



Republic of the Philippines  
**Securities and Exchange Commission**  
SEC Bldg. EDSA, Greenhills, Mandaluyong City

In the Matter of

**CAPITOL PLANS, INC.**

SEC Case No. 05-09-009  
[Ref: CED Case No. 08-2882]  
FOR: Issuance of a Cease  
and Desist Order

Compliance and Enforcement  
Department,

*Petitioner.*

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**ORDER**

This *Order* resolves the *Motion to Lift Cease and Desist Order* dated and filed on 23 June 2009 ("*Motion*", for brevity) by Respondents Alonzo Q. Ancheta, Rolando P. Ancheta, Bella Caridad P. Ancheta, Celia O. Angeles, Anita Rilloraza, Victor Dela Dingco Jr., Benidicta Balabad and/or Benny Balabad, and Zobella Realty & Development, Inc. ("*Movants*" for brevity).

Movants Alonzo Q. Ancheta, Rolando P. Ancheta, Celia O. Angeles, Anita Rilloraza, and Victor Dela Dingco Jr. are members of Capitol Plans, Inc.'s ("*CPI*" for brevity) Board of Directors, while movants Bella Caridad P. Ancheta, Benidicta Balabad, and Zobella Realty & Development, Inc. are *CPI's* stockholders.

The movants assail the following underscored portion of the dispositive part of the *Cease and Desist Order* dated 11 June 2009 ("*CDO*" for brevity), which provides:

"WHEREFORE, premises considered, there being a *prima facie* evidence that respondent is engaged in the unauthorized offering, selling and issuance to the public unregistered pre-need plans without a Dealer's license to do so, Respondent, its respective officers, directors, representatives, agents and any and all persons, conduit entities and subsidiaries claiming and acting for and in behalf of respondent are hereby ordered to immediately CEASE AND DESIST from further offering and selling unregistered pre-need plans to the general public.

Moreover, to forestall grave damage and prejudice to all concerned and to ensure the preservation of the assets for the benefit of not only the planholders and investors, but the

creditors, stockholders and other claimants, as well, Respondent or any of their representatives, or any person/s acting for and in their behalf, and such other persons directing or controlling the activities of such corporation, officers, representatives salesmen and agents, are all enjoined from a) transacting any and all business involving the funds in its depository banks, and b) from transferring, disposing or conveying in any other manner any and all assets, properties, real or personal, including banks deposits and tax credit certificates if any, of which the named persons herein may have any interest, claim or participation whatsoever, whether directly or indirectly, under their custody, excluding trust funds or assets thereof, immediately upon receipt of this Order, until further order from this Commission." (Underscoring ours.)

All persons against whom this CDO is issued may, within a non-extendible period of five (5) business days from receipt of the order, file a formal request or motion for the lifting thereof with this Commission.

FAIL NOT UNDER PENALTY OF LAW.

SO ORDERED."

Movants pray that the *Cease and Desist Order* be lifted "with respect to their transferring, disposing or conveying transferring, disposing or conveying in any manner any and all of their personal properties."<sup>1</sup>

On 03 July 2009, a hearing on the *Motion* was held. Subsequently, the Commission issued an Order dated 09 July 2009 directing petitioner Compliance and Enforcement Department ("CED" for brevity) to file its Comment/Opposition to the Motion within ten (10) days from the said hearing date. Further, the movants were given five (5) days from receipt of the Comment within which to file their Reply and the CED was given five (5) days from receipt of the Reply within which to file its Rejoinder. In compliance with the Order, the CED filed its Comment/Opposition on 13 July 2009. Thereafter, the movants filed their Reply on 20 July 2009. On the other hand, the CED opted not to file a Rejoinder within the given period, which lapsed on 27 July 2009. Hence, the matter is now deemed submitted for resolution.

Movants argue that the CDO must be lifted with respect to their own respective properties since the Commission failed to conduct a proper investigation or verification, and to establish that the movants' act of transacting their own respective properties will cause a fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public. They argue further that: (1) they were wrongly impleaded in the *CDO* since they are no longer controlling stockholders/directors/officers of CPI; (2) they cannot be made liable since they have fully paid their subscriptions in the shares of stock of CPI; and (3)

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<sup>1</sup> Movants' Reply dated 20 July, 2009, page 14..

fraud was not sufficiently established in order to justify piercing the corporate veil, and reaching into the properties of CPI's stockholders and directors.

On the other hand, petitioner CED argues that the Commission has conducted, and is continuing a proper investigation into the fraudulent activities of CPI and its directors and stockholders. The CED argues further that this investigation reveals that the movants were the controlling stockholders/directors/officers of CPI since the inception of CPI's violations of the *New Rules on the Registration and Sale of Pre-Need Plans under Section 16 of the Securities Regulation Code*. In other words, the CED argues that the movants are responsible for CPI's violations and fraudulent practices, and hence, the CDO was properly issued against them.

The main issue is whether or not the *Cease and Desist Order* must be partially lifted in so far as it prevents movants from transferring, disposing or conveying their own respective properties.

Section 64.1 of R.A. No. 8799, provides:

"Sec. 64. Cease and Desist Order. – 64.1. The Commission, after proper investigation or verification, motu proprio, or upon verified complaint by any aggrieved party, may issue a cease and desist order without the necessity of a prior hearing if in its judgment the act or practice, unless restrained, will operate as a fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public." (Underscoring ours)

Under this provision, the Commission must comply with two essential requirements before it may issue a cease and desist order: First, it must conduct proper investigation or verification; and second, there must be a finding that the act or practice, unless restrained, will operate as a fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public.<sup>2</sup>

The first requisite is present in this case. The Commission conducted proper investigation and verification before it issued the assailed CDO. As petitioner correctly points out, the investigation began on 22 June 1999 when SE Specialist Liboon and SE Specialist II Villegas conducted a routine audit on CPI and discovered its violations, such as: (1) offering educational plans for sale without the Commission's prior approval; (2) over-issuance of pension plans worth Php 31,206,730; (3) issuance of life plans without due license from the Commission; (4) non-filing of Actuarial Violation Reports for five years from 1994 to 1998; and (5) failure to meet the minimum capital requirement. Since then the Commission has continued an investigation into CPI's violations and the responsibility of its officers, directors, and/or stockholders. The details of this investigation have already been sufficiently discussed in the assailed CDO itself, and need not be reproduced here.

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<sup>2</sup> *Securities and Exchange Commission vs. Performance Foreign Exchange Corporation*, G.R. No. 154131, July 20, 2006.

The crucial question now is whether the Commission's investigation yielded a finding that movants' act of transacting their own respective properties, unless restrained, will operate as a fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public. In other words, the question now is whether or not the second requisite is present.

In the case of movant Rolando P. Ancheta, who is the president, COO (chief operating officer) and a director of CPI, the Commission made such a finding. The fact that his signature appears in the Bayanihan Life Plan Program ("BLLP," for brevity) plans constitutes *prima facie* evidence that he willfully and knowingly assented and directed CPI's illegal and unauthorized sale of BLPP life plans to the public.

Section 31 of the Corporation Code provides the liability of erring directors or officers such as movant Rolando P. Ancheta, to wit:

"Section 31. Liability of directors, trustees or officers. - Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons. xxx"

Under this provision, movant Rolando P. Ancheta is jointly and severally liable with CPI for all damages resulting from the unauthorized offer, sale and issuance of life plans to the public. The Commission is constrained to maintain the present CDO preventing movant Rolando P. Ancheta from transacting with his own properties since there is a great possibility that he will conceal his own properties in order to avoid answering his personal liability to the victims of CPI's illegal and unauthorized acts. In other words, if he is allowed to continue transacting his properties, it will operate as a fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public. Hence, the CDO against him with respect to his own properties cannot be lifted.

However, as to the other movants, petitioner failed to established their individual responsibilities and/or liabilities for CPI's violations. It appears that petitioner only relied on CPI's General Information Sheets ("GIS" for brevity) on file with the Commission in order to impute their liability for CPI's violations. This is clearly insufficient since the GIS does not show the named directors', officers' or stockholders' knowledge and/or participation regarding specific corporate acts. In other words, the petitioner failed to show that the investigation established that the other movants' are also responsible for CPI's violations. This means that there is still no finding that movants' act of transacting their own respective properties, unless restrained, will operate as a fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public. Therefore, the restraint against the movants, except for Rolando P. Ancheta, preventing them from

transacting with their own respective properties therefore cannot be sustained and the CDO must be partially lifted in this regard.

**WHEREFORE**, premises considered, the Cease and Desist Order dated 11 June 2009 is hereby **PARTIALLY LIFTED** only in so far as it restrains Alonzo Q. Ancheta, Bella Caridad P. Ancheta, Celia O. Angeles, Anita Rilloraza, Victor Dela Dingco Jr., Benidicta Balabad and/or Benny Balabad, and Zobella Realty & Development, Inc.:

"b) from transferring, disposing or conveying in any other manner any and all assets, properties, real or personal, including banks deposits and tax credit certificates if any, of which the named persons herein may have any interest, claim or participation whatsoever, whether directly or indirectly, under their custody, excluding trust funds or assets thereof, immediately upon receipt of this Order, until further order from this Commission."

The motion of Rolando P. Ancheta is hereby **DENIED**. In all other respects, the CDO remains in force and is now hereby made **PERMANENT**.

This Order, however, is without prejudice to any liability which another forum may adjudge against movants in connection with the fraudulent scheme of the Capitol Plans, Inc.

**SO ORDERED.**

Mandaluyong City, 29 July 2009.

**\* FE B. BARIN**  
Chairperson

  
**MA. JUANITA E. CUETO**  
Commissioner

  
**THADDEUS E. VENTURANZA**  
Commissioner

  
**RAUL J. PALABRICA**  
Commissioner

  
**MANUEL HUBERTO B. GAITE**  
Commissioner

\*left for another official engagement