Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Bldg., EDSA Greenhills, Mandaluyong City

JOHN BENEDICT G. AGUZAR,
Plaintiff-Appellant,

-versus-

SEC *En Banc* Case No. 02-16-395

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT and JOSE CECILIO G. PENAFLOR,
Defendant-Appellees.
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DECISION

Before the Commission *En Banc* is an *Appeal*[1] filed on 09 February 2016 by John Benedict G. Aguzar (**Aguzar**), seeking to reverse and set aside the *Order* dated 07 January 2016 (**Assailed Order**) of Enforcement and Investor Protection Department (**EIPD**) that dismissed the former's complaint against Jose Cecilio G. Penaflor (**Penaflor**).

On 10 December 2015, Aguzar filed a verified *Complaint*[2] against Penaflor with the EIPD for illegal sale of securities. Aguzar avers that on 17 July 2014, he and Penaflor formed "CAP-M Consultancy Co." (CAP-M), a partnership which is engaged in the business of "*management and technical consultancy to persons, corporations, partnerships and associations engaged in commerce, industry, aquaculture and other enterprise*"[3]. He accused Penaflor of using CAP-M's name, bank accounts, and receipt book to illegally sell securities to the public. Thus, he filed a complaint against Penaflor for violating Section 26.3 - Fraudulent Transactions[4] of the Securities Regulation Code (SRC).

EIPD, on 07 January 2016, dismissed Aguzar's complaint for lack of jurisdiction on the ground that the matters raised in the complaint arose from intra-partnership relations. Consequently, jurisdiction over such dispute is within the regular courts[5].

Hence, the instant *Appeal*.

Aguzar argues that EIPD erroneously dismissed his complaint against Penaflor. He contends that EIPD hastily concluded that his statements on Penaflor illegal selling of

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[1] Notice of Appeal and Memorandum of Appeal dated 09 February 2016.

[2] Annex "B" of the Appeal.

[3] Article II of CAP-M Consultancy Co.'s Articles of Partnership.

[4] Section 26.3 Engaged in any act, transaction, practice or course of business which operates or would operate as a fraud or deceit upon any person.

[5] Assailed Order's dispositive portion - "The matters raised in the Complaint being constitutive of a controversy arising out of intra-partnership relations, jurisdiction over the Complaint is with the appropriate Regional Trial Court and not the Securities and Exchange Commission. PREMISES CONSIDERED, the instant complaint is hereby DISMISSED for lack of jurisdiction."

securities, which is based on his personal knowledge and under oath, was not sufficient to initiate an investigation. Aguzar further argues that EIPD did not even require Penaflor to answer the allegations in his complaint. He also claims that he intended to file the complaint to inform the Commission of Penaflor's illegal activities using CAP-M in order to warn the investing public. He is seeking for a Cease and Desist Order (CDO) be issued against Penaflor, enjoining the latter from further selling securities. To support these allegations, Aguzar presented additional evidence, to wit:

Annex	***Evidence***
C	Demand Letter of Menardo Quinosa against Penaflor
D	Letter of Bank of the Philippines Islands to CAP-M
E	Penaflor's list of Investors
F	Text messages between Jahred Tangcunco and Penaflor
G	Checks issued by Penaflor to Jahred Tangcunco
H	Show Cause Letter of San Beda College to Penaflor with attached handwritten letter-complaints of students against Penaflor
I	Notice to the Public on Penaflor published in Philippine Daily Inquirer by the Philippine Stock Exchange

The Commission *En Banc* directed Appellees to file their respective *Reply Memorandum* to Aguzar's *Appeal* within ten (10) days from receipt of its *Order*[6]. EIPD, on 18 February 2016, filed its *Reply Memorandum*[7]. On the other hand, Penaflor filed on 07 March 2016 a motion for extension,[8] requesting for additional time to file his *Reply Memorandum*.

Before we resolve the case on the merits, we first resolve the issue concerning Penaflor's motion for extension. Penaflor filed a prohibitive pleading as defined under Section 3-6 of the 2006 SEC Rules of Procedure (2006 Rules)[9]. In effect, such pleading is automatically expunged from the records. Since the Commission did not receive Penaflor's *Reply Memorandum* within the prescribed period, his right to file the same is considered to have been waived. Thus, this case was deemed submitted for resolution.

The foregoing considered, we now resolve the case on the merits based on the allegations in the *Appeal* and the evidence presented.

We find the *Appeal* partially meritorious.

Aguzar prays for the Commission to set aside the Assailed Order and issue a CDO against Penaflor to enjoin the latter from using CAP-M's name, bank accounts and receipt book in selling of securities[10].

As to the Assailed Order, we disagree with EIPD in dismissing Aguzar's complaint for lack of jurisdiction. While it is true that the Commission has no jurisdiction over intra-corporate/intra-partnership controversies, it has jurisdiction to investigate and penalize

[6] Order dated 10 February 2016.
[7] Dated 12 February 2016.
[8] Motion for Extension of Time to File Comment dated 24 February 2016.
[9] Section 3-6. *Prohibited Pleadings* – The following pleadings or any submission that is filed or made under a similar guise or title shall not be allowed: x x x e) Motion for extension of time to file pleadings, affidavits, or any other submission of similar intent; x x x Should one be filed, said prohibited pleadings or submissions shall be automatically expunged from the records of the case.
[10] Prayer of the Appeal.

individuals/entities, who without a license, offer/sell securities to the public. As a rule, no person shall engage in the business of buying or selling securities in the Philippines as a broker or dealer, or act as a salesman, or an associated person of any broker or dealer unless registered as such with the Commission[11].

In the instant case, there appears to be evidence revealing that Penaflor, without a license, was selling securities to the public. Aguzar claimed, based on personal knowledge, that Penaflor was selling securities, without a license, through their partnership CAP-M. To support such allegation, He presented the following: 1.) handwritten letter-complaints; 2.) transcripts of text messages of investors; 3.) a list of Penaflor's investors; and 4.) copies of checks as payment for investments. Accordingly, EIPD should have investigated and verified these allegations, since it is the investigating and prosecuting arm of the Commission.

As for issuance of a CDO, the Commission cannot rule yet on the said matter, since the allegations and evidence in Aguzar's complaint need to be further investigated and verified.

WHEREFORE, premises considered, the *Appeal* is partially **GRANTED**. EIPD's *Order* dated 07 January 2016 is **REVERSED** and **SET ASIDE**. John Benedict G. Aguzar's *Complaint* against Jose Cecilio G. Penaflor is hereby **REMANDED** to EIPD for further investigation.

SO ORDERED.

City of Mandaluyong, 17 March 2016.

TERESITA J. HERBOSA
Chairperson

MANUEL HUBERTO B. GAITE
Commissioner

ANTONIETA F. IBE*
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

BLAS JAMES G.VITERBO
Commissioner

*on leave

[11] Section 28 of the SRC.