IN THE MATTER OF:

CANADIAN AMERICAN EDUCATION FOUNDATION, INC.

CAROLINA DAVID LOPEZ,
Complainant-Appellant,

- *versus* - **SEC En Banc Case No. 08-15-383**

CANADIAN AMERICAN EDUCATION FOUNDATION, INC.,
Respondent-Appellee.

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DECISION

Before this Commission is the Memorandum on Appeal dated 20 July 2015 (the "Appeal") filed by Complainant-Appellant Carolina David Lopez (the "Appellant") on 20 August 2015 seeking the reversal and the setting aside of the Order dated 20 July 2015 (the "Assailed Order") of the Enforcement and Investor Protection Department (EIPD), the dispositive portion of which reads as follows:

> "Accordingly, this Commission is constrained to CLOSE and TERMINATE the proceedings in the instant case for lack of jurisdiction.
>
> PREMISES CONSIDERED, the proceedings in the instant case are hereby CLOSED AND TERMINATED."

RELEVANT FACTS

In a letter dated 10 June 2014 (the "Letter-Request")[1], Appellant Lopez brought to the attention of the EIPD the alleged unauthorized investment taking activities of Ms. Carmela Ferreira (Ms. Ferreira) who obtained money from investors in relation to the establishment and operation of the Canadian American Education Foundation, Inc., and requested that an investigation and

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[1] Annex "A" of the Memorandum on Appeal.

appropriate action be made by the Commission pursuant to the powers and authority granted to it under Section 5 of the Securities Regulation Code (SRC).

In her Letter-Request, Appellant Lopez alleged that she and Ms. Ferreira originally planned to establish Canadian American School (CAS), a non-stock non-profit entity that will operate as an international elementary school that adopts the North American curriculum. In furtherance of the said plan, Ms. Ferreira agreed to act as an industrial investor while Appellant Lopez agreed to put in Pesos: Five Hundred Thousand & 00/100 (Php500,000.00), which is the alleged required amount for investors. Accordingly, Appellant Lopez allegedly gave Ms. Ferreira Pesos: Three Hundred Thousand & 00/100 (Php300,000.00), and purchased furnitures and accessories worth Pesos: Two Hundred Thousand & 00/100 (Php200,000.00) for the school, as approved by Ms. Ferreira. The records show that the said plan did not push through which led to Appellant Lopez demanding the reimbursement of the purchases she made for the school and allegedly discovered the fraudulent activity of Ms. Ferreira in the process.[2]

Appellant Lopez further alleged that pursuant to the original plan, the Articles of Incorporation of CAS under the name of Canadian American Education Foundation, Inc. was circulated for signature of the incorporators and was signed by Appellant Lopez. Ms. Ferreira however did not pursue the incorporation of CAS after the application was allegedly denied for using and submitting the wrong form, but subsequently caused the registration of Canadian American Education Foundation, Inc. (the “Corporation”), a totally different entity which excluded Appellant Lopez as one of the incorporators.

Appellant Lopez alleged that the registration of the Corporation was fraudulent as it was made without the consent and mandate of the persons who signed the Articles of Incorporation of CAS. Appellant Lopez maintained that Ms. Ferreira cannot establish and register the Corporation without the approval of the persons who invested money for CAS. Appellant Lopez further alleged that Ms. Ferreira has been soliciting investments from the public with a promise of guaranteed returns from the operation of the Corporation which constitutes fraud under the SRC.

Acting on the Letter-Request of Appellant Lopez, the EIPD issued the Assailed Order dismissing the same for lack of jurisdiction.

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[2] See Par. D of the Letter (Annex “A” of the Appeal).

In the Assailed Order, the EIPD anchored the dismissal of the case on the absence of a juridical or corporate relation between the parties, and on the finding that the Letter-Request of Appellant Lopez was basically a claim for the recovery of her investment.

ISSUE

Did the EIPD commit reversible error in dismissing the Letter-Request of Appellant?

DISCUSSION

The Appeal has no merit.

I. Procedurally, the Letter-Request is infirm for its failure to comply with the Rules of Procedure.

Appellant Lopez insists that the EIPD committed reversible error in dismissing the Letter-Request because the same was allegedly made not for the purpose of obtaining reimbursement from the Corporation but for securing the assistance of the Commission to investigate and act on the investment fraud committed by the Corporation.[3]

At the outset, the Commission notes that the instant case originated from the unverified Letter-Request that was filed by Appellant Lopez with EIPD for the purpose of investigating Ms. Ferreira and/or the Corporation for possible violation of the SRC. The Commission also notes that the Letter-Request was not accompanied by a Certification of against forum shopping.

Sections 3-1 and 3-5, Rule III of the 2006 Rules of Procedure of the Securities and Exchange Commission[4] (the "Rules") provides:

> "<u>An action filed under these Rules shall be commenced by filing a verified complaint</u> with supporting documents <u>with the Operating Department</u> that has jurisdiction over the subject matter."
>
> "The complainant shall certify under oath that; (a) he has not commenced any action or filed any complaint involving the same subject matter or issues in any court, tribunal or agency and, to the best of his knowledge, no such

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[3] See Paragraphs 8 and 9 of the Appeal
[4] The Rules applicable at the time of the filing of the Letter

> other action is pending therein; (b) if there is such other pending action, a complete statement of its present status; and (c) if he should thereafter learn that the same or similar action has been filed or is pending, he shall report the fact within five (5) days from such knowledge to the Operating Department concerned.
>
> Failure to comply with any of the foregoing requirements shall result in the dismissal without prejudice of the complaint. xxx" (Emphasis supplied)

In *Spouses Melo v. Court of Appeals,*[5] the Supreme Court emphasized the importance and obligatory nature in complying with the foregoing requirements, thus:

> "The requirement to file a certificate of non-forum shopping is mandatory. Failure to comply with this requirement cannot be excused by the fact that plaintiff is not guilty of forum shopping. The Court of Appeals, therefore, erred in concluding that Administrative Circular No. 04-94 did not apply to private respondent's case merely because her complaint was not based on petitioners' cause of action. The Circular applies to any complaint, petition, application, or other initiatory pleading, regardless of whether the party filing it has actually committed forum shopping. Every party filing a complaint or any other initiatory pleading is required to swear under oath that he has not committed nor will he commit forum shopping. Otherwise, we would have an absurd situation where the parties themselves would be the judge of whether their actions constitute a violation of said Circular, and compliance therewith would depend on their belief that they might or might not have violated the requirement. Such interpretation of the requirement would defeat the very purpose of Circular 04-94." (Emphasis supplied)

On the basis of the foregoing, the Commission finds that the EIPD committed reversible error in giving due course to the Letter-Request, treating the same as an adjudicative action, and issuing the Assailed Order notwithstanding the fact that the same was clearly wanting in the requisite verification and certification against forum shopping. Moreover, being a mere letter-request for the conduct of an investigation on a possible violation which did not contain the matters required in Section 3-9 of the Rules[6], the same should have been dismissed outright by the EIPD without prejudice.

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[5] G.R. No. 123686, [November 16, 1999].

[6] "The complaint shall contain the following information: (a) the names and residences of the parties, (b) a concise statement of the ultimate facts constituting the complainant's cause(s) of action, (c) a brief statement of the right(s) sought to be enforced, (d) the law, rule or regulation on which the complaint is based; (e) a summary of the complainant's claim(s), (f) a statement of the issues to be resolved, (g) the affidavits of the witnesses, copies of the documentary and other pieces of evidence, and (g) the reliefs sought.

II. The Appellant failed to show by substantial evidence that the Corporation is engaged in the sale of securities without the requisite license.

In her Appeal, Appellant Lopez maintains that the EIPD committed reversible error in considering her cause of action as one for recovery of a sum of money. Appellant Lopez argues and insists that the Letter-Request was a complaint for violation of the SRC consisting in the alleged unauthorized investment taking activities of the Corporation.

The issuance of securities is governed by Section 8 of the SRC which requires, as a general rule, that the same be registered with and approved by the Commission, to wit:

> "Securities shall not be sold or offered for sale or distribution within the Philippines, without a registration statement duly filed with and approved by the Commission. Prior to such sale, information on the securities, in such form and with such substance as the Commission may prescribe, shall be made available to each prospective purchaser."

One of the exceptions recognized by the SRC which validly dispenses with the registration requirement is if the sale of the securities is made by the issuer to fewer than twenty (20) persons in the Philippines during any twelve-month period.[7]

In the instant case, the records show that except for the BDO check[8] that was presented to show that Appellant Lopez invested in the Corporation, no other evidence was presented by Appellant to prove her allegation that the Corporation was engaged in the unauthorized sale of securities, in violation of Section 8 of the SRC. This fact was admitted by Appellant Lopez who requested the assistance of the EIPD to investigate the operations of the Corporation, alleged to be soliciting investments from the public without the requisite authority from the Commission, apparently because she had at that time no evidence to prove the same.[9]

Moreover, there is also nothing in the records that will show that the Corporation sold securities to more than twenty (20) persons which requires prior registration with the Commission. If at all, the Articles of Incorporation

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[7] Section 10(k) of the SRC.
[8] Annex "A" of the Appeal.
[9] See Paragraphs 10 and 12 of the Appeal.

of the Corporation which was submitted in evidence will show that only the five (5) incorporators contributed Php200,000.00 each to establish and operationalize the Corporation.

On the basis of the foregoing, while Appellant Lopez was correct in positing that the Commission has jurisdiction over acts and transactions that are violative of the SRC, the instant case is nonetheless dismissible for failure of Appellant to prove her allegations by substantial evidence. In *Morales, Jr. v. Carpio-Morales, et. al.*[10], the Supreme Court emphasized the elementary rule in procedural law that bare allegations, unsubstantiated by evidence are not equivalent to proof, to wit:

> "The basic rule is that mere allegation is not evidence and is not equivalent to proof. Charges based on mere suspicion and speculation likewise cannot be given credence. When the complainant relies on mere conjectures and suppositions, and fails to substantiate his allegations, the complaint must be dismissed for lack of merit." (Emphasis supplied)

In administrative cases for alleged violation of the SRC filed with the Commission, the quantum of evidence required is substantial evidence or such amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion. It is more than a mere scintilla of evidence. The standard of substantial evidence is satisfied when there is reasonable ground to believe, based on the evidence submitted, that the respondent is responsible for the misconduct complained of. It need not be overwhelming or preponderant, as is required in an ordinary civil case, or evidence beyond reasonable doubt, as is required in criminal cases, but the evidence must be enough for a reasonable mind to support a conclusion.[11]

In the instant case, Appellant Lopez failed to substantiate her allegations with the quantum of evidence required by law. The absence of testimonial or documentary evidence to prove that the Corporation is engaged in the unauthorized sale of securities, renders the instant case infirm for want of evidence. The Commission cannot rely on the bare allegations, conjectures and suppositions presented in the Appeal as they have no leg to stand on. Thus, the dismissal of the Appeal for lack of merit is in order.

WHEREFORE, premises considered, the Memorandum on Appeal filed by Carolina David Lopez is hereby DISMISSED for lack of merit.

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[10] G.R. No. 208086. July 27, 2016
[11] Miro vs Mendoza (G.R. Nos. 172532 172544-45, November 20, 2013)

SO ORDERED.

Pasay City, Philippines, 6 October 2020.

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner