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

In the matter of

PETRO LENDING CORPORATION,

-versus -

SEC-Admin. Case No. 01-12-142
For: Revocation of Certificate of Incorporation with Prayer for the Issuance of a Cease and Desist Order

ENFORCEMENT AND PROSECUTION DEPARTMENT,

Petitioner.

x--x

DECISION

The case before us is a Petition for Revocation of the Certificate of Incorporation of Petro Lending Corporation (hereinafter referred to as "Respondent") filed with the Commission by the then Enforcement & Prosecution Department (now the Enforcement & Investor Protection Department) of the Commission (hereinafter referred to as "Petitioner") on January 20, 2012 for violation of the provisions of Section 6, paragraph (l)(3) of Presidential Decree No. 902-A, as amended (PD 902-A).

On June 7, 2012[1], the Commission issued a Cease and Desist Order (CDO) prohibiting the Respondent, its partners, officers, representatives, agents, and any and all persons claiming and acting for and in their behalf from conducting business as a lending company until it has complied with all the requirements under the Lending Company Regulation Act[2] (LCRA) specifically the requirement to obtain a Certificate of Authority (CA) to operate as a Lending Company. The relevant facts as declared in the CDO are as follows:

> "Petro Lending is a corporation duly registered with the Commission on 26 July 1995 under SEC Registration No. AS095007180. The primary purpose of Petro Lending, as stated in its Articles of Incorporation is:
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> > 'To engage in the business of lending investor, lending money, to persons and entities under the terms and conditions allowed by law, excluding financing under Republic Act 5980

[1] Served on the Respondent and its officers, at their addresses on record.
[2] Republic Act No. 9474 (RA 9474)

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otherwise known as the Financing Company Act, and pawn booking activities as defined in P. D. 114.'

The Corporate Finance Department ("CFD") had earlier sent a show cause letter to Petro Lending advising it to secure a Certificate of Authority ("CA") from the Commission to operate as a lending company since a daily penalty was being proposed for the violation of Republic Act No. 9474 ("R.A. 9474"). Petro Lending continuously requested for an extension of time within which to secure the required CA, in its letters dated 22 October 2009, 14 January 2010, 15 March 2010, and 16 August 2010. These requests were granted by the CFD, with the reminder that: 'Please file your application at the soonest possible time since a daily penalty is being proposed for violation of R.A. No. 9474 or the Lending Company Regulation Act of 2007.'

On 20 July 2010, the Company Registration Monitoring Department ("CRMD") furnished the CFD a list of lending companies and their respective status based on the records of the Commission. Notably, based on the records, Petro Lending did not have a pending application for CA with the Commission.

On 24 November 2010, the CFD endorsed to petitioner EPD these lending companies operating without CA to Operate as a Lending Company, one of which is Petro Lending. The CFD recommended that 'an ocular inspection be conducted on the aforementioned companies to determine whether they are actually and continually operating without the required Certificate of Authority to Operate as a Lending Company despite receipt of the show cause letters from this Commission.'

In its letter dated 14 January 2011, the EPD requested from the Business Permits and Licensing Office (BPLO) of Pasig City for a certification on whether respondent Petro Lending was registered/licensed to engage in lending activities. Instead of the requested certification, the BPLO of Pasig City gave a copy of the payment records as of 08 February 2011 showing that Petro Lending paid the local assessments of Pasig City as a lending investor and declared its capitalization/gross sales for the whole year of 2011.

The EPD also alleges that it conducted an ocular inspection of the premises and spoke with the representative of Petro Lending, Ms. Fely J. Vale, and informed her of the investigation due to Petro Lending's failure to secure the required CA. EPD alleges that Ms. Vale reaffirmed the intention of Petro to comply with the Commission's directive but explained that they are having difficulty in securing government documents required in the issuance of the CA.

The EPD then scheduled and conducted two conferences: one on 18 April 2011, which was reset upon request of Petro Lending. In the subsequent 17 May 2011 conference scheduled by the EPD, a certain Marilou dela Paz appeared for and in behalf of Petro Lending. Once again, the EPD emphasized the need for Petro Lending to secure a CA to operate as a lending company to prevent the possible revocation of its primary registration. The EPD imposed a deadline for Petro Lending to comply with the requirements by the end of May 2011. Thus, on 31 May 2011, the EPD directed the respondent Petro Lending to update the EPD of the status of its application, if any. On 13 June 2011, Ms. Vale wrote a letter explaining that Petro Lending submitted partial requirements with the CRMD on 10 June 2011 but these were not accepted by the CRMD since they submitted incomplete requirements.

On 17 June 2011, Petro Lending was directed, once again, by the EPD to secure its CA before the end of 28 June 2011. Despite such directive, upon verification with the CRMD, the CRMD advised the EPD that the Commission has not issued a CA to Petro Lending nor was there a pending application with the CRMD.

Finally, the EPD in an Order imposed a fine of Ten Thousand Pesos (PhP 10,000.00) and penalty of Fifty Thousand Pesos (PhP 50,000.00) on Petro Lending for its failure to secure a CA from the Commission in violation of Section 4 of R.A. 9474. Petro Lending was also reprimanded for its failure to submit a sworn statement of its President indicating the schedule of the company's capital build-up in the amount of P1 Million, in violation of Section 5 of R.A. 9474."

On May 3, 2013, the Commission received Respondent's Answer alleging that: (1) after its incorporation, management has not taken any steps to formally commence operation; (2) this is the reason why it has not applied and secured any CA to Operate as a Lending Company; and (3) its submission of reportorial requirements, including affidavits of non-operation, bolsters its position that the Company never commenced operations.

We now resolve the instant Petition.

Section 6, paragraph (l)(3) of PD 902-A expressly provides that refusal to comply with any lawful order of the Commission restraining commission of acts which would amount to grave violation of its franchise is one of the grounds for revocation of the Certificate of Registration of corporations, thus:

> "Sec. 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers: xxx
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> (l) To suspend, or revoke, after proper notice and hearing, the franchise or certificate of registration of corporations, partnerships or associations, upon any of the grounds provided by law, including the following: xxx
>
> (3) Refusal to comply or defiance of any lawful order of the Commission restraining commission of acts which would amount to a grave violation of its franchise;"

In this connection, Rule 3(a)(i)[3] of the Implementing Rules and Regulations (IRR) of the LCRA, expressly directs existing lending companies, organized as a single proprietorship or partnership to, not only, organize themselves as a stock corporation with the minimum capital requirement, but also, to secure a CA to operate as a lending company, to wit:

"Rule 3. Requirements for Organization

(a) Form of Organization

A lending company shall be established as a stock corporation.

(i) Existing Lending Companies organized as single proprietorship or partnership shall, within a period of one (1) year from the effectivity of the Act, organize themselves as a stock corporation with the minimum capitalization prescribed under the Act **and** secure a Certificate of Authority to operate a lending company. Otherwise, they shall be disallowed from engaging in the business of granting loans to the public."

Applying the foregoing provisions to the instant case, it is clear that the issuance by the Commission of a Primary License to the Respondent in 1995 is not sufficient for the latter to operate as a lending company. The IRR of the LCRA still requires the Respondent to secure from the Commission a Secondary License or a CA to operate a lending company.

The argument of the Respondent in its Answer[4] that it has not taken any steps to formally commence commercial operations is insufficient to exempt it from securing the CA which, according to the IRR, must be obtained for it to maintain its primary franchise as, and hold themselves out to be, a lending company, or make use of the word "Lending Corporation" as part of its firm name[5]. Otherwise, the very reason for its incorporation would be defeated.

Besides, it is settled that a corporation shall be considered to have commenced the transaction of its business when it has performed preparatory acts geared toward the fulfillment of the purposes for which it was established, such as but not limited to the following: entering into contracts or negotiation for lease or sale of properties to be used as business of factory site; making plans for and the construction of the factory; and taking steps to expedite the construction of the corporation's working equipment.[6] The commencement of Respondent's business was manifested when it applied for a mayor's

[3] Requirements for Organization
[4] Paragraph 2, page 1.
[5] Rule 8 (c) and 10 (b)(i) &(ii), IRR.
[6] SEC Rules, December 29, 1992, cited in page 213-124, The Corporation Code of the Philippines Annotated, 2002 Edition, by Hector S. De Leon.

permit, paid business taxes and other fees to the Business Permits and Licensing Office of the Pasig City. Otherwise stated, the Respondent should have secured a CA from the Commission because there are indications that it has performed acts geared toward the fulfilment of its primary purpose, which is to engage in lending activities.

Notwithstanding the foregoing, the Respondent disregarded the Commission's several orders and directives to secure a CA despite the fact that the Commission accorded it several opportunities to comply with the same. In other words, the acts of the Respondent amounts to a refusal to comply or defiance of the lawful orders of the Commission stated in Section 6, paragraph (l)(3) of PD 902-A, as amended. For that reason, there is sufficient ground to revoke the Primary Franchise of the Respondent.

WHEREFORE, premises considered, the instant Petition is **GRANTED**. Accordingly, the Certificate of Registration of Respondent **PETRO LENDING CORPORATION** is hereby **REVOKED**.

Let a copy of this Decision be also furnished to the Corporate Governance & Finance Department, the Company Registration & Monitoring Department and the Economic Research &Training Department for their information and appropriate action.

SO ORDERED.

Mandaluyong City, Philippines; April 29, 2014.

TERESITA J. HERBOSA*
Chairperson

MA. JUANITA E. CUETO
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA *
Commissioner

ANTONIETA F. IBE
Commissioner

* On vacation leave.