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

IN THE MATTER OF:
FERNANDO JOQUICO SANTOS

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,
Movant.
x--------------------------------------x

SEC CDO Case No. 01-25-117

20 February 2025

TO:

FERNANDO JOQUICO SANTOS
1 J. De Mesa St., Brgy. Little Baguio
San Juan 1500

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Securities and Exchange Commission
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BY: [signature]

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

IN THE MATTER OF:
FERNANDO JOQUICO SANTOS

SEC CDO Case No. 01-25-117
Promulgated: 18 February 2025

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,
Movant.

x--x

CEASE AND DESIST ORDER

This resolves the *Motion for the Issuance of a Cease and Desist Order* dated 15 January 2025 (the "Motion") filed by the Enforcement and Investor Protection Department (EIPD) of even date, praying that a Cease and Desist Order (CDO) be issued directing **FERNANDO JOQUICO SANTOS** ("Mr. Santos"), his agents, representatives, promoters and all persons acting for and in his behalf (the "Agents"), to immediately cease and desist from engaging in lending activities as they are not registered as a corporation, and have no license to operate as such, which are both required under the Lending Company Regulation Act (LCRA).

RELEVANT FACTS

The filing of the present *Motion* was prompted by the letters sent by the Office of the City Prosecutor, San Juan City (OCP San Juan)[1] to the Commission, seeking the latter's assistance in determining whether Mr. Santos has been granted the authority to engage in lending activities. The inquiry by the OCP San Juan on the legitimacy of the lending activities/business of Mr. Santos resulted from his filing before the OCP San Juan of numerous cases for violation of BP 22 against his clients/borrowers for the past two years.[2]

Acting on the letters of the OCP San Juan, the Task Force on Online Lending Applications[3] of the EIPD (the "EIPD Task Force") conducted a

[1] Dated 07 September 2023 and 16 September 2024.
[2] EIPD's Motion, Annexes "A" – "A-1".
[3] Task Force on Online Lending Applications was created by the Commission to investigate the proliferation of the Online Lending Companies engaged in to lending activities with unexplainable high

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formal investigation[4] on the lending activities of Mr. Santos for possible violation of Republic Act No. 9474 or the Lending Company Regulation Act of 2007, which the Commission is mandated to administer and implement.

The EIPD Task Force verified with the Business Permits and License Office (BPLO) of San Juan City whether there is any business registered under the name of Fernando J. Santos. The BPLO issued a Certification attesting to the fact that based on its records, there is no registered business under such name.[5]

In the course of the investigation, the EIPD Task Force also obtained copies of the complaints[6] filed by Mr. Santos with the OCP San Juan for violation BP 22 against his borrowers, for bounced checks issued by the latter as payment for loans obtained from him. The Complaints showed that Mr. Santos has been conducting lending activities since 2018, and has been extending loans to the public in amounts ranging from PHP 30,000.00 - PHP 600,000.00.

In support of its allegations of the unauthorized lending activities of Mr. Santos, the EIPD Task Force submitted in evidence the *Complaint Affidavits*[7] of former agents of Mr. Santos who subsequently became subjects of the criminal cases for BP 22 filed by Mr. Santos.[8] The affiants declared in their respective affidavits that Mr. Santos offered them to become an agent or middleman where they will earn between 2%-3% commission per loan transaction. They were required by Mr. Santos to (a) each open a checking account, and to make a guarantee check for the full amount of every loan they secure; and (b) to sign a blank paper at the start of every transaction before the release of the loan proceeds. The copies of the daily reports showing the remittance payments made to Mr. Santos were attached to the Complaint Affidavits.

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interest rate, unilaterally implementation of onerous and unreasonable terms and conditions, make misrepresentations as to non-collection of charges and fees and violate the rights to privacy of the debtors.

[4] EIPD's Motion, Annex "C".

[5] *Motion*, par. 7 and Annex "D".

[6] OCP San Juan – Criminal Complaint Forms with Docket Nos. INV-22G-00553; INV-22G-00528; INV-22E-00424; INV-23G-00812; INV-24B-00077; INV-23G-00770; INV-22K-01087; INV-23A-00038; INV-23B-00127; INV-22E-00415; INV-22E-00398; INV-22E-00401; INV-22E-00400; INV-22E-00425; INV-22H-00684; INV-22H-00693; INV-21J-1187; INV-22H-00648; and INV-22C-00251.

[7] *Motion.* See Annex "F" to "F-1".

[8] *Ibid*, par. 9.

The foregoing was confirmed and attested to by the EIPD investigator who executed and issued an affidavit which was submitted in evidence.[9]

Finally, in support of its allegation that Mr. Santos has not caused the registration of a corporation that will carry out a lending business, and has secured a Certificate of Authority from the Commission, both of which are required under the Lending Company Regulation Act of 2007, EIPD Task Force submitted in evidence the negative Certifications issued by the Company Registration and Monitoring Department (CRMD) and Financing and Lending Companies Department (FLCD).[10]

ISSUE

Whether the allegations and the evidence presented by the EIPD Task Force warrant the issuance of a CDO against Mr. Santos.

RULING

The *Motion* is impressed with merit.

The pieces of evidence presented sufficiently support the allegations of the EIPD that Mr. Santos, not being a corporation, is actually engaged in the business of offering and providing loans to the public, and/or is carrying out transactions proper to a lending company, without the requisite Certificate of Authority issued by the Commission.

At the outset, it must be emphasized that Republic Act No. 8799 or the Securities Regulation Code (SRC) grants the Commission the power and authority to implement and enforce not only the provisions of the SRC, but also the laws administered and implemented by it. In this regard, Section 5.1(a) of the SRC provides:

> Section 5. *Powers and Functions of the Commission* – 5.1. **The Commission shall act with transparency and shall have the powers and functions provided by** this code, Presidential Decree No. 902-A, the Corporation Code, the Investment Houses law, **the Financing Company Act** **<u>and other existing laws</u>. Pursuant thereto the**

[9] *Ibid.* See Annex "C".
[10] *Ibid.* See Annex "E".

Commission shall have, among others, the following powers and functions:

> (d) **Regulate, investigate or supervise the activities of <u>persons</u> to ensure compliance;**
>
> xxx xxx xxx
>
> (i) **Issue cease and desist orders to prevent fraud or injury to the investing public;**
>
> (n) Exercise such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted the Commission to achieve the objectives and purpose of these laws." (Emphasis and underscoring supplied)

It is clear from the afore-quoted provision of the SRC that the Commission has the express power and authority to regulate and investigate the activities of persons, both juridical and natural, to ensure compliance with the provisions of the laws administered or implemented by it. Thus, if a person commits an act that constitutes a violation (or will result in a violation) of the laws implemented by it, the Commission is duty bound to promptly exercise the said power and authority, including the issuance of a cease and desist order, to ensure, among others, that the investing public and/or consumers are not defrauded or injured.

Among the laws that the Commission is mandated to implement is Lending Company Regulation Act of 2007 (LCRA), which categorically provides in Sections 3 and 4 that only a "lending company", which must be a corporation, and has secured a Certificate of Authority from the Commission can validly and lawfully carry out a lending business, to wit:

> **Sec. 3.** ***Definition of Terms.*** — For the purposes of implementing this Act, the following definitions shall apply:
>
> (a) LENDING COMPANY shall refer to a corporation engaged in granting loans from its own capital funds or from funds sourced from not more than nineteen (19) persons. It shall not be deemed to include banking institutions, investment houses, savings and loans associations, financing companies, pawnshops, insurance companies, cooperatives and other credit institutions already regulated by law. The term shall be synonymous with lending investors.

> **SEC. 4.** ***Form of Organization.*** **- A lending company shall be established only as a corporation**: *Provided* That existing lending investors organized as single proprietorships or partnerships shall be disallowed from engaging in the business of granting loans to the public one year after the date of effectivity of this Act.
>
> **No lending company shall conduct business unless granted an authority to operate by the SEC."** (Emphasis and underscoring supplied)

Relative thereto, Section 2 of the LCRA lays down the policy of the State to regulate the establishment and operations of lending companies to effectively prevent and mitigate the commission of practices prejudicial to public interest, thus:

> **SEC. 2.** ***Declaration of Policy.*** - It is hereby declared the policy of the State to regulate the establishment of lending companies and to place their operation on a sound, efficient and stable condition to derive the optimum advantages from them as an additional source of credit; to prevent and mitigate, as far as practicable, practices prejudicial to public interest; and to lay down the minimum requirements and standards under which they may be established and do business.

Through the LCRA, the public is afforded ample protection as all registered lending companies are presumed to be fully compliant with all regulatory requirements and stand to be fully accountable/liable for any violation of its provisions, including its implementing rules and regulations. In a similar vein, the LCRA provides an assurance to the public that persons/entities that operate a lending business without the required license are not exempt from the regulatory watch of the Commission, and from assuming the appropriate penalties for operating without being a corporation and/or without license. In this regard, Section 12 of the LCRA specifically provides, in part, thus:

> **SEC. 12.** ***Penalty.*** - **A fine** of not less than Ten Thousand Pesos (P10,000.00) and not more than Fifty thousand pesos(P50,000.00) **or imprisonment** of not less than six months but not more than ten (10) years **or both, at the discretion of the court, shall be imposed upon**:
>
> 1. **Any person who shall engage in the business of a lending company without a validly subsisting authority to operate** from the SEC. (Emphasis supplied)

In the instant case, the evidence presented by the EIPD Task Force show that Mr. Santos is clearly engaged in the business of extending loan to the public on a regular basis since 2018, thus acting as a lending company without being a registered corporation, and the requisite certificate of authority from the Commission in violation of the LCRA.

The high volume of lending transactions and the substantial amount of loans involved, undoubtedly reveals Mr. Santos intention to continuously engage in the business of lending for profit. The lending business conducted by Mr. Santos is made even more apparent by his employment of agents/middlemen to secure/offer loans to the public, monitor/report loan balances, and ensure the collection of the said loans. Mr. Santos also implemented a system intended to effectively manage risk of losses by compelling his agents/middlemen to act as guarantors of his borrowers.

The foregoing clearly constitutes a clear violation of the LCRA which warrants the immediate issuance of a cease and desist order to immediately prevent an illegal act, and to protect the public from Mr. Santos' fraudulent business activity *i.e.* misrepresenting to the public that he has the license to operate a lending business. This absence of authority is affirmed by the certifications issued by the FLCD and CRMD. The issuance of a cease and desist order against Mr. Santos is however, without prejudice to the institution of the appropriate criminal action for violation of the LCRA.

WHEREFORE, premises considered, **FERNANDO JOQUICO SANTOS**, his operators, promoters, representatives, agents AND ANY AND ALL PERSONS CLAIMING AND ACTING FOR AND IN HIS BEHALF, are hereby **ORDERED** to immediately **CEASE AND DESIST** from engaging in, carrying out, promoting and facilitating any lending activity/transaction until they have incorporated and have secured from this Commission the requisite Certificate of Incorporation and Certificate of Authority to Operate as Lending Companies or Financing Companies.

FERNANDO JOQUICO SANTOS, his operators, promoters, representatives, agents AND ANY AND ALL PERSONS CLAIMING AND ACTING FOR AND IN HIS BEHALF, are **DIRECTED** to **CEASE AND DESIST** from offering and advertising their lending business through the internet or any other media, and to delete/remove any and all materials involving or covering the same.

The **EIPD** of the Commission is hereby **DIRECTED** to cause the posting of this *Cease and Desist Order* in the Commission's website considering that Fernando Joquico Santos is not a registered entity.

The EIPD is **FURTHER DIRECTED** to submit a formal compliance report, by way of a pleading, to the Commission *En Banc* within ten (10) days from receipt of this ***Cease and Desist Order.***

Let a copy of this Order be furnished to the Company Registration and Monitoring Department, Markets and Securities Regulation Department, Corporate Governance and Finance Department and the Information and Communications Technology Department of this Commission, the Bangko Sentral ng Pilipinas, the Department of Trade and Industry, the National Privacy Commission, the Department of Information and Communications Technology, and the relevant local government unit(s) for their information and appropriate action.

In accordance with the provisions of Sec. 64.3[11] of the SRC and Sec. 4-3, Rule IV, Part II of the 2016 Rules of Procedure of the Commission, the parties subject of the Cease and Desist Order may file a Verified Motion to lift thereof within five (5) days from the date of its posting or publication.

FAIL NOT UNDER PENALTY OF LAW.

SO ORDERED.

Makati City, Philippines.

EMILIO B. AQUINO**
Chairperson

[11] Any person against whom a cease and desist order was issued may, within five (5) days from receipt of the order, file a formal request for a lifting thereof. Said request shall be set for hearing by the Commission not later than fifteen (15) days from its filing and the resolution thereof shall be made not later than ten (10) days from the termination of the hearing. If the Commission fails to resolve the request within the time herein prescribed, the cease and desist order shall automatically be lifted.

JAVEY PAUL D. FRANCISCO
Commissioner

KARLO S. BELLO
Commissioner

MCJILL BRYANT T. FERNANDEZ
Commissioner

ROGELIO V. QUEVEDO*
Commissioner

*Abstain
**On Official Business