

PRIMANILA PLANS, INC., HEREIN REPRESENTED BY EDUARDO S. MADRID, PETITIONER, VS. SECURITIES AND EXCHANGE COMMISSION, RESPONDENT.

G.R. No. 193791. August 02, 2014

Ponente: REYES, J.

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REYES, J.:

This resolves the Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court filed by Primanila Plans, Inc. (Primanila) to assail the Decision[2] dated March 9, 2010 and Resolution[3] dated September 15, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 104083. The CA affirmed in CA-G.R. SP No. 104083 the Securities and Exchange Commission's (SEC) issuance of an Order[4] dated April 9, 2008, which was a cease and desist order upon Primanila with the following dispositive portion:

WHEREFORE, pursuant to the authority vested in the Commission, PRIMANILA PLANS, INC., its respective officers, directors, agents, representatives, and any and all persons, conduit entities and subsidiaries claiming and acting under their authority, are hereby ordered to immediately CEASE AND DESIST from further engaging in activities of selling, offering for sale Primasa plans and to refrain from further collecting payments and amortizations for Primasa plans to protect the interest of investors and the public in general.

In accordance with the provisions of Section 64.3 of Republic Act No. 8799, otherwise known as the Securities Regulation Code, the parties subject of this Cease and Desist Order may file a formal request or motion for the lifting of this Order within a non-extendible period of five (5) days from receipt hereof.

SO ORDERED.[5]

The Facts

Primanila was registered with the SEC on October 17, 1988 and was issued Certificate of Registration No. 156350. Based on its amended articles of incorporation, the company's primary purpose was "to organize, establish, develop, conduct, provide, maintain, operate, offer, issue, market and sell pension plans under which the savings of professionals, officers, directors and other personnel of corporations, firms, or entities, and self employed individuals can be pooled together, accumulated and invested in profitable placements and productive enterprises so as to build an Accumulated Fund for each individual participant or planholder for his retirement, monthly pension or for other [foreseeable] needs in the future." Primanila then operated as a pre-need company and maintained a business office in Makati City.[6]

On April 9, 2008, the SEC was prompted to issue the subject cease and desist order after an investigation conducted by the SEC's Compliance and Enforcement Department (CED) on Primanila yielded the following factual findings duly explained in the cease and desist order:

- The office of [Primanila] located at 20[th] Floor, Philippine AXA Life Centre, Sen. Gil Puyat Ave., Makati City was closed. No notices were posted outside said office to inform the public of the reason for such closure.

x x x

- [Primanila]'s website (www.primanila.com) was offering a pension plan product called Primasa Plan. The website contains detailed instructions as to how interested persons can apply for the said plan and where initial contributions and succeeding installment payments can be made by applicants and planholders. According to the website, applicants and planholders can pay directly at the head office, any of its field offices or may deposit the payments in PRIMANILA's METROBANK Account No. 066-3-06631031-1. This was discovered by [CED] when a member of CED visited [Primanila's] website on February 12, 2008.

- [PRIMANILA] failed to renew its Dealer's License for 2008. In view of the expiration of the said license, the [SEC's Non-Traditional Securities and Instruments Department (NTD)], through its Acting Director Jose P. Aquino, issued a letter dated January 3, 2008 addressed to [Primanila's] Chairman and CEO Mr. Eduardo S. Madrid, enjoining [Primanila] from selling and/or offering for sale pre-need plans to the public.

- [Primanila] has not been issued a secondary license to act as dealer or general agent for pre-need pension plans for 2008. Also, no registration statement has been filed by [Primanila] for the approval of a pension plan product called Primasa Plan. This is shown in the certification dated February 15, 2008 issued by NTD upon the request of Atty. Hubert B. Guevara of CED.

- [Primanila's] Bank Account is still active. This was discovered by CED when it deposited on March 6, 2008 the sum of Php 50.00 which was duly received by METROBANK Robinson's Branch as shown by the deposit slip.

- Among the many planholders of [PRIMANILA] are enlisted personnel of the Philippine National Police (PNP). Premium collections for Primaplans via salary deductions were religiously remitted to [Primanila] on a monthly basis. x x x

- PNP remitted the total amount of Php 2,072,149.38 to respondent PRIMANILA representing the aforementioned premium collections via salary deductions of the 410 enlisted personnel of PNP who are planholders. This is shown in the table prepared by the remittance clerk of the PNP, Ms. Mercedita A. Almeda.

- [PRIMANILA] failed to deposit the required monthly contributions to the trust fund in violation of Pre-need Rule 19.1. This is shown in the Trust Fund Reports for the months of November and December 2007 prepared by ASIATRUST BANK, the trustee of [Primanila].

- [PRIMANILA] under-declared the total amount of its collections as shown in its SEC Monthly Collection Reports which it submitted to NTD. Its reports show that it only collected the total amount of Php 302,081.00 from January to September 2007. However, the remittance report of the PNP shows that [Primanila] received the amount of Php 1,688,965.22 from the PNP planholders alone for the said period. Therefore, it under-declared its report by Php 1,386,884.22.[7]

From these findings, the SEC declared that Primanila committed a flagrant violation of Republic Act No. 8799, otherwise known as The Securities Regulation Code (SRC), particularly Section 16 thereof which reads:

Section 16. Pre-Need Plans. – No person shall sell or offer for sale to the public any pre-need plan except in accordance with rules and regulations which the Commission shall prescribe. Such rules shall regulate the sale of pre-need plans by, among other things, requiring the registration of pre-need plans, licensing persons involved in the sale of pre-need plans, requiring disclosures to prospective plan holders, prescribing advertising guidelines, providing for uniform accounting system, reports and record keeping with respect to such plans, imposing capital, bonding and other financial responsibility and establishing trust funds for the payment of benefits under such plans.

It also breached the New Rules on the Registration and Sale of Pre-Need Plans, specifically Rule Nos. 3 and 15 thereof, to wit:

Rule 3. Registration of Pre-Need Plans. – No corporation shall issue, offer for sale, or sell Pre-Need Plans unless such plans shall have been registered under Rule 4.

Rule 15. Registration of Dealers, General Agents and Salesmen of Pre-Need Plans.

15.1. Any issuer selling its own Pre-Need Plans shall be deemed a dealer in securities and shall be required to be registered as such and comply with all the provisions hereof; provided that the issuer selling different types of Pre-Need Plans shall be required to be registered as dealer only once for the different types of plans.

The SEC then issued the subject cease and desist order “in order to prevent further violations and in order to protect the interest of its plan holders and the public.”[8]

Feeling aggrieved, Primanila filed a Motion for Reconsideration/Lift Cease and Desist Order,[9] arguing that it was denied due process as the order was released without any prior issuance by the SEC of a notice or formal charge that could have allowed the company to defend itself.[10] Primanila further argued that it was neither selling nor collecting premium payments for the product Primasa plans. The product was previously developed but was never launched and sold to the public following the resignation from the company in 2006 by Benjamin Munda, the one who crafted it. The Primanila company website that included details on the Primasa product was not updated; the advertisement of the product on the website was the result of mere inadvertence.[11] Thus, the cease and desist order against Primanila would allegedly not accomplish anything, but only prejudice the interest and claims of its other planholders.[12]

On June 5, 2008, the SEC issued its Order[13] denying Primanila’s motion for reconsideration for lack of merit. The cease and desist order issued on April 9, 2008 was then made permanent.

Unyielding, Primanila appealed to the CA via a petition for review. On March 9, 2010, the CA rendered its decision dismissing the petition and affirming in toto the issuances of the SEC.

The Present Petition

Following the CA’s denial of its motion to reconsider, Primanila filed the present petition which cites the following grounds:

THE [CA] GROSSLY ERRED WHEN IT SUSTAINED THE ASSAILED ORDERS OF RESPONDENT SEC CONSIDERING THAT THE FACTS AND EVIDENCE ON RECORD [STATE] OTHERWISE;

THE [CA] GROSSLY ERRED WHEN IT RULED THAT [PRIMANILA] WAS GIVEN DUE PROCESS BY RESPONDENT SEC AS [PRIMANILA] WAS ABLE TO FILE A MOTION FOR RECONSIDERATION; AND

THE [CA] GROSSLY ERRED WHEN IT RULED THAT THE PUBLIC WILL NOT SUFFER GREATLY AND IRREPARABLY BY THE IMPLEMENTATION OF THE ASSAILED ORDERS OF RESPONDENT SEC.[14]

The Ruling of the Court

The petition lacks merit.

Due Process of Law

Contrary to its stance, Primanila was accorded due process notwithstanding the SEC’s immediate issuance of the cease and desist order on April 9, 2008. The authority of the SEC and the manner by which it can issue cease and desist orders are provided in Section 64 of the SRC, and we quote:

Section 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.

64.2. Until the Commission issues a cease and desist order, the fact that an investigation has been initiated or that a complaint has been filed, including the contents of the complaint, shall be confidential. Upon issuance of a cease and desist order, the Commission shall make public such order and a copy thereof shall be immediately furnished to each person subject to the order.

64.3. Any person against whom a cease and desist order was issued may, within five (5) days from receipt of the order, file a formal request for lifting thereof. Said request shall be set for hearing by the Commission not later than fifteen (15) days from its filing and the resolution thereof shall be made not later than ten (10) days from the termination of the hearing. If the Commission fails to resolve the request within the time herein prescribed, the cease and desist order shall automatically be lifted. (Emphasis ours)

The law is clear on the point that a cease and desist order may be issued by the SEC motu proprio, it being unnecessary that it results from a verified complaint from an aggrieved party. A prior hearing is also not required whenever the Commission finds it appropriate to issue a cease and desist order that aims to curtail fraud or grave or irreparable injury to investors. There is good reason for this provision, as any delay in the restraint of acts that yield such results can only generate further injury to the public that the SEC is obliged to protect.

To equally protect individuals and corporations from baseless and improvident issuances, the authority of the SEC under this rule is nonetheless with defined limits. A cease and desist order may only be issued by the Commission after proper investigation or verification, and upon showing that the acts sought to be restrained could result in injury or fraud to the investing public. Without doubt, these requisites were duly satisfied by the SEC prior to its issuance of the subject cease and desist order.

Records indicate the prior conduct of a proper investigation on Primanila's activities by the Commission's CED. Investigators of the CED personally conducted an ocular inspection of Primanila's declared office, only to confirm reports that it had closed even without the prior approval of the SEC. Members of CED also visited the company website of Primanila, and discovered the company's offer for sale thereon of the pension plan product called Primasa Plan, with instructions on how interested applicants and planholders could pay their premium payments for the plan. One of the payment options was through bank deposit to Primanila's given Metrobank account which, following an actual deposit made by the CED was confirmed to be active.

As part of their investigation, the SEC also looked into records relevant to Primanila's business. Records with the SEC's Non-Traditional Securities and Instruments Department (NTD) disclosed Primanila's failure to renew its dealer's license for 2008, or to apply for a secondary license as dealer or general agent for pre-need pension plans for the same year. SEC records also confirmed Primanila's failure to file a registration statement for Primasa Plan, to fully remit premium collections from planholders, and to declare truthfully its premium collections from January to September 2007.

The SEC was not mandated to allow Primanila to participate in the investigation conducted by the Commission prior to the cease and desist order's issuance. Given the circumstances, it was sufficient for the satisfaction of the demands of due process that the company was amply apprised of the results of the SEC investigation, and then given the reasonable opportunity to present its defense. Primanila was able to do this via its motion to reconsider and lift the cease and desist order. After the CED filed its comment on the motion, Primanila was further given the chance to explain its side to the SEC through the filing of its reply. "Trite to state, a formal trial or hearing is not necessary to comply with the requirements of due process. Its essence is simply the opportunity to explain one's

position.”[15] As the Court held in *Ledesma v. Court of Appeals*: [16]

Due process, as a constitutional precept, does not always and in all situations require a trial-type proceeding. Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. The essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one’s side, or an opportunity to seek a reconsideration of the action or ruling complained of.[17]

Validity of the Cease and Desist Order

The validity of the SEC’s cease and desist order is further sustained for having sufficient factual and legal bases.

The acts specifically restrained by the subject cease and desist order were Primanila’s sale, offer for sale and collection of payments specifically for its Primasa plans. Notwithstanding the findings of both the SEC and the CA on Primanila’s activities, the company still argued in its petition that it neither sold nor collected premiums for the Primasa product. Primanila argued that the offer for sale of Primasa through the Primanila website was the result of mere inadvertence, after the website developer whom it hired got hold of a copy of an old Primasa brochure and then included its contents in the company website even without the knowledge and prior approval of Primanila.

It bears emphasis that the arguments of Primanila on the matter present factual issues, which as a rule, are beyond the scope of a petition for review on certiorari. We underscore the basic rule that only questions of law may be raised in a petition for review under Rule 45 of the Rules of Court. The Supreme Court is not a trier of facts. It is not our function to review, examine and evaluate or weigh the probative value of the evidence presented, for a question of fact would arise in such event.[18] Thus, it is equally settled that the factual findings of administrative agencies, such as the SEC, are generally held to be binding and final so long as they are supported by substantial evidence in the record of the case. Our jurisdiction is limited to reviewing and revising errors of law imputed to the lower court, the latter’s findings of fact being conclusive and not reviewable by this Court.[19]

In ruling on the petition’s denial, we rely on the substantial evidence that supports the SEC’s and CA’s findings. Section 5, Rule 133 of the Rules of Court defines “substantial evidence” as such relevant evidence which a reasonable mind might accept as adequate to support a conclusion.[20] In the instant case, this substantial evidence is derived from the results of the SEC investigation on Primanila’s activities. Specifically on the product Primasa plans, the SEC ascertained that there were detailed instructions on Primanila’s website as to how interested persons could apply for a plan, together with the manner by which premium payments therefor could be effected. A money deposit by CED to Primanila’s Metrobank account indicated in the advertisement confirmed that the bank account was active.

There could be no better conclusion from the foregoing circumstances that Primanila was engaged in the sale or, at the very least, an offer for sale to the public of the Primasa plans. The offer for Primasa was direct and its reach was even expansive, especially as it utilized its website as a medium and visits to it were, as could be expected, from prospective clients.

The Court finds weak and implausible the argument of Primanila that the inclusion of the Primasa advertisement on its website was due to mere inadvertence. It was very unlikely that Primanila’s website developer would include in the Primanila website sections or items that were not sanctioned by the company. As a hiree of the company, the website developer could have only acted upon the orders and specific instructions of the company.

As prudence requires, there also normally are employees of a company who are specifically tasked to monitor contents and activities in its company website. It was therefore inconceivable that Primanila only knew of the Primasa post on its website after it received the subject cease and desist order. In any case, Primanila should be held responsible for the truthfulness of all data or information that appeared on its website, especially as these were supplied by persons who were working under its authority.

It is beyond dispute that Primasa plans were not registered with the SEC. Primanila was then barred from selling and offering for sale the said plan product. A continued sale by the company would operate as fraud to its investors, and would cause grave or irreparable injury or prejudice to the investing public, grounds which could justify the issuance of a cease and desist order under Section 64 of the SRC. Furthermore, even prior to the issuance of the subject cease and desist order, Primanila was already enjoined by the SEC from selling and/or offering for sale pre-need products to the public. The SEC Order dated April 9, 2008 declared that Primanila failed to renew its dealer's license for 2008, prompting the SEC's NTD to issue a letter dated January 3, 2008 addressed to Primanila's Chairman and Chief Executive Officer Eduardo S. Madrid, enjoining the company from selling and/or offering for sale pre-need plans to the public. It also had not obtained a secondary license to act as dealer or general agent for pre-need pension plans for 2008.[21]

In view of the foregoing, Primanila clearly violated Section 16 of the SRC and pertinent rules which barred the sale or offer for sale to the public of a pre-need product except in accordance with SEC rules and regulations. Under Section 16 of the SRC:

Sec. 16. Pre-Need Plans. – No person shall sell or offer for sale to the public any pre-need plan except in accordance with rules and regulations which the Commission shall prescribe. Such rules shall regulate the sale of pre-need plans by, among other things, requiring the registration of pre-need plans, licensing persons involved in the sale of pre-need plans, requiring disclosures to prospective plan holders, prescribing advertising guidelines, providing for uniform plans, imposing capital, bonding and other financial responsibility, and establishing trust funds for the payment of benefits under such plans.

As the foregoing provisions are necessary for the protection of investors and the public in general, even the Pre-Need Code,[22] which now governs pre-need companies and their activities, contains similar conditions for the regulation of pre-need plans.

WHEREFORE, the petition is DENIED. The Decision dated March 9, 2010 and Resolution dated September 15, 2010 of the Court of Appeals in CA-G.R. SP. No. 104083 are AFFIRMED.

SO ORDERED.

Sereno, C.J., (Chairperson), Bersamin,[*] Villarama, Jr., and Mendoza,[**]JJ., concur.

[*] Acting Working Chairperson per Special Order No. 1741 dated July 31, 2014 vice Justice Teresita J. Leonardo-De Castro.

[**] Acting Member per Special Order No. 1738 dated July 31, 2014 vice Justice Teresita J. Leonardo-De Castro.

[1] Rollo, pp. 9-24.

[2] Penned by Associate Justice Normandie B. Pizarro, with Associate Justices Hakim S. Abdulwahid and Ruben C. Ayson, concurring; id. at 69-79.

[3] Id. at 88-89.

[4] Id. at 26-29.

[5] Id. at 29.

[6] Id. at 26.

[7] Id. at 26-28.

[8] Id. at 29.

[9] Id. at 30-32.

[10] Id. at 30-30a.

[11] Id. at 30.

[12] Id. at 31.

[13] Id. at 49-53.

[14] Id. at 13.

[15] *Power Homes Unlimited Corporation v. Securities and Exchange Commission*, 570 Phil. 161, 168 (2008).

[16] 565 Phil. 731 (2007).

[17] Id. at 740.

[18] *Magdiwang Realty Corporation v. The Manila Banking Corporation*, G.R. No. 195592, September 5, 2012, 680 SCRA 251, 264.

[19] *Cuenca v. Hon. Atas*, 561 Phil. 186, 220 (2007).

[20] Section 5, Rule 133 of the Rules of Court.

[21] *Rollo*, p. 27.

[22] Republic Act No. 9829 (2009).

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