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

In the matter of:

FAST TRACK WORLDWIDE, INC.
Petitioner-Movant,

SEC CDO Case No. 05-20-065

versus-

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,
Respondent.

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RESOLUTION

This resolves the *Motion for Leave to Resume Operations* dated 24 August 2020[1] and the *Motion to Continue Operations as E-Commerce Seller* dated 28 August 2020[2] (hereinafter referred to collectively as the "Motions") filed by Fast Track Worldwide, Inc. ("Fast Track"), through counsel, praying that the Commission issues an order granting the Motion allowing Fast Track to resume and continue its operations consisting of its direct e-commerce selling and reseller program to sell its products pending resolution of the Motion to Lift Cease and Desist Order (the "Motion to Lift").

In the Cease and Desist Order[3] issued by the Commission *En Banc*, Fast Track was directed to immediately cease and desist from engaging in the sale and/or offer of securities without the requisite license, the dispositive portion of which partly reads:

> "**WHEREFORE,** premises considered, **FAST TRACK WORLDWIDE, INC.**, its partners, operators, directors, officers, salesmen agents, representatives, promoters, and all persons, conduit entities and subsidiaries claiming and acting for and on its behalf, are hereby directed to **IMMEDIATELY CEASE AND DESIST UNDER PAIN OF CONTEMPT** from further engaging in, promoting and facilitating selling and/or offering for sale securities in the form on investment contracts and/or other activities/transactions, until the requisite registration statements are duly filed with and approved by this Commission, and the corresponding license and/or permit to offer/sell securities are issued.

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[1] Filed on 24 August 2020
[2] Filed on 3 September 2020
[3] Dated 05 June 2020

> Finally, the Commission hereby **PROHIBITS** Fast Track, its partners, operators, directors, officers, salesmen agents, representatives, promoters, and all persons, conduit entities and subsidiaries claiming and acting for and on its behalf from transacting any business involving the funds covered by this CDO in its depository banks, and from transferring, disposing, or conveying in any manner, all assets, properties, real or personal, including but not limited to bank deposits, of which the named persons herein may have any interest, claim or participation whatsoever, directly or indirectly, under its/their custody, to forestall grave damage and prejudice to all concerned and to ensure the preservation of the assets for the benefit of the investors."

On 08 June 2020, Fast Track filed the Motion to Lift praying that the Commission sets aside the CDO on the ground that it is allegedly not engaged in the sale or offer of securities.

On 20 August 2020, the Commission denied the Motion to Lift and made the CDO permanent, sustaining its earlier finding that Fast Track's business scheme actually involves the sale and/or offer of securities in the nature of investment contracts, considering that all the elements of Howey Test are present, as extensively discussed in the CDO.

In the Motions, Fast Track posits that the grant of authority by the Commission to continue the conduct of its business operations using other modes of selling of its products i.e. through its e-commerce online stores is warranted because such products are registered with the Food and Drug Administration ("FDA").[4] Fast Track also argues that it should be allowed to resume operations while the Motion to Lift is pending, allegedly to enable it to dispose of its huge number of unutilized stocks and inventory[5], and ensure that it is not exposed to further liability, expensive litigation and potential dissipation of assets[6].

This Commission denies the Motions on the ground of mootness.

At the outset, it should be pointed out that this Commission has already denied the Motion to Lift and made the CDO permanent in its Resolution dated 20 August 2020 (the "Resolution"), a copy of which was sent to Fast Track, through counsel, via email on 24 August 2020 pursuant to the consent given by Fast Track[7]. Relative thereto, Section 1-1, Rule I Part V (Motion for Reconsideration, Appeal and Execution Proceedings) of the 2016 Rules of

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[4] see Pars. 3 and 4 (page 2) of the Motion to Continue Operations as E-Commerce Seller
[5] *Ibid*
[6] see Par. 11 (page 3) of the Motion for Leave to Resume Operations
[7] Footnote No. 1 of the Entry of Appearance with Motion to Lift Cease and Desist Order states: "Petitioner FTW consents to service by email to the undersigned counsel through any of the following addresses: angel.machuca@gulapalaw.com; caloy.cajucom@gulapalaw.com; and matel.lazaro@gulapalaw.com."

Procedure of the Securities and Exchange Commission (the "Rules"), specifically provides:

> "**The provisions in Part V of these Rules shall apply in administrative and adjudicative actions before the Commission, except for proceedings where the Commission (i) issued a cease and desist order**, or (ii) denied a request for reduction of penalty, a request for payment of administrative penalty by installment or a settlement offer." (Emphasis supplied)

Under the afore-quoted provision, it is clear that if the Commission issues a CDO, the remedy of a person/entity subject thereof is to elevate the matter to the Court of Appeals under either Rule 43[8] or Rule 65[9] of the Rules of Court considering that a motion for reconsideration is a prohibited pleading.

A review of the records of the instant case show that Fast Track has not filed an appeal or a petition for review within the period provided in Section 4 of Rules 45 and 65 of the Rules of Court, assailing the Resolution before the Court of Appeals. **Considering that Fast Track received a copy of the Resolution on 24 August 2020, and no appeal or petition for review was filed within the reglementary period, the same has thus become final and executory by operation law**. This is clearly provided in Section 2-4(a), Rule II Part IV of the Rules, thus:

> "**If no appeal** or motion for reconsideration **is filed within the period fixed in these Rules or the Rules of Court, the** decision, final order or **resolution of the Commission in En Banc**, Special Hearing Panel or the Director of the Operating Department, as the case may be, **shall become final and executory**." (Emphasis supplied)

Relative thereto, the Rules direct the Commission to cause the entry of judgment or final order in the Book of Entries of Judgments in accordance with

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[8] "**Section 1.** *Scope.* — This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Invention Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law."

[9] "**Section 1.** *Petition for certiorari.* — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46."

Rule 36 of the Rules of Court[10], and to cause the execution of a judgment that has become final and executory[11]. This is consistent with the doctrine of finality of judgments which was explained by the Supreme Court in *Torres vs Aruego*[12], thus:

> "**A judgment becomes 'final and executory' by operation of law. Finality becomes a fact when the reglementary period to appeal lapses and no appeal is perfected within such period. As a consequence, no court (not even this Court) can exercise appellate jurisdiction to review a case or modify a decision that has became final.**
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> **xxx xxx xxx**
>
> Nothing is more settled in the law than that **a decision that has acquired finality becomes immutable and unalterable and may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law and whether it was made by the court that rendered it or by the highest court of the land**. The only recognized exceptions to the general rule are the correction of clerical errors, the so called *nunc pro tunc* entries which cause no prejudice to any party, void judgments, and whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable." (Emphasis supplied)

The Commission is now duty-bound to execute the Resolution pursuant to the doctrine of finality of judgments, the same being a ministerial function which preclude the exercise of discretion.[13] More importantly, with the Resolution having attained finality, the Commission can no longer act on the Motions because it has already lost jurisdiction over the main case from which the Motions are anchored. The Supreme Court emphasized this in *Seven Brothers Shipping Corporation vs Oriental Assurance Corporation*[14], thus:

> "**The rule in this jurisdiction is that once a decision has become final and executory**, no further amendment or correction can be made by the court, except to order its execution and to correct clerical errors and mistakes. **The court loses jurisdiction over the case and not even an appellate court would have the power to review a judgment that has acquired finality**. Thus, Seven Brothers can no longer raise in the instant petition matters that have been passed upon and decided with finality in a previous case." (Emphasis supplied)

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[10] Section 2-4(b) Rule II Part IV of the SEC Rules
[11] Section 4-1 (a) Rule IV
[12] G.R. No. 201271, September 20, 2017
[13] "Stated differently, once a judgment becomes final, the prevailing party is entitled as a matter of right to a writ of execution. **Its issuance is, in fact, the trial court's ministerial duty**, the only limitation being that the writ must conform substantially to every essential particular of the judgment promulgated, more particularly, the orders or decrees in the dispositive portion of the decision. **Even the holding in abeyance of the issuance of a writ of execution of a final and executory judgment can be considered abuse of discretion on the part of the trial court**." (Emphasis supplied) [*Vargas vs Cajucom,* G.R. No. 171095, June 22, 2015]
[14] G.R. No. 140613. October 15, 2002

Having lost jurisdiction over the case, any action of this Commission which will modify the Resolution is a nullity.

The Commission also holds that the denial of the Motions is warranted because the issues presented therein have been mooted after the Resolution became final and executory. In the case of *The Province of North Cotabato v. The Government of the Republic of the Philippines Peace Panel on Ancestral Domain*[15], the Supreme Court explained when a case is moot or academic, thus:

> *"For a court to exercise its power of adjudication, there must be an actual case or controversy — one which involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution; the case must not be moot or academic or based on extra-legal or other similar considerations not cognizable by a court of justice.* ***A case becomes moot and academic when its purpose has become stale. An action is considered "moot" when it no longer presents a justiciable controversy because the issues involved have become academic or dead or when the matter in dispute has already been resolved and hence, one is not entitled to judicial intervention unless the issue is likely to be raised again between the parties. Simply stated, there is nothing for the court to resolve as the determination thereof has been overtaken by subsequent events."*** (Underscoring supplied)

In the instant case, the failure of Fast Track to file an appeal with the Court of Appeals which resulted in the Resolution having become final and executory, is a supervening event that mooted the issues presented in the Motions considering that the all the matters/issues covered by CDO, which necessarily include those raised in the Motions, have already been passed upon. Thus, any determination/resolution that the Commission will have on the Motions based on its appreciation and evaluation of the arguments presented therein will have no practical value or have no practical legal effect because in the nature of things, the same cannot be enforced as the Resolution may no longer be modified.

WHEREFORE, premises considered, the *Motion for Leave to Resume Operations* and the *Motion to Continue Operations as E-Commerce Seller* filed by Fast Track Worldwide, Inc. is hereby **DENIED** on the ground of mootness. The Resolution dated 20 August 2020 issued by this Commission which has become final and executory **STANDS**. The Office of the General Counsel is hereby **DIRECTED** enter the Resolution in the Book of Entries of Judgments.

Let a copy of this *Resolution* be also posted in the Commission's website; and published in a national newspaper of general circulation and furnished to all operating departments and offices of the Commission for their information and appropriate action.

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[15] *The Province of North Cotabato v. The Government of the Republic of the Philippines Peace Panel on Ancestral Domain*, G.R. Nos. 183591, 183752, 183893 & 183951, October 14, 2008.

SO ORDERED.
Pasay City, 21 September 2021.

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner