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

FAMILYHAN CREDIT CORPORATION,

Appellant,

-versus- **SEC En Banc Case No. 07-21-486**

CORPORATE GOVERNANCE AND FINANCE DEPARTMENT,

Appellee.

x--x

21 December 2021

TO:

GSD 12/23/21

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FAMILYHAN CREDIT CORPORATION
Appellant
National Highway, Poblacion 1,
4222 Cuenca, Batangas

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GREETINGS:

Please take notice that on 02 November 2021, a **DECISION** was issued in the above-entitled case, the original of which is now on file with this office.

Pasay City, Philippines.

By authority of the Commission:

ARMANDO A. PAN, JR.
Commission Secretary

CGF 17

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DECISION

Before the Commission is the *Memorandum of Appeal* dated 5 July 2021 (the "Appeal") filed by Appellant Familyhan Credit Corporation (Familyhan) assailing the *Resolution* dated 18 June 2021 (the "Assailed Resolution") issued by the Corporate Governance and Finance Department (CGFD) which denied its *Motion for Reconsideration* and affirmed CGFD Order No. 29, Series of 2021 (the "Assailed Order") revoking Appellant Familyhan's Certificate of Authority to Operate as a Financing Company, the dispositive portion of which reads:

> "**WHEREFORE**, in view of the foregoing, the Certificate of Authority to Operate as a Lending Company of Familyhan Credit Corporation (CA No. 1692) is hereby **REVOKED**.
>
> **SO ORDERED**."

THE RELEVANT FACTS

Appellant Familyhan is a corporation duly organized and existing under the laws of the Republic of the Philippines, having been incorporated on 20 February 2015 with the issuance of SEC Registration No. CS201503145 under its name. It is authorized to engage and operate as a financing company as defined under Republic Act No. 8556, otherwise known as the Financing Company Act of 1998 (FCA), as amended. It was issued CA No. 1692 by the Securities and Exchange Commission on 20 February 2015.

From the months of April to July of 2020, the CGFD received complaints from Mses. Jessica Sumpio (Ms. Sumpio), Daryll Fe Chavez

Pardo (Ms. Pardo), and Marissa Portuguez (Ms. Portuguez)[1] against Appellant Familyhan for alleged violations of SEC Memorandum Circular No. 18, Series of 2019 (SEC MC 18) on the Prohibition of Unfair Debt Collection Practices of Financing and Lending Companies. The complaints alleged that Appellant Familyhan carried a collection scheme where it actually contacted persons related to its borrowers who were not the named guarantors or co-makers and informed them about the loan, and/or threatened borrowers that their contact list will be informed about the loan if payment is not made within prescribed period. Acting on these complaints, and after investigation where the CGFD initially found possible violation of Section 1(h) of SEC MC 18, Show Cause Letters[2] were issued by the CGFD directing Appellant Familyhan to show cause why it should not be held liable for violating SEC MC 18.

Appellant Familyhan filed its Letter-Response dated 23 November 2020[3] to the Show Cause Order on the complaint of Ms. Pardo, alleging therein that it had no control over the actions of its collectors/agents and should therefore not be held liable for the latter's conduct. The CGFD noted Appellant Familyhan's failure to provide any evidence showing that it did not use sensitive personal information of its borrower(s), and found the explanation proffered by Appellant Familyhan to be without merit, which resulted in the imposition of the appropriate penalty for its first violation of SEC MC 18.

The records show that Appellant Familyhan failed to file a response to the Show Cause Order covering the complaint of Ms. Sumpio. Consequently, CGFD proceeded to impose the appropriate penalty for its second violation of SEC MC 18.

In its Letter-Response dated 12 December 2020[4] to the Show Cause Order covering the complaint of Ms. Portuguez, Appellant Familyhan argued that it could not have violated SEC MC 18 because its act in contacting a person in the borrower's list was resorted to after it allegedly became evident that the borrower made herself deliberately unavailable. Appellant Familyhan put up the defense that the said act was intended to remind the borrower of her obligation to pay the loan and to get in touch with it. The CGFD however found Appellant Familyhan's justification to be without merit and imposed the appropriate penalty for its third violation of SEC MC 18.

The CGFD also received other complaints[5] against Appellant Familyhan for alleged violation of Republic Act No. 3765, otherwise known as the Truth in Lending Act (TILA), in relation to SEC Memorandum Circular

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[1] Annexes "A" – "C", CGFD Comment.
[2] Annexes "A-1", "B-1", and "C-1", CGFD Comment.
[3] Annex "7", Familyhan Appeal.
[4] Ibid.
[5] Annexes "H" – "O", CGFD Comment.

No. 7, Series of 2011 (SEC MC 7) or the Implementation of the Truth in Lending Act to Enhance Loan Transaction Transparency from the following persons: Mses. Lei-Ann G. Anical (Ms. Anical), Glorifer I. Navea (Ms. Navea), Cristina Lapay (Ms. Lapay), Mylene Marimon (Ms. Marimon), Florpis E. Jacutin (Ms. Jacutin), Juvy Mata (Ms. Mata), Jennifer Abarra (Ms. Abarra), and Corazon A. Fernandez (Ms. Fernandez), who all alleged that Appellant Familyhan failed to provide them with a copy of the disclosure statement and/or loan agreement.

The CGFD acted on the said complaints by issuing the corresponding Letters[6] which directed Appellant Familyhan to submit its Comment/Answer to the same, and to show proof that it complied with the provisions of the TILA by submitting copies of the Disclosure Statements and Amortization Schedules provided to and signed by its borrowers prior to the consummation of the transaction.

In its Comments,[7] Appellant Familyhan alleged that before an application for loan is processed and acted upon, all potential borrowers are informed of the following details, through phone call: (a) the installment amortization amount which includes the principal and interest, and installment dates; (b) the total interest of the loan; (c) the acceptance fees which is equivalent to 10% of the principal loan; (d) the late payment fee; and (e) the remittance charge. Appellant Familyhan also alleged that a copy of the loan document is given to each of its borrower through a link sent via e-mail where the borrower is required to affix his/her electronic signature after having read the contents of the said document.

On 30 July 2020, the CGFD conducted a conference in relation to the above complaints which was attended by Appellant Familyhan's counsel, Atty. Jennylyn R. Ojano-Sabado, who presented a copy of her client's new draft disclosure statement or authorization, discussed the operations of the company and manifested that her client, Appellant Familyhan, will be implementing the revised loan documents that will show compliance with all relevant laws.

During the conduct of its investigation, the CGFD found Appellant Familyhan's claim that it substantially complied with the provisions of the TILA to be without merit because the amortization schedules (attached to the loan agreements) that were submitted in evidence did not include/provide for the net proceeds of the loan as received by its borrowers. The CGFD thus found no merit in the arguments of Appellant Familyhan and forthwith proceeded to impose the corresponding penalties for violation of SEC MC 7.

[6] Annexes "H-1", "I-1", "J-1", "K-1", "L-1", "M-1", "N-1", and "O-1", CGFD Comment.
[7] Annexes "S-2", "T-2", "U-2", "V-2", "W-2", "X-2", "Y-2", and "Z-2", CGFD Comment.

Considering the multiple violations that Appellant Familyhan has committed which were all admitted by the latter as evidenced by its payment of the various penalties imposed against it[8], the CGFD issued a Formal Charge against Appellant Familyhan on 15 February 2021 for violation of SEC MC 18 and TILA, in relation to SEC MC 7, in accordance with Rule III, Part II of the 2016 Rules of Procedure of the Commission (2016 SEC Rules) and directed it to explain why its CA should not be revoked in view of its multiple violations of the TILA and MCs issued by the Commission implementing the same.

On 4 March 2021, Appellant Familyhan filed its *Verified Answer*[9] (the "Answer") to the formal charge therein praying for the dismissal of the Formal Charge for alleged lack of merit. In its Answer, Appellant Familyhan insisted that the CGFD failed to issue the appropriate formal charges in relation to the complaints of Mses. Sumpio, Pardo, Anical, Navea, and Lapay which is allegedly fatal, arguing that the same is condition precedent for a valid decision under the 2016 Rules of Procedure of the Securities and Exchange Commission (the "Rules"). Appellant Familyhan also argued that it did not violate the TILA because it furnished its borrowers copies of the terms and conditions of their respective loans prior to its consummation.

On 13 April 2021, the CGFD issued the Assailed Order revoking Appellant Familyhan's CA for multiple violations of SEC MC 18 and the TILA, in relation to SEC MC 7. In the Assailed Order, the CGFD pointed out and showed proof that the letter-orders that were issued to Appellant Familyhan contained sufficient factual allegations on the violations that duly informed the latter of the nature of the charges brought against it. The CGFD also alleged that Appellant Familyhan's insistence that the CGFD violated the Rules is without basis as the Commission has suspended its application in relation to proceedings involving lending and financing companies.[10]

The *Motion for Reconsideration*[11] filed by Appellant Familyhan on 26 April 2021, which reiterated the arguments that it raised in its *Verified Answer* was denied by the CGFD for lack of merit. Hence, the instant Appeal.

On 26 July 2021, the CGFD filed its *Comment/Opposition [To Memorandum of Appeal dated 5 July 2021]* (the "Comment/Opposition"), praying that the Appeal be denied for alleged lack of merit, and the Assailed Resolution be affirmed in full.

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[8] See Annexes "F", "G", "DD", "EE"
[9] Annex "9", Appeal.
[10] See last paragraph of the Assailed Order (page 6)
[11] Annex "10", Appeal.

ISSUE

Whether the CGFD committed reversible error in revoking the CA of Appellant Familyhan on the basis of a finding of violation of SEC MC 18, and the Truth in Lending Act, in relation to SEC MC No. 7, Series of 2011.

RULING

The Commission affirms the Assailed Resolution and sustains the revocation of the CA of Appellant Familyhan.

I. Appellant Familyhan was not denied of its right to due process.

At the outset, the Commission notes that Appellant Familyhan basically reiterated in its Appeal, the arguments and allegations in the pleadings that it filed with the CGFD. Appellant Familyhan maintains that the Assailed Resolution which sustained the revocation of its CA is infirm because the CGFD merely issued Show Cause Orders with respect to the complaints of Mses. Sumpio, Pardo, Anical, Navea, and Lapay, instead of Formal Charges which is allegedly required under the Rules.[12] Moreover, Appellant Familyhan argues that the CGFD committed reversible error in taking cognizance of the complaints of Mses. Mata, Navea, Jacutin, Abarra, Marimon, and Fernandez which were all allegedly unverified, and should have thus been denied due course.[13] Appellant Familyhan is in effect arguing that the revocation of its CA by the CGFD should be reversed by the Commission as the same was allegedly made in violation of its right to due process.

In its Comment/Opposition, the CGFD argued that Appellant Familyhan's reliance on the alleged non-compliance with the provisions of the Rules was misplaced on the ground that the Commission specifically issued a Resolution suspending its application to proceedings involving lending and financing companies. Appellee CGFD also claimed that despite the non-applicability of the Rules, Appellant Familyhan was nonetheless afforded its right to administrative due process.

We agree with the Appellee CGFD.

Section 1-5, Rule I, Part I of the Rules states:

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[12] See Par. 23 of the Appeal
[13] See Pars. 29 and 32 of the Appeal

> "Section 1-5. Suspension of Rules in Exceptional Cases. – In the broader interest of justice and in order to best serve public interest, the Commission may, in any particular matter, exempt it from these Rules in exceptional cases and apply such suitable, fair, and reasonable procedure to improve the delivery of public service and to assist the parties in obtaining a speedy and judicious disposition of cases."

Pursuant to the afore-quoted provision of the Rules, the Commission issued SEC Resolution No. 781A, Series of 2019 (the "Resolution 781A"), suspending the application of the Rules in all actions and proceedings covering lending and financing companies to promote public interest, to wit:

> "SEC Resolution No. 781A, Series of 2019
>
> RESOLVED, That in the broader interest of justice, and **in order to best serve public interest, TO SUSPEND the implementation of the 2016 Rules of Procedure of the Securities and Exchange Commission (2016 Rules)** in accordance with Part I, Rule I, Section 1.5 thereof, **in connection with the administrative actions of the Corporate Governance and Finance Department against financing companies and lending companies that are subject of several complaints from the public**, and those that are violating the Lending Company Regulation Act of 2007 (R.A. 9474) and its Implementing Rules and Regulations; **the Financing Company Act of 1998 (R.A. 8556) and its Implementing Rules and Regulations; the Truth in Lending Act (R.A. 3765); SEC MC 18**; reportorial and other compliance requirements, **and all other rules and regulations implemented by the Commission**, such issue being of exceptional character and of public interest." (Emphasis supplied)

Considering that Appellant Familyhan is a corporation engaged in the business of operating a lending company[14], the Resolution 781A is applicable in the instant case and was thus correctly invoked by the CGFD in dispensing with the issuance of a formal charge for each of the complaint that was filed with it.

The Commission takes administrative notice that a considerable number of lending and financing companies have employed unfair debt collection practices with impunity especially during the pandemic, which resulted in the filing of numerous complaints against certain lending and financing companies, including Appellant Familyhan. This justified the issuance of Resolution 781A which was intended to promote the integrity of the lending/financing sector, and to protect/safeguard the sensitive personal information of persons, which is a power expressly granted to the Commission.

Moreover, it should be emphasized that the proceedings in the instant case, being administrative in nature, is not required to strictly adhere to the technical rules prescribed in judicial proceedings, and the decisions need only

[14] Paragraph 1, Appeal.

to be based on substantial evidence. This established rule was reiterated by the Supreme Court in *Magcamit vs Internal Affairs Service – Philippine Drug Enforcement Agency*[15], to wit:

> "**Administrative determinations of contested cases are by their nature quasi-judicial; there is no requirement for strict adherence to technical rules that are observed in truly judicial proceedings**. As a rule, technical rules of procedure and evidence are relaxed in administrative proceedings in order "to assist the parties in obtaining just, speedy and inexpensive determination of their respective claims and defenses." **By relaxing technical rules, administrative agencies are, thus, given leeway in coming up with a decision**." (Emphasis supplied)

Nonetheless, as correctly pointed out by Appellee CGFD, the relaxation of the technical rules of procedure pursuant to Resolution 781A, did not mean that Appellant Familyhan was likewise deprived of its day in court because the evidence on record shows that the latter was fully informed of the complaints filed against it when it was issued the relevant Show Cause Orders/Letter-Orders which afforded Appellant Familyhan the opportunity to refute the allegations of violation and/or present its defense. More importantly, the records of the case show that Appellant Familyhan submitted its letter-replies to the Show Cause Orders/Letter-Orders, actively participated in the proceedings as evidenced by its attendance in the conference(s) conducted by the CGFD, and filed a Motion for Reconsideration on the Assailed Order which was acted upon by the CGFD. These factual circumstances negate the claim of Appellant Familyhan that it was denied due process. These factual circumstances establish CGFD's compliance with the requirements of due process. In this regard, the doctrine established in the case of *Vivo vs PAGCOR*[16] is very apt, to wit:

> "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 elaborates on the well-established meaning of due process in administrative proceedings in this wise:
>
>> x x x 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

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[15] G.R. No. 198140, January 25, 2016

[16] G.R. No. 187854, November 12, 2013. See also *Palao vs. Florentino International, Inc.*, G.R. No. 186967, January 18, 2017.

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.**" (Emphasis supplied)

II. Appellant Familyhan violated SEC MC 18, and the TILA in relation to SEC MC 7

In its Appeal, Appellant Familyhan maintained that it did not violate the cited law and regulations, arguing that, in relation to the TILA, it allegedly complied with its provisions because complainants were provided with all the required information which are contained in page 4 of the respective loan agreements. As for the SEC MC 18, Appellant Familyhan claimed that the sending of demand letters to persons other than the borrowers were made not for the purpose of embarrassing/harassing the latter, but primarily to inquire on their whereabouts. These are the arguments that Appellant Familyhan are presenting to this Commission in support of its conclusion that it did not violate SEC MC 18 and the TILA in relation SEC MC 7.

The Commission is not convinced.

Section 1 (h) of SEC MC 18 provides:

"Section 1. Unfair Collection Practices. – FCs, **LCs**, and TPSPs hired by them may resort to all reasonable and legally permissible means to collect amounts due them under the loan agreement, provided that, in the exercise of their rights and performance of their duties, **they must observe good faith and reasonable conduct and refrain from engaging in unscrupulous and untoward acts**. Without limiting the general application of the foregoing, **the following conduct shall constitute collection practices, which shall be subject to the penalties provided herein**:

x x x

h. Notwithstanding the borrower's consent, **contacting the person in the borrower's contact list other than those who were named as guarantors or co-makers shall also constitute unfair debt collection practice.**" (Emphasis supplied)

The afore-quote provision is clear that the act of contacting the person in the borrower's contact list, regardless of the intent and purpose of the lending or financing company, constitutes unfair debt collection practice. The reason for this is that SEC MC 18 and the very law that it is implementing i.e. R.A. No. 8556 (the "Financing Company Act") and R.A. No. 9474 (the "Lending Company Regulation Act of 2007") are special laws, the acts that are prohibited and/or offenses set forth therein are considered *mala prohibita* which means that the commission of the prohibited act is punishable.[17]

On the other hand, in implementing the provisions of the TILA, SEC MC 7 provides that:

> "**The Commission**, in its commitment to protect the uniformed use of credit by borrowers or users and in compliance with the Truth in Lending Act (R.A. 3765) requiring full disclosure of the true cost of credit, **resolved in its en banc meeting on 18 August 2011 to adopt Circular No. 730 dated 20 July 2011 of the Bangko Sentral ng Pilipinas (BSP) on updated rules implementing the Truth in Lending Act to enhance loan transaction transparency.**" (Emphasis supplied)

Relative thereto, the pertinent provisions of BSP Circular No. 730 dated 20 July 2011 (BSP Circular 730) states:

> "Section 3. Information to be disclosed:
>
> Subsection X307.2, MORB is hereby amended to read as follows:
>
> §X307.2 Information to be disclosed. **As a general rule, loan terms shall be disclosed to all types of borrower. For small business/retail/consumer credit, the following are the minimum information to be disclosed** (sample form in Appendix 19):
>
> a. The **total amount to be financed;**
> b. The **finance charges expressed in terms of pesos and centavos;**
> c. The **net proceeds of the loan**; and
> d. The **percentage that the finance charge bears to the total amount** to be financed **expressed as a simple annual rate or an effective annual interest rate** (EIR) as described in item h of Subsection X307.1. EIR may also be quoted as a monthly rate in parallel with the quotation of the contractual rate.
>
> **Banks are required to furnish each borrower a copy of the disclosure statement, prior to the consummation of the transaction.**" (Emphasis supplied)

BSP Circular 730 clearly provides that that the lender is obligated to adequately inform its borrowers of the terms of their loans in the simplest terms possible, without requiring the latter to perform any other act or calculation to know the intended information or value. The objective of the law, and the related rules and regulations, will be rendered nugatory if the said responsibility is passed on the borrower who may not be knowledgeable on the nuances of the matters contained therein. By making such information known to the borrowers by the lenders themselves, complete transparency is

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[17] "In offenses considered as mala prohibita or when the doing of an act is prohibited by a special law such as in the present case, the commission of the prohibited act is the crime itself. It is sufficient that the offender has the intent to perpetrate the act prohibited by the special law, and that it is done knowingly and consciously." (*Tigoy v. Court of Appeals*, G.R. No. 144640, [June 26, 2006], 525 PHIL 613-624)

realized. This protects not only the borrowers from unscrupulous practices of merchants, but also the latter by denying abusive borrowers the convenient excuse of allegations of fraud and deceit perpetrated by the lenders.

After a careful examination of the evidence on record, the Commission agrees with the CGFD that Appellant Familyhan's loan contracts do not state the net proceeds of the loan such that its borrowers have to manually determine the net proceeds of their respective loan agreements. In fact, this violation which is a consequence of Appellant Familyhan's failure to provide the details required by law in its loan contracts, was admitted by the Appellant when it stated that "*a simple mathematical computation would already give Respondent's borrowers the exact figures of their net proceeds*".[18] This is a violation of the afore-quoted provisions.

More importantly, the violations that were found by CGFD to have been committed by Appellant Familyhan were based not only on substantial evidence, but on the clear admissions of Appellant Familyhan itself.

The Commission cannot ignore the fact that Appellant Familyhan expressly admitted having violated SEC MC 18 for which reason, it is now seeking leniency[19] and arguing that the penalty of revocation of its CA was excessive considering that it was burdened by stubborn employees who had the penchant for violating the law and regulations issued by the Commission[20]. Relative thereto, the Commission notes that Appellant Familyhan accepted the previous findings of the CGFD that it violated SEC MC 18 and TILA in relation to SEC MC 7, as evidenced by its payment of the assessed penalties. These admissions cemented the findings of the CGFD and affirmed the correctness of the Assailed Resolution which sustained the penalty of revocation of its CA.

Moreover, it bears emphasis that the admissions made by Appellant Familyhan are considered judicial admissions which established the violations subject of the instant case. In *Gonzales-Saldaña vs Niamatali*[21], the Supreme Court explained the legal effect of judicial admissions, to wit:

> "**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 showing that it was made through palpable mistake or that no such admission was made.
>
> A party who judicially admits a fact cannot later challenge [the] fact as judicial admissions are a waiver of proof; production of evidence is

[18] Paragraph 43, Verified Answer.
[19] See Subtitle B (Respondent is entitled to leniency over its violations of MC 18-19), pars. 36-43 of the Appeal.
[20] See par. 55 of the Appeal
[21] G.R. No. 226587, November 21, 2018

> dispensed with. **A judicial admission also removes an admitted fact from the field of controversy. Consequently, an admission made in the pleadings cannot be controverted by the party making such admission and is cannot be controverted by the party making such admission and is conclusive as to such party, and all proofs to the contrary or inconsistent therewith should be ignored, whether objection is interposed by the party or not. The allegations, statements or admissions contained in a pleading are conclusive as against the pleader**. A party cannot subsequently take a position contrary to or inconsistent with what was pleaded. (Emphasis supplied)

On the basis thereof, the Commission hereby sustains the finding of violation of SEC MC 18 and the TILA in relation to SEC MC 7 by Appellant Familyhan.

III. The CGFD correctly imposed the penalty of revocation of Appellant Familyhan's CA for multiple violations of SEC MC 8 and the TILA, in relation to SEC MC 7.

In its Appeal, Appellant Familyhan maintains that the CGFD committed reversible error in revoking its CA, arguing that the attendant circumstances in the instant case allegedly justify affording leniency to it, which allegedly rendered this penalty excessive. In support thereof, Appellant Familyhan alleged that the acts complained of which violated SEC MC 18 were made only because it was imperative for it to collect the amounts due to the company to ensure continued business operations. Appellant Familyhan however insists that the penalty of revocation of its CA is excessive because the CGFD allegedly failed to consider (a) its efforts in complying with the relevant laws, rules and regulations which it allegedly implemented in its operations through memoranda, and the conduct of relevant trainings[22], and (b) the reality that unscrupulous borrowers who allegedly defaulted in their obligations compelled it to secure the services of counsel to ensure collection of loans.

The Commission cannot accede to Appellant Familyhan's position and arguments.

Section 5 of SEC MC 18 provides for the applicable penalties for violation of its provisions, and in case of third violation, grants the Commission the discretion to suspend or revoke the CA of the erring company based on the facts, gravity and seriousness of the offense, thus:

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[22] See Pars. 53 and 54 of the Appeal

"**Sec. 5. Applicable Penalties.** – Violation of this Circular **shall** subject FCs and LCs to the following penalties:

Third Offense: **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 and 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 word "*shall*" in the afore-quoted provision was intentionally used to ensure that any act or omission that violates the Financing Company Act of 1998 and/or the Lending Company Regulation Act of 2007 which it seeks to implement is administratively sanctioned/penalized, to ensure that integrity of the financing business/industry which is imbued with public interest is not compromised. However, **in the exercise of its power and authority to penalize, the Commission is given the discretion to impose the appropriate penalty/sanction which is qualified by the word "*or*"**. The concept of discretion and the valid exercise thereof was explained by the Supreme Court in *Sanson vs Barrios*[23], to wit:

> "**Whenever a statute gives discretionary power to any person, to be exercised by him upon his own appreciation of certain facts, such statute constitutes him the sole judge of the existence of those facts.** Discretion, when applied to public functionaries, means **a power or right conferred upon them by law of acting officially, under certain circumstances, according to the dictates of their own judgments and consciences, uncontrolled by the judgments or consciences of others.** A purely ministerial act or duty, in contradistinction to a discretional act, is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or the exercise of his own judgment, upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer, and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion nor judgment." (Emphasis supplied)

In relation to the imposition of the appropriate penalty(ies), Appellant Familyhan's reliance in *Marbel Institute of Technical College vs Lubaton*[24] in support of its position that revocation is not warranted because all remedies

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[23] G.R. No. L-45086, July 20, 1936
[24] Par. 52 of the Appeal (SEC Case No. 05-09-0336, October 18, 2016)

have to be exhausted as a condition precedent for its imposition, is misplaced. In the first place, the principle in the cited case applies to cases involving the revocation of the primary license of a corporation and not the secondary license, as what happened in the instant case. Secondly, there is nothing in Section 5 of SEC MC 18 that prohibits the Commission from imposing the penalty of revocation of the CA of any entity that has violated the circular the third time, especially if, in the mind of the Commission, the circumstances, the nature and the gravity of the acts warrant the same. Had SEC MC 18 intended to impose the penalty of revocation only after the penalty of fine or suspension has been meted, the same should have been clearly stated therein. The fundamental rule in statutory construction is that if the statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without interpretation.[25]

The grant of authority to the Commission to revoke the CA of lending or financing companies who violate the law, rules, and regulations is justified by the fact that a license is a mere privilege, and the enjoyment thereof is conditioned on the grantee's full and continued compliance with applicable laws and regulations. In *Oposa v. Factoran, Jr.*[26], the Supreme Court held that a license may be validly withdrawn at any time if public interest and public welfare requires the same:

> "**Needless to say, all licenses may thus be revoked or rescinded by executive action. It is not a contract, property or a property right protected by the due process clause of the Constitution**. In Tan vs. Director of Forestry, this Court held:
>
> > ". . . A timber license is an instrument by which the State regulates the utilization and disposition of forest resources to the end that public welfare is promoted. A timber license is not a contract within the purview of the due process clause; **it is only a license or privilege, which can be validly withdrawn whenever dictated by public interest or public welfare as in this case.**
> >
> > 'A license is merely a permit or privilege to do what otherwise would be unlawful, and is not a contract between the authority, federal, state, or municipal, granting it and the person to whom it is granted; neither is it property or a property right, nor does it create a vested right; nor is it taxation' (37 C.J. 168). Thus, this Court held that the granting of license does not create irrevocable rights, neither is it property or property rights (People vs. Ong Tin, 54 O.G. 7576) . . ." (Emphasis supplied)

It should be emphasized that Section 1(h) of SEC MC 18 categorically prohibits financing and lending companies from contacting the borrower's contact list other than those who are named as guarantors or co-makers, and

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[25] Republic vs Lacap, (G.R. No. 158253, March 2, 2007)
[26] G.R. No. 101083, [July 30, 1993])

SEC MC 7 requires financing and lending companies to disclose the net proceeds of the loan to all borrowers. These circulars which implement the Financing Company Act of 1998 and the Lending Company Regulation Act of 2007, seek to promote and maintain the integrity, stability, and soundness of financing and lending companies, just like other financial institutions, by ensuring, among others, that acts or practices that are prejudicial to the public interest are not countenanced.

In the instant case, the records show that Appellant Familyhan violated (a) Section 1[h] of SEC MC 18 more than three (3) times, and (b) SEC MC 7 eight (8) times, a fact that it admitted, as evidenced by its payment of the monetary penalties assessed by the CGFD. Relative thereto, the Commission holds that the number of violations that Appellant Familyhan committed indicates and affirms the gravity and seriousness thereof because it shows a conscious and deliberate disregard of the provisions of the said circulars which the Commission is mandated to implement. This warrants the revocation of its CA and the Commission thus sees no compelling reason to disturb the finding and the decision of the CGFD.

Appellant Familyhan's act of passing the blame to its employees who, it alleged, had a penchant for violating the circulars[27], if at all, discloses an operation that has a poor corporate governance system. This cannot however, operate to exculpate Appellant Familyhan from liability under SEC MC 18 and SEC MC 7. To accept and sustain Appellant Familyhan's argument would set a dangerous precedent that a financing or lending company can conveniently set up a defense that its violation of laws, rules, and regulations was due to circumstances beyond its control, and will encourage entities to avoid accountability by hiding behind the unlawful acts/omissions of their officers, employees, or agents.

Finally, Appellant Familyhan posits that Section 3 (ddd) of the Bayanihan Law mandates the relaxation by the relevant government agencies, including the Commission, in the imposition of penalties against erring lending companies as a response to the COVID-19 pandemic.

Appellant Familyhan's reliance on, and interpretation of Section 3 (ddd) of the Bayanihan Law is misplaced and erroneous. The said provision states:

> "(ddd) **Encouraging** the BSP and the **Securities and Exchange Commission (SEC) to adopt measures, including the relaxation of regulatory and statutory restrictions and requirements** for a period of not more than one (1) year from their date of effectivity **to encourage the banking industry and other financial institutions to extend loans and other forms of financial accommodation** to help businesses recover from

[27] See Par. 55 of the Appeal

> the economic effects of the COVID-19 crisis and to enable the banking industry to manage appropriately its risks and potential losses.
>
> The BSP and the SEC are likewise hereby authorized to grant reporting relief to its supervised entities by allowing staggering booking of allowance for credit losses for all types of credit accommodations extended to individuals and business entities affected by COVID-19;" (Emphasis supplied)

The "*relaxation of regulatory and statutory restrictions and requirements*" in the afore-quoted provision means that the BSP and the SEC are directed to come up with, and implement policies, processes and regulations that will facilitate and assist in the continued operations of financial institutions so that they extend loans to businesses and individuals who are in dire need of financial support. This consists, among others, in the extension of deadlines in the filing of reportorial requirements. The "*relaxation of regulatory and statutory restrictions and requirements*" certainly does not mean the relaxation in implementing Section 1[h] of SEC MC 18 and SEC MC 7 which were intended to protect the public, as alluded to by Appellant Familyhan. The Bayanihan Law will not sanction the relaxation of a regulation that will result in giving premium to and/or encourage abusive and unethical practices by lending or financing companies to justify their continued operation during the pandemic.

WHEREFORE, premises considered, the *Memorandum of Appeal* is hereby **DENIED** for lack of merit. The Assailed Resolution of the CGFD which sustained *Order No. 29, Series of 2021* revoking Appellant Familyhan's Certificate of Authority to Operate as a Financing Company is hereby **AFFIRMED**.

SO ORDERED.

Pasay City, Philippines, 2 November 2021.

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner