



4 July 2019

COURT ISSUES HOLD DEPARTURE ORDER AGAINST KAPA OPERATORS, PROMOTERS

The Regional Trial Court of Davao City has issued a precautionary hold departure order against the operators and promoters of Kapa-Community Ministry International, Inc. amid a criminal complaint by the Securities and Exchange Commission (SEC).

The order issued by Executive Judge Emmanuel C. Carpio on July 1 covers KAPA Founder and President Joel A. Apolinario, Trustee Margie Apolinario Danao and Corporate Secretary Reyna L. Apolinario along with promoters Catherine Evangelista, Rene Catubigan, Marisol M. Diaz, Adelfa Fernandico and Moises Mopia.

The respondents are facing a criminal complaint filed by the SEC before the Department of Justice for soliciting investments from the public without the necessary license and through a Ponzi scheme, in violation of Republic Act No. 8799, or the Securities Regulation Code.

“[T]he undersigned is convinced and satisfied on the existence of probable cause of a high probability that respondents will depart from the Philippines to evade arrest and prosecution of the above-indicated crimes, with imposable penalty of more than six (6) years and one (1) day,” read the order issued by Judge Carpio.

Accordingly, the Regional Trial Court of Davao City directed the Department of Foreign Affairs and the Bureau of Immigration “to stop or hold the above-described respondents from leaving the country and to include their names in the Hold Departure List of said office.”

The SEC filed the criminal complaint against the respondents last June 18, after finding substantial evidence that KAPA had enticed the public to “donate” at least P10,000 in exchange for a 30% monthly “blessing” or “love gift” for life, without having to do anything other than invest and wait for the payout.

The arrangement between KAPA and its members constituted an investment contract, a form of security regulated by the SEC.

Under Section 8 of the Securities Regulation Act, securities shall not be sold or offered for sale or distribution without a registration statement duly filed and approved by the Commission.

Section 28 adds that no person shall engage in the business of buying or selling securities in the Philippines as a broker or dealer, or act as a salesman, or an associated person of any broker or dealer unless registered with the SEC.

Those who sell or offer securities to the public without the necessary license may be held criminally liable and accordingly sanctioned or penalized pursuant to the decision of the Supreme Court in the case of the SEC vs. Oudine Santos on March 19, 2014.

Section 26 of the Securities Regulation Code further prohibits fraudulent transactions, including Ponzi schemes where investors are lured with impossibly high returns and paid using the money contributed by other investors.

A person found to have violated the Securities Regulation Code, or the relevant rules and regulations promulgated by the SEC, will face a maximum fine of P5 million or imprisonment of seven to 21 years, or both.

In its complaint, however, the SEC pushed for the penalty to be imposed on the operators and promoters of KAPA to be one degree higher than what is prescribed by the Securities Regulation Code, considering the use of Facebook and YouTube in the illegal invest scheme.

Section 6 of Republic Act No. 10175, or the Cybercrime Prevention Act of 2012, provides for the imposition of a penalty one degree higher than what the Revised Penal Code, as amended, and special laws provides if the crime or offense was committed by, through and with the use of information and communication technologies.

The Commission issued an advisory against KAPA as early as March 2017. It would later issue a cease and desist order on February 14 and an order of revocation of the nonstock corporation's registration on April 3.

In the interest of affected investors, the Commission, through the Anti-Money Laundering Council, obtained a freeze order from the Court of Appeals to preserve assets linked to KAPA.

Those who have invested money in KAPA may file complaints with the SEC Enforcement and Investor Protection Department at Secretariat Building, PICC Complex, Pasay City with telephone numbers (02) 818-6337 and (02) 818-5324.

Affected investors may also visit the SEC Davao City Extension Office at SDC Building, Purok 13, Maa Road, Maa, Davao City; call (082) 298-2170 and (082) 298-1893; or email kjpestaress@sec.gov.ph. In Cagayan de Oro City, they may visit the Commission at SEC Building, corner 14th and Tomasco Del Lara Street; call (088) 857-4325 and (088) 857-7225; or email rvegypto@sec.gov.ph.

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