revocation of the Certificate of Registration (the "EIPD Petition")[1] filed against **GRACELAND PROPERTIES AND DEVELOPMENT, INC.** ("GRACELAND" for brevity) and **ICON DEVELOPMENT CORPORATION** ("ICON" for brevity) by the then Enforcement and Prosecution Department, now Enforcement and Investor Protection Department ("EIPD") on the ground of serious misrepresentation under Section 6(1)(2) of Presidential Decree No. 902-A (PD No. 902-A), as amended.

## THE PARTIES

Petitioner EIPD (the "Petitioner") is the Commission's Department tasked to ensure compliance by corporations and partnerships, market participants, issuers and individuals with laws, rules and regulations implemented by the Commission; and to initiate/carry out appropriate enforcement action, including the filing of petitions for the revocation of certificates of registration of corporations found to have violated the laws, rules and regulations implemented by the Commission, except those cases which are under the original authority of the Company Registration and Monitoring Department ("CRMD").

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[1] Petition for Revocation dated 15 August 2011 and filed on 17 August 2011.

GRACELAND is a corporation duly registered[2] with the Commission and engaged in the real estate business. As stated in its Articles of Incorporation, its primary purpose is as follows –

> *"To own, use, improve, develop, subdivide, sell, exchange, lease, and hold for investment or otherwise,* ***real estate*** *of all kinds, including buildings, houses, apartments and other structures."*

ICON, on the other hand, is a corporation duly registered[3] with the Commission, and organized to engage in a real estate business. As stated in its Articles of Incorporation, its primary purpose is as follows –

> *"To acquire by purchase, lease, donation or otherwise, and to own, use, improve, develop, subdivide, sell mortgage, exchange, lease, develop, and hold for investment or otherwise,* ***real estate*** *of all kinds, whether improve, manage or otherwise dispose of buildings, houses, apartments, and other structures of whatever kind, together with their appurtenances"*

## FACTUAL ANTECEDENTS

The instant case stemmed from the *Petition*[4] filed by several investors which was endorsed to this Commission by Senator Rodolfo Biazon who requested that an investigation of an alleged investment scam amounting to millions of pesos, allegedly perpetrated by GRACELAND and ICON (collectively referred to as the "Respondents"), be conducted. In the *Petition*, the investors alleged that the "*subject matter of the case is one of common or general interest to many legitimate investors of [GRACELAND] and its sister companies with interlocking directorates*". The investors alleged that they were approached by officers[5] and agents[6] of GRACELAND who offered an investment proposal which promised a guaranteed return of between two to four percent (2% to 4%) per month on their capital investment. To secure their investments, postdated checks (PDC) together with promissory notes were undertaken to be issued in favor of the investors.

The *Petition* likewise alleged that in cases where the amount invested were considerably big, the promissory notes issued by GRACELAND were

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[2] SEC Company Reg. No. CS200405351, issued on 1 April 2004.
[3] SEC Reg No. AS094-00009314, issued on 11 October 1994.
[4] The Petition dated 25 January 2010 jointly filed with Senator Biazon on even date by thirteen (13) investors: Emmanuel D. Gob, George G. Cabigan, Jorge B. Vargas, Arturo P. Mirandilla, Ludivina B. Bornolla, Mary Jane B. Bornolla, Jesusa Q. Jumawan, Amabel M. Remo, Georaline L.Cabigan, Ruben Jonathan A. Cabales, Ethelwoldo T. Pasiliao, Agnes Zafranco Caralian, and Spouses Jerry and Eloisa Inojosa
[5] Corporate officers registered on the GIS issued dated 8 November 2011 are as follows:
Eduardo G. Luarca, President; Bernardita C. Ronquillo, Chief Financial Officer; Teresita C. Castillo, Vice-President; Ma. Diana A. Castillo, Corporate Secretary.
[6] See paragraph 17 of the Petition.

accompanied by a Deed of Assignment to a condominium unit as an added security.[7]

On separate dates[8] thereafter, sixty-three (63) investors[9] (the "Complainants") who claimed to have been defrauded filed their respective Complaint-Affidavits against GRACELAND with the Petitioner. The Complainants reiterated in their Complaint-Affidavits the allegations in the *Petition* i.e. an investment opportunity was offered by the salesmen and/or agents of GRACELAND where they were promised an investment return at the rate of between two to four percent (2-4%) a month on their capital investment. In support of their Complaint-Affidavits, the Complainants attached and submitted copies of the promissory notes issued by GRACELAND, which indicated that the latter promised to return the principal investment and to pay the guaranteed return. Copies of the post-dated checks issued by GRACELAND were likewise submitted as attachments to the Complaint-Affidavits.[10]

One of the complainants, a certain Ma. Milagros C. Salcedo, alleged in her Complaint-Affidavit that she invested One Million Pesos (Php 1,000,000.00) after an agent of GRACELAND enticed her to invest and earn two to four percent (2-4%) a month on the said investment. She further alleged that GRACELAND issued post-dated checks as well as promissory notes in her favor as proof of her investment and to secure the same. However, records reveal that the document dated 14 May 2008 which she attached to the Complaint-Affidavit shows that it was ICON that acknowledged receipt of her One Million Pesos (Php 1,000,000.00) investment, and agreed to pay the same together with the guaranteed return at the rate of three percent (3%) per month on or before 14 November 2008.[11]

Notices of Conference were issued by Petitioner to the officers of the Respondents, namely, Ronaldo Soliman (President of ICON), Eduardo Luarca (President of GRACELAND), and Diana A. Castillo (Secretary of Graceland), requiring them to appear before the EIPD for a conference on 27 April 2010 and to submit documents enumerated therein. However, only Ronaldo Soliman ("Soliman") appeared at the said conference and manifested that GRACELAND President Eduardo Luarca was "on indefinite leave because of the election period."

Acting on the allegations in the Complaint-Affidavits, Petitioner sought the assistance of the Corporation Finance Department, now Corporate

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[7] See paragraph 3(b) of the Petition.
[8] 19 March 2010, 26 July 2010 and 29 July 2010.
[9] See paragraph 18 of the Petition.
[10] Id., pars 15 to 18; and Annexes "G series" to Annexes "DD series" (Complaint-Affidavits of the investors-complainants and their supporting documents).
[11] Id., pars. 15 to 18; and Annex "Z series" (Complaint-Affidavits of Ma. Milagros C. Salcedo) and Annex "Z-5" (Document of ICON dated 14 May 2008).

Governance and Finance Department ("CGFD") in verifying if Respondents are licensed issuers of securities considering that they were found to be selling and/or offering securities to the public.[12] The CGFD issued a negative Certification dated 12 February 2010 confirming that Respondents are not registered issuers of securities.

In the course of the investigation and the proceedings conducted by the Petitioner, Mr. Soliman requested for additional time to prepare and submit the required documents. Respondents were given sufficient time to submit the documents required by the Petitioner, however, both failed to submit the same. Moreover, the records show that Respondents' proposal for a settlement offer embodied in their letter dated 25 June 2010 was denied by the Petitioner on the ground that they failed to submit the documents required of them.[13] Petitioner then filed the instant EIPD Petition.

In the EIPD Petition, Petitioner alleged that the numerous complaints that were filed against the Respondents reveal and confirm the following common investment schemes which both concocted to defraud the Complainants, to wit:

1) Agents/salesman of GRACELAND would entice prospective investors to place their money in an investment scheme which had a guaranteed return of between two to four percent (2% to 4%) per month;
2) Once the investor agrees and invests his/her money, GRACELAND would issue a promissory note to the investor, accompanied by post-dated checks to cover the principal amount and the guaranteed return, payable in equal installments. For some investments, GRACELAND issued to its investors certificates of membership in Graceland Estates & Country Club, Inc. (in the name of "Graceland Properties and Development, Inc." and/or "Icon Development, Inc.") as security for the investment; and for substantial investments, GRACELAND issued a Deed of Assignment in favor of the investor covering a condominium unit(s) as security;
3) The first post-dated check would be honored by the drawee bank. However, succeeding checks would be dishonored and the investor would learn that the account was already closed; and
4) The checks issued as payments for the principal investment and/or the guaranteed return remain unsettled. The investors would eventually discover that the certificates of membership and/or the Deeds of Assignments were worthless pieces of paper.

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[12] Id., Annex "GG" (Memorandum to CGFD dated 08 February 2010).
[13] Id., pars. 24 to 28; Annex "JJ" (Letter dated 31 May 2010 to Ronald R. Soliman), Annex "KK" (Letter dated 03 June 2010 to EIPD), Annex "LL" (Letter dated 07 June 2010 to Ronald R. Soliman), Annex "MM" (Settlement Offer in the amount of One Hundred Thousand Pesos [Php 100,000.00], payable in equal installments), and Annex "NN," (Letter dated 31 May 2010).

Petitioner likewise averred that Respondents were both engaged in the sale of securities in the form of "notes and evidence of indebtedness" under Section 3(a) of the Securities Regulation Code (SRC) without the requisite license from this Commission. Petitioner argued that the promissory notes issued by Respondents were securities because the latter represented to the investors that they will share in the profits of the enterprise i.e. a guaranteed return of between 2%-4% per month of the entire investment.[14] Petitioner considers the foregoing as an act that constitutes serious misrepresentation as to what said corporations can do to the great damage or prejudice of the general public which warrants the revocation of the certificates of the registration of Respondents since both of them are not authorized under their respective articles of incorporation to sell and/or offer securities to the public.

In their joint *Answer with Motion to Expunge Complaint from the Record* (Answer), Respondents prayed for the dismissal of the EIPD Petition on the ground of forum shopping and improper service of summons. Respondents argued that Petitioner did not disclose in the Certificate of Non-Forum Shopping that there was a pending criminal case before the Department of Justice ("DOJ") [the "DOJ Case][15] involving the same parties, incidents and issue, and that there was improper service of summons since allegedly, mere clerks of Respondents received the summons. They also alleged that the post-dated checks and promissory notes do not constitute securities under the SRC because they were issued pursuant to a loan transaction, and should thus be considered as forbearance of money evidenced by promissory notes.[16]

In its *Reply*, Petitioner countered that the allegation of forum shopping is baseless because the case pending before the DOJ is a criminal case for violation of Section 8, in relation to Section 72 of the SRC, filed against Ronaldo Soliman as Executive Vice President of GRACELAND and President and CEO of ICON, while the instant case is an administrative case for revocation of the certificates of registration filed against GRACELAND and ICON on the ground of serious misrepresentation. Petitioner posited that the defense of forum shopping is unavailing since the party respondents in the two cases are different i.e. the respondent in the criminal case pending before the DOJ is Mr. Soliman whereas the Respondents in the instant administrative case GRACELAND and ICON. Moreover, Petitioner emphasized that notes and evidences of indebtedness issued by Respondents are considered securities under Section 3 of the SRC, thus, the activities of Respondents constitute offering and selling of securities without the requisite license from the Commission warranting the revocation of their certificates of registration.[17]

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[14] Paragraph 43 of the EIPD Petition.
[15] Docketed as NPS Docket No. SVI-INV101-0366.
[16] Answer dated 2 September 2011, pp. 1, 2, and 10.
[17] Reply dated 19 September 2011 and filed on 21 September 2011, pars. 1, 2, 4, 5, 6, and 24.

## ISSUE

Whether or not the revocation of Respondents' Certificates of Registration on the ground of serious misrepresentation as to what these corporations can do to the damage or prejudice of the public is warranted given the evidence on record.

## RULING

After a careful consideration and review of the arguments of the parties, as well as the evidence presented, this Commission finds the EIPD Petition to be meritorious and hereby grants the same.

Before discussing the substantive issue presented herein, we will address the procedural issues presented by Respondents relating to the alleged forum shopping resorted to by EIPD, as well as the allegation on improper service of summons.

At the outset, this Commission finds that the allegations of procedural infirmity in the EIPD Petition and in the service thereof, are without merit and basis.

Forum shopping refers to the act of availing oneself of several judicial remedies in different courts, either simultaneously or successively, substantially founded on the same transaction and identical material facts and circumstances, raising basically like issues either pending in, or already resolved by, some other court.[18]

In the case of the *Municipality of Taguig v. Court of Appeals,*[19] the Supreme Court ruled that "*forum shopping exists when, as a result of an adverse opinion in one forum, a party seeks a favorable opinion (other than by appeal or certiorari) in another, or when he institutes two or more actions or proceedings grounded on the same cause, on the gamble that one or the other court would make a favorable disposition. What is truly important to consider in determining whether forum shopping exists or not is the vexation caused the courts and parties-litigants by a party who asks different courts and/or administrative agencies to rule on the same or related causes and/or grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different fora upon the same issues.*" The principle applies not only with respect to suits filed before courts but also in connection with a litigation commenced in court

[18] Gatmaytan v. Court of Appeals, G.R. No. 123332, February 3, 1997.
[19] G.R. No. 142619, September 13, 2005.

while an administrative proceeding is pending in order to defeat administrative processes in anticipation of an unfavorable administrative ruling and possibly a favorable court ruling.[20]

The elements of forum shopping are the same as in *litis pendentia* where the final judgment in one case will amount to res judicata in the other; they are as follows: (a) identity of parties, or at least such parties that represent the same interests in both actions; (b) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and (c) identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to res judicata in the action under consideration.[21]

Applying the forgoing, it is clear that there is no forum shopping as the elements thereof are wanting in the instant case.

First, there is clearly no identity of parties in the instant case and in the DOJ Case. We agree with the EIPD that in the DOJ Case which is criminal in nature, the principal respondent is Mr. Soliman who is being sued in his personal capacity as the Executive Vice President of GRACELAND and President and CEO of ICON for violation of Section 8 in relation to Section 73 of the SRC; while in the instant case which is administrative in nature, Respondents as juridical persons are the respondents. Mr. Soliman and Respondents are clearly different parties based on the elementary and fundamental principle of corporation law that a corporation is an artificial being invested by law with a personality separate and distinct from its stockholders and from other corporations to which it may be connected.[22]

Second, there is no identity of rights asserted and reliefs prayed for. In the DOJ Case, the Commission is exercising its right as the agency mandated to implement the provisions of the SRC, to institute the appropriate criminal action for violation of Section 8 in relation to Section 73 thereof. The relief prayed for by the Commission in the DOJ Case is the issuance of an information against Mr. Soliman, and ultimately the imposition of the appropriate penalties provided for in Section 73 of the SRC. In the instant case, Petitioner's cause of action relates to Respondents' alleged violation of Sec. 6(1)(2) of PD 902-A, as amended, and the relief prayed for is the revocation of the Certificates of Registration of Respondents. The difference in the causes of action in the DOJ Case and the instant case is thus obvious. The DOJ Case seeks for the filing of an information against Mr. Soliman, while the instant case seeks for the revocation of the Certificates of Registration of Respondents.

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[20] First Philippine International Bank v. Court of Appeals, GR No. 115849, January 24, 1996

[21] Phil. Pharmawealth v. Pfizer Inc. et al., G.R. No. 167715, November 17, 2010 citing: Pentacapital Investment Corporation v. Makilito Mahinay, G.R. No. 171736.

[22] Genuino Agro-Industrial Development Corp. v. Romano, G.R. No. 204782, September 18, 2019.

<u>Third</u>, any judgment rendered in the DOJ Case will not amount to res judicata in the instant case. It is a fundamental principle of administrative law that administrative cases are independent from criminal actions for the same act or omission. An absolution from a criminal charge is not a bar to an administrative prosecution, or vice versa. Considering the difference in the quantum of evidence, as well, the procedure followed and the sanctions imposed in criminal and administrative proceedings, the findings and conclusions in one should not necessarily be binding on the other.[23]

As to the next procedural issue, the records of the case will show that summons were properly served, contrary to the Respondents' assertion.

The Respondents insist that the summonses were served upon mere clerks of the corporation without presenting any evidence to prove such allegation. Without the requisite evidence to support thereof, the foregoing allegation is rendered self-serving which cannot negate the Affidavits of Service which were under oath and were attached by Petitioner to the EIPD Petition to show that Summonses were properly served. Moreover, records also show that ICON admitted in its Answer that clerks, who by nature of their functions, are charged with the authority to receive documents for the company as well as its officers who held office in said corporation.

Assuming, *ex gratia argumenti*, that summonses were served on the clerk of Respondents, the defect was effectively cured after Respondents filed their Answer which is considered as voluntary appearance. The records show that Respondents did not specifically assail the jurisdiction of the Commission but only prayed for the dismissal of the EIPD Petition on the allegation of lack of merit. The foregoing finds support in the case of *G.V. Florida Transport, Inc. v. Tiara Commercial Corp.*[24] where the Supreme Court ruled that:

> "Service of summons, however, is not the only mode through which a court acquires jurisdiction over the person of the defendant. Section 20 of Rule 14 of the Rules of Court states:
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> > Sec. 20. Voluntary appearance. — The defendant's voluntary appearance in the action shall be equivalent to service of summons. The inclusion in a motion to dismiss of other grounds aside from lack of jurisdiction over the person of the defendant shall not be deemed a voluntary appearance.
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> <u>There is voluntary appearance when a party, without directly assailing the court's lack of jurisdiction, seeks affirmative relief from the court. When a party appears before the court without qualification, he or she is deemed to have waived his or her objection regarding lack of jurisdiction due to improper service of summons</u>. When a defendant, however, appears before

[23] Brigido B. Peredes v. Court of Appeals, G.R. No. 169534, 30 July 2007.
[24] G.R. No. 201378, October 18, 2017.

> the court for the specific purpose of questioning the court's jurisdiction over him or her, this is a special appearance and does not vest the court with jurisdiction over the person of the defendant. Section 20 of Rule 14 of the Rules of Court provides that so long as a defendant raises the issue of lack of jurisdiction, he or she is allowed to include other grounds of objection. In such case, there is no voluntary appearance." (Emphasis ours)

**The Evidence of Indebtedness issued and/or used by Respondents are Securities under the SRC**

Coming now to the substantive issue, Respondents insist that they were not engaged in the sale of securities considering that the transaction carried out by them in relation to their clients were simple loans, and that the post-dated checks and promissory notes which they issued were not evidences of indebtedness under the SRC. The records and the evidence however show that, as correctly found by Petitioners, Respondents were engaged in the sale and/or offer of securities in the form of "evidences of indebtedness" without the requisite license from this Commission.

The EIPD Petition was able to establish through the Complaint-Affidavits[25] that were attached thereto that Respondents enticed the complainants to invest their money, and actually obtained money from them in the form of a loan with a guaranteed return of between two to four percent (2-4%), represented by the post-dated checks and promissory notes that were issued to the Complainants. The EIPD Petition also established through the Complaint-Affidavits that the investor-complainants were enticed to renew their investments and increase the same in the hope of receiving higher interest yields.

In the context of the foregoing, the checks and promissory notes that were issued by Respondents partook of the nature securities in the form of evidences of indebtedness as they were issued in lieu of stocks or traditional securities, apparently to circumvent the provisions of the SRC which require the requisite license before selling or dealing with securities. Consequently, the individual non-personalized loans which Respondents solicited from the public ceased to be mere ordinary loans but were essentially investment transactions. In the case of *Gabionza v. Court of Appeals*,[26] the Supreme Court discussed how evidences of indebtedness were considered securities, which is very much the same as in the instant case, thus:

> "This analysis is highly myopic and ignorant of the bigger picture. It is one thing for a corporation to issue checks to satisfy isolated individual obligations, and another for a corporation to execute an elaborate scheme where it would comport itself to the public as a pseudo-investment house

[25] See Annexes "A" to "DD" of the Petition.
[26] G.R. No. 161057, September 12, 2008.

> <u>and issue postdated checks instead of stocks or traditional securities to evidence the investments of its patrons. The Revised Securities Act was geared towards maintaining the stability of the national investment market against activities such as those apparently engaged in by ASBHI</u>. As the DOJ Resolution noted, ASBHI adopted this scheme in an attempt to circumvent the Revised Securities Act, which requires a prior license to sell or deal in securities. After all, if ASBHI's activities were actually regulated by the SEC, it is hardly likely that the design it chose to employ would have been permitted at all.
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> xxx xxx xxx
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> A check is a commercial paper evidencing indebtedness of any person, financial or non-financial entity. <u>Since the checks in this case were generally rolled over to augment the creditor's existing investment with ASBHI, they most definitely take on the attributes of traditional stocks</u>.
>
> xxx xxx xxx
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> After all, as the DOJ Resolution correctly pointed out: "[T]he postdated checks themselves serve as the evidences of the indebtedness. A different rule would open the floodgates for a similar scheme, whereby companies without prior license or authority from the SEC. This cannot be countenanced." (Emphasis ours)

Section 3.1 (a) of the SRC defines securities as "*shares, participation or interests in a corporation or in a commercial enterprise or profit-making venture and evidenced by a certificate, contract, instrument, whether written or electronic in character. <u>It includes</u>: (a) shares of stock, bonds, debentures, notes and <u>evidences of indebtedness</u>, asset-backed securities*". (Emphasis ours)

The 2015 Implementing Rules and Regulations (IRR) of the SRC further define securities in Rule 3(3.1), thus:

> *"**Rule 3 – Definition of Terms***
>
> ***3.1.** As used in these Rule, unless the context provides otherwise:*
>
> *xxxx xxxx xxxx*
>
> ***3.1.20. Securities shall include**: (a) Shares of stock, bonds, government securities, commercial papers, debentures, notes, **evidences of indebtedness**, asset-backed securities; (b) Investment contracts, certificates of interest or participation in a profit-sharing agreement, certificates of deposit for a future subscription; (c) Fractional undivided interests in oil, gas or other mineral rights; (d) Derivatives like option and warrants; (e) Certificates of assignments, certificates of participation, trust certificates, voting trust certificates or similar instruments; (f) Proprietary or non-proprietary membership certificates **in corporations**; and (g) Other instruments as may in the future be determined by the Commission." (Emphasis supplied)*

The SRC proscribes the sale and/or offer of securities to the public without a registration statement duly filed with and approved by the Commission. Section 8(8.1) of the SRC provides for the requirement of securing a duly approved registration statement before a security can be offered or sold to the public, to wit:

> *"**SEC. 8. Requirement of Registration of Securities.** – 8.1 **Securities shall not be sold or offered for sale or distribution within the Philippines, without a registration statement duly filed with and approved by the Commission**. Prior such sale, information on the securities, in such form and with such substance as the Commission may prescribe, shall be made available to each prospective purchaser."* (Emphasis supplied)

The evidence presented by Petitioner sufficiently establishes Respondents' violation of Section 8 of the SRC considering that in administrative proceedings such as the instant case, the quantum of proof necessary for a finding of violation is only substantial evidence. This finds support in the case of the *Department of Health v. Aquintey*,[27] the Supreme Court held that:

> "In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. Well entrenched is the rule that substantial proof, and not clear and convincing evidence or proof beyond reasonable doubt, is sufficient as basis for the imposition of any disciplinary action upon the employee. The standard of substantial evidence is satisfied where the employer has reasonable ground to believe that the employee is responsible for the misconduct and his participation therein renders him unworthy of trust and confidence demanded by his position. In this case, the attending facts and the evidence presented, point to no other conclusion than the administrative liability of respondents for gross insubordination." (Emphasis supplied)

It bears emphasis that Respondents did not dispute the finding of violation of Sec. 8 of the SRC by Petitioner. Respondents instead, merely proffered a general denial that they were not engaged in the sale/offer of securities which was however unsubstantiated by evidence.

It is in the context of the foregoing that Petitioner filed the instant Petition seeking the revocation of Respondent's Certificates of Registration on the ground of serious misrepresentation under Section 6(l)(2) of PD 902-A, as amended.

We sustain the Petition.

[27] G.R. No. 204766, March 06, 2017

Serious misrepresentation, once established, triggers and warrants the exercise by this Commission of its mandate to protect the investing public, utilizing for this purpose its expertise in matters relating to securities. <u>An administrative charge for violation of the Securities Regulation Code is a specialized dispute. Hence, it must first be referred to an administrative agency of special competence,</u> *i.e.*, the SEC. Under the doctrine of primary jurisdiction, courts will not determine a controversy involving a question within the jurisdiction of the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the specialized knowledge and expertise of said administrative tribunal to determine technical and intricate matters of fact. The Securities Regulation Code is a special law. Its interpretation and implementation is vested primarily in the SEC.[28]

In the case of *Bernardo v. Court of Appeals*, the Supreme Court has defined misrepresentation as a false statement about a material fact in any contract or other transaction that misleads the party to whom it is made.[29] Likewise, fraud refers to all kinds of deception — whether through, among others, misrepresentation — that would lead an ordinarily prudent person into error after taking the circumstances into account.[30] The fraud is serious when it is sufficient to impress, or to lead an ordinarily prudent person into error.[31]

On the basis of the foregoing, serious misrepresentation as to what the corporation can do or is doing under Section 6(l)(2) of PD 902-A, as amended, exists if a corporation performs an act or carries out transactions which are not within its authority and power under its Articles of Incorporation to do or make. These unauthorized acts are also called *ultra vires* acts of corporations, or acts committed outside the object for which a corporation was created as defined by law of its organization and thereof beyond the powers conferred upon it by law.[32] In *Rural Bank of Milaor v. Ocfemia*[33], the Court defined the concept of *ultra vires*, thus:

> "The language of the Code appears to confine the term ultra vires to an act outside or beyond express, implied and incidental corporate powers. <u>Nevertheless, the concept can also include those acts that may ostensibly be within such powers but are, by general or special laws, either proscribed or declared illegal</u>. In general, although perhaps loosely, ultra vires has also been used to designate those acts of the board of directors or of corporate officers when acting beyond their respective spheres of authority. In the context that the law has used the term in Article 45 of the Corporation Code, an ultra vires act would be void and not susceptible to ratification. <u>In determining whether or not a corporation may perform an act, one considers</u>

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[28] Securities and Exchange Commission vs. Interport Resources Corp., G.R. No. 135808, October 6, 2008.
[29] Bernardo vs. Court of Appeals, G.R. No. 124261, May 27, 2004.
[30] Solidbank Corp. vs. Mindanao Ferroalloy Corp., G.R. No. 153535, July 28, 2005.
[31] Tankeh v. Development Bank of the Phils., G.R. No. 171428, November 11, 2013.
[32] Republic v. Acoje Mining Co., Inc., G.R. No. L-18062, February 28, 1963.
[33] G.R. No. 137686, February 8, 2000.

> <u>the logical and necessary relation between the act assailed and the corporate purpose expressed by the law or in the charter</u>. For if the act were one which is lawful in itself or not otherwise prohibited and done for the purpose of serving corporate ends or reasonably contributes to the promotion of those ends in a substantial and not merely in a remote and fanciful sense, it may be fairly considered within corporate powers." (Emphasis supplied)

In the instant case, it is not disputed that Respondents did not have secondary license to sell or offer securities. Nonetheless, Respondents sold and offered securities in the form of evidences of indebtedness without the requisite license from this Commission.

The Commission thus finds that Respondents' act of selling and/offering the Preferred Shares in the form of evidences of indebtedness without the requisite license constituted serious misrepresentation as to what the corporation can do or is doing under Section 6(l)(2) of PD 902-A, as amended, because these acts were clearly outside the object for which Respondents were created. The sale and/or offer of securities cannot be considered as an implied or incidental powers granted to the Respondents since their primary purpose is to engage in real estate business. This is the reason why Respondents needed the secondary license before it can lawfully sell and/or offer securities.

In the case of *SEC v. CJH Development Corporation*[34], the Supreme Court held that fraud is attendant in the act of selling and/or offering securities without the requisite license, thus:

> "The act of selling unregistered securities would necessarily operate as a fraud on investors as it deceives the investing public by making it appear that respondents have authority to deal on such securities. Section 8.1 of the SRC clearly states that securities shall not be sold or offered for sale or distribution within the Philippines without a registration statement duly filed with and approved by the SEC and that prior to such sale, information on the securities, in such form and with such substance as the SEC may prescribe, shall be made available to each prospective buyer."

Moreover, in the case of *Securities and Exchange Commission v. Subic Bay Golf and Country Club, Inc.*[35], the Supreme Court affirmed and emphasized the mandate of this Commission to protect the investing public by strictly implementing and enforcing the provisions of the SRC, to wit:

> "Any fraud or misrepresentation in the issuance of securities injures the public. The Securities and Exchange Commission's power to suspend or revoke registrations and to impose fines and other penalties provides the public with a certain level of assurance that the securities contain representations that are true, and that misrepresentations if later found, would be detrimental to the erring corporation. It creates risks to

[34] G.R. No. 210316, 28 November 2016.
[35] G.R. No. 179047, March 11, 2015

corporations that issue securities and adds cost to errors, misrepresentations, and violations related to the issuance of those securities. This protects the public who will rely on representations of corporations and partnerships regarding financial instruments that they issue. The Securities and Exchange Commission's regulatory power over securities-related activities is tied to the government's duty to protect the investing public from illegal and fraudulent instruments."

**WHEREFORE**, premises considered, the Petition for the Revocation of the Certificate of Registration against GRACELAND and ICON for violation of Section 6(l)(2) of PD 902-A, as amended, is hereby granted. The Certificates of Registration of GRACELAND and ICON are hereby REVOKED.

Let a copy of this Decision be furnished to the Enforcement and Prosecution Department and the Company Registration and Monitoring Department for their information and appropriate action.

**SO ORDERED.**

Pasay City, Philippines; 31 March 2020.

**EMILIO B. AQUINO**
*Chairperson*

**EPHYRO LUIS B. AMATONG**
*Commissioner*

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