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

ROBOCASH FINANCE CORP.,
Appellant,

- versus -

SEC En Banc Case No. 02-20-472

ATTY. RACHEL ESTHER J. GUMTANG-REMALANTE, IN HER CAPACITY AS OFFICER-IN-CHARGE OF THE **CORPORATE GOVERNANCE AND FINANCE DEPARTMENT OF THE SECURITIES AND EXCHANGE COMMISSION,**
Appellee.

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DECISION

Before the Commission is the *Appeal Memorandum* dated 26 February 2020 (the "Appeal") filed by Appellant Robocash Finance Corp. (Robocash) assailing the *Order*[1] dated 12 December 2019 (the "Assailed Order") issued by Appellee Corporate Governance and Finance Department (CGFD) revoking Appellant Robocash's Certificate of Authority to Operate as a Financing Company (CA), the dispositive portion of which reads:

> "**WHEREFORE**, in view of the foregoing, the Certificate of Authority to Operate as a Financing Company of Robocash Finance Corp. is hereby **REVOKED**."

THE RELEVANT FACTS

Appellant Robocash is a corporation duly organized and existing by virtue of the laws of the Republic of the Philippines, having been incorporated on 08 September 2017. Its primary purpose is to engage in financing under Republic Act No. 8556, otherwise known as the Financing Company Act of 1998 ("FCA"), as amended. It was issued CA No. 1150 by the Securities and Exchange Commission (the "Commission") on 8 September 2017 and is thereby authorized to operate as a financing company as defined under the FCA.

After its incorporation, Appellant Robocash decided to open additional branches, where it applied for and secured thirty-two (32) CAs for

[1] No. 237, Series of 2019

its new branches pursuant to and in compliance with Section 6 of the Rules and Regulations to Implement the Provisions of the FCA (the "FCA-IRR").[2]

In the course of the monitoring process conducted by the CGFD, it was discovered that Appellant Robocash was operating financing company branches without the requisite CAs. This was validated and confirmed during the on-site audit conducted by the CGFD on 07 March 2019 and 5 July 2019.[3]

On 19 June 2019, the CGFD sent Appellant Robocash a Show Cause Letter (the "June 2019 Show Cause") directing the latter to explain why it should not be penalized for its failure to secure CAs for eighty (80) of its branches and to surrender the CAs of four (4) of its non-operating branches. The June 2019 Show Cause likewise ordered Appellant Robocash to provide justification why it should not be held liable for violation of SEC Memorandum Circular No. 7, Series of 2011 ("MC No. 7") for its failure to provide the required Disclosure Statement and amortization schedule, and display the appropriate CA in conspicuous places in its concerned branches.

On 5 July 2019, the CGFD conducted another on-site audit wherein Appellant Robocash submitted its consent to electronic correspondence and designated its General Manager, Mr. Ronnel C. Mapaye, as its contact person.

On 26 July 2019, Appellant submitted its Response-Letter to the June 2019 Show Cause where it admitted that pursuant to its own investigation and verification, there were only seventy-six (76) branches that were operating without the requisite CAs, contrary to the finding of the CGFD.[4]

On 16 September 2019, the CGFD issued another Show Cause Letter (the "September 2019 Show Cause") directing Appellant Robocash to show cause why it should not be held liable for violating Section 6 of the FCA Rules and MC No. 7, and directed it to surrender the CAs of four (4) of its non-operating branches. The September 2019 Show Cause basically reiterated the June 2019 Show Cause.

During the 20 September 2019 hearing that was called and conducted by the CGFD[5] where a representative of Appellant Robocash attended, the latter confirmed that it was maintaining and operating a total of one hundred six (106) branches, where seventeen (17) of those branches have pending applications for a CA with the CGFD.[6]

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[2] Par. 3.8 of the Appeal
[3] Par. 1.4 of the Comment dated 7 July 2020 filed by the CGFD
[4] Annex "J-1" of the Appeal
[5] Pursuant to the Notice of Hearing dated 19 September 2019 issued by the CGFD (Annex "L" of the Appeal)
[6] Annex "N" of the Appeal

On 24 September 2019, CGFD received Appellant Robocash's reply to its September 2019 Show Cause where it reiterated its previous admission that it was operating seventy-six (76) branches without CAs.[7]

On separate dates, the CGFD issued and served separate Show Cause Letters[8] to Appellant Robocash in relation to the operation of (a) St. Francis Square Branch, (b) General Aguinaldo Avenue Branch and (c) Quirino Avenue Branch without the requisite CA. In response to the said show cause letters, Appellant Robocash alleged that its St. Francis Square Branch was permanently closed since 31 May 2019[9] and the two (2) other branches i.e. General Aguinaldo and Quirino Avenue Branches have temporarily ceased operations.[10]

In a letter dated 4 October 2019, the CGFD assessed and penalized Appellant Robocash the amount of Php96,000.00 after finding that the operation of the foregoing branches were made without the requisite CA. Appellant Robocash thereafter paid the recomputed penalties in the aggregate amount of PhP52,200.00.[11]

On 13 November 2019, the CGFD issued a Formal Charge directing Appellant Robocash to show cause why its CA should not be revoked for violation of Section 6(A) of the FCA IRR and MC No. 7.

On 29 November 2019, Appellant Robocash filed its *Verified Answer* praying that an Order be issued finding that it did not violate the FCA and its IRR, and granting its request to release the twenty-one (21) CAs. Appellant Robocash argued that the maximum penalty of revocation of its CA is not warranted as it did not maliciously violate the FCA IRR and MC No. 7. In support thereof, it alleged that it closed all its branches without CAs immediately after it received the Notice of Hearing dated 19 September 2019 issued by the CGFD. Appellant Robocash also argued that its act in operating branches without the requisite CA should only be considered as a single offense as it was committed in one occasion.

On 12 December 2019, CGFD issued the Assailed Order revoking the CA of Appellant Robocash for establishing and operating seventy-seven (77) branches without the requisite CAs.

On 27 December 2019, Appellant Robocash filed its *Motion for Reconsideration* therein praying for the reversal of the Assailed Order alleging that the revocation was made without proper hearing. Appellant Robocash also maintained that the revocation of its CA was inequitable and unwarranted because its failure to secure CAs for all seventy-seven (77) of its branches should be considered as a single violation only.

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[7] Annex "O" of the Appeal
[8] (1) Show Cause Letter dated 20 September 2019 re: St. Francis Square Branch, (2) Show Cause Letter dated 23 September 2019 re: General Aguinaldo Avenue Branch, and (3) Show Cause Letter dated 25 September 2019 re: Quirino Avenue Branch.
[9] Annex "Q-1" of the Appeal
[10] Annexes "R-1" and "S-1" of the Appeal
[11] Annexes "U-1", "V-1" and "W-1" of the Appeal

On 10 February 2020, CGFD issued *Order No. 40, Series of 2020* denying Appellant's *Motion for Reconsideration.*

On 26 February 2020, Appellant Robocash filed its Appeal with the Commission through the Office of the General Counsel, where it presented the following grounds in support of its position that the reversal of the Assailed Order revoking its CA is warranted:

(1) The previous decisions of the Commission disclose a policy that all other sanctions less severe than revocation should be exhausted before imposing the penalty of revocation. It argued that while the said policy applied to cases revoking the primary license, the same may be applied to the instant case since the revocation of its secondary license will render its corporate existence nugatory. The imposition of penalties other than revocation is also allegedly sanctioned under the FCA IRR and SEC Memorandum Circular No. 5, Series of 2006;

(2) The Assailed Order is not consistent with the FCA IRR and MC No. 5 which require that in cases where there is a finding of multiple violations, the prior imposition of suspension of CA before imposing the penalty of revocation is necessary to give the erring company the opportunity to rectify its violations;

(3) It has demonstrated its willingness to rectify its lapses and has undertaken to fully comply with the requirements provided under the FCA and its IRR by strengthening its internal regulatory compliance capabilities and revising its risk models to ensure the gradual reduction of its interest rates; and

(4) The violations committed by it are not too grave as to show obduracy or pertinacity in contempt of law. Hence, the imposition of the penalty of suspension instead of revocation will not diminish nor render trivial the gravity of its non-compliance with the law.

On 29 April 2020, Appellant Robocash filed, through electronic mail, its *Manifestation (on Voluntary Reduction of Interest Rates, Compliance with Bayanihan to Heal as One Act, and Additional Debt Relief Measures)* of even date.[12]

On 15 June 2020, the Commission received Appellant's *Manifestation and Motion* dated 27 February 2020 therein stating that it inadvertently filed

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[12] On 9 June 2020, Appellant filed its *Manifestation (re: Email Filing of Manifestation dated April 29, 2020)* informing the Commission of its filing of its *Manifestation* dated 29 April 2020 through electronic mail.

its *Appeal Memorandum* on 26 February 2020 without the requisite Certification of Non-Forum Shopping ("Certification"). To rectify the mistake, it filed its *Appeal Memorandum* with the requisite Certification through registered mail, attaching the same to the said *Manifestation and Motion*.

On 7 July 2020, CGFD filed its *Comment (to Appeal Memorandum dated 26 February 2020)* praying for the denial of the Appeal for lack of merit.

A Formal Entry of Appearance and Motion for Leave of Court to Admit Supplement to the Appeal Memorandum dated 27 January 2021 was thereafter filed by Robocash through the Law Firm of Saludo Taleon & Associates, therein praying, among others, for the reversal and the setting aside of the Assailed Order, and for the issuance of a Decision directing Appellant Robocash to pay the amount of PhP7,612,100.00 for violating Section 6(a) of the FCA-IRR.

ISSUE

The sole issue presented to this Commission is whether the operation of seventy-seven (77) branches without the requisite CA warrants the imposition of the penalty of revocation of Appellant Robocash's CA.

RULING

The Commission affirms the Assailed Order.

In Republic Act No. 5980 (the "Financing Company Act of 1998" or "FCA") as amended, the State expressly recognized the essential and critical role of financing and lending companies in the development of the national economy as they provide medium and long term credits for investments needed in starting a business, or in growing and developing an existing one. It is in this context that the State deemed it necessary to regulate their operations through legislation, to ensure that just like other financial institutions, the same are sound, competitive, stable, and efficient. Moreover, it should be emphasized that the FCA was intended, among others, to curtail or prevent acts or practices that are prejudicial to the public interest, and provided therein effective mechanisms for this purpose.

As the agency mandated to implement the provisions of the FCA, the Commission issued the Rules and Regulations to Implement the Provisions of Republic Act No. 8556 on 20 May 1999 (the "FCA-IRR") which provide, among others, for the requirements that all covered companies must comply with prior to the issuance of the requisite Certificate of Authority (CA). The FCA-IRR, having been issued in the exercise of a delegated rule-making power, has the force and effect of law. In *People vs Maceren*[13], the Supreme

[13] G.R. No. L-32166, October 18, 1977.

Court explained the nature and the reason for the grant of rule-making powers to administrative agencies, thus:

> "**Administrative agencies are clothed with rule-making powers because the lawmaking body finds it impracticable, if not impossible, to anticipate and provide for the multifarious and complex situations that may be encountered in enforcing the law**. All that is required is that the regulation should be germane to the objects and purposes of the law and that it should conform to the standards that the law prescribes.
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> The lawmaking body cannot possibly provide for all the details in the enforcement of a particular statute.
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> The grant of the rule-making power to administrative agencies is a relaxation of the principle of separation of powers and is an exception to the nondelegation of legislative powers. **Administrative regulations or "subordinate legislation" calculated to promote the public interest are necessary because of "the growing complexity of modern life, the multiplication of the subjects of governmental regulations, and the increased difficulty of administering the law.**" (Emphasis supplied)

In relation to the instant case, Section 6 of the FCA-IRR expressly and categorically requires a financing company to secure a CA prior to the establishment or operation of a branch, agency, or extension office:

> "Section 6. Branches, Agencies, Extension Offices or Units
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> a) Certificate of Authority – **No financing company shall establish or operate a branch**, agency, extension office or unit **without a prior certificate of authority to be issued by the Commission**. x x x" (Emphasis supplied)

The issuance of a CA is a regulatory tool designed to ensure effective and efficient implementation of the FCA and its IRR, by virtue of which, the State, through the Commission is able to validate and ascertain that the branches, agencies, extension offices or units that financing/lending companies will be establishing and operating are capable and competent in carrying out the business of a financing/lending company, and in complying with the provisions thereof. The reason for this lies in the fact that a license is a mere privilege, and the enjoyment thereof is conditioned on the grantee's full compliance with applicable laws and regulations. In *Oposa v. Factoran, Jr.*[14], the Supreme Court held that a license may be validly withdrawn at anytime if public interest and public welfare requires the same:

> "**Needless to say, all licenses may thus be revoked or rescinded by executive action. It is not a contract, property or a property right protected by the due process clause of the Constitution**. In Tan vs. Director of Forestry, this Court held:
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> > ". . . A timber license is an instrument by which the State regulates the utilization and disposition of forest resources to the end that public welfare is promoted. A timber license is not a contract within the purview of the due process clause; **it is**

[14] G.R. No. 101083, [July 30, 1993])

> **only a license or privilege, which can be validly withdrawn whenever dictated by public interest or public welfare as in this case.**
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> 'A license is merely a permit or privilege to do what otherwise would be unlawful, and is not a contract between the authority, federal, state, or municipal, granting it and the person to whom it is granted; neither is it property or a property right, nor does it create a vested right; nor is it taxation' (37 C.J. 168). Thus, this Court held that the granting of license does not create irrevocable rights, neither is it property or property rights (People vs. Ong Tin, 54 O.G. 7576) . . ." (Emphasis supplied)

In the instant case, **the records show that Appellant Robocash established and operated seventy-seven (77) branches without the required CA. This fact was expressly admitted by Appellant Robocash. Appellant Robocash's multiple violation (77 counts) of Section 6 of the FCA-IRR is not disputed.**

In its Appeal, Appellant Robocash maintained that the CGFD committed reversible error in revoking its CA, arguing that the same is not warranted under the FCA-IRR, the applicable decisions of the Commission, and is not commensurate to the violation committed. Appellant Robocash is in effect saying that the CGFD abused the exercise of its discretion in imposing the penalty of revocation of its CA because it is not warranted by the rules, circumstances and evidence on record.

The power and authority of the Commission to impose the appropriate administrative sanctions for violations of the FCA-IRR is provided in Section 14 thereof, to wit:

> "Section 14. Administrative Sanctions
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> **If the Commission finds that there is a violation of R.A. 8556, of these Rules and Regulations**, of the terms and conditions of the Certificate of Authority to Operate as a Financing Company, of any Commission order, decision or ruling, or the financing company refuses to have its books of accounts audited, or continuously fails to comply with SEC requirements, **the Commission <u>shall</u>, in its discretion, <u>impose any or all of the following sanctions</u>**.
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> a) **Suspension or revocation of the Certificate of Authority to Operate as a Financing Company after proper notice and hearing;**
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> b) **A basic fine of not less than Ten Thousand Pesos (P10,000) and P100 for each day of continuing violation, but in no case shall the total fine be more than One Hundred Thousand Pesos (P100,000);**
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> c) Other sanctions within the power of the Commission.
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> The imposition of the foregoing administrative sanctions shall not preclude the institution of appropriate action against the officers and directors of the financing company or any person who might have participated therein, directly or indirectly, in violation of R.A. 8556, and this Rules and Regulations." (Emphasis and underscoring supplied)

The word "*shall*" in the afore-quoted provision was intentionally used to ensure that any act or omission that violates the FCA-IRR is administratively sanctioned/penalized, for the purpose of maintaining the integrity of the financing business/industry which is imbued with public interest. However, **in the exercise of its power and authority to penalize, the Commission is given the discretion to impose the appropriate penalty/sanction which is qualified by the words "*any or all*"**. The concept of discretion and the valid exercise thereof was explained by the Supreme Court in *Sanson vs Barrios*[15], to wit:

> "**Whenever a statute gives discretionary power to any person, to be exercised by him upon his own appreciation of certain facts, such statute constitutes him the sole judge of the existence of those facts**. Discretion, when applied to public functionaries, means **a power or right conferred upon them by law of acting officially, under certain circumstances, according to the dictates of their own judgments and consciences, uncontrolled by the judgments or consciences of others**. A purely ministerial act or duty, in contradistinction to a discretional act, is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to or the exercise of his own judgment, upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer, and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion nor judgment." (Emphasis supplied)

On the basis thereof, Appellant Robocash's argument that the FCA-IRR and MC No. 5 does not sanction the imposition of the penalty of revocation at the first instance is clearly without basis and cannot be sustained. The phrase "***shall, in its discretion, impose any or all of the following sanctions***" literally means that the Commission has the power and authority to either (a) suspend the CA of a company, (b) revoke the CA of a company, (c) impose a fine, (d) suspend the CA and impose a fine, or (e) revoke the CA and impose a fine, all of which is without prejudice to the institution of appropriate action against the officers and directors of the erring financing company. **There is nothing in Section 6 of the FCA-IRR that prohibits the Commission from imposing the penalty of revocation at the first instance. Had the FCA-IRR intended to impose the penalty of revocation only after the penalty of suspension has been meted, the same should have been clearly stated therein.** The fundamental rule in statutory construction is that if the statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without interpretation.[16]

In the instant case, considering that the fact of violation of Section 6 of the FCA-IRR by Appellant Robocash was established and is not disputed, the exercise of its discretion to impose the appropriate penalty/ies requires

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[15] G.R. No. L-45086, July 20, 1936
[16] Republic vs Lacap, (G.R. No. 158253, March 2, 2007)

the Commission to consider the nature of the offense, the gravity thereof, and the degree of culpability of Appellant Robocash.

I. **The nature and gravity of the offense justify the imposition of the penalty of revocation of Appellant Robocash's CA.**

In its Appeal, Appellant Robocash maintained that the CGFD committed reversible error in imposing the penalty of revocation, arguing that a penalty less severe is justified by the circumstances attendant in the instant case. In support thereof, Appellant Robocash argued that the imposition of a penalty of suspension will not diminish nor render trivial its violations because the temporary closure/suspension of its entire operations will have a serious adverse impact on its business.[17] Appellant Robocash also alleged that it has demonstrated its willingness to rectify its lapses and to comply with its obligations by fully cooperating in the CGFD's investigation, allowing access to its records, voluntary closure of branches without CA and payment of assessed penalties, among others.[18]

The Commission does not agree.

Section 6 of the FCA-IRR specifically requires a financing company to secure a CA from the Commission for each branch that it will establish and operate. **The procurement of the CA is both a condition precedent to, and an indispensable requirement for a lawful and valid establishment and operation of a branch**. The clear objective of the regulation is to ensure that only applications that have been reviewed/evaluated and have been found by the Commission to have fully complied with the requirements are issued a CA, because the business of a financing company is imbued with public interest. By issuing a CA, the State, through the Commission, is in effect certifying that company on whose favor the same was issued has complied with all the legal requirements and is thus authorized to conduct the business of a financing/lending company. The CA is akin to business permits and other licenses in the sense that after they are issued, the public can safely transact with and avail of the licensee's services because the latter is already under the regulatory and administrative watch of the Commission.

In the context of the foregoing, it is clear that only those who have the required CA can validly and lawfully operate a branch. Stated otherwise, entities who operate a branch without the requisite CA are violating the regulation which has the effect of a law, and are committing an unlawful act. In *Cayabyab vs Dimson*[19], the Supreme Court ruled that the legitimacy of the business does not give an entity the right to establish and operate the same in the absence of the requisite permit/license, thus:

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[17] See Par. 4.24 of the Appeal
[18] See Par. 4.14 of the Appeal
[19] G.R. No. 223862, July 10, 2017

"**A business permit must be secured from the municipal business permits and licensing office in order for the business to legally operate in the locality. While poultry farming is admittedly a legitimate business, it cannot operate without a business permit**, which expires on the 31st of December of every year and must be renewed before the end of January of the following year.

xxx xxx xxx

Having failed to apply for and secure the necessary business permit to operate in 2014 on account of his inability to obtain the required barangay clearance due to non-compliance with a requirement standard, **Dimson may not legally operate in the Municipality of Lubao, Pampanga**, thereby, warranting the issuance by Mayor Cayabyab of the CDO and the Closure Order. Accordingly, no error, much less grave abuse of discretion can be ascribed on the RTC in denying Dimson's application for the issuance of a TRO against the said orders. In the absence of a business permit, Dimson has no clear legal right to resume his operations pending final determination by the RTC of the merits of the main case for *certiorari, mandamus,* and prohibition. **A clear legal right means one clearly founded in or granted by law or is enforceable as a matter of law, which is not extant in the present case**. It is settled that the possibility of irreparable damage without proof of an actual existing right is not a ground for the issuance of an injunctive relief." (Emphasis supplied)

In the instant case, we hold that the operation by Appellant Robocash of seventy-seven (77) branches without the requisite CA is a grave and serious violation because it partook of a nature of illegally operating a business without license. Apparently, the records show that the alleged rapid growth of the company due to the continuing high demand for its services[20] prompted Appellant Robocash to proceed with the establishment and operation of the seventy-seven (77) new branches without the required CA. Section 6 of the FCA-IRR, however, is categorical in saying that a CA is required <u>prior</u> to the establishment and operation of a branch; and pursuant to the afore-quoted doctrine, the conduct of a legitimate business and the pursuit of a legitimate business interest does not justify the violation of a law, rule or regulation and/or the commission of an illegal act. The nature of the offense i.e. operating a branch without license is clearly serious as it constitutes an unlawful act.

Moreover, the number of violations committed by Appellant Robocash i.e. 77 counts, affirms the gravity and the seriousness thereof because it shows not only a conscious and deliberate disregard of the provision of the FCA-IRR requiring a CA before operating a branch office, but also of the authority of the Commission as the agency tasked with the implementation thereof.

Appellant Robocash however argues that its act of establishing and operating seventy-seven (77) branches should not be considered as separate violations of the FCA-IRR because it has been its practice to apply for CAs in bulk for purposes of efficiency.

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[20] Pars. 3.11 & 3.12 of the Appeal

Appellant Robocash's argument has no basis in law.

It should be emphasized at the outset that Section 6 of the FCA-IRR requires every branch to have a CA prior to the commencement of its operations. **The operative act that would constitute a violation of the said provision is the establishment or operation of a branch without the requisite CA. Accordingly, a violation is committed each time a branch is established and operated without the required CA**. In this case, Appellant Robocash operated seventy-seven (77) branches without the required CA which means that it violated the said provision seventy-seven (77) times. Consequently, the allegation that an application for the issuance of a CA covering the seventy-seven (77) branches has already been filed does not and will not exculpate Appellant Robocash from liability because the violation has already been consummated.

The Commission also notes that Appellant Robocash's argument is misleading because the records show that at the time of audit, no application for the issuance of a CA covering the seventy-seven (77) branches was yet filed with the Commission. Moreover, the subsequent filing of such application (after the issuance of the Show Cause Letters) is likewise unavailing because there is no guarantee that a favorable action on the application will result in the automatic issuance of seventy-seven (77) CAs. The Commission, through the CGFD, will have to evaluate the documents submitted for each of the seventy-seven (77) branches, and only those that are found to have fully complied with all the requirements are issued a CA. This is consistent with the rule that the grant of a secondary license is not a matter of right. Interestingly, as correctly noted by Appellant Robocash, a one-time failure/denial of the application will result in multiple branches opening without the requisite CA.[21]

The application for the issuance of a CA covering the seventy-seven (77) branches cannot therefore be used to support an argument/position that there should only be a single violation because what the FCA-IRR prohibits is the act of operating a branch without a CA which was committed by Appellant Robocash seventy-seven (77) times. The application for the issuance of a CA has absolutely nothing to do with the Appellant Robocash's act of opening and operating seventy-seven (77) branches without CA.

On account thereof, we hold that the CGFD did not commit reversible error in revoking the CA of Appellant Robocash based on the finding (and the admission of Appellant Robocash) that it violated Section 6 of the FCA-IRR seventy-seven (77) times after it established and operated (and consequently profited) seventy-seven (77) branches without the requisite CA.

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[21] Par. 4.35 of the Appeal

II. Appellant Robocash's establishment and operation of the 77 branches without CA were attended by bad faith.

In its Appeal, Appellant Robocash maintained that the penalty of revocation imposed by the CGFD is not commensurate with the violations that were committed by it and should thus be reversed by the Commission. In support thereof, it alleges that the rapid growth of the business as a consequence of its services having been well received by the market[22] and the continuing high demand for the same[23] outpaced the growth and development of its corporate governance and internal regulatory compliance systems which resulted in the inadvertent failure to comply with the requirement of securing a CA prior to the operation of its new branches.[24]

The evidence on record militates against the arguments and the justifications provided by Appellant Robocash.

At the outset, We note that Appellant Robocash was fully aware of the requirement to secure a CA prior to opening and operating a branch under Section 6 of the FCA-IRR.[25] The records show that in compliance with the said provision, Appellant Robocash in fact applied for and secured thirty-two (32) CAs before making them operational.[26] However, we also note that had the CGFD not discovered Appellant Robocash's violation, the latter would have continued operating and profiting from the seventy-seven (77) branches sans the required CA. In this context, we find the act of Appellant Robocash in establishing and operating seventy-seven (77) new branches without CA despite full knowledge of the requirement under Section 6 of the FCA-IRR to be attended by bad faith. In *Adriano vs Lasala*[27], the Supreme Court explained the concept of bad faith, thus:

> "Bad faith does not simply connote bad judgment or negligence. **It imports a dishonest purpose** or some moral obliquity and **conscious doing of a wrong, a breach of known duty** through some motive or interest or ill will that partakes of the nature of fraud. It is, therefore, a question of intention, which can be inferred from one's conduct and/or contemporaneous statements."

In the instant case, Appellant Robocash fully knew that it had the obligation to comply with the requirement of securing the CA of its seventy-seven (77) new branches before opening and operating them. However, despite this knowledge, Appellant Robocash nonetheless opted to operate the seventy-seven (77) new branches and made it appear to the public that such branches were duly licensed. This shows that for Appellant Robocash, profitability and the opportunity to expand the business are more important

[22] Par. 3.7 of the Appeal
[23] Par. 3.11 of the Appeal
[24] Par. 3.12 of the Appeal
[25] Par. 3.8 of the Appeal
[26] Annex "G" of the Appeal
[27] G.R. No. 197842, October 9, 2013

than complying with the legal requirement of securing a CA before opening and operating branch offices. With the operation of the seventy-seven (77) new branches without CAs, which is clearly more than double compared to the number of its branches that have CAs, Appellant Robocash was not only able to expand and broaden its client base, and provide loans to a considerable number of new clients, it also profited therefrom considering the fact that it was charging an interest rate of 2.5% per day.

The foregoing negates the allegation of Appellant Robocash that its failure to secure the CA of the seventy-seven (77) new branches was brought about by mere inadvertence. Appellant Robocash apparently took a calculated risk when it decided to establish and operate the seventy-seven (77) new branches without the CA, which was fully known to it as an indispensable requirement. This is not mere inadvertence, negligence or lapse in judgment; this was a conscious decision to violate the FCA-IRR which affirms the seriousness and the gravity of the said violation.

Moreover, lest it should be forgotten, considering that the instant case is an administrative action for violation of the implementing rules of FCA which is a special law, the defense of good faith is immaterial.[28]

On account of the foregoing, we hold that the seriousness and gravity of the violations committed by Appellant Robocash warrant the penalty of revocation of its CA, and thus affirm the ruling of the CGFD.

III. Appellant Robocash's reliance on the previous decisions of the Commission is misplaced. Previous decisions merely have persuasive effect in the Commission's exercise of discretion.

Appellant Robocash maintained that the imposition of the penalty of revocation of its CA by the CGFD should be reversed as the same is not consistent with the earlier decisions of the Commission in similar cases where only the penalty of suspension was imposed and afforded erring companies the opportunity to rectify their wrong. In support thereof, it cited

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28 "The general rule is that acts punished under a special law are *malum prohibitum*. "An act which is declared *malum prohibitum*, **malice or criminal intent is completely immaterial**."

In the case of *mala in se it is necessary, to constitute a punishable offense, for the person doing the act to have knowledge of the nature of his act and to have a criminal intent;* ***in the case of mala prohibita, unless such words as "knowingly" and "willfully" are contained in the statute, neither knowledge nor criminal intent is necessary***. In other words, a person morally quite innocent and with every intention of being a law-abiding citizen becomes a criminal, and liable to criminal penalties, if he does an act prohibited by these statutes.

Hence, "*[i]ntent to commit the crime and intent to perpetrate the act must be distinguished.* A person may not have consciously intended to commit a crime; but he did intend to commit an act, and that act is, by the very nature of things, the crime itself[.]" **When an act is prohibited by a special law, it is considered injurious to public welfare, and the performance of the prohibited act is the crime itself**." (Emphasis supplied) [Datu Guimid P. Matalam vs People of the Philippines. (G.R. Nos. 221849-50, April 04, 2016)] the cases of *In the Matter of Salvation Acopio, et al. vs. J.R. Estrada & Sons, Inc.* ("J.R. Estrada Case") and *In the Matter of Anselmo Candado vs. International Justice Mission, Inc.* ("IJM Case") where the Commission ruled that the revocation of the primary franchises of the concerned corporations was not warranted by the circumstances and evidence. In the J.R. Estrada Case, the Commission ruled that appellant company's failure to comply with the reportorial requirements did not justify the revocation of its franchise and applied the principle that in cases where the primary franchise, all available remedies should be exhausted before visiting upon the corporation the harsh penalty of revocation. In the IJM Case, the Commission ruled against the revocation of the License to Transact Business based on the finding that the evidence failed to show that IJM performed acts outside the purpose authorized under its license.

The inapplicability of the J.R. Estrada Case and IJM Case, and the plethora of cases cited in its Appeal[29] is readily apparent. Aside from the fact that the alleged violations cited therein i.e. failure of the subject corporations to comply with the reportorial requirements, pale in comparison with the gravity and seriousness of the violations of Appellant Robocash as discussed earlier, **it should be emphasized that these and similar cases, called for the exercise by the Commission of the discretion granted by law and the rules to impose the appropriate penalties based on its appreciation of the seriousness and gravity of the violation as supported by evidence.**

Moreover, it bears emphasis that in the context of the exercise of the Commission's power and authority to impose the appropriate penalty, while previous decisions might have a persuasive effect, the same does not operate to bind the hands and obligate the Commission to decide similarly in subsequent cases where it is called upon to exercise its discretion. This is consistent with the very concept of discretion where the Commission is expected to decide according to the dictates of its own judgment, based on its independent appreciation of the facts and circumstances attendant in each case, and uncontrolled by the judgments of others, which necessarily includes rulings in its previous decisions.

Hence, it might be well to point out that this Commission has, in the exercise of its discretion, sustained the revocation at the first instance of the franchises/licenses of the following corporations, among others, after finding that the same warranted by the gravity and seriousness of the offense: (a) Petro Lending Corporation which operated a lending business without the

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[29] Pars. 4.10.1 and 4.10.2 (1) *Wise Holdings Case*; (2) *Club Morocco Case;* (3) *Forum Pacific Case;* (4) *Legacy TD Case;* (5) *Legacy GS Case;* (6) *In the Matter of Home Joy Village Foundation, Inc.;* (7) *In the Matter of Vil-Clad Marketing Corporation;* (8) *In the Matter of Lamb of God Foundation, Inc.;* (9) *In the Matter of Rural Bank of Mabinay (Negros Oriental), Inc.;* (10) *In the Matter of Magayon Construction and Development Corporation;* (11) *In the Matter of Donngary Farms, Inc.;* (12) *In the Matter of Philippine Juniors Bowlers Association, Inc.;* (13) *In the Matter of Canlubang Golf & Country Club, Inc.;* (14) *Perfecto Pondo, et al. vs. Federation of Rural Workers Organization, Inc.;* (15) *In the Matter of AGP Industrial Corporation;* (16) *In the Matter of Malaluan Hospital Corporation;* (17) *In the Matter of Credit Card Association of the Philippines, Inc.;* (18) *In the Matter of Uniart Ceramics Incorporation; and* (19) *In the Matter of Isu Holdings Corporation.*

requisite CA[30]; (b) Transnational Investors Corporation which operated a lending business without the requisite CA;[31] and (c) Sanglaan Loan Company Incorporated which operated a lending business without the requisite CA[32]. **The said cases show that from the perspective of the Commission as the implementing agency of the FCA and its IRR, the operation of a lending company without the requisite CA are serious offenses that warrant the imposition of the penalty of revocation**.

Finally, We find the allegations that it had immediately voluntarily closed branches without CA, implemented steps to ensure compliance with the FCA and its Rules, revised its risk models to reduce interest rates, are all inconsequential because these are only relevant if the violation is not serious. In the instant case, the gravity and seriousness of the violations that Appellant Robocash have committed warrant the revocation of its CA. Thus any corrective action will simply be irrelevant. Moreover, while the Commission notes of the high esteem accorded by the Appellant Robocash to its shareholders specifically in relation to their successful foray in the online and offline financial services in Europe and Asia, the evidence on record shows that their extensive experience was not used and capitalized to ensure that Appellant Robocash complies with the basic requirement of securing a CA for the seventy-seven (77) branches prior to its operation.

Before We write finis to this Decision, the Commission cannot overemphasize the fact that the business of financing and lending companies is imbued with public interest which requires all covered entities, including Appellant Robocash, to observe the highest degree of competence, integrity and moral uprightness as this is necessary to promote trust and confidence by the public in the industry.[33] Moreover, the failure to secure the requisite CA prior to the operation of seventy-seven (77) branches cannot simply be brushed aside because the same relates to a compliance with a legal requirement that all grantees of licenses are mandated at all times to observe.

WHEREFORE, premises considered, the Appeal Memorandum is hereby **DENIED** for lack of merit. The assailed orders of CGFD: *Order No. 237, Series of 2019* revoking Appellant's Certificate of Authority to Operate as a Financing Company; and *Order No. 40, Series of 2020* denying Appellant's *Motion for Reconsideration*, are hereby **AFFIRMED**.

SO ORDERED.

Pasay City, Philippines; 22 April 2021.

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[30] Petro Lending Corporation vs Enforcement and Prosecution Department (SEC Admin. Case No. 01-12-142)

[31] Transnational Investors Corporation vs Enforcement and Prosecution Department (SEC Admin. Case No. 12-12-166)

[32] Sanglaan Loan Company, Incorporated vs Enforcement and Prosecution Department (SEC Admin. Case No. 02-12-144)

[33] See Duque vs Veloso (G.R. No. 196201, June 19, 2012)

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

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