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

IN RE:
REQUEST FOR WAIVER OF FINES AND PENALTIES

SEC EN BANC CASE NO. 05-14-333

FAIRMONT REAL ESTATE INCORPORATED (FREI),
Appellant

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R E S O L U T I O N

For consideration of the Commission En Banc is the Motion to Withdraw Appeal[1] filed by Fairmont Real Estate Incorporated ("FREI") praying that the appeal be withdrawn and alleging that it is ready and willing to pay the subject fines and/or penalties.

RELEVANT FACTS

FREI is a corporation registered with the Securities and Exchange Commission under SEC Reg. No. 35912.

On 6 January 2014, the Company Registration and Monitoring Department ("CRMD") issued an assessment against FREI in the amount of One Hundred Thirty-Nine Thousand and Thirty Pesos, 91/100 (₱ 139, 030.91).[2] FREI asked for a reduction of penalties,[3] the CRMD merely reduced the assessment and retained all other fines and penalties.[4] FREI requested for another reconsideration explaining that the late/non-filing of the reports was due to lack of operations and commercial activities.[5] The CRMD in its reply[6] informed FREI that financial drawbacks will not exempt them from the imposition of penalties.

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[1] Dated 27 July 2018.
[2] Annex "B" of the Memorandum on Appeal.
[3] Annex "C" of the Memorandum on Appeal.
[4] Annex "D" of the Memorandum on Appeal.
[5] Annex "E" of the Memorandum on Appeal.
[6] Annex "F" of the Memorandum on Appeal.

FREI filed a Notice of Appeal with Attached Memorandum Appeal on 19 May 2014 arguing that the Commission should apply liberal rules and regulations in favor of FREI since it is a surrendered corporation to the Presidential Commission on Good Government ("PCGG") and its assets are earmarked for the Comprehensive Agrarian Reform Program ("CARP").

FREI further contends that the late/non filing of the reports was because it had to reconcile the figures and data of the previous management, it did not have any commercial activity, and its corporate existence is being maintained for the purpose of winding up its affairs and the remittance of its disposed assets to the National Treasury for CARP. Furthermore, it did not violate Section 43 of the Corporation Code because from the time it was surrendered to the Republic in 1986 it became a *sui generis* GOCC; hence, its assets are not distributable to its stockholders.

Lastly, FREI contends that the imposition of the 20% maximum surcharge for each violation is unreasonable considering that FREI's failure to submit the reportorial requirements was justifiable and due to circumstances beyond its control.

The CRMD in its Reply Memorandum dated 11 June 2014 contends that FREI's Certificate of Registration was once revoked by the Commission due to its failure to file the required reports. It was only lifted through another Order wherein FREI undertook to adopt measures to ensure that it will submit the required reports and avoid the repetition of a similar violation. The CRMD contends that "all corporations registered and organized under the Corporation Code including non-chartered GOCCs are bound by the reportorial requirements"[7] under Section 141 of the Corporation Code.

The CRMD further argues that the imposition of the penalty to FREI is in accordance with the scale of fines issued by the Commission. Further, the purpose of imposing the maximum surcharge to corporations violating the reportorial requirement for the second time is "for the corporation to strictly abide by the reportorial requirements and avoid the disconcerting situation for a corporation to have its certificate of registration revoked for a second time or more."[8] Since FREI failed to file the required reports, the CRMD had no other recourse but to impose the corresponding penalties.

The CRMD also contends that even GOCCs are required to file reports under Section 25 of Republic Act No. 10149. Furthermore, the CRMD argues that FREI's present board of directors succeeds not only to the responsibility

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[7] Paragraph 11, Reply Memorandum.
[8] Paragraph 13, Reply Memorandum.

of managing the corporation but also to the liabilities of the corporation, this includes the penalties for non-filing of the reports.

The CRMD also found out through FREI's 2012 Audited Financial Statement that FREI retained surplus profits in the amount of five million, three hundred eighty thousand, nine hundred thirteen pesos. FREI's retention of more than 100% of its surplus profits is not among the allowable circumstances mentioned in Section 43 of the Corporation Code. The CRMD contends that suspending or revoking FREI's primary license is too grave a penalty; hence, it imposed the penalty instead.

Lastly, the CRMD argues that the lifting of the revocation of the corporate registration so that FREI can continue the purpose or purposes for which it was establish is contrary to FREI's claim of non-operation. Furthermore, even if the corporation no longer operates so long as it is existing and "under the administrative and supervisory jurisdiction of the Commission it is still required to submit the reports despite its non-operation."[9]

FREI in its Comment to the Reply Memorandum dated 20 June 2014 reiterated that it is a *sui generis* GOCC as it is a sequestered corporation and under the supervision of the PCGG. FREI contends that it is not supervised by the Governance Commission on GOCCs (GOG)[10] and reiterated that all of its assets owned by the Republic which are earmarked for CARP.

On 27 July 2018, FREI through their Corporate Secretary filed a Motion to Withdraw Appeal moving for the following:

> "1.) To withdraw the subject appeal; 2.) Pertinent records concerning the subject appeal be turned over to the Appellant; 3.) The Corporation be granted this withdrawal in the soonest possible time; and 4.) FREI is ready and willing to pay the subject fines and/or penalties."

Section 3, Rule 51 of the 1997 Rules on Civil Procedure which is suppletory to the 2016 SEC Rules of Procedure[11] provides that:

> "SECTION 3: *Withdrawal of appeal*. – An appeal may be withdrawn as of right at any time before the filling of the appellee's brief. Thereafter, the ***withdrawal may be allowed in the discretion of the court***." (emphasis supplied)

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[9] Paragraph 21, Reply Memorandum.
[10] Through a Memorandum of Agreement (Annex "A" of the Comment to the Reply Memorandum").
[11] Section 1-6, Rule I, Part I of the 2016 SEC Rules of Procedure.

FREI's Motion to Withdraw Appeal is filed after the CRMD has filed its Reply Memorandum, as such, the granting or denial of said motion is discretionary on the part of the Commission En Banc.

The Commission, while resolving to grant the withdrawal of the appeal finds it worthwhile to issue a full decision for the guidance of the public.

WHEREFORE, premises considered, the Motion to Withdraw Appeal is **HEREBY GRANTED**. Furthermore, Fairmont Real Estate Incorporated is hereby **DIRECTED** to pay the fines assessed against it by the CRMD in the amount of one hundred thirty-nine thousand and thirty pesos, 91/100 (₱139, 030.91) within thirty days from receipt of this **RESOLUTION** and to submit a report of its compliance to the Commission En Banc through the Office of the General Counsel.

Let a copy of this *Resolution* be furnished to the Company Registration & Monitoring Department for their information and appropriate action.

SO ORDERED.

Pasay City, Philippines, 16 April 2019.

EMILIO B. AQUINO
Chairperson

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO *
Commissioner

KELVIN LESTER K. LEE
Commissioner

*On Leave