**Republic of the Philippines**
**Department of Finance**
**Securities and Exchange Commission**
SEC Building, EDSA, Greenhills, Mandaluyong City

**In the Matter of:**

**PHILIPPINE LAND GROUP, INC.**

**SEC CDO Case No. 13-12-001**

**ENFORCEMENT AND PROSECUTION DEPARTMENT (now the ENFORCEMENT & INVESTOR PROTECTION DEPARTMENT)**

***Petitioner.***

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# ORDER

Pending consideration before us is **PHILIPPINE LAND GROUP, INC.'S** ("PLGI") Motion to Lift Cease and Desist Order ("Motion to Lift") filed on 24 July 2013, praying for the lifting and/or setting aside of the Cease and Desist Order ("CDO") issued by the Commission on 04 July 2013, the dispositive portion of which reads:

> "**PREMISES CONSIDERED, PHILIPPINE LAND GROUP, INC.**, its officers, directors, agents, representatives, conduits, assigns, and any and all persons claiming and acting for and in behalf and under their authority are hereby ordered to **IMMEDIATELY CEASE AND DESIST,[1] UNDER PAIN OF CONTEMPT, from further offering, soliciting, or otherwise offering or selling unregistered securities to the public, namely the sale of units in the Grandview Tower which has prima facie been established to constitute an investment contract, club shares, pooling of funds, investment trusts, or similar forms, and, in connection therewith, soliciting, accepting or receiving from others, money for the purpose of investing therein. xxx**"

[1] Section 64.1, SRC. The Commission, after proper investigation or verification, *motu propio*, or upon verified complaint by any aggrieved party, may issue a cease and desist order without the necessity of a prior hearing if in its judgment the act or practice, unless restrained, will operate as a fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public.
xxx

On 08 August 2013, the Commission issued an Order setting the Motion to Lift for hearing on 23 August 2013, but was rescheduled to 24 September 2013. During the scheduled hearing, PLGI moved for the submission of a Supplemental Motion, while the Enforcement and Prosecution Department ("EPD") [now the Enforcement & Investor Protection Department ("EIPD")] likewise moved that it be given time to comment on the said Supplemental Motion.

In an Order dated 07 October 2013, the respective motions of PLGI and EPD were granted, thus, the former was given 15 days from receipt of the said Order to submit its Supplemental Motion while the latter has fifteen (15) days from receipt of such Supplemental Motion to comment thereon.

However, PLGI, has, to date, failed to file its Supplemental Motion or any submission. On 19 December 2013, the EIPD filed its Opposition to the Motion to Lift, praying that the same be denied and the CDO be made permanent.

Accordingly, on 10 February 2015, the Commission issued an Order terminating the hearing on the Motion to Lift and submitting the same for resolution.

We now rule on the Motion to Lift. PLGI alleges that, *viz:*

> " 4. PLG was not furnished/given a copy of the complaint of the Tullochs. Thus it was not able to refute and belie their malicious and perjured lies. What was merely given to PLG was a notice of conference. xxx;
>
> 5. For the information of the Honorable Commission to set the record straight, PLG is not engaged in the business of selling securities nor offer the same for sale to the public;
>
> 6. While it is true the PLG has a plan for the formation, creation and development of a condo hotel and vacation club, the same did not materialize. xxx;
>
> xxx
>
> 9. The plan for the creation and development of condohotel and vacation club remains a plan and the said plan was later aborted and/or abandoned. This is the reason why no management contract was executed by PLG with their clients, and no investment and/or securities were sold to public. PLG is solely selling condominium units.
>
> 10. That PLG undertakes to secure secondary license before the Honorable Commission once it pursue its plan of putting up a vacation club."

As to PLGI's contention that it was not furnished a copy of the complaint of the Tullochs (original complainants before the EPD), Section 64.1 of the Securities Regulation Code ("SRC"), in providing the requirements for the issuance of a CDO, states the following:

> "The Commission, after proper investigation or verification, *motu proprio,* or upon verified complaint by any aggrieved party, may issue a cease and desist order without the necessity of a prior hearing if in its judgment the act or practice, unless restrained, will operate as a fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public."

This is likewise embodied in Rule X, Section 10-2 of the 2006 Rules of Procedure of the Commission.

In short, the Commission may issue a CDO either *motu proprio* or upon verified complaint without a prior hearing and without furnishing the concerned party a copy of a verified complaint (i.e., Motion for Issuance of a CDO). The essential requirement that must be complied with by the Commission before it may issue a CDO is that the EIPD must conduct a proper investigation or verification. Once an investigation or verification by the EIPD is conducted, the Commission may issue a CDO, if in its judgment, the act or practice, unless restrained, will operate as a fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public. In fact, this was already communicated to PLGI during the hearing on the Motion to Lift. Thus, PLGI's argument that it was not furnished a copy of the complaint is without merit.

With regard to the other allegations of PLGI, particularly that it is not engaged in the business of selling securities nor offering the same for sale to the public, we disagree.

It must be emphasized that PLGI's allegations that it is not engaged in the business of selling securities nor offering the same for sale to the public are mere statements which are not substantiated by any evidence.

Contrary to the allegations of PLGI, records [i.e., 1) EIPD's Field Investigation Report, 2) the affidavits and/or statements under oath of the Tullochs, incorporators and officers of PLGI, and the buyers, 3) marketing brochures and flyers distributed by PLGI, 4) the management agreement provided by PLGI's sales executive, Mr. Tom Hanton, and 5) the Contract to Sell submitted by the incorporators, which specifically provides that "the VENDEE's [*sic*] of those units will enter into a management contract with Grandview Property Management, Inc."], evidently disclose and establish that PLGI, by selling the units in the Grandview Tower with a promise to earn income which ranges from 70% to 80% for the property owner on a regular basis, is engaged in the selling and/or offering for sale of unregistered securities in the form of investment contracts.

Section 3.1 of the SRC provides:

"SECTION 3. Definition of Terms. — 3.1. "Securities" are 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. It includes: xxx

(b) **Investment contracts**, certificates of interest or participation in a profit sharing agreement, certificates of deposit for a future subscription;" (Emphasis supplied)

Corrolarily thereto, an investment contract is defined in the "Amended Implementing Rules and Regulations of the Securities Regulation Code"[2] as follows:

"SRC RULE 3 Definition of Terms Used in the Rules and Regulations

1. As used in the rules and regulations adopted by the Commission under the Code, unless the context otherwise requires:

xxx

G. An investment contract means a contract, transaction or scheme (collectively "contract") whereby a person invests his money in a common enterprise and is led to expect profits primarily from the efforts of others.

1. An investment contract is presumed to exist whenever a person seeks to use the money or property of others on the promise of profits.

2. A common enterprise is deemed created when two (2) or more investors "pool" their resources, creating a common enterprise, even if the promoter receives nothing more than a broker's commission."

Further, the Supreme Court in *Power Homes Unlimited Corporation vs. SEC*[3] discussed the concept of an investment contract under R.A. No. 8799 and concluded that, "to be a security subject to regulation by the SEC, an investment contract in our jurisdiction must be proved to be: (1) an investment of money, (2) in a common enterprise, (3) with expectation of profits, (4) primarily from efforts of others."

To reiterate, and as previously discussed in our 04 July 2013 CDO, PGLI has been established as having sold and/or offered investment contracts that are not registered with the Commission, contrary to law, to wit:

"The facts gathered show that the investment scheme offered by PLGI has the elements of an investment contract as enunciated by the Supreme Court in *Power Homes Unlimited Corporation vs. SEC* xxx.

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[2] December 30, 2003.

[3] G.R. No. 164182, February 26, 2008.

Through the purchase of a condotel of respondent PLGI, the vendee becomes an investor who enters into a contract. The purchase price takes the form of investment of money for which the investor will receive a guaranteed amount of profit. The amount of [sic] ranges from 80%, as stated by Mr. Hanton, to 75% per sample letter of PLGI to a vendee. In the scheme offered by PLGI, the buyer of the condominium unit of Grandview Tower does not buy the unit only. By purchasing a unit, the buyer is required to enter into a management agreement with GPMI, wherein the unit bought is pooled together with the units purchased by other buyers and operated as a hotel enterprise. Effectively the buyers of the units do not merely invest in a condominium unit. By doing so, they enter into a common enterprise, with the expectation of profits, primarily through the efforts of others. The purchase money used to buy a unit is invested in a common enterprise, which is the condotel. The investor expects to derive profits from the management and operation of the pooled units constituting the condotel, as described in the flyers, brochures, Contract to Sell and Management Agreement, a letter from PLGI, which lead the investor to expect profits primarily from the efforts of others.

xxx

The respondent PLGI has engaged in offering and selling securities to the general public as defined under Rule 3, Paragraph 1, Subparagraph N of the Amended IRR of the SRC, by distributing flyers, brochures, placing advertisements in the Internet, and conducting presentation sot [sic] prospective clients. Rule 3, Paragraph 1, Subparagraph N of the Amended IRR of the SRC provides:

> "N. Public Offering means a random or indiscriminate offering of securities in general to anyone who will buy, whether solicited or unsolicited. Any solicitation or presentation of securities for sale through any of the following modes shall be presumed to be a public offering:
>
> i. Publication in any newspaper, magazine or printed reading material which is distributed within the Philippines or any part thereof;
> ii. Presentation in any public or commercial place;
> iii. Advertisement or announcement in any radio or television, or in any online or email system; or
> iv. Distribution and/or making available flyers, brochures or any offering material in a public or commercial place, or mailing the same to prospective purchasers."

The acts of respondent in soliciting sales undoubtedly fall under the definition of public offering, but PLGI failed to secure the registration of subject securities with the Commission, per Sections 8 and 12 of the SRC, as certified by the CFD."

PLGI also failed to obtain a secondary license to act as broker-dealer in securities under the SRC, and the company's salesmen listed in its Manifestation have not been issued any license to act as brokers or dealers in securities as certified by the MRD. Sections 28.1 and 28.2 of the SRC provide:

> "SECTION 28. Registration of Brokers, Dealers, Salesmen and Associated Persons. — 28.1. No person shall engage in the business of buying or selling securities in the Philippines as a broker or dealer, or act as a salesman, or an associated person of any broker or dealer unless registered as such with the Commission.
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> 28.2. No registered broker or dealer shall employ any salesman or any associated person, and no issuer shall employ any salesman, who is not registered as such with the Commission."

The corporation cannot feign ignorance of the requirement inasmuch as the Certificate of Incorporation specifically states the requirement of a Secondary License from the Commission for acting as broker or dealer in securities and club shares, among others."

Accordingly, for failure of PLGI to raise any substantial arguments and evidence that could overturn the above finding, and merit the lifting of the CDO issued against it, its officers, directors, representatives, conduits, assigns and any and all persons, claiming and acting for and in their behalf and under their authority, we find no reason to disturb our previous ruling.

**WHEREFORE**, premises considered, the instant Motion to Lift the Cease and Desist Order is hereby **DENIED.** Accordingly, as prayed for by the Enforcement & Investor Protection Department in its Opposition, the Cease and Desist Order dated 04 July 2013 issued against **PHILIPPINE LAND GROUP, INC.**, its officers, directors, agents, representatives, conduits, assigns, and any and all persons claiming and acting for and in behalf and under its authority, **from further offering, soliciting, or otherwise offering or selling unregistered securities to the public, namely the sale of units in the Grandview Tower which has prima facie been established to constitute an investment contract, club shares, pooling of funds, investment trusts, or similar forms, and, in connection therewith, soliciting, accepting or receiving from others, money for the purpose of investing therein,** is hereby **MADE PERMANENT**.

The **Enforcement & Investor Protection Department** is hereby **DIRECTED** to: (a) serve this Order on the President, General Manager, Corporate Secretary, Treasurer or In-House Counsel of **PHILIPPINE LAND GROUP, INC.** (b) post copies of the Order at the entrance of the main office and/or branches, if any, of **PHILIPPINE LAND GROUP, INC.** Let a copy of this Order be also posted in the Commission's website and published in a national newspaper of general circulation.

Further, let a copy of this Order be furnished the Company Registration and Monitoring Department, the Corporate Governance and Finance Department, the Markets and Securities Regulation Department, and the Economic Research and Information Department for their information and appropriate action.

**SO ORDERED.**

**Mandaluyong City, 12 February 2015.**

**TERESITA J. HERBOSA**
*Chairperson*

**MANUEL HUBERTO B. GAITE***
*Commissioner*

**ANTONIETA F. IBE**
*Commissioner*

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

**BLAS JAMES G. VITERBO**
*Commissioner*

*On Leave