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

In the Matter of:

SCENTKOWORLD CORPORATION and BRENDAHL CRUZ HOLDINGS, INC.

SEC Admin Case No. 09-19-183

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT (EIPD),
Movant.

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RESOLUTION

For consideration of the *En Banc* is the *Urgent Motion to Lift the Cease and Desist Order with Motion for Removal from SEC Advisory List ("Motion" for brevity)* filed[1] by Respondents SCENTKOWORLD CORPORATION ("SCENTKOWORLD") and BRENDAHL CRUZ HOLDINGS, INC., ("BRENDAHL") through counsel, Carpio & Duterte Lawyers.

FACTS

Respondent SCENTKOWORLD is a corporation registered with the Commission, its certificate of incorporation bearing Company Registration No. CS201812717, was issued on 6 July 2018. Its principal office is located at Unit 401 316 Building, Monumento, Rizal Avenue, corner EDSA, Barangay 86, Caloocan City, Third District, NCR, Philippines 1400. The primary purpose of SCENTKOWORLD is "To engage in wholesale trading of goods and merchandise."

On the other hand, respondent BRENDAHL is a corporation registered with the Commission, its certificate of incorporation bearing Company Registration No. CS201954130, was issued on 25 July 2019. Its principal office is located at Unit 401, No. 316 Building, Monumento, EDSA, Barangay 86, Caloocan City, Third District, NCR, Philippines 1400. The primary purpose of which is "To acquire by purchase, exchange, assignment or otherwise, and sell, assign, transfer, exchange, lease, let, develop, mortgage, pledge, deal, in and with and otherwise operate, enjoy and dispose of, all properties of every kind and description and wherever situated and to the extent permitted by law, including but not limited to real estate, whether

[1] Dated 3 October 2019 which was received by the Commission on 4 October 2019.

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improved or unimproved, and any interest or right therein, as well as buildings, tenements, warehouse, factories, edifices and structures and other improvements, and shares of capital stock or other securities or obligations, created, negotiated or issued by any corporation, association or other entity, and while the owner, holder or possessor thereof, to exercise all rights, powers and privileges of ownership or any other interest therein, including the right to receive, collect and dispose of, any and all rentals, dividends, interests, and income derived therefrom, and the right to vote on any proprietary or other interest on any shares of the capital stock, and other securities, having voting power, so owned or held and; provided that the corporation shall not engage in the business of an investment company as defined in the Investment Company Act (R.A. 2629) as amended, without first complying with the applicable provisions of the said statute. That the corporation shall have all the express powers of a corporation as provided for under Section 36 of the Corporation Code of the Philippines. Provided that the corporation shall not solicit, accept or take investments/placements from the public neither shall it issue investment contracts."

On 12 September 2019, the EIPD filed before the *Commission En Banc*, through the Office of the General Counsel, a *Motion for Issuance of Cease and Desist Order* (the "Motion")) against respondents SCENTKOWORLD and BRENDAHL.

On 24 September 2019, the *Commission En Banc* found sufficient basis to issue a Cease and Desist Order (CDO) against respondents SCENTKOWORLD and BRENDAHL after finding that latter are engaged in the sale and/or offer for sale of securities, in the form of investment contract, without the requisite registration statement duly issued and approved by the Commission.

On 4 October 2019, respondent SCENTKOWORLD filed the instant *Motion* arguing that it has never been engaged in the business of selling securities. It further stressed that distributors were reminded to use its official marketing materials and tools to sell their products but admitted that some of its distributors used the term "investment" and made false promises with the intent of earning commissions, points and rewards upon purchase of their product, regardless of whether the same are re-distributed or sold.

In support to these arguments, respondent SCENTKOWORLD presented a copy of social media post directed to a certain distributor named, "Mario Tolentino Posas" (Mr. Posas for brevity), and the corresponding Memo warning the public against the latter for the acts he committed to show that respondent do not allow their distributors to carry out unauthorized transactions or business practices, and do not tolerate making of false promises and exaggerated claims by its distributors. A copy of respondent's Code of

Conduct and Ethical Standards[2] was presented, to further supplement the veracity of its claim.

On the allegations that respondent SCENTKOWORLD is engaged in an online solicitation and investment activities, respondent averred that there was no direct and unequivocal statement made by a certain Mr. Aurelio Agustin Jr.[3](Mr. Agustin for brevity), with regard to the automatic return of investment of Php20,0000.00 for every Php5,000.00 payment made by each distributor, as featured in its online presentation. Also, respondent vehemently denied that the name "Mr. Gourido", who represented himself as a distributor, did not exist on the list on their data base system. This was attested through an Affidavit executed by Mr. Agustin.

On the compensation plan earned through direct referral, respondent SCENTKOWORLD did not specifically deny the same. However, it explained that the referral fee earned by each distributor is part of the compensation received for the efforts made by each distributor in mentoring or coaching their new recruits. According to respondent, the said plan was entirely different from what has been alleged by the petitioner under the concept of "investment contract" because the profits derived by the distributors were primarily through their own efforts of selling and/or marketing of their products rather than from earnings derived from the effort of others.

In the same view, respondent BRENDAHL contended that it has a separate and distinct personality from that of SCENTKOWORLD for which reason the principle of piercing the veil of corporate fiction cannot be applied and it cannot thus be a subject of the said CDO.

On 20 October 2019, during the clarificatory hearing, both parties appeared. EIPD was given five (5) days within which to file its *Comment* to the urgent *Motion*. Respondents were given same period of time to file their *Reply*.

On 25 October 2019, petitioner EIPD filed its *Comment* and argued that the participation of Mr. Rommel Gourido (Mr. Gourido for brevity) should not be easily set aside by the Commission by the mere denial of respondent SCENTKOWORLD unsupported by evidence considering that Mr. Gourido was inside the premises of respondents' office, conducting a seminar to prospective investors and even introduced himself to the participants as one of the pioneers of respondent SCENTKOWORLD.

To show respondent's modus operandi, petitioner EIPD presented the Affidavit[4] of Mary Grace Calixto which contained a declaration on how she

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[2] Attached as Annex "E" of the Motion.
[3] Vice-President for Marketing.
[4] Affidavit executed dated 10 October 2019 attached herewith as Exhibit "A" of the Comment.

was able to join SCENTKOWORLD, invested her money therein, and thereafter was defrauded by the same.

On 30 October 2019, respondents filed its *Reply*, where they alleged that: (a) petitioner was not able to prove that respondents SCENTKOWORLD and BRENDAHL were engaged in selling securities; (b) the investigation conducted was not in accordance to law and; (c) petitioner was not able to prove that respondents were not selling securities.

ISSUE

WHETHER OR NOT SCENTKOWORLD AND BRENDAHL WERE ABLE TO PRESENT SUFFICIENT BASIS TO JUSTIFY THE LIFTING OF THE CDO.

DISCUSSION

After careful review of the arguments of the parties, the Commission finds the *Motion* unmeritorious and hereby decides to deny the same.

First, respondent SCENTKOWORLD's denial that it is engaged in the sale of securities, unsupported by evidence, is certainly not sufficient to justify the lifting of the CDO.

The records reveal that the finding of EIPD relating to the actual sale and/or offer for sale of securities by respondents without the requisite secondary license was substantiated by affidavits of its investors, field investigation reports conducted by the operatives of EIPD and online posts gathered from the internet.

In *Caca v. CA*[5], the Supreme Court ruled that in the appreciation of evidence, an affirmative declaration prevails over a bare denial, to wit:

> "*Denial is a self-serving negative defense that cannot be given greater weight than the declaration of a credible witness who testified on affirmative matter.*" (Italics supplied).

Moreover, the Supreme Court also ruled in *People v. Bagaua*[6], that "it is well-settled that denial, if unsubstantiated by clear and convincing evidence is a negative self-serving assertion that deserves no weight in law."

Respondent SCENTKOWORLD's claim that it constantly reminded its distributors on the prescribed use of its official marketing materials and tools

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[5] G.R. No. 116962, July 7, 1997, 341 PHIL 114-118.
[6] G.R. No. 147943, December 12, 2002, 442 PHIL 245-257.

to sell the products cannot negate the findings of EIPD which is supported by substantial evidence. The Commission finds the foregoing claim of SCENTKOWORLD to be an express admission of EIPD's finding that it is engaged in the sale of securities. By claiming that it constantly reminded its distributors not to carry out unauthorized transactions, SCENTKOWORLD expressly admitted that its distributors were engaged in unauthorized transactions, however, SCENTKOWORLD should be absolved of any liability because it never failed to remind them not engage in unauthorized activity.

On the basis of the foregoing, it appears that SCENTKOWORLD's Memo or warning letters[7] issued to Mario Posas and Ner Fran dated 26 June 2019 and 26 August 2019 respectively, for the alleged infraction on their posting[8] on social media sites were afterthought, designed to give semblance of tenability to its argument that it is not engaged in the unauthorized sale of securities.

The same can be said of the Code of Conduct & Ethical Standards[9] which was used by respondent SCENTKOWORLD to show that they do not sanction unethical business practices of their distributors, such as making exaggerated claims and false promises.

The affidavit executed by Mr. Agustin where he declared that: (a) respondent SCENTKOWORLD is not engaged in an online solicitation and investment activities; (b) that the profits derived by the distributors were primarily through their own efforts of selling and/or marketing of their products rather than from earnings derived from the effort of others and; (c) that there is no person under the name of Mr. Gourido who is connected with the respondent and such name did not exist on their data base system, is self-serving and cannot refute the findings of EIPD which are duly supported by evidence. As the Vice-President for Marketing of SCENTKOWORLD, Mr. Agustin was expected to make those statements in favor of his company.

The fact that petitioner EIPD presented various screenshots and clippings of respondent SCENTKOWORLD's marketing brochures and business offering from their prospective investors as a result of their field investigation, the presence of which was never denied specifically by the respondent, constitutes substantial evidence to prove that respondent SCENTKOWORLD was engaged in the selling and offering of securities, in the form of investment contract, without the requisite secondary license.

Hence, we are constrained to deny the *Motion* of respondent SCENTKOWORLD for lack of merit.

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[7] Attached herewith as Annex "D-2" of the Motion.
[8] *Id.*
[9] *Id.*

For the respondent BRENDAHL.

Coming now to respondent BRENDAHL, its contention that it has a personality separate and distinct from SCENTKOWORLD hence the principle of piercing the veil of corporate fiction is inapplicable and the CDO cannot be issued against it, is misplaced and bereft of merit.

It bears emphasis that respondent BRENDAHL represented to the public that it has secondary license to sell and/or offer securities issued and duly approved by the Commission, in order to entice investors to invest their money with their company, when in fact there is none. The foregoing constitutes fraudulent transaction as defined in Section 26 of the SRC and Rule 26 of the 2015 Implementing Rules and Regulation of the SRC, thus:

> "SECTION 26. *Fraudulent Transactions.* — It shall be unlawful for any person, directly or indirectly, in connection with the purchase or sale of any securities to:
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> xxx.
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> 26.2. Obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
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> 26.3. Engage in any act, transaction, practice or course of business which operates or would operate as a fraud or deceit upon any person."

"Rule 26 - Fraudulent Transactions

> 26.1. It shall be unlawful for any person, directly or indirectly, in connection with the purchase or sale of any securities to: (i) employ any device, scheme, or artifice to defraud; (ii) obtain money or property by means of any untrue statement of a material fact of any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (iii) engage in any act, transaction, practice or course of business which operates or would operate as a fraud or deceit upon any person.
>
> xxx.

26.3. Prohibited Representations, Dealings and Solicitations

It shall be unlawful for any:

26.3.1. Person to represent that he has been registered as a securities intermediary with the Commission unless such person is registered under the Code. Provided, registration under the Corporation Code shall not be deemed to be registration under the Code;"

Nowhere in the pleadings filed by the petitioner EIPD nor in the decision of this Commission can it be found that the basis for the issuance of the CDO issued against respondent BRENDAHL was the fact of its being a related party of respondent SCENTKOWORLD. Neither was the concept of piercing the veil of corporate fiction used in this case as basis for the issuance of the CDO. Respondent BRENDAHL's reliance on the same is thus misplaced.

On the basis of the forgoing, the Commission do not see any reason or find any basis to justify the lifting of the CDO against BRENDAHL.

WHEREFORE, premises considered, the *Urgent Motion to Lift the Cease and Desist Order with Motion for Removal from SEC Advisory List* filed by respondents SCENTKOWORLD and BRENDAHL are hereby **DENIED** for lack of merit. The CDO issued against respondents dated 24 September 2019 is hereby **MADE PERMANENT.**

SO ORDERED.

Pasay City, Philippines; 11 November 2019.

EMILIO B. AQUINO
Chairperson

* **EPHYRO LUIS B. AMATONG**
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner

*On Official Business