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

IN THE MATTER OF:

COPPERSTONE LENDING, INC. DOING BUSINESS UNDER THE NAME/S AND STYLE/S OF QUICKLA, POCOCASH, BLUE PESO, PESO FORREST, MOCA MOCA, PESO BUFFET & LOAD CASH (SEC Registration No. 2021050012959-04; CA No. 3454)
Appellants,

SEC EN BANC CASE NO. 06-24-545
FOR: REVOCATION OF CERTIFICATE OF AUTHORITY (CA) TO OPERATE A LENDING COMPANY FOR VIOLATION OF:

1. MEMORANDUM CIRCULAR NO. 18, SERIES OF 2019 ON THE PROHIBITION OF UNFAIR COLLECTION PRACTICES OF FINANCING COMPANIES AND LENDING COMPANIES;
2. R.A. 3765 OR THE TRUTH IN LENDING ACT; AND
3. MEMORANDUM CIRCULAR NO. 3 SERIES OF 2022 ON THE IMPLEMENTATION OF BANKO SENTRAL NG PILIPINAS CIRCULAR NO. 1133 SERIES OF 2021 ON THE CEILING/S ON INTEREST RATES AND OTHER FEES CHARGED BY LENDING COMPANIES, FINANCING COMPANIES, AND THEIR ONLINE LENDING PLATFORMS.

PROMULGATED: 18 December 2024

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DECISION

Before this Commission is the Appeal Memorandum dated 26 May 2024 (the "Appeal") filed by Copperstone Lending, Inc. on 5 June 2024, praying for the reversal and the setting aside of the Resolution dated 21 May 2024 (the "Assailed Resolution") issued by the Financing and Lending Companies Department (FLCD), which sustained the Order dated 11 April 2024 (the "Assailed Order") earlier issued by the latter, the dispositive portion of which, in part, reads:

> "WHEREFORE, in view of the foregoing, the Primary Registration (SEC No. 2021050012959-04) AND the Certificate of Authority to Operate as a Lending Company (CA No. 3454) of Copperstone Lending Inc. is hereby REVOKED. It is likewise ordered to pay the penalty of Twenty Thousand Pesos (Php20,000.00) for its first violation of RA 3765 or the TILA in relation to MC No. 7, Series of 2011 on Implementing the TILA

to Enhance Loan Transaction Transparency within 15 days from receipt of this Order."

THE PARTIES

Appellant, Copperstone Lending, Inc. (the "Appellant") is a domestic corporation duly organized and existing under Philippine laws, having been issued a Certificate of Incorporation with registration number SEC No. 2021050012959-04. Appellant is also a grantee of a Certificate of Authority to Operate as a Lending Company with CA No. 3454, which allows it to carry out and maintain a lending operation. Appellant owns and operates the following online lending applications/platforms: QUCKLA, POCOCASH, BLUE PESO, PESO FORREST, MOCA MOCA, PESSOBUFFET and LOAD CASH. Appellant's principal office is at Unit 1907, The Trade and Financial Tower, 7th Ave. cor. 32 St., Bonifacio Global City, Fort Bonifacio, Taguig City.

Appellee, FLCD is a department of this Commission tasked to monitor and enforce compliance by financing companies (FCs) and lending companies (LCs) with the Financing Company Act, Lending Company Regulation Act, the Financial Products and Services Consumer Protection Act, and their respective implementing rules and regulations, among others; having the authority to suspend or revoke the Certificates of Registration and CA of erring LCs or FCs, whenever warranted by the circumstances.

THE RELEVANT FACTS

From September 2022 to March 2023, the FLCD received complaints from the purported borrowers of Appellant, who all alleged that the latter violated Memorandum Circular No. 18, series of 2019 (MC No. 18), otherwise known as the "Prohibition on Unfair Debt Collection Practices of Financing Companies and Lending Companies", and Republic Act No. 3765 or the "Truth in Lending Act" (TILA) in relation to Memorandum Circular No. 7, series of 2011 (MC No. 7) [Implementation of the Truth in Lending Act to Enhance Loan Transaction Transparency].

The complainants and the nature of their complaints which were received by the FLCD, and which, according to the latter, warranted the appropriate regulatory action, are summarized as follows:

(1) Ms. Carol Sevilla (Ms. Sevilla) alleged that Appellant failed to inform her of the exact loan amount, and the interest(s) on overdue amounts. Ms. Sevilla also alleged that Appellant harassed her in effecting collection of the loan amount.[1]

(2) Ms. Princess Crishane Arevalo (Ms. Arevalo) alleged that Appellant employed unfair debt collection practices in effecting collection of the amount which she borrowed.[2]

(3) Mr. Jiovanni Granaderos (Mr. Granaderos) alleged that Appellant unilaterally modified the payment terms by exacting payment of the loan on the seventh (7th) day, instead of after the one hundred eightieth (180th) day from receipt of the loan amount. Mr. Granaderos also alleged that he was threatened by Appellant with an estafa case if he will not pay his debt.[3]

(4) Ms. Shieva Camille Eroy (Ms. Eroy) alleged that Appellant threatened her with an estafa case if he will not pay his debt.[4]

(5) Ms. Brazcell Domondon (Ms. Domondon) alleged that Appellant threatened that she will be blacklisted with other financial institutions, and her family members and friends will be informed of her loan if she does not pay the same.[5]

(6) Mr. Ronello Omero (Mr. Omero) alleged that Appellant disbursed a loan amount without his prior authority, and unilaterally modified the payment terms by exacting payment of the loan on the seventh (7th) day, instead of after the one hundred eightieth (180th) day from receipt of the loan amount.[6]

(7) Mr. Job Stephen Maristela (Mr. Maristela) alleged that Appellant harassed him and the contacts in his mobile phone, posted comments in his Facebook account, to exact payment of his loan amount.[7]

Acting on the foregoing complaints, the FLCD issued Show Cause Letters and Comment Letters on different dates, directing Appellant to

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[1] *Order* dated 11 April 2024. See pages 1 to 2.
[2] *Ibid.* pages 2 to 3.
[3] *Ibid.* page 3 to 4.
[4] *Ibid.* pages 4 to 5.
[5] *Ibid.* page 5.
[6] *Ibid.* page 5.
[7] *Ibid.* page 6.

explain why it should not be penalized for violating MC No. 18 and/or the TILA in relation to MC No. 7.[8] To enable Appellant to present its side and address the complaints against it, the FLCD also conducted a conference, which was attended by its Compliance Consultants, Mr. RJ Buenaventura and Mr. Cesar Morales.

After the conduct of the proceedings, the FLCD issued the Assailed Order, where it found Appellant to have violated (a) MC No. 18 in relation to the complaints of Mr. Maristela, Mr. Domondon, Mr. Granaderos and Ms. Arevalo; (b) MC No. 18 inasmuch as the violation was committed by Appellant's third-party service provider *i.e.* Triwave Information Technology, Inc. (Triwave), which Appellant admitted to have engaged; and (C) the TILA *vis* MC No. 7 in relation to the complaints of Ms. Eroy and Mr. Granaderos. The FLCD then imposed the supreme penalty of revocation of both the primary and secondary licenses of Appellant, ratiocinating that while only six (6) of the alleged one thousand eighty-six (1,086) complaints progressed into a formal case, the number of complaints disclose the pattern of abusive collection practices and unclear disclosure of loan terms which Appellant carried out.[9]

Appellant filed a Motion for Reconsideration dated 22 April 2024 which was denied by the FLCD in the Assailed Resolution for lack of merit. The FLCD maintained that the complainants subject of the instant case were able to show by substantial evidence that Appellant violated MC No. 18 and/or the TILA in relation to MC No. 7, which merited the revocation of its primary and secondary licenses.

Hence, the instant Appeal.

On 18 July 2024, the FLCD filed its Comment on the Appeal Memorandum which prayed for the denial of the Appeal. In giving credence to the screenshots of the texts and messages which the complainants submitted in evidence, the FLCD argued that fact that they all bore the name of Appellant's OLPs suffices to support a conclusion that they were owned and operated by the latter.[10] The FLCD equally maintained that it did not err in revoking the primary and secondary licenses of Appellant, and Appellant's reliance in FCash Global Lending, Inc. v. CGFD was misplaced.

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[8] *Ibid.* page 1.
[9] *Order.* Page 12.
[10] *Comment on the Appeal Memorandum.* See page 5.

On 12 August 2024, Appellant filed its Reply to FLCD's Comment with Motion for Leave, therein reiterating its prayer seeking the reversal and the setting aside of the Assailed Order which was affirmed by the Assailed Resolution. In support thereof, Appellant maintained that the pieces of evidence submitted by the complainants which the FLCD relied upon failed to establish its culpability. Appellant specifically argued that by giving full credence to the screenshots of the text and email messages, the FLCD violated the Rules on Electronic Evidence which require a testimony of the party or the person who has personal knowledge of the same.[11] The Appellant claimed that the complainants did not validate through an affidavit or testimony, the veracity of the screenshots which they submitted. Appellant also reiterated its argument that the penalty of the revocation which the FLCD imposed is harsh, and contrary to the existing policy of the Commission, as well as jurisprudence.[12] Finally, Appellant maintained it did not violate the TILA since the complete information on the terms of the loan which prospective borrowers get to choose is available in the app.

On 28 October 2024, Appellant filed a Manifestation with Motion for Early Resolution, where it prayed for the (a) reinstatement of its corporate franchise, (b) the lifting of the revocation of its license to operate as OLP, and (c) the reinstatement of its name in the List of Recorded Online Lending Platforms. In support thereof, Appellant manifested that it had implemented measures to ensure full compliance with all applicable laws, rules and regulations, including: (a) the termination of its contract with Triwave, and its replacement by Secure Information Technology Corp. [Secure]; (b) active monitoring of Secure's compliance with all applicable laws, rules and regulations; (c) replacement of its existing lending apps to specifically highlight a functionality that provides prospective lenders with the terms of loan, and a 24-hour cooling-off period, among others; and (d) a new formal office organization.

ISSUES

(A) Whether Appellant was denied of its right to due process.
(B) Whether Appellant violated MC No. 18 and the TILA in relation to MC No. 7.
(C) Whether the penalty of revocation of the Certificate of Incorporation and the CA of Appellant is warranted by the circumstances and evidence on record.

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[11] *Reply*. Pars. 3 to 7; 11, 13.
[12] *Ibid.* Pars. 26 to 31.

RULING

A. Appellant was not denied the right to due process

In its Appeal, Appellant maintains that FLCD's act of taking cognizance of, and giving credence to the screenshots of the SMS messages submitted in evidence by Ms. Sevilla, Ms. Arevalo, Mr. Granaderos, Ms. Eroy, Ms. Domondon, Mr. Omero and Mr. Maristela (hereinafter referred to as the "Complainants") constituted a denial of its right to due process, as they were unverified and unauthenticated which failed to comply with the Rules on Electronic Evidence.[13] The Appellant also claims that the failure of the FLCD to comply with Section 3.1, Rule III, Part II of the 2016 Rules of Procedure of the Securities and Exchange Commission (the "2016 Rules"), with the issuance of Show Cause Letters, instead of the required Formal Charge, equally constituted a violation of its right to due process.[14] In this regard, Appellant argued that the FLCD's reliance on SEC Resolution 718a series of 2016 was misplaced as the same cannot be considered a binding rule for not having been published even in the Commission's website.[15]

The FLCD countered that the Appellant was not denied of its right to due process since it was given opportunity to refute the allegations of the Complainants which were laid down in the Show Cause Letters/Comment Letters, and to present its defense when it submitted its Position Paper.[16]

At the onset, emphasis should be made of the fact that the instant case partakes of the nature of an administrative action, which is determined in an administrative proceeding. In our jurisdiction, it is a settled jurisprudential rule that the technical rules of procedure and evidence are not strictly applied in administrative proceedings,[17] where the quantum of proof necessary to sustain a finding is merely substantial evidence,[18] or that amount of relevant evidence a reasonable mind might

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[13] *Appeal*. Par. 15. See also *Reply*. Pars. 3, 6 and 7.
[14] *Ibid.* Par. 24.
[15] *Ibid.* Pars. 26, 27, 29 and 31.
[16] *Comment on the Appeal Memorandum.* See page 2.
[17] "Further, **administrative bodies are not bound by the technical niceties of law and procedure and the rules obtaining in courts of law**. Administrative tribunals exercising quasi-judicial powers are unfettered by the rigidity of certain procedural requirements, subject to the observance of fundamental and essential requirements of due process in justiciable cases presented before them. **In administrative proceedings, technical rules of procedure and evidence are not strictly applied** and administrative due process cannot be fully equated with due process in its strict judicial sense." (*Samalio vs Court of Appeals*. G.R. No. 140079. March 31, 2005)
[18] "Administrative proceedings are governed by the "substantial evidence rule." A finding of guilt in an administrative case would have to be sustained for as long as it is supported by substantial evidence that the respondent has committed the acts stated in the complaint or formal charge. As defined, substantial evidence is such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. This is different from the quantum of proof required in criminal proceedings which

accept as adequate to support a conclusion. In adopting these jurisprudential precepts, Section 1-4(a), Rule I, Part I of the 2016 Rules provides the purpose for the same, to wit:

> "These rules shall be liberally construed and administered **to promote public interest, to secure a just, prompt, expeditious, and inexpensive determination of every action and proceeding before the Commission and to carry out the objectives of the laws** it is mandated to implement." (Emphasis supplied)

Thus, to ensure that the Commission is able to effectively implement the laws administered by it by promptly and expeditiously passing upon the actions filed with it, unhampered by the technical rules of procedures obtaining in the courts of justice, Section 5-1, Rule I, Part I of the 2016 Rules specifically grants the Commission the power and authority to suspend the application of the Rules, to wit:

> "**In the broad interest of justice and in order to best serve public interest, the Commission may**, in any particular manner, **exempt it from these Rules in exceptional cases and apply such suitable, fair and reasonable procedure** to improve the delivery pf public service and **to assist the parties in obtaining a speedy and judicious disposition of cases**." (Emphasis supplied)

Be that as it may, the relaxation of the rules of procedure and compliance with the quantum of evidence required in administrative proceedings does not give this Commission the authority disregard the demands of fair play which is guaranteed under our 1987 Constitution. In this regard, this Commission is fully cognizant of the rule established in jurisprudence that in administrative case, due process is satisfied when respondent is afforded the opportunity to explain his/her side, or to seek reconsideration of the action/ruling which he/she is assailing, to wit:

> "The essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard. In administrative proceedings, as in the case at bar, procedural due process simply means the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of. 'To be heard' does not mean only verbal arguments in court; one may also be heard thru pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is

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necessitates a finding of guilt of the accused beyond reasonable doubt. The Ombudsman, in ordering the withdrawal of the criminal complaints against respondent was simply saying that there is no evidence sufficient to establish her guilt beyond reasonable doubt which is a condition *sine qua non* for conviction. Ergo, the dismissal of the criminal case will not foreclose administrative action against respondent." (*Velazques vs Hernandez*. G.R. No. 150732. August 32, 2004) no denial of procedural due process." This was extensively discussed in *Vivo v. Philippine Amusement and Gaming Corporation* as follows:

> The observance of fairness in the conduct of any investigation is at the very heart of procedural due process. The essence of due process is to be heard, and, as applied to administrative proceedings, this means a fair and reasonable opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of. Administrative due process cannot be fully equated with due process in its strict judicial sense, for in the former a formal or trial-type hearing is not always necessary, and technical rules of procedure are not strictly applied. *Ledesma v. Court of Appeals* [(565 Phil. 731, 740 [2007])] elaborates on the well-established meaning of due process in administrative proceedings in this wise:
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> x xx Due process, as a constitutional precept, does not always and in all situations require a trial-type proceeding. Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. The essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of."[19] (Emphasis supplied)

In the instant case, the records show that while the FLCD merely issued Show Cause Letters/Comment Letters, the same did not automatically resulted in the denial of Appellant's right to due process because the subsequent proceedings obtaining therefrom show that Appellant was informed of the nature of charges, and was given ample opportunity to explain its side, or put up its defense. In this regard, We note that the Show Cause Letters/Comment Letters did not only disclosed the names of the Complainants, and the laws/regulations which Appellant has allegedly violated, they also directed the Appellant to answer the said allegations, thus giving the latter the opportunity to explain its side. In fact, the records will bear that Appellant formally addressed all the Show Cause Letters, participated in the conference conducted by the FLCD, and filed a Motion for Reconsideration, all of which were admitted, given due course and considered by the FLCD in the Assailed Order and the Assailed Resolution.

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[19] *Disciplinary Board, Land Transportation Office v. Gutierrez* (G.R. No. 224395, July 3, 2017).

Moreover, this Commission is cognizant of the fact that in the instant Appeal, Appellant filed a Reply to FLCD's Comment with Motion for Leave, and a Manifestation with Motion for Early Resolution, where it was able to reiterate and/or expound on its arguments, and adduce additional evidence to support its position. The said pleadings were given due course, admitted, and will be considered by this Commission in passing upon the matters/issued presented in the instant Appeal.

Verily, these factual circumstances and pieces of evidence, all showing that Appellant actively participated in the proceedings of the instant case, and exhaustively presented its position and arguments, negate its allegation that it was denied of the right to due process.

B. Appellant violated MC No. 18 and the TILA in relation to MC No. 7. The settlement of the complaints filed by the Complainants did not moot the issues presented in the instant case.

The Appellant maintains that the FLCD committed reversible error in not dismissing the complaints against it, arguing that the settlement and resolution of the same mooted the issues presented in the said complaints.[20]

This Commission does not agree with Appellant.

It bears emphasis that Appellant is a grantee of a primary franchise and a CA, both of which partakes of the nature of a permit, which requires full compliance by the grantee of all applicable laws, rules and regulations for its continued enjoyment, not being a contract from which a right can be demanded from the State. Thus, the failure of Appellant, or any FC or LC for that matter, to comply with the provisions of the applicable laws, rules and regulations may result in the imposition of the appropriate sanctions, including the suspension or revocation of its license.[21]

The doctrine in *SEC v. Universal Rightfield Property Holdings, Inc.*[22] where the Supreme Court sustained the revocation of the issuer's

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[20] *Appeal*. Pars. 38, 69 to 71 .
[21] See Section 9(f) of R.A. No. 9474; Sec. 16 in relation to Sec. 6(d) of R.A. No. 11765; and MC No. 18 relating to revocation of CA.
[22] G.R. No. 181381. July 20, 2015.

registration of securities, and its license to sell the same for failure on the part of the licensee to comply with the applicable laws, rules and regulations, is instructive, to wit:

> "Rather, when the SEC exercises its incidental power to conduct administrative hearings and make decisions, it does so in the course of the performance of its regulatory and law enforcement function.
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> Significantly, unlike in Globe Telecom, Inc. where the Court ruled that the fine imposed by the NTC without notice and hearing, was null and void due to the denial of petitioner's right to due process, **the revocation of URPHI's registration of securities and permit to sell them to the public cannot be considered a penalty but a withdrawal of a privilege, which regulatory power the SEC validly exercised after giving it due notice and opportunity to be heard**." (Emphasis supplied)

When the Commission imposes the appropriate penalties, including suspension or revocation of licenses, prescribed under appropriate laws, rules or regulations,[23] it is performing an important regulatory function of ensuring that all regulated entities and grantees of franchises/permits fully complies with such laws, rules or regulations.[24]

After carefully considering the records of the case, this Commission finds that there is no need to belabor the issue on whether Appellant violated MC No. 18 and the TILA in relation to MC No. 7 in relation to the Complainants, as the fact of violation was admitted by no less than Appellant itself. By claiming that the instant case has been rendered moot after the complaints of the Complainants were "*settled and resolved*"[25], Appellant has, in effect judicially admitted[26], albeit impliedly, the veracity of the complaints against it for violation of MC No. 18, and the TILA in relation to MC No. 7, to wit:

> "Xxx Additionally, based on the results of the investigation conducted, the Respondent-Appellant concluded that one of its personnel sent the harassment correspondence to Mr. Granaderos and that immediate actions have been taken to prevent any similar incidents from occurring in the future."[27]

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[23] Sec. 5(f) and (m) of the SRC.
[24] Sec. 5(d) of the SRC.
[25] *Appeal.* Par. 69.
[26] "The foregoing transcript of the preliminary conference indubitably shows that counsel for petitioners made a judicial admission and failed to refute that admission during the said proceedings despite the opportunity to do so. A judicial admission is an admission, verbal or written, made by a party in the course of the proceedings in the same case, which dispenses with the need for proof with respect to the matter or fact admitted. It may be contradicted only by a showing that it was made through palpable mistake or that no such admission was made." (*Agbayani vs Lupa Realty Holding Corporation*, G.R. No. 201193. June 10, 2019)
[27] *Appeal.* Par. 57.

> "Xxx. The Respondent-Appellant clarified that it had outsourced its debt collection services to a third-party company under a Debt Collection Service Agreement. It assured the FLCD that it has a stringent screening and admission process for the personnel hired by its third-party collecting agent to ensure strict adherence to all laws, rules, and regulations, implemented by the Honorable Commission."[28]
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> "Appellant has terminated its contract with Triwave Information Technology Inc. ("Triwave"), appellant's third-party provider handling collection from delinquent borrowers. Xxx.
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> Replacing Triwave is SECURE INFORMATION TECHNOLOGY CORP. ("SECURE"), a company with global experience in collecting industry. Xxx."[29]
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> "Xxx. Appellant will ensure that SECURE adopts zero tolerance for violations of MC 18 regulations, which violations will result in termination of employment of the violators. SECURE itself will be punished, which may include contract termination."[30]

It makes no sense for Appellant to have proactively settled the complaints of the Complainants, and even to have replaced Triwave with SECURE, if it was not convinced that the allegations against it for violation of MC No. 18 and the TILA in relation to MC No. 7, were backed by evidence.

In the same manner, We don't find merit in Appellant's argument that it should not be held liable for the violations of its third-party collecting agent (or employees), invoking the relevant provisions of the Civil Code on Agency.[31]

A well-settled jurisprudential principle which the Supreme Court has unwaveringly applied is that the provisions of positive law are deemed written into the contracts of private individuals, and the same operate to govern and/or limit the relations of the contracting parties, to wit:

> "Severina's heirs anchor their claim on the *kasunduan*, stressing on their freedom to stipulate and the binding effect of contracts. This argument is misplaced. The Civil Code provides:
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> > ARTICLE 1306. The contracting parties may establish such stipulations, clauses, terms and conditions as they may

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[28] *Ibid.* Par. 62.
[29] *Manifestation with Motion for Early Resolution.* Pars. 1 and 2.
[30] *Ibid.* Par. 3.
[31] *Reply to FLCD's Comment with Motion for Leave.* Pars. 38, 41, 43 and 44.

> deem convenient *provided they are not contrary to law*, morals, good customs, public order or public policy.
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> It is basic that the law is deemed written into every contract. Although a contract is the law between the parties, the provisions of positive law which regulate contracts are deemed written therein and shall limit and govern the relations between the parties."[32] (Emphasis supplied)

Applying the afore-quoted doctrinal principle, We cannot sustain Appellant's plea for exemption of liability because Section 13 of Republic Act No. 11765, which expressly makes financial services providers solidarily liable with their third-party service providers, is deemed written into the Service Agreement between Appellant and Triwave, to wit:

> "The financial service provider shall be responsible for the acts or omissions of its directors, trustees, officers, employees, or agents in marketing and transacting with financial consumers for its financial products or services. The financial service provider shall be solidarily liable with accredited third-party service providers for their acts or omissions in marketing and transacting, which may include, but not limited to, debt collection, with financial consumers for its financial products and services."

C. The penalty of revocation of Appellant's Certificate of Registration and CA is not warranted by the circumstances and evidence on record.

Appellant maintained that the FLCD committed reversible error in revoking its primary license and CA, arguing that such penalty is disproportionate in the light of the facts, specifically that this is allegedly the first time that it was charged for violation of MC No. 18. Appellant argued that pursuant to the existing rule of exhausting all available remedies before imposing the penalty of revocation, it should be afforded the opportunity to take corrective measures and demonstrate that it deserves to continue operating as a lending company.[33]

The FLCD, on the other hand, countered by reiterating its position that the penalty of revocation was proper and appropriate, as the numerous complaints that it received showed not only a pattern of unfair

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[32] *Heirs of San Miguel vs Court of Appeals*. G.R. No. 136054. September 5, 2001.

[33] *Appeal*. Pars. 79, 80, and 81. See also *Reply*. Pars.26, 27, 32, and 36.

debt collection practice, but also the gravity of the offense. In this regard, the FLCD maintained that while only six (6) of the complaints progressed into formal complaints, the fact that it received a total of one thousand eighty-six (1,086) complaints allegedly against Appellant disclose a pattern of abusive collection practices, which are circumstantial evidence that supports and warrants the imposition of the penalty of revocation.

We agree with Appellant that the attendant facts and circumstances, considered in their entirety, doesn't support the imposition of the supreme penalty of revocation.

Section 5(m)[34] of the SRC and Section 179 (k)[35] of the RCC provide for the express grant to the Commission of the power to suspend or revoke the certificate of registration of corporations. On the other hand, Section 9(f)[36] of the Lending Company Regulation Act of 2007 provides for the power of the Commission to suspend or revoke a CA issued to an LC or FC.

In the exercise of its regulatory power to penalize and impose the appropriate sanction(s) upon a regulated entity found to have violated the laws, rules or regulations administered by the Commission, We have consistently adopted the rule that revocation of a corporation's franchise and/or the secondary license issued to it is a penalty of last resort. In fact, in a number of cases where this Commission was called-upon to review and pass-upon a decision/resolution of an operating department where the penalty of revocation was imposed, this Commission reiterated and was guided by the following equally important rules: (a) the drastic remedy of dissolving a corporation, or revoking a franchise/license must be exercised with great caution, to the extent that all remedies must be exhausted before imposing the harsh penalty of dissolution/revocation;[37] (b) that revocation will only be resorted if all

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[34] "**Section 5.** *Powers and Functions of the Commission.* – 5.1. The commission shall act with transparency and shall have the powers and functions provided by this code, Presidential Decree No. 902-A, the Corporation Code, the Investment Houses law, the Financing Company Act and other existing laws. Pursuant thereto the Commission shall have, among others, the following powers and functions:

> (m) Suspend, or revoke, after proper notice and hearing the franchise or certificate of registration of corporations, partnership or associations, upon any of the grounds provided by law;"

[35] "**Section 179.** *Powers, Functions, and Jurisdiction of the Commission.* - The Commission shall have the power and authority to:

> (j) Suspend or revoke the certificate of incorporation after proper notice and hearing;"

[36] "**SEC. 9.** ***Authority of the SEC.*** - The SEC is hereby authorized to:

> (f) Impose such administrative sanctions including suspension or revocation of the lending company's authority to operate and the imposition of fines for violations of this Act and regulations issued by the SEC in pursuance thereto."

[37] See *FCash Global Lending, Inc. vs CGFD* (SEC *En Banc.* Case No. 12-20-480., March 2, 2021) citing 16A Fletcher *Cyc Corp* [Perm Ed] sec. 8035 at p. 155

the available remedies have been exhausted;[38] and (c) that the erring corporation must be given an opportunity to correct any misdeed, or to comply with the law.[39] The doctrine in the old (yet still controlling) case of *Government of the Philippine Islands v. El Hogar Filipino*[40] which embodies the foregoing rules is instructive, to wit:

> "The question then arises whether the failure of the respondent to get rid of the San Clemente property within five years after it first acquired the deed thereto, even supposing the five-year period to be properly counted from that date, is such a violation of law as should work a forfeiture of its franchise and require a judgment to be entered for its dissolution in this action of *quo warranto*. **Upon this point we do not hesitate to say that in our opinion the corporation has not been shown to have offended against the law in a manner that should entail a forfeiture of its charter. Certainly no court with any discretion to use in the matter would visit upon the respondent and its thousands of shareholders the extreme penalty of the law as a consequence of the delinquency here shown to have been committed.**
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> xxx xxx xxx
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> **This provision clearly shows that the court has a discretion with respect to the infliction of capital punishment upon corporations and that there are certain misdemeanors and misusers of franchises which should not be recognized as requiring their dissolution**. In Government of the Philippine Islands vs. Philippine Sugar Estates Development Co. (38 Phil., 15), it was found that the offending corporation had been largely (though indirectly) engaged in the buying and holding of real property for speculative purposes in contravention of its charter and contrary to the express provisions of law. Moreover, in that case the offending corporation was found to be still interested in the properties so purchased for speculative purposes at the time the action was brought. Nevertheless, instead of making an absolute and unconditional order for the dissolution of the corporation, the judgment of ouster was made conditional upon the failure of the corporation to discontinue its unlawful conduct within six months after final decision. In the case before us the respondent appears to have rid itself of the San Clemente property many months prior to the institution of this action. It is evident from this that the dissolution of the respondent would not be an appropriate remedy in this case. We do not of course undertake to say that a corporation might not be dissolved for offenses of this nature perpetrated in the past, especially if its conduct had exhibited a willful obduracy and contempt of law. We content ourselves with holding that upon the facts here before us the penalty of dissolution would be excessively severe and fraught with consequences

[38] See *Marbel Institute of Technical College, et al. vs. Agapito Lubaton, et al.* (SEC Case No. 05-09-0336. October 18, 2016)
[39] *In the Matter of the Petition for Involuntary Dissolution of Starconnection, Inc.*, (SEC Case No. 06-09-271, January 7, 2010)
[40] G.R. No. 26649.,13 July 1927

altogether disproportionate to the offense committed." (Emphasis supplied)

It should nonetheless be emphasized that the rule on corporate revocation as a last result has no application in cases where the violation/infraction is attended by fraud, serious misrepresentation, illegality, or if there is a repeated violation. Thus, the Commission imposed the penalty of revocation (which was sustained by the Supreme Court) on a corporation (a) that carried out an unlawful and fraudulent investment-taking scheme;[41] (b) whose incorporators misrepresented their identities by using fictitious names or aliases;[42] (c) that continuously failed to file the required reports, being a registered issuer of securities, notwithstanding prior revocation of its license;[43] and (d) whose incorporators were not unit owners of the condominium which is required under the old Corporation Code.[44]

Be that as it may, in the exercise of its power to penalize regulated entities, the Commission has the discretion to impose the appropriate penalties based on its appreciation of the facts, attendant circumstances, and evidence adduced by the parties. This is clear in Section 5 of MC No. 18, which implements the Lending Company Regulation Act of 2007[45], to wit:

> "**Subject to the facts, circumstances and gravity of the offense**, the Commission, **at its discretion, may impose a fine** of not less than twice the fine for the second offense but not more than P1 Million (1,000,000) Pesos; **or suspension of lending or financing activities** for a period of sixty (60) days; **or Revocation of Certificate of Authority** to operate as a Financing or Lending Company, **as appropriate for each circumstance.**" (Emphasis supplied)

The afore-quoted provision implements a policy of imposing a penalty which is commensurate to the gravity and seriousness of the violation, consistent with, and considering all the attendant facts and/or circumstances which the evidence bears. In other words, from the perspective of the regulation, a penalty imposed is considered appropriate if it has considered the violation i.e. the acts and

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[41] *Kapa-Community Ministry International, Inc. vs EIPD of the SEC* (G.R. No. 259600. July 27, 2022); See also *In the Matter of: Organico Agribusiness Ventures Corp.* (SEC En Banc Case No. 08-19-462)
[42] *Care Best International, Inc. vs Securities and Exchange Commission* (G.R. No. 215510. March 16, 2015)
[43] *Securities and Exchange Commission vs Universal Rightfield Property Holdings, Inc.* (G.R. No. 181381. July 20, 2015)
[44] *Skyworld Condominium Owners Association, Inc. vs Securities and Exchange Commission.* (G.R. No. 95778. July 17, 1992)
[45] "**SEC. 9. *Authority of the SEC.*** - The SEC is hereby authorized to:

Xxx xxx xxx;

(f) Impose such administrative sanctions including suspension or revocation of the lending company's authority to operate and the imposition of fines for violations of this Act and regulations issued by the SEC in pursuance thereto."

circumstances attendant in the commission thereof, as well as the those done by the perpetrator after committing the violation. While it is true that subsequent actions will not negate the fact of violation, especially so that what is involved is a special law/regulation where the mere commission of the prohibited act justifies the imposition of the penalty, the same is nonetheless important for purposes of determining the appropriate penalty to be imposed. A contrary position would render nugatory the grant (and exercise of) the discretion by the Commission to determine and impose the appropriate penalty based on the attendant "*facts, circumstances and gravity of the offense*".

In the instant case, the evidence presented by the FLCD showed that Appellant indeed violated MC No. 18 and/or the TILA in relation to MC No. 7. Moreover, as pointed out earlier, the statements made by Appellant in its pleadings which were quoted in the earlier part of this Decision constitute an admission of such findings of violation by the FLCD. These should properly be considered in determining the appropriate penalty to be imposed upon the Appellant.

Be that as it may, the evidence on record will equally bear that during the pendency of the instant case, Appellant has implemented policies and processes, and carried out actions which, taken together, reveal its sincere efforts to address its shortcomings, and comply with the provisions of applicable laws, rules and regulations. For one, Appellant has terminated the services of Triwave, its previous third-party collection agent, which has been replaced by Secure.[46] While the replacement of Triwave might be considered as an admission by Appellant that Triwave has indeed employed unfair debt collection practices, the same is nonetheless indicative of Appellant's seriousness in correcting a mistake, and in ensuring that the same violation is prevented. For this purpose, Appellant has manifested that it will monitor the performance of Secure, and will adopt a policy of zero tolerance to violations of MC No. 18.[47] Appellant also submitted evidence showing that it has replaced its lending app, and will use a new one that is compliant with the TILA.[48] These circumstances constitute substantial evidence showing Appellant's resolute intent to carry out its lending business in compliance with MC No. 18, as well as other applicable laws, rules and regulations.

In the instant Appeal, where the Commission is called upon to exercise its discretion on whether to sustain the imposition of the

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[46] *Manifestation with Motion for Early Resolution*. Pars. 1 & 2.
[47] *Ibid.* Pars. 3, 5 and 6.
[48] *Ibid.* pars. 9 & 10.

supreme penalty of revocation of the primary and secondary franchises of Appellant, the facts and circumstances relating to the commission of the violation, as well as the subsequent actions made by Appellant should be considered. Only by doing so can this Commission be truly said to have imposed a penalty that is "appropriate", consistent with the above-quoted regulatory mandate. The same will likewise ensure that the exercise by the Commission of the discretion granted to it is carried out properly; removing any doubt that the same is tainted with arbitrariness, vindictiveness, irregularity or abuse.

Thus, taking into consideration all the attendant facts and circumstances, We agree with Appellant that the penalty of revocation of its primary and secondary franchises is excessive and too harsh. While the fact of violation is not disputed, Appellant was nonetheless able to show that it has reformed, and has even already laid down and/or effected policies and procedures that are designed to fully comply with the applicable laws, rules and regulations. This Commission is cognizant of the risk (and the cost) that Appellant took in effecting such reforms in the interim, even if there was no assurance that its prayer for the reinstatement of its franchises will be granted. To our mind, these subsequent actions of Appellant are indicia of its sincerity to conduct its business affairs in a manner that fully complies with statutory, regulatory and legal requirements. This justifies the grant of a second lease of Appellant's corporate life.

It must be emphasized though that while this Commission is not imposing the supreme penalty of revocation at this time, We are not saying that Appellant's violation is not reprehensible or serious, because they are. Unfair or abusive debt collection and recovery practices are serious violations which are punished by law. The instant Decision should therefore be considered by Appellant as a stern and final warning that another, or a repeated violation of MC No. 18, the TILA in relation to MC No. 7, and other applicable laws, rules and regulations will be dealt with accordingly, which may result in the revocation of its primary and secondary franchises.

WHEREFORE, premises considered, the Memorandum on Appeal is hereby **GRANTED**. The Order dated 11 April 2024 (which was affirmed by the Resolution dated 21 May 2024) of the FLCD is hereby MODIFIED. The following penalties are hereby imposed upon Copperstone Lending Inc.:

(a) A fine of Pesos: Twenty Thousand & 00/100 (Php20,000.00) for its first violation of RA 3765 or the TILA in relation to MC No. 7, Series of 2011 on Implementing the TILA to Enhance Loan Transaction Transparency;

(b) A fine of Pesos: One Million & 00/100 (Php1,000,000.00) for violation of MC No. 18; and

(c) The Certificate of Authority of Copperstone Lending Inc. is suspended for sixty (60) days.

SO ORDERED.

Makati City, Philippines.

EMILIO B. AQUINO
Chairperson

JAVEY PAUL D. FRANCISCO
Commissioner

KARLO S. BELLO
Commissioner

MCJILL BRYANT T. FERNANDEZ
Commissioner

ROGELIO V. QUEVEDO
Commissioner