Republic of the Philippines
Department of Finance
Securities and Exchange Commission
Commission En Banc

IN THE MATTER OF CAPITOL HILLS GOLF AND COUNTRY CLUB, INC.

SEC CDO Case No. 08-17-045

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT (EIPD),

Movant.

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DECISION

This resolves the Urgent motion for Issuance of Cease and Desist Order dated 29 August 2017 filed by the EIPD on 31 August 2017 against Capitol Hills Golf and Country Club, Inc. **("CAPITOL HILLS")** on the ground that the latter is continuing its business despite the pendency of its ongoing liquidation proceedings.

THE PARTIES

Movant Appellee **EIPD** is one of the operating departments of the Securities and Exchange Commission ("Commission") tasked to ensure compliance by all market participants, issuers and individuals, and take appropriate enforcement action against them for infractions of the laws, rules and regulations implemented by the Commission. The same is vested with the primary authority to conduct investigations and administrative actions involving, among others, the selling, offering or transacting unregistered securities by entities without a secondary license, as well as to initiate petitions for revocation of corporate registration except those under the original authority of the Company Registration and Monitoring Department ("CRMD"). Finally, the EIPD is tasked to investigate, *motu proprio* or upon a verified complaint or referral, violations of laws, rules and regulations implemented by the Commission, as well as to initiate the issuance of a Cease and Desist Orders ("CDO") by the latter.

Respondent **CAPITOL HILLS GOLF AND COUNTRY CLUB, INC. (CAPITOL HILLS)** is a domestic corporation duly organized and registered under the laws of the Philippines primarily engaged in the business of operating and maintaining a golf course and with license to offer and sell securities to the public.

STATEMENT OF FACTS

Respondent Capitol Hills, formerly known as International Sports Development Corporation, registered with the Securities and Exchange Commission on 25 January 1960 with Company Registration No. 000016388. Hence, it only has a corporate life until 25 January 2010. Despite the expiration of its registration, respondent Capitol Hills submitted its 2011 General Information Sheet (GIS)[1].

The EIPD narrates in its Urgent Motion that it received a Memorandum from the Office of the Chairman pertaining to a news article entitled "Hidden Agenda" published at the Philippine Star on 15 April 2015[2] about the continuous operation of Capitol Hills despite the expiration of its franchise. Moreover, the article stated that the GG&A Club Shares website (www.ggaclubshares.com.ph) shows that it is still offering its shares to the public. Subsequently, the EIPD received another Memorandum[3] from the Corporate Governance and Finance Department (CGFD) endorsing the complaint for liquidation filed by one its stockholders before the Regional Trial Court of Quezon City.

Also, the EIPD was able to secure a Certification from the Corporate Filings and Records Division dated 27 January 2014[4] that Capitol Hills did not extend its corporate term. Thus, the EIPD sent a Show Cause Order[5] on 19 May 2015 to Capitol Hills and its officers to answer the alleged selling of club shares to the public despite the expiration of its primary and secondary license. In their letter-reply dated 9 June 2015[6], Capitol Hills averred that they have nothing to do with the offer of their shares in GG&A website and even presented a Certification[7] for said matter.

During the conference of the parties on 15 July 2015, the counsels of Capitol Hills stated that it is in the process of disposing its assets. They even presented a copy of their Omnibus Motion dated 21 May 2015 to assail the complaint filed one of its stockholders before the Regional Trial Court of Quezon City.[8]

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[1] Urgent Motion, Annex "C".
[2] *Id.*., Annex "D".
[3] *Id.*, Annex "E".
[4] *Id.*, Annex "F".
[5] *Id.*, Annex "G".
[6] *Id.*, Annex "H".
[7] *Id.*., Annex "I".
[8] *Id.*, Annex "J".

On 7 July 2016, the investigating team of the EIPD proceeded to the business address of Capitol Hills at Old Balara, Quezon City to conduct a surveillance operation. Thus, they were able to confirm that Capitol Hills was still offering their facilities to the public at a discounted rate and that one has to acquire the membership of another in order to avail of the same. Further, the team was handed a price list[9] and a memorandum[10] for said matter.[11] Afterwards, the investigating team proceeded to the Business Permit Licensing Office (BPLO) of Quezon City and found that Capitol Hills attempted to apply for a business permit despite the expiration of its franchise and that the BPLO issued a Cease and Desist Order dated 11 May 2017[12] against Capitol Hills.

Hence, this instant Urgent Motion filed by the EIPD. During the pendency of the same, the Office of the General Counsel called for a clarificatory conference on 20 September 2017. During said conference, the EIPD manifested that it will file a supplemental motion introducing the additional evidence to support their Urgent Motion. Finally on 13 October 2017, the EIPD filed a Compliance, attaching therein the Order of Branch 90 Regional Trial Court of Quezon City dated 16 August 2017, ruling the illegality of the continuous operation of Capitol Hills's business and directing it to cease and desist from the same.

ISSUES:

Whether or not the Securities and Exchange Commission has jurisdiction to issue a Cease and Desist Order against Capitol Hills despite the pendency of liquidation proceedings before the Regional Trial Court.

DISCUSSION

This Commission finds for the denial of the EIPD's Urgent Motion for the Issuance of a Cease and Desist Order against Capitol Hills due to lack of jurisdiction.

Under Sec. 4, Rule 2 of A.M. No. 15-04-06-SC, otherwise known as the "*Financial Liquidation and Suspension of Payments Rules of Procedure for Insolvent Debtors*", the venue and jurisdiction of Petition for Involuntary

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[9] Urgent Motion, Annex "L".
[10] *Id.*, Annex "M".
[11] *Id.*, Annex "J".
[12] *Id,* Annex "N".

Liquidation is with the Regional Trial Court of the city or municipality where the head office of the juridical debtor is located. However, if the juridical debtor or corporation is not yet being liquidated, it is the SEC who has jurisdiction to regulate the transactions of said juridical debtor or corporation.

Here, the evidence presented by the EIPD shows that there is already a pending liquidation proceedings of respondent Capitol Hills before Branch 90 of the Regional Trial Court (RTC) of Quezon City. As such, all incidents regarding respondent corporation are within the jurisdiction of said Court and outside of this Commission. In fact, based on the Omnibus Order of the RTC dated 16 August 2017, the RTC found the continuous operation of Capitol Hills illegal and thus, ordered the latter to cease-and-desist from the same. Pertinent portion of said Order reads:

> "Considering the relevant foregoing and above-cited submissions/arguments of Aliling and Madrid which this Court finds to be impressed with merit, this Court is of the considered and humble view that CHGCCI through its Board of Liquidators should cease and desist from further continuing its business for which it was established and from further contracting loans against the properties of the CHGCCI. CHGCCI cannot anymore sell shares because as lengthily discussed in the above-quoted memorandum, a dissolved corporation has no more legal capacity to transact business except to liquidate and to wind up its affairs as provided under Section 133 of the Corporation Code...
>
> xxxxx
>
> The Board of Liquidators of Capitol Hills Golf and Country Club, Inc. (CHGCCI) is **DIRECTED** to cease and desist from further continuing the club's business for which it was established, that is, from operating and maintaining the golf course, from further contracting loans and/or from further mortgaging the properties of the CHGCCI, and, from selling shares..."

In view thereof, this Commission no longer has any jurisdiction over respondent corporation considering that an involuntary liquidation proceedings involving the latter is already pending before the Regional Trial Court of Quezon City. Further, there is no longer any need for this Commission to rule upon this instant case since jurisdiction over the liquidation and the other incidents of respondent Capitol Hills has been assumed by the RTC.

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WHEREFORE, premises considered, the Urgent Motion for Issuance of a Cease-and-Desist Order is hereby **DENIED** on the ground of lack of jurisdiction.

SO ORDERED.

Pasay City, Philippines; 16 July, 2019.

EMILIO B. AQUINO
Chairperson

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner