



REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
SECURITIES & EXCHANGE COMMISSION
SEC Building, EDSA, Greenhills
Mandaluyong City, Metro Manila

IN THE MATTER OF
GLASGOW CREDIT & COLLECTION
SERVICES, INC.

CED Case No.
02-2721

Compliance and Enforcement
Department

Petitioner,

x-----x

CEASE AND DESIST ORDER

For consideration of the Commission *En Banc* is a *MOTION FOR THE ISSUANCE OF CEASE AND DESIST ORDER* (CDO) filed by petitioner Compliance and Enforcement Department (CED) against Glasgow Credit and Collection Services, Inc. (copy of the aforementioned *MOTION* is attached hereto, marked as Annex A and made an integral part of this CDO).

Respondent is a domestic corporation duly registered with the Commission on 2 May 2002, under SEC Reg. No. A200206946, the primary purpose of which is

"to make business of Credit and Collection Services and other necessary or essential activities as well as incidental activities thereto, as the transaction of the lawful business of the company may reasonably and necessarily require, subject to the limitations prescribed by law and constitution."

The corporation is now the subject of an investigation undertaken by the Commission *motu proprio* due to numerous queries concerning the legality of the same.

Investigation conducted by the Commission's CED yielded copies of the standard contract executed between Glasgow and the investor, as well as some of the postdated checks

issued by Glasgow pursuant to such agreement. Sworn affidavits were likewise obtained from two investors attesting to the scheme of subject corporation.

A perusal of all the evidence yielded by the investigation will show that the respondent corporation is engaged in the business of offering to the public high monthly interest on investments for a period of six months. Commission records likewise revealed that subject company did not file a registration statement with the Corporation Finance Department for purposes of issuing securities to the public; neither is it licensed as an investment corporation.

After an investigation was conducted by the department, respondent corporation was shown to have violated the Securities Regulation Code (Republic Act 8799), more particularly, Section 8.1 of the same, which provides,

SEC.8. *Requirement of Registration of Securities.* -8.1. Securities shall not be sold or offered for sale or distribution within the Philippines, without a registration statement duly filed with and approved by the Commission. Prior to such sale, information on the securities, in such form and with such substance as the Commission may prescribe, shall be made available to each prospective purchaser.

Sec. 3.1 of the Securities Regulation Code [hereinafter "Code"] defines securities as "shares, participation or interests in a corporation or in a commercial enterprise or profit-making venture and evidenced by a certificate, contract, instrument, whether written or electronic in character. It includes:

xxx

(b) *Investment contracts*, certificates of interest or participation in a profit sharing agreement, certificates of deposit for a future subscription; xxx" [underscoring supplied]

In turn, the Implementing Rules and Regulations of the Code defines an investment contract as "a contract, transaction or scheme...whereby a person invests his money in a common enterprise and is led to expect profits primarily from the efforts of others". Said Rule further provides that there is a presumption that a contract is an investment contract whenever a person seeks to use the money of others on the promise of profits.

¹ SRC Rule 3.1-1 Definition of Investment Contract and Derivative

The foregoing definition of the investment contract is an adaptation of the modified Howey Test first defined by the US Federal Supreme Court in the case of *Securities and Exchange Commission v. W.J. Howey Company*² as "a contract, transaction or scheme whereby a person invests money in a common enterprise expecting profits to accrue solely from the efforts of the promoter or third partiesxxx"; said Howey Test was later modified in the case of *Securities and Exchange Commission v. Glenn W. Turner Enterprises, Inc.*³ In the modified Howey test, the touchstone is the presence of an investment in a common venture premised on a reasonable expectation of profits to be derived from the entrepreneurial efforts of others. (69 Am.Jur. 2d 536 p. 108).

The Investment Contract theory thus has the following elements:

- a) a contract, transaction or scheme
- b) an investment of money
- c) investment is made in a common enterprise
- d) expectation of profits
- e) profits arise primarily from the efforts of others

A Contract, Transaction
or Scheme
(collectively, "Contract")

The term "investment contract" was given such a broad meaning so as to include schemes for as long as it involves the use of the money of others on the promise of profits. Notably, a writing is not essential for an investment contract (1 Loss, Securities Regulation 2d Ed 489).

The scheme employed by respondent corporation promises investors monthly interest of 15% for a minimum placement of FIFTY THOUSAND PESOS (P 50,000.00) for six months, at the end of which period the principal would be returned. Investments of less than P 50,000 were promised the same terms and conditions, with a slightly lower interest rate of 10% a month for said six-month period. Upon signing of the contract by Glasgow and the investor, the former would issue seven post-dated checks to the latter covering the six monthly interest payments and the principal.

² 328 U.S. 293

³ 474 F.2d 476.

Investment of Money

Rule 3.1-1 paragraph 1(a) of the Code's Implementing Rules and Regulations states,

"A presumption that a contract is an investment contract arises whenever a person seeks to use the money of others on the promise of profits."

The promise of profits is clearly stated in the contract itself, indicating a rate of return far greater than the standard rate offered by banks at the present time. Thus, the contract clearly involves an investment of money, or the placing of the money with Glasgow with the expectation and for the primary purpose of earning interest from such placement.

The intent of the parties to invest is also evident from the entries in the log book kept by the guard of the building, wherein most of the visitors of respondent corporation indicated as their purpose "Invest" or "Investor".

Common Enterprise

Rule 3.1-1 paragraph 1(b) of the Code's Implementing Rules and Regulations provides,

"When two or more investors "pool" their resources, there is a common enterprise, even if the promoter does not do more than receive a broker's commission."

The pooling of resources of more than two investors is evident from Glasgow's receipt of the investments from the public in the course of its regular business. The logbook entries listing visitors to the Glasgow numbered well over one hundred on the days the on-site investigation was conducted.

Profits Arise Primarily
From the Efforts of Others

The question under the modified Howey test is whether efforts made by those other than the investor are the undeniably significant ones, those essential managerial efforts which affect the failure or success of the enterprise (69 Am Jur 2d § 39 p. 111). In the case at hand, it is clear that the efforts made for the enterprise to earn profits are made primarily if not solely by Glasgow, with the participation of the investors limited to placing their investments and collecting the promised returns as each postdated check falls due. This is therefore a textbook case of profits arising primarily, if not solely, from parties other than the investors.

All the above mentioned elements of an investment contract being undeniably present in the scheme of respondent corporation, Glasgow Credit & Collection Services, Inc., is offering to the public securities in the form of investment contracts which should have been subject to prior registration with the Commission by the filing of registration statements as required by the above quoted Section 8.1 of the Code and under the applicable rules and regulations of the Commission for the registration of securities.

Since the securities offered for sale or distributed by the respondent corporation have not yet been registered with the Commission, there is an imperative need for said corporation to be enjoined from operating as such and from further engaging in the activities of selling, offering for sale or distributing securities in order to protect the interest of the investors and the public in general.

WHEREFORE, pursuant to the authority vested in the Commission, GLASGOW CREDIT & COLLECTION SERVICES, INC., its officers, directors, agents, representatives, assigns and any and all persons claiming and acting under their authority, are hereby ordered to immediately CEASE AND DESIST from further engaging in the sale, offer for sale or distribution of the securities upon receipt of this order, failing which the SEC shall be constrained to physically close the offices of respondent corporation, and hold in contempt the persons responsible for the refusal to comply herewith, as provided in Sec. 53.4 of the Code.

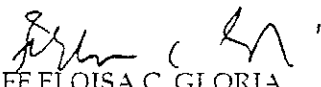
In accordance with the provisions of Section 64.3 of the Code, the parties subject of this Cease and Desist Order may file a request for the lifting thereof within five (5) days from receipt hereof.

SO ORDERED.

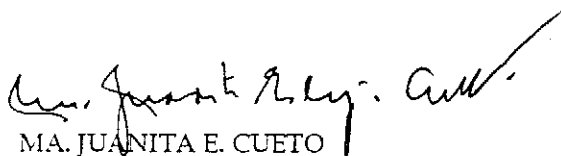
Mandaluyong City, Metro Manila.

9 July 2002.


LILIA R. BAUTISTA
Chairperson


FE ELOISA C. GLORIA
Commissioner


JOSELIA J. POBLADOR
Commissioner


MA. JUANITA E. CUETO
Commissioner

JESUS E.G. MARTINEZ
Commissioner
