Republic of the Philippines
Department of Finance
Securities and Exchange Commission

DOMINGO VILLAFRANCA, on behalf of the Awardees of Certificate of Land Ownership Award (CLOA) under the Comprehensive Agrarian Reform Law (CARP) in Hacienda Looc, Nasugbu, Batangas
Complainant-Appellant,

- versus -

SEC Case No. 05-009
FOR: Alleged Misrepresentation and Nondisclosure of Material Facts in the Registration Statement or Prospectus

SM INVESTMENT CORPORATION,
Respondent-Appellee.

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DECISION

Pending consideration of the Commission *En Banc* is the *Memorandum on Appeal* filed on 19 October 2005 by complainant-appellant Domingo Villafranca (complainant-appellant) against respondent-appellee SM Investment Corporation (SMIC) assailing the Order[1] (Assailed Order) of the Corporation Finance Department (CFD), now known as the Corporate Governance and Finance Department (CGFD). The dispositive portion of which reads as follows:

> "**WHEREFORE**, IT IS RESOLVED THAT the pending legal cases involving MSDC and Hacienda Looc are NOT MATERIAL, which are therefore not required to be disclosed in the registration statement filed by respondent SMIC.
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> The Complaint filed by Domingo U. Villafranca and Nomer G. del Mundo, on behalf of the Awardees of Certificates of Land Ownership (CLOAS) under the Comprehensive Agrarian Reform Law (CARP), against [SMIC], for alleged violation of Sections 13.1(a)(iv) and 13(b) of the Securities Regulation Code, for misrepresentation and non-disclosure of material facts in its registration statement, is hereby DISMISSED for lack of merit."

[1] Order dated 30 September 2005.

Factual Antecedents

On 14 April 2005, complainant-appellant and Nomer G. del Mundo filed a *Letter-Complaint* (Complaint) with the CFD. They allege that they are farmers and beneficiaries of the CLOAS, under the CARP, of Hacienda Looc which is allegedly a "substantial asset" of Manila Southcoast Development Corporation (MSDC), a subsidiary of SMIC. They claim that SMIC committed a violation of Sections 13.1(a)(iv) and 13(b) of the Securities Regulation Code (SRC)[2] by the misrepresentation and nondisclosure of *material facts* in its registration documents relating to the Domestic and International Offer of its 115,000,000 Common Shares. They claim that SMIC failed to disclose in the registration documents the legal proceedings[3] involving the nullification of titles of MSDC. Thus, they pray that an order be issued, among others, revoking the registration of SMIC securities and revoking the Certificate of Permit to Offer Securities for Sale.

After an exchange of pleadings[4] and the conduct of various conferences,[5] the CFD issued the *Assailed Order*, on 30 September 2005, dismissing the Complaint for lack of merit. The CFD stated that the legal proceedings involving the Hacienda Looc are not material to warrant disclosure in the Registration Statement of SMIC.

On 19 October 2005, only complainant-appellant filed the instant *Memorandum on Appeal* dated 17 October 2005 before the Commission *En Banc* praying that the Assailed Order be set aside, and that the registration of securities of SMIC, including its Certificate or Permit to Offer Securities, be revoked.

After SMIC filed its Reply Memorandum,[6] complainant-appellant filed, on 28 December 2005, a *Notice of Withdrawal of Appeal* notifying the Commission that he is withdrawing his appeal of the Assailed Order of the CFD. Complainant-appellant further

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[2] Republic Act No. 8799 (2000).

[3] The alleged legal proceedings involving Hacienda Looc are the following: (i) Civil cases before the trial court involving attacks on Southcoast's title over the Hacienda Looc (Civil Case No. 792, Hernandez, et al. v. Asset Privatization Trust, et al., Civil Case No. 847, Nomer del Mundo v. MSDC, et al., and Civil Case No. 861, Gabriel Maullon, et al. v. MSCD, et al.); (ii) Proceedings before the Department of Agrarian Reform Adjudication Board (DARAB) for the cancellation of the CLOAs covering parts of the Hacienda Looc (DARAB Case No. 73840A); and (iii) Cease and Desist Order (CDO) issued by the Sangguniang Bayan of Nasugbu against Southcoast ordering the latter to halt the construction of a road access to Hacienda Looc on the ground the said latter had no business and development permit .

[4] Comment of SMIC dated 26 May 2005 and filed on 27 May 2005; Reply Comment of complainant-appellant Domingo U. Villafranca and Nomer G. del Mundo dated 9 June 2005 and filed on 10 June 2005; Rejoinder of SMIC dated 16 June 2005 and filed on 17 June 2005; Sur-rejoinder of complainant-appellant Domingo U. Villafranca and Nomer G. del Mundo dated 23 June 2005 and filed on 24 June 2004; Memorandum of SMIC dated 14 July 2005 and filed on 15 July 2005; and Reply Memorandum of complainant-appellant Domingo U. Villafranca and Nomer G. del Mundo dated 20 July 2005.

[5] Conferences held on 16 May 2005, 10 June 2005, and 24 June 2005.

[6] Reply Memorandum dated 8 December 2005 and filed on 12 December 2005.

manifested that del Mundo did not "join" the appeal. In which case, the Order of the CFD "had attained finality as to them", and such order "may now be considered final and executory" as to them. Thus, complainant-appellant prayed that the appeal be dismissed with prejudice.[7]

On 4 March 2008, del Mundo filed a *Manifestation (with Entry of Appearance)* (Manifestation) dated 18 February 2008 alleging that, after the hearing on the Complaint before the CFD, he had "no more idea on what happened to the case". Thus, he prayed, among others, that the Manifestation be noted and that he be allowed to secure a copy of the whole records of the case.[8]

On 1 August 2008, del Mundo filed a *Vehement Opposition to the Notice of Withdrawal of Appeal (with Motion to Resolve Appeal)* (Opposition to Withdrawal of Appeal) dated 24 July 2008, stating that he was "surprised" to find out that the Notice of Withdrawal of Appeal had been filed and such withdrawal was filed without his consent. He argues that the withdrawal will violate his constitutional right to due process. He further avers that the Commission can itself initiate a review of the Decision of the CFD under SRC Rule 4.7. Thus, he prays that the appeal be considered alive and resolved at the soonest possible time.[9]

On 14 October 2008, upon the order[10] of General Counsel Vernette G. Umali-Paco, SMIC filed its *Comment/Opposition (Re: Vehement Opposition to the Notice of Withdrawal of Appeal with Motion to Resolve Appeal)* (Comment to Opposition to Withdrawal of Appeal) dated 13 October 2008, arguing that the appeal was filed ONLY by complainant-appellant. It further stated that the Order of the CFD had become final and executory against del Mundo due to his failure to appeal the case within the prescribed period. Thus, it prays that the Commission dismiss the Opposition to Withdrawal of Appeal.[11]

On 24 October 2008, likewise upon the order[12] of General Counsel Vernette G. Umali-Paco, complainant-appellant filed a *Comment* alleging that only he filed the *Notice of Withdrawal of Appeal* and not del Mundo. However, he claims that the instant case involves "public interest under the Securities Regulation Code for the protection of the investing public, which does not even need public complainants but may be investigated by this Office *motu proprio*".[13]

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[7] Notice of Withdrawal of Appeal dated 23 December 2005.
[8] Manifestation dated 18 February 2008, par. 2.
[9] Opposition to Withdrawal of Appeal dated 24 July 2008, par. 4
[10] Order of General Counsel Vernette G. Umali-Paco, dated 12 September 2008.
[11] Comment to Opposition to Withdrawal of Appeal dated 13 October 2008 of SMIC, par. 5.
[12] See Note 6.
[13] Comment dated 10 October 2008, par. 2.

In response to the comments of SMIC and the complainant-appellant, del Mundo filed a *Reply (with Reiteration of the Motion to Resolve Appeal)* (Reply), on 3 November 2008, stating that the appeal presents meritorious arguments that requires the resolution of the Commission, instead of its withdrawal. Del Mundo reiterates that the non-disclosure of the alleged pending cases against MSDC constitutes misleading representation on the part of SMIC, which is a ground for the revocation of SMIC's registration statement pursuant to Section 13.1(iv) of the SRC.[14]

On 20 April 2009, movant-intervenor Teodorico Derain filed a *Motion to Intervene* alleging that he is the registered owner of a parcel of land in Hacienda Looc. He further alleges that he is a real party-in-interest in the subject case. Thus, he prays that he be allowed to intervene in the instant case.[15]

On 17 May 2012, del Mundo filed an *Urgent Ex-Parte Motion to Set case for Oral Argument* (Motion to Set Case for Oral Argument) claiming, among others, that the Commission may "affirm" his opposition stated in the Opposition to Withdrawal of Appeal during the hearing. Thus, he prayed for that the case be set for oral arguments.[16]

On 29 August 2012, SMIC filed a *Motion for Early Resolution* praying that the Commission resolve the Notice of Withdrawal and issue an order declaring the Order of the CFD to be final and executory.[17]

On 22 December 2015, del Mundo filed a *Manifestation* reiterating his disagreement to the finding of the CFD that the cases involving MSDC and Hacienda Looc are not material.[18]

The issues to resolved are the following: (i) whether the instant appeal may be withdrawn by the Commission with prejudice despite the opposition of Nomer G. del Mundo; (ii) whether Teodorico Derain may intervene in the case; and (iii) whether the Commission may set the case for oral arguments.

As to the first issue, del Mundo opposes complainant-appellant's withdrawal of the instant appeal arguing that his consent was not obtained therefor and such withdrawal will violate his right to due process. However, per records, ONLY complainant-appellant filed, on 19 October 2005, his Notice of Appeal and Memorandum on Appeal to the Assailed Order of the CFD pursuant to Section 11-2 of the 2006 Rules of Procedure (Rules).[19]

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[14] Reply dated 24 October 2008, par. 2.
[15] Motion to Intervene dated 16 April 2009.
[16] Motion to Set Case for Oral Argument dated 7 May 2012.
[17] Motion for Early Resolution dated 22 August 2012.
[18] Manifestation dated 17 December 2012.
[19] Section 11-2 of the Rules provides:

Attached to the Memorandum of Appeal is the Verification/Certificate of Non-Forum Shopping executed by complainant-appellant, which states, among others, "That I AM the Complainant-Appellant x x x" and "That I have caused the preparation of the foregoing [Memorandum on Appeal] x x x". Furthermore, as admitted by complainant-appellant, del Mundo did not "join" in the appeal. Lastly, it must be noted that, although the former alleges that he represents the complainants-appellants, no authority has been given by del Mundo.

On the other hand, per records, del Mundo has not filed a separate appeal thereto. Del Mundo claims that he had "no more idea on what happened to the case" and that he was "surprised" to find out that the Notice of Withdrawal of Appeal had been filed. Del Mundo's contention is not tenable. The Supreme Court[20] stated that truly, a litigant bears the responsibility to monitor the status of his case, for no prudent party leaves the fate of his case entirely in the hands of his lawyer. It is the client's duty to be in contact with his lawyer from time to time in order to be informed of the progress and developments of his case; hence, to merely rely on the bare reassurances of his lawyer that everything is being taken care of is not enough. Moreover, it is well-settled that notice to counsel is notice to the client.[21] In which case, del Mundo should have a monitored the status of the case and remained in contact with his lawyer. Thus, del Mundo's consent is not required for the withdrawal of the appeal considering only complainant-appellant appealed the case, and del Mundo cannot claim ignorance as to the status of the case since he bears the responsibility of monitoring the case.

Next, del Mundo argues that the withdrawal of the instant appeal by complainant-appellant will violate the former's right to due process. However, his argument is misplaced. In *Boardwalk Business Ventures, Inc. vs. Villareal*, the Supreme Court stated that the right to appeal is neither a natural right nor is it a component of due process. It is a mere statutory privilege, and may be exercised only in the manner and in accordance with the provisions of law. This being so, an appealing party must strictly comply with the requisites laid down in the Rules of Court. Deviations from the Rules cannot be tolerated. The rationale for this strict attitude is not difficult to appreciate as the Rules are designed to facilitate the orderly disposition of appealed cases. In an age where courts are bedeviled by clogged dockets, the Rules need to be followed by appellants with greater fidelity. Their observance cannot be left to the whims and caprices of appellants. Thus, there is no violation of del Mundo's right to due process considering that an appeal is not a component of due process and is only a statutory privilege.

"Appeal may be taken upon the adverse party and filing with the Commission En Banc within fifteen (15) days from notice of Decision x x x, a notice of appeal and a memorandum on appeal and paying the corresponding docket therefor. Provided, no appeal shall be given due course unless it includes a certificate of non-filing of multiple petitions and complaints provided for in section 3-5 hereof."

[20] Suliman v. People of the Philippines, G.R. No. 190970, 24 November 2014.
[21] Francisco v. Flores, et al., A.C. No. 10753, 26 January 2016.

Further, del Mundo argues that the Commission can initiate a review of the Assailed Order of the CFD pursuant to SRC Rule 4.7 of the 2003 Implementing Rules and Regulations (IRR) of the SRC.[22] However, after a review of the Memorandum of Appeal, the arguments raised therein merely rehashes the arguments stated in the Complaint. Moreover, after evaluating the Assailed Order of the CFD, the Commission *En Banc* still finds no reason to reverse the Assailed Order since the nondisclosure of the legal proceedings involving the Hacienda Looc are not material facts that are required to be stated in the registration statement. Section 13 of the SRC provides that the Commission may revoke the effectivity of a registration statement and the registration of the security there-under if it finds, among others, the following: (i) that the issuer has made any false or misleading representation of *material facts* in any prospectus concerning the issuer or its securities; or (ii) the registration statement is on its face incomplete or inaccurate in any material respect or includes any untrue statements of a *material fact* required to be stated therein or necessary to make the statement therein not misleading.

"Material fact", referred to in Section 13 of the SRC, means any fact/information that could result in a change in the market price or value of any of the issuer's securities, or would potentially affect the investment decision of an investor.[23] *Material fact* includes a "significant or **ten percent (10%) or more change in the financial condition** or results of operation of the registrant unless a report to that effect is filed with the Commission and furnished the prospective purchaser". [24]

In this case, it is argued in the Complaint and Memorandum on Appeal that the legal proceedings involving the nullification of titles of MSDC, a subsidiary of SMIC, of the Hacienda Looc are material facts that are required to be disclosed in the Registration Statement of SMIC. They claim that a decision nullifying the titles of MSDC of the Hacienda Looc will affect market price or value of SMIC's shares, particularly the Offer Shares. As correctly ruled by the CFD, the legal proceedings involving the nullification of titles of MSDC of the Hacienda Looc are not material facts, since there will not be a significant or ten (10%) or more change in the financial condition of SMIC if there is a decision nullifying the titles of MSDC of the Hacienda Looc. It must be noted that the Hacienda Looc's *Carrying Value* (cost less depreciation), which is the value based on Note 2 of the financial statements of SMIC as of 31 December 2004,[25] is One Billion and Eight Hundred Seventy Six Million Pesos (Php 1,876,000,000.00). On the other hand, the *Total Consolidated Assets of SMIC* is One Hundred Eleven Billion and Eight Hundred Ninety Million Pesos (Php 111,890,000,000.00). In which case, the ratio of carrying value of the Hacienda Looc

[22] SRC Rule 4.7 of the 2003 IRR provides that the Commission, motu proprio or upon petition filed by an interested party, may review any order, resolution, decision or action of any of its departments, offices, individual Commissioner, or staff member of the Commission.

[23] SRC Rule 3.1(I) of the 2003 IRR, which was in effect at the time the registration statement was filed with the Commission and at the time the said Commission issued the Certificate.

[24] SRC Rule 14(1)(A) of the 2003 IRR.

[25] Assailed Order, p. 9.

divided by the total consolidated assets of SMIC is only **<u>1.68%</u>**. Below is an illustration of the foregoing computation:

(a) Carrying Value of the Hacienda Looc, which is property of the subsidiary of SMIC (i.e., MSDC)	Php 1,876,000,000.00
(b) Total Consolidated Assets of SMIC (based on the financial statements of SMIC as of 31 December 2004)	Php 111,890,000,000.00
Ratio (a/b)	**1.68%**

Clearly, the legal proceedings involving the nullification of the titles of MSDC of the Hacienda Looc are not material facts, considering that any decision therein nullifying such titles will not result in a significant or ten percent (10%) or more change in the financial condition of SMIC.

Next, as to the *second issue*, Teodorico Derain requests to intervene in the instant case arguing that he is the registered owner of the land and real party-in-interest. However, such issue is deemed moot considering that the Commission, as above stated, resolved to grant the withdrawal of appeal. In which case, Mr. Derain has longer has a legal interest in the case pursuant to the 2006 Rules of Procedure of the Commission (Rules), considering that Commission resolved to grant the withdrawal of the appeal.[26]

Lastly, as to the *third issue*, del Mundo requests that the Commission set the case for oral argument in order to allow him to oppose the Withdrawal of Appeal. However, his arguments in opposing the withdrawing the appeal was extensively discussed in his Opposition to Withdrawal of Appeal filed on 1 August 2008, Reply filed on 3 November 2008, and Manifestation filed on 22 December 2015. Clearly, he made his position known before the Commission and nothing stated therein requires to be clarified. In fact, oral arguments are never a part of due process.[27] Thus, the Motion to Set Case for Oral Argument filed by Nomer G. del Mundo is denied.

WHEREFORE, premises considered, the withdrawal of the appeal of complainant-appellant Domingo U. Villafranca is hereby **GRANTED**. This case is thus considered **CLOSED**.

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[26] Section 2-3 of the Rules provides that a natural person may, at any stage of the proceedings, be permitted by the Hearing Panel or Officer to intervene in an action or complaint if he has a legal interest therein or when he is so situated as to be adversely affected by the decision of the Commission.

[27] Acibo v. Macadaeg, et al., G. R. L-19701, 30 June 1964.

Further, the Motion to Intervene filed by Teodorico Derain and the Urgent Ex-Parte Motion to Set Case for Oral Argument filed by Nomer G. del Mundo are **NOTED** but cannot be given due course considering that the withdrawal of the appeal is granted.

Lastly, the Order dated 30 September 2005 of the Corporation Finance Department, now known as the Corporate Governance and Finance Department, is hereby **AFFIRMED.**

SO ORDERED.

Pasay City, 29 September 2016.

TERESITA J. HERBOSA
Chairperson

MANUEL HUBERTO B. GAITE
Commissioner

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

BLAS JAMES G. VITERBO
Commissioner