



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



In Re:

NOMAD SPORTS CLUB

SEC Admin. Case No. 01-09-005

For: Issuance of a Cease and Desist Order

**COMPLIANCE AND ENFORCEMENT
DEPARTMENT (CED)**

X-----X

ORDER

For consideration of the Commission is the prayer of petitioner Compliance and Enforcement Department (CED) for the issuance of a Cease and Desist Order against respondent Nomad Sports Club as contained in the *Motion for Issuance of Cease and Desist Order* dated 27 January 2009.

The facts of the case are as follows:

Respondent Nomad Sports Club (NOMAD) was registered with this Commission on 18 January 1949 and was issued Certificate of Registration No. 0000004155¹. Per its latest Amended Articles of Incorporation, its Primary Purpose is, to wit:

"To establish, maintain and operate a sports field and an clubhouse thereon constructed, with all necessary equipment and other appurtenances, for the promotion of social, athletic and recreational activities of its members as well as to foster, promote and conduct legitimate athletic exercises, sports, games and entertainment of all kinds; to encourage and foster ethical standards in business and profession; and to secure the active interest of its members in the civic, commercial, moral and social welfare of the community.

Without in any particular limiting or restricting any of the objects and powers of this corporation, it is hereby declared and provided that the corporation shall have the power to enter into contracts, borrow money, issue certificates of membership, mortgage or pledge and of its property; and

To make and perform contracts of every kind and description necessary for the carrying out of the purposes and objects for which the corporation was organized; to do generally all such things as may be reasonably necessary to accomplish the purposes for which it was organized."²

Respondent holds office at Off Madrid St., Merville Subdivision, Paranaque City.

Sometime in July 2008, petitioner received an indorsement from the Corporation

1 Annex A of the Motion

2 Article II of the latest Amended Articles of Incorporation as approved by the Commission on 3 August 1998

Finance Department (CFD), by way of a Memorandum dated 24 July 2008, of letters dated 17 July 2008 and 22 July 2008 by Atty. Roland Beltran. Atty. Beltran requested for an "investigation/examination on the financial records and dealings of the Club inasmuch as its assets are being dissipated to the prejudice of the Club and its general members"³ and the issuance of a cease and desist Order "to protect the money of the unsuspecting investors re the bond offering and issuance of shares to a non-existing corporation without the approval from the Securities and Exchange Commission"⁴

Thereafter, on 26 August 2008, CED also received a Complaint⁵ from Mr. Edward L. Du against the corporation and its trustees and officers. Mr. Du alleged that the corporation "disseminated copies of a prospectus and advertisement which listed, among others; (a) the proposed structure of Nomads Land Corporation (NLC); (b) the purchase price for the land currently occupied by respondent NOMAD and the terms thereof; (c) the sale of NLC shares to members and the price thereof; (d) the sale of NLC shares to non-members and the price thereof; (e) the bond offering to raise P30 million initial payment; and (f) the conditions of the bond."⁶

He further alleged that "sports club membership certificates are securities under the Sec. 3.1 (f) of the SRC. Hence, according to him, respondent NOMAD violated: (a) Section 12.1 of the SRC for offering and selling securities without having filed a registration statement; (b) Sec. 12.5 (a) for its non-payment of the required fees; (c) Sec. 12.5 (b) for its failure to publish a notice of filing of registration statement; and (d) Sec. 8.1(3) (D) (ii) for its failure to abide by the rules on the form of prospectus."⁷

Respondent NOMAD, through counsel Atty. Ramos, submitted its position paper⁸ denying that it released a prospectus, as alleged by Mr. Du, and that the document submitted by Mr. Du as evidence is merely a brochure for its announcements and information campaign to determine whether the general membership would be interested in the purchase of the land. Moreover, the corporation has not issued any bond.

Petitioner conducted its own investigation and found that "in consideration of the payment of a joining fee, the amount of which varies depending on the kind of membership applied for, a member is entitled to the use and enjoyment of the club facilities of respondent NOMAD as listed in the Club House Rules. It concluded that the "club membership" falls squarely within the definition of non-proprietary shares as defined under SRC Rule 3 (k)."⁹

This is affirmed by the Corporate Finance Department ("CFD") of this Commission, stating that the "certificates of membership issued by NOMAD to its members, be they proprietary or non-proprietary, are in the nature of securities as defined under SRC Rule 3 (k) and (l) that require prior registration pursuant to Sections 8 and 12 of the SRC. The same is also true with respect to the shares and bonds which

3 Annex D of the Motion

4 Annex E of the Motion

5 Annex G of the Motion

6 Paragraph 5 of the Motion

7 Paragraph 6 of the Motion

8 Annex Y of the Motion

9 Paragraph 23 of the Motion

respondent NOMAD is set to offer.”¹⁰ Furthermore, CFD certified that respondent is not a registered issuer of securities under Sections 8 and 12 of the Securities and Regulation Code (“SRC”) and is not licensed to offer or issue securities to the public.¹¹

There being a *prima facie* evidence that respondent is engaged in the unauthorized offering and selling of membership shares to the public without license to do so, respondent NOMAD SPORTS CLUB, 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 membership certificates to the general public.

Pursuant to Section 10-4 of the 2006 Rules of Procedure of this Commission, respondent may file a formal request or motion for the lifting this Order within a non-extendible period of five (5) business days from receipt of this Order.

SO ORDERED.

Mandaluyong City, 30 January 2009.


FE B. BARIN
Chairperson


MA. JUANITA E. CUETO
Commissioner

JESUS ENRIQUE G. MARTINEZ *
Commissioner


RAUL J. PALABRICA
Commissioner


THADDEUS E. VENTURANZA
Commissioner

¹⁰ Annex W of the Motion

¹¹ Annex X of the Motion

* On sick leave.