Republic of the Philippines
Department of Finance
Securities and Exchange Commission
EC Building, EDSA, Greenhills, Mandaluyong City

In the Matter of

DILIMAN DOCTORS HOSPITAL, INC.,

SEC CDO Case No. 10-12-008

ENFORCEMENT AND PROSECUTION DEPARTMENT

Movant.

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ORDER

This resolves the Request or Motion [To Lift Cease and Desist Order] filed by Diliman Doctors Hospital, Inc. (hereinafter referred to as "DDHI") on 07 December 2012.

In an Order dated 10 December 2012, the Request or Motion to Lift Cease and Desist Order filed by DDHI was set for hearing on 20 December 2012. On 04 January 2013, DDHI filed a Motion to Direct the Enforcement and Prosecution Department ("EPD") to furnish DDHI a copy of the Field Investigation Report. In an Order dated 07 January 2013, the EPD was directed to comment on the Motion to Direct the EPD to furnish DDHI a Copy of the Field Investigation Report. The EPD filed its Opposition on 17 January 2013 while DDHI filed its Reply on 08 February 2013. Thereafter, the parties were called for a clarificatory conference on 24 April 2013. During the conference, DDHI was furnished with a copy of the Field Investigation Report and both parties were directed to file their respective Memoranda. On 20 May 2013, the EPD filed its Memorandum while DDHI filed a Manifestation. On 27 May 2013, an Order was issued submitting the case for resolution.

In its Motion to Lift CDO,[1] DDHI principally argue that the CDO issued by the Commission on 22 November 2012 should be set aside based on the following grounds:

(a) DDHI is not selling its own shares nor has plans to go public or intentions to make a public offering to generate funds for hospital projects;

[1] Records, pp. 136-179.

SEC - OGC

(b) After incorporation, the remaining unsubscribed shares of DDHI have been subscribed by new subscribers. As of May 2011, DDHI has no more shares to sell considering its authorized capital stock were fully subscribed and issued. Thus, it is absurd for DDHI to advertise or offer its own shares to the public;

(c) Sale of DDHI shares is initiated by individual stockholders/founders based on their right of ownership and registration is not necessary before it can be sold;

(d) DDHI did not authorize the advertisement of sale of DDHI shares and distribution of flyers; and

(e) The chilling effect of the CDO will cause irreparable injury to DDHI and its founders as it discourages legitimate business entities to deal with DDHI.

The EPD, in its Opposition to the Motion to Lift CDO,[2] argues, among others, that –

(a) The Commission, in issuing the CDO, did not intend to impede on the right of DDHI to construct the hospital or to deliver basic health services to the public, but merely exercised its powers pursuant to Section 5.1 (i) of the Securities Regulation Code (SRC) in relation to Sections 3 and 8 of the SRC;

(b) Based on DDHI's statements in its Motion to Lift CDO as well as the statement of private complainant's witness, Dr. Rowena Blancia, during the conference held on 27 July 2012 and in her affidavit, DDHI has actually sold its shares to investors such as Dr. Blancia and/or her daughter Princez Mariya Blancia. On one hand, DDHI also admitted in its Motion to Lift CDO that its stockholders sold securities without first securing the required secondary license;

(c) Based on its Articles of Incorporation, DDHI's stockholders are prohibited from selling or disposing their shares in the corporation until 20 April 2014, unless they comply with the conditions set forth in DDHI's Articles of Incorporation. In its Motion to Lift CDO, DDHI did not present any evidence showing compliance with the conditions set forth in their Articles of Incorporation regarding sale or disposition of shares as well as with the necessary filing and approval of registration statements with the Commission pursuant to Section 8 and 12 of the SRC; and

(d) Absent any indication that the Philippine Daily Inquirer advertisement, brochures, flyers and blogs were initiated by particular stockholders, it can be presumed that said advertisement, brochures and flyers are public promotions initiated by DDHI to attract additional stockholders and pull in finances.

In its Reply,[3] DDHI averred that –

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[2] Records, pp. 188-196.
[3] Id., pp. 204-214.

(a) It is not required to register the shares of stocks subscribed by its stockholders as the issuance of shares to the incorporators and stockholders arising from their subscription and full payment of their respective subscribed shares is exempt under Sec. 10.1 (i) of the SRC;

(b) No circumstances warrant the need for individual stockholders to secure a secondary license as any sale made by an individual stockholder may still be considered an exempt transaction under Section 10.1 (c) of the SRC;

(c) The giving of flyers to the EPD investigators by the guard at the project site cannot be considered to be made in a public place since it was made at the confines of the offices and property of DDHI;

(d) DDHI never made any offer to sell in any of the medium mentioned by EPD as it does not need to raise or generate funds from the public to finance its hospital project. It further argues that in case of the blogs of Dra. Samoy and Dayrit Sales and Leasing Corp., it should be presumed that Dra. Samoy and Mrs. Dayrit, being the owner of Dayrit Sales and Leasing Corp., are the persons offering their shares for sale and not DDHI. It further argues that the acknowledgment receipt issued by DDHI is not conclusive proof that the shares were owned by DDHI; and

(e) The Commission cannot intrude into the internal affairs of the corporation without any actual controversy filed by the corporation or affected founder or buyer for alleged violation of the Articles of Incorporation of DDHI.

The EPD, in its Memorandum,[4] reiterated its earlier arguments and averred that the transaction(s) subject of the CDO issued by the Commission was the offering and sale of shares of stock of DDHI to investors who were not stockholders and/or subscribers of its authorized capital stock at the time DDHI applied for increase of its capital stock, thus, the sale to investors in "Blocks" consisting of 20 shares of stock does not come under the purview of Section 10.1 (i) of the SRC.

Instead of filing a Memorandum, DDHI filed a Manifestation[5] emphasizing that the danger or evil which the CDO seeks to prevent is not present in the operations of DDHI.

The Commission finds no cogent reason to vacate and set aside its CDO dated 22 November 2012.

The allegation that the entire authorized capital stock of DDHI was fully subscribed as of May 2011 is not sufficient to overcome the evidence showing that DDHI actually engaged in the sale and/or offer for sale of securities to the public, in this case shares of stocks, without a registration statement duly filed and approved by the Commission. It finds no support in the fact that DDHI's stock and transfer book[6]

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[4] Records, pp. 224-240.
[5] Id., pp. 241-242.
[6] Id., pp. 42-49, Annexes K, L, L-1, L-2, L-3, L-4, L-5 and M.

is blank as certified by its Corporate Secretary and only 99.75% of its authorized capital stock has been subscribed based on its 2012 General Information Sheet.[7]

It does not overcome the fact that DDHI, through its agent, Ms. Judith Duday, offered for sale[8] its shares of stock to EPD investigators on 25 September 2012 in its office, without the necessary registration. A perusal of the fliers and brochures given to the EPD investigators clearly shows that what is being offered for sale to the public are not the shares owned by anyone of the existing DDHI shareholders as claimed by DDHI, but what appears to be unissued shares of DDHI. The checks[9] issued by Dr. Rowena Blancia to DDHI and the acknowledgment receipt[10] issued by DDHI are circumstances showing that what is being offered for sale are unissued shares of DDHI and not shares owned by any of the existing DDHI shareholders.

If at all there is some truth to its contention that its authorized capital stock has been fully subscribed as of May 2011, it did not stop DDHI and its agents from offering for sale to the public shares that are more than what is authorized by law and its Articles of Incorporation to be issued. The amount of the minimum investment sought by DDHI ranges from Four Hundred Fifty Thousand Pesos (P450,000.00) to Five Hundred Thousand Pesos (P500,000.00) per one block of share which is equivalent to twenty shares of stock. Considering the extent of the potential exposure to the public of DDHI's proposed offer for sale and the full subscription of its authorized capital stock, it becomes imperative for the Commission to retain the CDO to protect the public from potential fraud.

The advertisement posted in the personal blog of Dra. Samoy[11] and likewise on the website of Dayrit Property Sales & Leasing Corporation,[12] the Facebook page of DDHI,[13] and the fliers and brochures[14] distributed by DDHI representatives in its office also clearly indicate that what is being offered for sale to the public are not the shares owned by any of the existing DDHI shareholders as claimed by DDHI, but what appears to be unissued shares of DDHI. The content of these advertisements, brochures and fliers is substantially the same, viz –

"xxx xxx xxx

The Diliman Doctors Hospital Investment

With a single investment, you become a part owner of the hospital with lifetime health security for you, your spouse and family as well as the

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[7] 79,800 subscribed shares out of 80,000 authorized capital stock.
[8] Records, p. 4, Annex DD, Field Investigation Report.
[9] Id., pp. 7-9, Annexes X, X-1 and X-2; BPI checks dated 8 November 2011, 8 December 2011, 8 January 2012, 8 February 2012, 8 March 2012, 8 April 2012 and 8 May 2012.
[10] Id., pp. 5-6, Annexes Y and Y-1; Acknowledgment Receipt dated 08 November 2011 and 15 November 2011.
[11] Id., pp. 10-12, Annexes V, V-1 and V-2.
[12] Id., pp. 19-25, Annexes U, U-1, U-2, U-3, U-4, U-5 and U-6.
[13] Id., pp. 29-34, Annexes Q, Q-1, Q-2, Q-3, Q-4 and Q-5.
[14] Id., pp. 26-28, Annexes R, S and T.

opportunity [sic] of your shares to earn dividends and appreciate in market value.

As a personal property, the stockholder's shares can be sold, transferred and inherited, unlike one's HMO and other health insurance.

Moreover, the excellent location is strategic for medical practioner [sic].

The Benefits
(Minimum of 1 Block of shares per stockholder required)

Stockholders
Free board and lodging for a total of 45 days per year (cumulative) in a private room
Fifty percent (50%) discount on professional fees based on house case rate.
Thirty percent (30%) discount on diagnostic procedures, such as X-ray, CT Scan, Laboratory, 2D-Echo, etc.
Free Operating Room, Delivery Room and Recovery Room fees.
Ten percent (10%) discount for Pharmacy, CSR and OR supplies
For Dental Services:
Free Consultation
Thirty Percent (30%) discount on restorative, Preventive, Periodontics, Endodontics, Surgery and Bleaching
Ten percent (10%) discount on Prosthodontics

Additional Benefits for Medical Stockholders
Privilege to practice and hold clinic subject to the rules and regulations of the hospital management
Decking and rotation of HMO and house cases subject to rules and regulations of the management

xxx xxx xxx"

DDHI also failed to substantiate its argument that the advertisements for sale and distribution of flyers were not authorized by its Board of Directors. A corporation can also act through a corporate officer or an agent impliedly authorized by general practice.[15] Ratification of the acts of the agent can also be made by the corporate board impliedly through acquiescence or silence and acceptance and retention of benefits.[16]

It must be pointed out that the fliers and brochures of DDHI were distributed by its agents to EPD investigators and Rowena Blancia at DDHI's offices,[17] thus,

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[15] Yasuma v. Heirs of Cecilia De Villa et al., G.R. No. 150350, 22 August 2006, citing Rural Bank of Milaor (Camarines Sur) v. Ocfemia, 381 Phil 911 (2000) [Concurring Opinion of J. Vitug].
[16] Id., citing MWSS v. Court of Appeals, G.R. No. 126000 and 128520, 07 October 1998.
[17] Records., pp.4 and 13, Annexes W and DD.

DDHI cannot now claim that it did not know or impliedly authorized or acquiesced to the printing and distribution of flyers and brochures. The distribution of the fliers and brochures at DDHI's offices is indicative of its Board's knowledge of such practice and of the apparent authority given by its Board to its agents to offer for sale DDHI shares to the public.

Also, the acceptance and retention by DDHI of the check payments made by Dr. Blancia[18] indicates that its Board impliedly ratified the printing and distribution of flyers and brochures as well as the sale or offer for sale of DDHI shares. The posting of the brochures and flyers in its Facebook page and the posting of brochures in the personal blog of Dra. Samoy, who is an incorporator, a director and a corporate officer of DDHI, also indicate knowledge and acquiescence of DDHI's board to the distribution of brochures and offering for sale of its shares to the public.

In its Reply, DDHI insists that there was no public offering because the giving of flyers to the EPD investigators was made within the confines of the private offices and property of DDHI. We disagree.

DDHI's offices are considered commercial places as it is the place where DDHI transacts its business with the public in general. Distribution of flyers and brochures in DDHI's offices gives rise to a presumption of a public offering as the flyer and brochure can pass from one person to another.

Even assuming that distribution of flyers and brochures in DDHI's offices does not constitute a public offering, it is sufficient that evidence on record shows that DDHI offered for sale or sold its shares within the Philippines without the required secondary license in violation of Section 8 of the SRC.

Lastly, assuming arguendo that it did not sell or offer for sale shares beyond what is authorized by its Articles of Incorporation, DDHI failed to substantiate its claim that the issuance of its unissued shares[19] after incorporation is exempt from registration.

Relying on Sec. 10.1 (i) of the SRC, DDHI failed to show that (a) the issuance of shares was part of and made in the course of increasing its authorized capital stock; (b) no expense was incurred, or no commission, compensation or remuneration was paid in connection with the sale or disposition of such shares; and (c) the purpose for soliciting such subscriptions is to comply with the requirements as to the percentage of capital stock of a proposed corporation which should be subscribed before it can be registered and duly incorporated.

The Affidavit of Nicolas Molon and Jose Bacud, DDHI's Chairman and President, respectively, clearly shows that the issuance of shares to Alfredo C. Reyes, Nancy P. Bacud, Efren Lozada, Jay G. Crisostomo, Jay M. Crisostomo IV, Jacqueline M. Crisostomo, Ronan Christian B. Mina, Dennis L. Sta. Ana, Julius Caesar C.

[18] Records, pp. 4-9 and 13 Annexes W, X, X-1, X-2 , Y, Y-1 and DD.
[19] Id., pp. 13, 49-53, Annexes J and W.

Cajucom, John P. Querol, Evangeline Y. Zozobrado, Florentino U. Ty, Roy Nicolas R. Molon Jr., and John Ferdinand P. Bacud were from the unissued shares of DDHI and not made prior to incorporation or in pursuance of an increase in its authorized capital stock.

It should also be pointed out that the aforementioned individuals are not existing stockholders of DDHI at the time of such issuance, thus, such shares were not offered for sale exclusively to existing stockholders of DDHI.

The same affidavit also shows that the shares issued after DDHI's incorporation to Edna Ancheta, Lani Ancheta, Reynauld Ancheta, Jose Bacud, Amie Grace Bucalan, Geanie Cerna-Lopez, Cesar Culas, Francisca Dayrit, Victor Domingo, Emigdio Dumlao Jr., Victoria Dumlao, Joy Luna, Rodolfo Luna, Edna Molon, Nicolas Molon, Rodolfo Nasol, Marietta Samoy and Kristine Ann Venzuela were from the unissued shares of DDHI and not made in pursuance of an increase in its authorized capital stock.

It is clear from the foregoing that the shares issued to the aforementioned individuals came from the unissued shares of DDHI's authorized capital stock. Thus, the aforementioned sale of DDHI shares to these individuals does not fall within the purview of Section 10.1(i) of the SRC.

The Affidavit of Mr. Molon and Mr. Bacud and the Affidavit of Dr. Blancia also indicate that the shares sold to Dr. Blancia and her daughter Princez Mariay B. Blancia were not made pursuant to an increase in its authorized capital stock. Consequently, the sale of DDHI shares to Ms. Blancia and Princez Mariay Blancia is not an exempt transaction under Section 10.1 (i) of the SRC.

Further, assuming arguendo that these are exempt transactions, exemption to register securities cannot be presumed but must be applied for under Sections 10.1, 10.2 and 10.3 of the SRC and its Implementing Rules and Regulations. Any person claiming an exemption under Section 10 has the burden, if challenged, to establish that the exemption is available.[20]He who alleges the affirmative of the issue has the burden of proof.[21] In this case, DDHI has not presented any proof but only their mere allegations.

WHEREFORE, premises considered, the Cease and Desist Order dated 22 November 2012 against Diliman Doctors Hospital, Inc. (SEC Registration No.CS201107118), its partners, officers, directors, agents, representatives, conduits, assigns and any and all persons claiming and acting for and in behalf and under its authority is hereby MADE PERMANENT until or unless it has complied with the legal requirements for offering for sale or selling securities to the public.

The Enforcement and Prosecution Department is hereby DIRECTED to (a) serve this Order on Diliman Doctors Hospital, Inc. and any of its authorized

[20] SRC Rule 10.1 (7)(A).
[21] Adriano v. Tanco et al., G.R. No. 168164, 05 July 2010.

representatives, namely its President, General Manager, Corporate Secretary, Treasurer or In-House Counsel; and (b) post copies of the Order at the entrance of the main office and/or branches, if any, of Diliman Doctors Hospital Inc.

FAIL NOT UNDER PENALTY OF LAW.

SO ORDERED.

City of Mandaluyong, 04 June 2013.

TERESITA J. HERBOSA*
Chairperson

MA. JUANITA E. CUETO
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner

ANTONIETA FORTUNA-IBE
Commissioner

*on official travel