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

In the matter of

COMMUNITY ASSOCIATES HABITAT FOUNDATION (CAHAFI), INC.,

SEC-OGC Case No. 12-11-140
For: Revocation of Certificate of Incorporation

ENFORCEMENT AND PROSECUTION DEPARTMENT,
Petitioner.
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DECISION

This resolves the *Petition for Revocation of the Certificate of Registration (Petition)* of Community Associates Habitat Foundation, Inc. (CAHAFI), dated December 5, 2011, filed by the then Enforcement and Prosecution Department (EPD), now Enforcement and Investor Protection Department, of the Commission on December 7, 2011 based on serious misrepresentation as to what the corporation can do as provided under Section 6, par. (l), sub-paragraph (2) of Presidential Decree 902-A[1], as amended.

The relevant facts, as alleged by the EPD in its *Petition*, are as follows:

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[1] "SECTION 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:

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l) To suspend, or ***revoke***, after proper notice and hearing, the franchise or certificate of registration of corporations, partnerships or associations, upon any of the grounds provided by law, including the following:

xxx---------xxx-----------xx

2) Serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public;"

CAHAFI is a non-stock non-profit foundation duly registered with the Commission on June 4, 2003 with Company Registration No. CN200312692.[2] As indicated in its Articles of Incorporation, the primary purposes of the corporation are, among others, as follows:

> "To organize or tap already landless Urban Poor and Labor Unions/Associations to include low income earner Government employees such as Teacher, member of the AFP and PNP and employees of Municipal Government units, to acquire their own house and lot at a very affordable monthly amortization.
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> To assist families who are already living on an area for a number of years but still their security of land tenure is uncertain due to lack of knowledge to deal with their problem concerning the land acquisition and development, or maybe a simple example of "Bahala na" attitude.
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> To create a research and documentation committee/group to scout for an unutilized parcel of lands and negotiate with its owners to reach an agreement for a possible land acquisition, it may through the Community Mortgage Program (CMP) of the National Home Mortgage and Finance Corp (NHMFC) or through an affordable short term direct financing scheme.
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> xxx-----------xxx------------xxx
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> To do and perform all other acts and deed as may be necessary convenient and appropriate for the accomplishment of the foregoing purposes."

On July 15, 2010, Mr. Ricardo H. Canlas filed before the EPD a Sworn "Salaysay", dated July 15, 2010. In his Salaysay, Mr. Canlas avers that he was employed by the Respondent as a Liason and Documentation Officer from April 1, 2005 until July 2, 2010. He asserts that CAHAFI is not a foundation but a family corporation which sells real estate properties to its supposed members. Moreover, he alleges that the foundation has no permit from local and national government agencies. Finally, Mr. Canlas describes the business transactions of CAHAFI as follows: Rosario Teatro, a representative of CAHAFI, approaches landowners and convinces them to sell to CAHAFI their property. As soon as landowners agree to the terms of the purchase, the property will be offered by CAHAFI for "pre-selling" to interested buyers. CAHAFI will then look for an organizer who will in turn convince buyers to be members of the "Foundation". CAHAFI collects certain membership fees in addition to the contract price

[2] Records, p. 272

for the purchase of subdivided lots. No development, however, was made on the project area, and no title was issued to the buyers/members.

To confirm the facts stated in the affidavit of Mr. Canlas, the EPD issued Summons directing him to appear before it on September 2, 2010. At the hearing, Mr. Canlas affirmed what he has declared in his sworn statement. Thereafter, he submitted several pieces of documentary evidence[3], together with Affidavits[4] of CAHAFI's members or buyers, to corroborate and prove his claims.

Acting on Mr. Canlas' complaint, the EPD conducted an investigation on the business transactions of the CAHAFI. It went to the Office of the Social Housing Finance Corporation[5] (SHFC) on October 4, 2010 to investigate and verify whether the CAHAFI is accredited to engage in Community Mortgage Program (CMP). In response to Petitioner's inquiry, the SHFC issued a Certification[6] declaring that CAHAFI has no pending application for accreditation as an Originator or Community Coordinator under the CMP.

The EPD also secured from the HLURB Region V Office[7] a Certification[8] stating that, although CAHAFI has applied for Certificate of Registration (CR) and License to Sell (LS) for its projects[9], HLURB has not issued a CR and/or LS. According to EPD's Field Investigation Report[10], Mr. Leonid Gaitera[11] declared that it appears from CAHAFI's applications that it was acting as a Developer and not as an Originator or a Community Coordinator in a CMP. Likewise, HLURB, in its letter[12] to CAHAFI, required it to submit several documents, otherwise, CAHAFI's application for CR/LS will be included in an inactive file.

On October 29, 2010, the EPD conducted an ocular inspection of Santol 1 and 2, two of the existing projects of CAHAFI in Tanza Cavite. The EPD's investigators interviewed Ms. Tolentino[13] and Mr. Numeriano Veleraina[14]. They declared that they have fully paid the purchase price of the lots they bought from CAHAFI as evidenced by a Certification of Full Payment. They further stated that although CAHAFI allowed them

[3] Petition, Annexes "G" to "N", "R" to "V", and "II" to "NNN", Records, 198-205, 181-192, 157-98, respectively.
[4] Ibid, Annexes "OOO" to "CCCC", Records, p. 3-97.
[5] A subsidiary of the National Home Mortgage Finance Corporation.
[6] Dated October 5, 2010, Annex "Q" of the Petition, Records, p. 193.
[7] Southern Tagalog Region.
[8] Dated October 28, 2013, Annex "W" of the Petition, Records, p. 181, Note 2, supra. Petition.
[9] CAHAFI HOMES located in Indang and Santol, Tanza Cavite, and Balayan Batangas.
[10] Petition, Annex "X" Summary Report of Field Investigation, Records, p. 179.
[11] Records Officer of HLURB, Region IV Office, Records, p. 180.
[12] Dated June 16, 2006, Annex "NNN", Records, p. 98.
[13] President of the Homeowners' Association of CAHAFI, Records p. 266.
[14] House owner in Santol 1 Project, Note 12, supra.

to construct their houses by virtue of such certificate, CAHAFI failed to undertake developments of the necessary roads, electrical and water facility at Santol 1 and 2.

On November 5, 2010, the EPD gave CAHAFI an opportunity to be heard and to explain its side by serving *Subpoenas Duces Tecum* and *Ad Testificandum* to its officers namely, (a) Marlon Miran; (b) Janett D. Miran; (c) Lilibeth Dardo; (d) Rochelle H. Morales; and (e) Facundo G. Dardo, Jr. However, its officers failed to appear before the Petitioner despite the *Subpoenas*. Thus, another set of *Subpoenas* were served upon them. Again, despite proper receipt of thereof, none of the CAHAFI's officers and trustees appeared.

The EPD, on the basis of the evidence on record and its own investigation, resolved that CAHAFI, as a foundation, cannot engage in activities or operate business for profit, hence, its operation is beyond the purpose for which it was incorporated. The EPD likewise found that CAHAFI misrepresented to the public that its program and activities are being undertaken as a CMP pursuant to Republic Act No. 7279 (RA 7279), otherwise known as the Urban Development Housing Act of 1992.

Thus, the EPD filed the instant *Petition* praying that the Commission revoke the Certificate of Incorporation of CAHAFI. In the meantime, the EPD prays that a Cease and Desist Order be issued against CAHAFI, its trustees, officers, members, salesmen, agents, representatives and any and all persons claiming and acting for and in its behalf, and directing them to immediately cease and desist from offering and selling lots to its members and the public.

Acting on the *Petition*, the Commission issued Summons, dated July 16, 2013, directing CAHAFI and its Officers to enter their appearances and file their *Answer* to the *Petition* within fifteen (15) days from receipt thereof. On July 19, 2013, the Commission's designated process server tried to serve summons on CAHAFI. However, according to the sister-in-law of its President, Ms. Joan Dardo, CAHAFI no longer holds office at its principal office, while all its officers cannot be located. Thus, on April 6, 2015, a copy of the Alias Summons was served on the *Respondent's* Corporate Secretary, through Myra M. Tapia.

ISSUE

Whether or not the Certificate of Registration of CAHAFI should be revoked, on the basis of Section 6, paragraph (l), sub-paragraph (2) of PD 902-A[15] and the evidence on record.

[15] Note 1, supra.

RULING

Despite the substituted service of Summons directing CAHAFI to file its *Answer* to the *Petition*, it has yet to file the same. Thus, pursuant to Section 3-12[16] of the 2006 Rules of Procedure of the Commission, it is considered as in default. As a consequence, the Commission shall render judgment on the basis of the Petition and the evidence on record.

We now resolve the case on the merits.

CAHAFI is not acting as an Originator or a Community Coordinator under the CMP.

CAHAFI represents to the public, particularly to its alleged members and/or buyers in their *Kasunduan*[17], that it has an obligation to undertake housing projects for them through the CMP under RA 7279.

Under Article VIII of RA 7279[18], the CMP is one of the programs which assist legally organized associations of underprivileged and homeless citizens to purchase and develop a tract of land under the concept of community ownership. The primary objective of the CMP is to assist residents of blighted or depressed areas to own the lots they occupy or where they choose to relocate to and eventually improve their neighborhood and homes to the extent of their affordability.[19]

Section 33 of RA No. 7279 provides that "associations organized pursuant to this Act <u>may collectively</u> acquire and own lands covered by this Program." In *Edna Eugenio vs. Sta. Monica Riverside Homeowners' Association*[20], the Supreme Court held that:

> "CMP, as a mode of land acquisition was introduced by Republic Act No. 7279, 'An Act to Provide for a Comprehensive and Continuing Urban

[16] SEC. 3-12. *Effect of Failure to Answer.* – If the respondent fails to answer the complaint within the above stated period, <u>he shall be considered as in default</u>. The hearing Panel or Officer shall, *motu proprio*, proceed to render judgment granting the complainant such relief as the complaint may warrant, unless the Hearing Panel or Officer determines that the complainant should be required to submit *ex parte* additional evidence.
[17] As an attachment to Annexes "D", "NN", "PPP", "QQQ", "ZZZ", "BBBB", and "CCCC".
[18] Otherwise known as the "Urban Development and Housing Act of 1992".
[19] Section 31, Note 17, supra.
[20] G.R. No. 187751, November 22, 2010.

Development and Housing Program, Establish the Mechanism and for its Implementation and other purposes.' Section 33 of the Act specifies that 'beneficiaries of the Program shall be responsible for their organization into associations to manage their subdivisions or places of residence, to secure housing loans under existing Community Mortgage Program and such other projects beneficial to them.'

The mortgage financing program of the National Home Mortgage Finance Corporation (NHMFC) assists legally organized associations of underprivileged and homeless citizens to purchase and develop a tract of land under the concept of community ownership.

Under the CMP, the landowner executes a contract to sell the property in favor of the community association. In turn, the community association executes an agreement with the SHFC for the collection and remittance of shares in monthly amortization from its member-borrowers, and is under obligation to keep tab of paid and unpaid amortization of its member-borrowers. In the event a member-borrower defaults, the community association has the responsibility to find a qualified substitute who shall assume the obligations of the member-borrower in default." [21]

The CMP is a financing scheme granted by the government through SHFC that assists and enables informal settlers, slum dwellers or residents of blighted areas, in purchasing, through their duly registered Community Associations (CA), the land they occupy or the land where they will be relocated. The loan is secured by a first mortgage on the undivided tract of land initially under the community ownership of the beneficiaries. Later on, the property is subdivided with individual mortgages per beneficiaries.

A Community Coordinator (CC) is tasked to assist informal settlers in organizing themselves into a CA. The CC may either be a Local Government Unit, a National Government Agency, Bureau or Corporation, or a Non-Government Organization (NGO) or a Cooperative duly registered with the SEC/CDA. [22]

The SHFC requires that the CC and CA, be duly accredited with it in order for such organization to be able to participate in the CMP. To be accredited, CC and CA[23]

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[21] Underlines ours.
[22] SHFC's Fast Fact on Community Mortgage Program, Annex "EEEE".
[23] "I. COMMUNITY COORDINATORS' (CC) ACCREDITATION, Records, p. 1.

A. Application letter for CC Accreditation (CMP-001) different provinces for the purpose of developing them into residential subdivisions. Then, CAHAFI subdivided the Santol properties into smaller lots for resale to the general public.

During said operation, CAHAFI did not file an application for either CC or CA accreditation under the CMP. This fact is clear from SHFC's Certification[25], dated October 5, 2010, declaring that CAHAFI has no pending application for accreditation under the CMP.

The foregoing considered, CAHAFI is not a CA or CC accredited by the SHFC to participate in the CMP. Rather, CAHAFI is acting as a developer of residential lots for resale to the general public pursuant to Section 2 (d) and (e) of Presidential Decree 957[26].

> "d) Subdivision project. - "Subdivision project" shall mean a tract or a parcel of land registered under Act No. 496 which is partitioned primarily for residential purposes into individual lots with or without improvements thereon, and offered to the public for sale, in cash or in installment terms. It shall include all residential, commercial, industrial and recreational areas as well as open spaces and other community and public areas in the project.
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> e) Subdivision lot. - "Subdivision lot" shall mean any of the lots, whether residential, commercial, industrial, or recreational, in a subdivision project."

CAHAFI is not acting as a foundation but is engaged in a real estate business for profit.

A foundation[27] is defined as "a non-stock, non-profit corporation established for the purpose of extending grants or endowments to support its goals or raising funds to accomplish charitable, religious, educational, athletic, cultural, literary, scientific, social welfare or other similar objectives."

In the instant case, CAHAFI was registered with the Commission as a foundation. It was purportedly organized for noble and philanthropic purposes such as, among others:

[25] Records, p. 193, Annex "Q", Petition.
[26] "Regulating the Sale of Subdivision Lots and Condominiums, providing Penalties for violation thereof", as amended by PD No. 1216.
[27] Section 1 of SEC Memorandum Circular No. 8, Series of 2006 (SEC MC No. 8), Revised Guidelines of Foundations.

(1) to organize or tap already landless Urban Poor and assist them in acquiring their own house and lot at a very affordable monthly amortization, (2) to assist families who are already living in a property that they do not own and help them deal with their problem concerning the land acquisition, and (3) to create a research and documentation committee/group to scout for an unutilized parcel of lands and negotiate with its owners to reach an agreement for a possible land acquisition, which may be through the CMP.

Pursuant to its primary purpose, CAHAFI represented to the Commission, through the Sworn Statement of Funds[28] of its President and Treasurer, dated August 12, 2007[29], that its sources of funds are limited to membership dues and donations and it has an on-ongoing lot distribution project in Santol, Tanza Cavite, to wit:

> "2. That the source of Funds of the Foundation during the Fiscal Year 2006 are from the following:
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> |---|---|---|---|
> | a: | Membership dues from members | PhP | 407,000.00 |
> | b: | Donation & Contribution from donors | | 36,650.00 |
> | c: | Training & Consulting from donors | | 406,147.00 |
> | d: | Vehicle Sale Proceeds | | 95,000.00 |
>
> 3. That the following are the activities of the Foundation in the preceding year:
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> a: Planned
> - Sponsorship of medical mission and livelihood seminars.
>
> b: Accomplished xxx
>
> c: On-Going Project
>
> - Lot distribution Project to Members-beneficiaries of the foundation located at Barangay Santol Tanza Cavite."

However, the evidence presented by EPD clearly show that CAHAFI's actual business transactions, i.e., real estate development, contradict the nature of a foundation and/or non-stock non-profit corporation and the purposes for which it is organized.[30]

CAHAFI does not distribute lots to its members-beneficiaries in Barangay Santol, Tanza Cavite. To the contrary, the following pieces of evidence show that CAHAFI sells residential house and lots, as a real estate developer, to the public for profit, to wit:

[28] Dated August 12, 2007,
[29] Filed with the Commission on September 11, 2007.
[30] Note 15, supra.

1. The Memorandum of Agreement[31] (MOA) and Deed of Conditional Sale (DCS),[32] demonstrate that CAHAFI bought a property[33], from Numeriana Herrera Iruguin Hines[34]. Thereafter, CAHAFI subdivided the said property and sold[35] the subdivided lots to its alleged members.

2. Paragraph 2 of the *Kasunduans*[36] stipulate that CAHAFI distributes the subdivided property to its alleged members under the "Direct-Buy Scheme." The alleged members are required to pay land commitment, membership and survey fees[37] in addition to the contract price of around PhP 900 to PhP 1,668 per square meters. These fees and revenues reveal that CAHAFI earns a gross profit of PhP 600 to Php 1418 per square meters.

4. The Affidavits[38] of CAHAFI's members consistently aver that although the above-mentioned MOA provides CAHAFI will distribute the lots in accordance with the CMP, they did not acquire their parcels of land through the CMP of the NHMFC considering that they directly and exclusively transacted with and remitted all their payments and other fees to CAHAFI.

CAHAFI is not licensed by the HLURB to sell lots as a developer.

Records show that CAHAFI applied for CR/LS with the HLURB for its residential development projects. However, the HLURB certified that it has not issued a CR and/or LS. Thus, CAHAFI has been selling subdivided lots and even houses to the general public without the required CR/LS.

Serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public.

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[31] Dated October 7, 2003, Annex "II", Records, p. 157.
[32] Dated 1 March 2004, Annex "MM", Records, p. 148.
[33] 35,000 square meter property located in Baragay Santol, Municipality of Tanza, Cavite bought at **Php 8,750,000.00 or Php 250/sq. m**., Records, p. 147
[34] Represented by Silvina H. Bautista
[35] Annexes "NN" to "KKK", Records pp. 101-144
[36] As an attachment to Annexes "NN", "PPP", "QQQ", "ZZZ", "BBBB", and "CCCC".
[37] Paragraph 4, thereof.
[38] Annexes "OOO" to "CCCC", Records pp. 3 to 97.

From the foregoing evidence, it is indubitable that CAHAFI misrepresented itself to the public, particularly to its alleged members and/or buyers, that is validly engaged in CMP and that it has an authority to undertake housing projects for them within the ambit of RA 7279. Further, it misrepresented itself as a foundation when its actual business operations clearly show that it is engaged in the real estate development business. Worse, SHFC and the HLURB have certified that CAHAFI is neither licensed as a Community Coordinator or Originator nor as a developer. These constitute serious misrepresentation as to what the corporation can do or doing to the great prejudice to the general public. As such, CAHAFI's operations are contrary to its primary purpose as stated in its Articles of Incorporation.

It is also worth mentioning that CAHAFI failed to improve its buyers' neighborhood at its Tanza Cavite project, despite its representation that it will provide electric and water distribution infrastructure and will develop the property pursuant to the provisions set forth in the aforementioned DOA and *Kasunduan*.

WHEREFORE, premises considered, the instant *Petition* is hereby **GRANTED.** The Certificate of Incorporation of **COMMUNITY ASSOCIATES HABITAT FOUNDATION (CAHAFI), INC.** is hereby **REVOKED,** for violating Section 6(l) sub-paragraph 2 of Presidential Decree No. 902-A.

Let the Company Registration and Monitoring Department be furnished a copy of this Decision for its appropriate action.

SO ORDERED

Mandaluyong City, 11 June 2015.

TERESITA J. HERBOSA
Chairperson

MANUEL HUBERTO B. GAITE
Commissioner

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

BLAS JAMES G. VITERBO
Commissioner