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

IN THE MATTER OF:

HUMANITARIAN AND SPIRITUAL MISSION APOSTULATES OF DAVAO AND ASIA, INC., HASMADAI FOUNDATION, INC., and HASMADAI INSTITUTE OF TECHNOLOGY CORP.

SEC CDO CASE NO. 05-24-112
Promulgated: 03 December 2024

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,
Movant.

x--------------------------------------x

RESOLUTION

For consideration of the Commission *En Banc* (the "Commission") is the Verified Motion to Lift Cease and Desist Order ("Motion to Lift") filed by **Humanitarian and Spiritual Mission Apostulates of Davao and Asia, Inc. (HASMADAI),** through counsel, on 01 July 2024 praying for the lifting of the Cease and Desist Order dated 21 May 2024 (the "Assailed CDO").

The Assailed CDO directed HASMADAI Foundation, HASMADAI, and HASMADAI Institute of Technology Corp. and their agents to immediately cease and desist from engaging in the unlawful/unauthorized solicitation, offer and/or sale of securities in the form of Mission Support or "*Charity Mission Support Pledge Form*", after the Commission found, based on substantial evidence, that their investment-taking activities were being carried out in violation of Section 8 of the Securities Regulation Code (SRC). The dispositive portion of the Assailed CDO reads, in part:

> "**WHEREFORE,** premises considered, **HASMADAI Foundation, Inc., Humanitarian and Spiritual Mission Apostulates of Davao and Asia, Inc.**, and **Humanitarian Institute of Technology Corp.**, Ralph Jimmy Calaor Gayatin a.k.a. Dante "Bong" Encarnacion Tabusares, Rowel Dagan Bacat, Cyrus Mark Cabasag, Cipriano Quizon, Jr., Lecerio

x--x

A. Lavente, Jr., Duraliza Baja Mahusay, Erwin S. Gabieta, Jeofrie A. Jala, Maria Lourdes Biongan Domosmog, Ledevina M. Generalao, Rodel B. Mahusay, Roy T. Velasco, and their respective officers, directors, representatives, salesmen, agents, brokers, dealers, promoters, recruiters, uplines, influencers, endorsers, abettors, and enablers and any and all persons claiming and/or acting for and in their behalf, are hereby ordered to **IMMEDIATELY CEASE AND DESIST** from engaging in activities of offering for sale of securities in the form of 1) Mission Support or *"Charity Mission Support Pledge Form"* and 2) any similar contract that would operate as a direct circumvention of this Order until the requisite registration statement is duly filed with and approved by the SEC and the corresponding permit to offer/sell securities is issued.

HASMADAI FOUNDATION, INC., HUMANITARIAN AND SPIRITUAL MISSION APOSTULATES OF DAVAO AND ASIA, INC., and **HUMANITARIAN INSTITUTE OF TECHNOLOGY CORP.**, together with Ralph Jimmy Calaor Gayatin a.k.a. Dante "Bong" Encarnacion Tabusares, Rowel Dagan Bacat, Cyrus Mark Cabasag, Cipriano Quizon, Jr., Lecerio A. Lavente, Jr., Duraliza Baja Mahusay, Erwin S. Gabieta, Jeofrie A. Jala, Maria Lourdes Biongan Domosmog, Ledevina M. Generalao, Rodel B. Mahusay, and Roy T. Velasco, its officers, operators, administrators, promoters, representatives, salesmen, agents, investment team planners, mentors, enablers, influencers, assigns, conduit entities, subsidiaries, and any and all persons claiming and/or acting for and in their behalf are likewise directed to immediately **CEASE** their internet presence relating to the transactions and investment scheme covered by this *Cease and Desist Order.* The Commission will institute the appropriate administrative and criminal action against any persons or entities found to act as solicitors, information providers, salesmen, agents, brokers, dealers or the like for and in their behalf.

Finally, the Commission hereby **PROHIBITS HASMADAI FOUNDATION, INC., HUMANITARIAN AND SPIRITUAL MISSION APOSTULATES OF DAVAO AND ASIA, INC.**, and **HUMANITARIAN INSTITUTE OF TECHNOLOGY CORP.**, and their respective officers, operators, administrators, promoters, representatives, salesmen, agents, investment team planners, mentors, enablers, influencers, assigns, conduit entities, subsidiaries, and any and all persons claiming and/or acting for and in their behalf from transacting any business involving funds in its depository banks, and from transferring, disposing, or conveying in any manner, any and all assets, properties, real or personal, including bank deposits, if any, of which the named persons herein may have interest, claim or participation, whether directly or indirectly, under their custody, to ensure the preservation of the assets of the investors."

x---x

THE RELEVANT FACTS

On 17 May 2024, the EIPD filed with the Commission, through the Office of the General Counsel, a Motion for Issuance of a Cease and Desist Order (the "Motion for CDO") against HASMADAI.

On 22 May 2024, the Commission *En Banc* issued the *Assailed CDO* after finding that HASMADAI is engaged in the unauthorized sale and/or offer of securities in the form of investment contracts.

In its *Motion to Lift,* HASMADAI primarily maintained that the Mission Support or the amounts received by the corporation are donations and not investments, and as such, cannot be considered as "securities" under the contemplation of the SRC. In support thereof, HASMADAI claimed that it is a religious organization, with headquarters in Mindanao where pastors from all denominations can preach and receive allowances. It supports its operations from the donations it receives from willing donors, both locally and abroad, and from the profits generated by its shopping centers. HASMADAI alleged that its profits are used solely for the furtherance of its charitable and humanitarian programs.

HASMADAI further maintained that the Charity Mission Support Pledge Form (the "Pledge Form") cannot be construed as an investment contract because there is allegedly no provision therein that would lead a reasonable person to expect profits from their donation or pledge. The Pledge Form merely provides for a list of social, spiritual or humanitarian programs from which a donor can choose to donate his or her money.[1]

HASMADAI maintained that while it gives Missionary Allowances, the same are not allegedly guaranteed, and the amount thereof is not fixed as the same is based on the need of the member/missionary, and subject to the availability of funds of the corporation.[2] HASMADAI also maintained that since its doors are open to any faith or denomination, it does not need to recruit, or grant the alleged 5% referral commission for every successful recruit.

HASMADAI also argued that the Assailed CDO should be lifted as the same was issued in violation of its right to due process. In support

[1] Motion to Lift, par.30.
[2] Motion to Lift, par.28.

SEC – OGC
CERTIFIED TRUE COPY OF THE DOCUMENTS ON RECORD
PAGE 3 OF 11 PAGES
BY: f

x--x

thereof, it alleged that no proper investigation and verification was conducted by the EIPD. Specifically, the EIPD allegedly failed to verify the authority of its missionary worker Azur Havana (Mr. Havana) who made false representations regarding HASMADAI's business without its knowledge and consent. The EIPD also failed to establish that HASMADAI employed fraud in accepting donations and pledges from its supporters or members, considering that it disclosed through its online presence and posts, how the donations that it received were being used. Thus, it cannot be said that it is causing grave and irreparable damage to the investing public.

In its *Comment*[3], the EIPD countered with the allegation that it conducted the requisite investigation/surveillance operations, and was able to secure and submit relevant evidence in support of its Motion for CDO, which proved that HASMADAI is engaged in unauthorized investment-taking activities. The EIPD also maintained that the use by HASMADAI of names to describe its unauthorized investment-taking scheme e.g. pay-in as a "pledge" or "donation" and pay-out as a "missionary allowance", did not negate the fact that such scheme/transaction has the unmistakable nature of an investment of money with expectation of return/profit.[4]

The EIPD further argued that although HASMADAI questioned the authority of Mr. Havana to issue statements with regard to its business, HASMADAI did not dispute that he was a member/missionary worker. As such, Azur Havana's statements should be given full credence and probative value based on reliable first-hand information and his own personal knowledge. Moreover, the EIPD argued that HASMADAI's reliance on the contents of the Pledge Form will not exculpate it from liability because other evidence on record, i.e. Mr. Tabusares admission during the Committee Hearing of the Sangguniang Bayan of San Francisco, Agusan del Sur relating to the grant of missionary allowances to donors, the Affidavit of a poseur-investor, the results of surveillance operations, which all of which proved the unauthorized investment scheme of HASMADAI.

The EIPD posited that the fact that Respondents made it appear that the investments solicited from the public were "pledges" or "mission support" undoubtedly indicate the fraudulent intent of HASMADAI to

[3] Dated 30 July 2024.
[4] Comment, par.12.

x---x

mislead the public.[5] The EIPD stressed that HASMADAI has no viable business or enterprise from which the huge promised profits or so-called income of more than 27% to 34% return were being derived from[6] aside from the donation/investment of its donors/members. Being a non-stock corporation, it should not even engage in the business of operating "shopping stores"[7] where the generation of profits is the main or underlying purpose.

On 29 August 2024, the EIPD filed its Position Paper where it reiterated the allegations in its Comment.

On 10 October 2024, HASMADAI filed its Position Paper where in addition to its previous allegations and arguments, it alleged that there were people who did not give donations or pledges and yet were able to receive missionary allowances. Moreover, there is no proof that HASMADAI offers a "Benefactor-Beneficiary" scheme whereby a donor gains more than what he has donated, as alleged by the EIPD. No promises were made to donors other than the blessing of knowing that every donation is given to those in need. Further, Mr. Tabusares, from the excerpts from the Committee Hearing, did not state that the missionary allowance is guaranteed for every donation made to HASMADAI. Mr. Tabusares merely stated that donors may receive blessings or missionary living allowances and that "blessings" may be construed to mean not only financial blessings but can also mean spiritual, emotional or other physical blessings such as health and wellness.

HASMADAI further claimed that its Pledge Form follows the tithing forms in many known catholic denominations which also guarantee blessings in exchange for giving tithes to the church. There is nothing unlawful in the collection of donations and pledges by HASMADAI since the main purpose of such collection is to engage in, operate and maintain the work of evangelism, apostolate and humanitarian missionary works, which is one of its primary purposes in its AOI.

ISSUE

[5] Comment, par.20.
[6] Comment, par.31.
[7] Comment, par.32.

Whether HASMADAI presented sufficient grounds in its *Motion to Lift* to warrant the issuance of an order lifting the *Assailed CDO.*

DISCUSSION

We deny the Motion to Lift for being bereft of merit and basis.

HASMADAI was not denied of its right to due process.

HASMADAI maintains that it was denied of due process because it was allegedly not afforded the opportunity to controvert the pieces of evidence presented by the EIPD, and it was not able to participate in the EIPD's investigation which deprived it of the opportunity to identity and confront the persons questioned during surveillance.

We do not agree with HASMADAI.

Sec. 64.2 of the SRC categorically mandates and classifies any investigation or complaint filed in relation to an act/transaction that may warrant the issuance of a CDO as confidential, to wit:

> "**Until the Commission issue a cease and desist order, the fact that an investigation has been initiated or that a complaint has been filed, including the contents of the complaint, shall be confidential**. Upon issuance of a cease and desist order, the Commission shall make public such order and a copy thereof shall be immediately furnished to each person subject to the order." (Emphasis supplied)

The purpose of the law in requiring that the investigation or complaint filed be kept confidential is to ensure that the Commission promptly acts on the matter, and exercises the appropriate regulatory action, unhampered by dilatory schemes which may be employed by the persons involved, for the protection of the investing public. This finds support in the case of *Primanila Plans, Inc. v. Securities and Exchange Commission,*[8] where the Supreme Court sustained the validity of the investigation notwithstanding the fact that the subject(s) thereof did not participate in the same, thus:

[8] G.R. No. 193791, August 6, 2014, 732 SCRA 264.

x--x

> "**The SEC was not mandated to allow Primanila to participate in the investigation conducted by the Commission prior to the cease and desist order's issuance**. Given the circumstances, it was sufficient for the satisfaction of the demands of due process that the company was **amply apprised of the results of the SEC investigation, and then given the reasonable opportunity to present its defense. Primanila was able to do this via its motion to reconsider and lift the cease and desist order**. After the CED filed its comment on the motion, Primanila was further given the chance to explain its side to the SEC through the filing of its reply. "Trite to state, a formal trial or hearing is not necessary to comply with the requirements of due process. Its essence is simply the opportunity to explain one's position." (Emphasis supplied)

On the basis thereof, HASMADAI's contention that it was denied of its right to due process since it was not involved in the investigation conducted by the EIPD is bereft of legal basis.

Be that as it may, this Commission is cognizant of the right of persons or entities subject of a CDO to due process, which under law and jurisprudence, consists of the opportunity to present their defense(s) and/or seek reconsideration of the questioned action or decision, both of which are available to them **after** the CDO is issued. In this regard, it bears emphasis that in administrative proceedings such as the instant case, the fundamental requirement of due process or the right to be heard is satisfied if respondent is given the opportunity to explain his/her side, or the opportunity to seek reconsideration of the action/ruling that is being assailed. Hence, where the notice requirement is complied with and the opportunity to be heard, either through oral arguments or pleadings, is accorded to respondent, there can be no denial of due process.[9]

In the instant case, the fact that HASMADAI's Motion to Lift was given due course notwithstanding its belated filing negates its allegation that it was denied due process.

Anent HASMADAI's allegation that the requisites prescribed under Sec. 64.2 of the SRC relating to the conduct of proper investigation, and finding of fraud were not complied with, this Commission finds the same to be devoid of factual basis.

---

[9] Vivo v. Philippine Amusement and Gaming Corporation, G.R. No. 187854, November 12, 2013.

x--x

The evidence on record shows that the EIPD conducted a formal investigation and submitted reports and document which supported the conclusion made by this Commission that the unauthorized investment-taking activities of HASMADAI violated the SRC and constituted fraud which warranted the issuance of the Assailed CDO to prevent grave and irreparable damage to the investing public.

HASMADAI is engaged in the unauthorized sale and/or offer of securities in the form of investment contracts without the required license.

The issuance of the *Assailed CDO* was based on the Commission's finding that HASMADAI was selling/offering unregistered securities in the form of investment contracts which was masked as a "donation" without the required license. HASMADAI's scheme of issuing a Pledge Form to cover the amount of pledge/investment with a promise of return or "mission allowance" ranging from 27% to 34% of the money pledged/invested is clearly an investment contract, the offer/sale of which, requires a license from the Commission.

HASMADAI's *Motion to Lift* failed to controvert the Commission's finding that it is engaged in the sale/offer of unregistered securities to the public in the form of investment contracts.

As extensively discussed in the *Assailed CDO*, the EIPD conducted a formal investigation and presented substantial evidence in support of its *Motion for CDO* consisting of the Certifications from the CRMD, CGFD and MSRD, Field Investigation Reports of the investigation; Affidavit of the Investigator who invested with HASMADAI; photos of HASMADAI branches, photos of the sample Pledge Form, and the photos of and screenshots of the Facebook postings, among others.

The slide presentation prepared by Mr. Havana, a member/missionary worker of HASMADAI, which showed a table of donations/supports received, and the corresponding allowance for a specific amount of donation/support, constitutes substantial evidence showing that HASMADAI's unauthorized investment-taking scheme involves the sale/offer of unregistered securities in the form of investment contract which violates Sections 8 and 28 of the SRC.

x--x

The Commission thus agrees with the EIPD that the representations made by Mr. Havana deserves to be given full credence. Mr. Havana was acting in his capacity as a missionary worker when he made the representations about the investment-taking activities of HASMADAI. Being a missionary worker of HASMADAI, a fact confirmed by HASMADAI, his representations about HASMADAI are based on his personal knowledge and thus, should bind HASMADAI. The slide presentation of Mr. Havana reinforces the finding of the Commission that HASMADAI is engaged in the sale of unregistered securities in the form of investment contracts without the required license.

In a similar vein, this Commission finds HASAMDAI's argument that not all of the elements of the *Howey Test* are present to be bereft of merit and basis. The bare allegations proffered by HASMADAI unsubstantiated by any evidence will not suffice to negate the evidence presented by the EIPD which showed otherwise. In *People v. Bagaua*[10] the Supreme Court ruled 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."*

The Commission cannot also give credence to HASMADAI's argument that there is no investment contract as the pledges are not investments but donations.

Donation is an act of liberality whereby a person disposes gratuitously of a thing or right in favor of another, who accepts it.[11] When a person donates money, the primary consideration is the liberality or the plain gratuity of the donor because such person is not expecting anything in return. Generally, it is considered as a one-sided transaction because the donation was given unconditionally.

HASMADAI's members are "donating" not out of gratuity or liberality, but because of the promised "missionary allowance" ranging from 27% to 34% of the money pledged which they will be receiving. When one gives something to another with the expectation of a return, the same is no longer a donation. Hence, the use of the term "donation" by HASMADI does not operate to negate the fact that the unauthorized

---

[10] G.R. No. 147943, December 12, 2002, 442 PHIL 245-257.
[11] Art. 725, NCC.

SEC – OGC
CERTIFIED TRUE COPY OF THE DOCUMENTS ON RECORD
PAGE 9 OF 11 PAGES
BY: [signature]

investment scheme which it is carrying out consists of selling/offering unregistered securities in the form of investment contract.

The US case of *SEC v. Bailey*[12] is instructive in determining the nature of an investment contract, thus:

> "The Securities Act is remedial in nature, to be liberally construed. It affects, not ordinary land sale contracts, but "investment contracts" which evidence primarily a right to participate in the proceeds of an income-producing venture, membership in which is secured through entrusting an investor's capital to the management of others. **In appraising contracts for the purpose of determining the applicability of the statute, courts readily look through the form to discover the real nature of the transaction. Labels affixed by the parties are of little moment."** (Emphasis supplied)

In an investment contract, the form is disregarded for substance and emphasis is placed upon economic reality. An investment contract means a contract or scheme for "the placing of capital or laying out of money in a way intended to secure income or profit from its employment."[13] Moreover, considering that this matter has been fully discussed in the Assailed CDO, and no evidence was presented by HASMADAI to the contrary, this Commission will no longer reiterate the same.

On the basis of the foregoing disquisitions, the Commission does not find any cogent reason that warrants the setting aside of the *Assailed CDO.*

WHEREFORE, premises considered, the *Verified Motion to Lift Cease and Desist Order* filed by Humanitarian and Spiritual Mission Apostulates of Davao and Asia, Inc. (HASMADAI) is hereby **DENIED** for lack of merit. The Cease and Desist Order dated 21 May 2024 issued against **HASMADAI Foundation, Inc.**, **HASMADAI**, and **Humanitarian Institute of Technology Corp.** their respective officers, directors, representatives, salesmen, agents, brokers, dealers, promoters, recruiters, uplines, influencers, endorsers, abettors, and enablers and any and all persons, conduit entities, subsidiaries and affiliates, is hereby made **PERMANENT.**

---

[12] 41 F. Supp. 647, 650 (S.D. Fla)
[13] State v. Gopher Tire & Rubber Co.; 177 N.W. 937,938 (1920)

x--x

The Enforcement and Investor Protection Department is hereby DIRECTED to: (a) serve this RESOLUTION to the President, General Manager, Corporate Secretary, Treasurer or In-House Counsel of **HASMADAI Foundation, Inc., HASMADAI,** and **Humanitarian Institute of Technology Corp.**; and (b) post copies of the RESOLUTION at the entrance of the main offices and/or branches, if any, of **HASMADAI Foundation, Inc., HASMADAI,** and **Humanitarian Institute of Technology Corp.**.

Let a copy of this RESOLUTION be also posted on the Commission's website and furnished to all operating departments and offices of the Commission for their information and appropriate action.

The Enforcement and Investor Protection Department, in coordination with other concerned departments, is FURTHER DIRECTED to file a compliance with the Commission En Banc within ten (10) days from receipt of this RESOLUTION.

SO ORDERED.

Makati City, Philippines.

EMILIO B. AQUINO
Chairperson

JAVEY PAUL D. FRANCISCO
Commissioner

KARLO S. BELLO
Commissioner

MCJILL BRYANT T. FERNANDEZ
Commissioner

ROGELIO V. QUEVEDO
Commissioner

Republic of the Philippines
SECURITIES AND EXCHANGE COMMISSION
SEC HEADQUARTERS, 7907 Makati Avenue
Salcedo Village, Bel-air, Makati City

December 6, 2024
DATE

I HEREBY CERTIFY that the foregoing is a true and correct xerox reproduction of the official file (s) thereof in the custody of this Commission consisting of Eleven (11) pages, pertaining to SEC CDD OS-24-112

GIPSY C. DAYAON
SEC Administrative Officer IV

Verified By: ________ Fees: ________ Paid under OR No. ________ Dated ________