Republic of the Philippines
Department of Finance
Securities and Exchange Commission

CALIRAYA SPRINGS GOLF CLUB, INC.,
Appellant,

- versus -

SEC *En Banc* Case No. 02-16-394

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,
Appellee.

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DECISION

Pending consideration for the Commission *En Banc* is the *Withdrawal of Appeal* filed by Caliraya Springs Golf Club, Inc. (Caliraya) on 9 March 2016.[1]

Caliraya is a non-profit corporation which incorporated with the Commission on 11 February 1997 with SEC Registration No. A1997-02176. Its primary purpose is "to promote the social, recreational and athletic activities on a non-profit basis among its members, the main objective and undertaking of which will be construction and maintenance of a golf course, tennis courts, swimming pools, and other indoor and outdoor related sports and recreational facilities."[2] It was issued a Certificate of Permit to Offer Securities for Sale on 6 June 1997 and was authorized to issue proprietary certificates.[3]

On 4 February 2004, for the failure to file its required reports[4] and to settle the assessed penalty in the amount of Php 145,550.00, Caliraya's Registration of Securities and Permit to Sell Securities (Secondary License) was revoked by the Commission.[5] It must be noted that, despite revocation of its permit to sell securities, Caliraya was still required under SRC Rule 13 of the 2003 Implementing Rules and Regulations (IRR) of the Securities Regulation Code (SRC)[6] to comply with its periodic reportorial requirements.

On 21 July 2011, again for the latter's failure to comply with its reportorial requirements,[7] the Commission, in its Order, likewise revoked the Certificate of Registration (Primary License) of Caliraya.[8]

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1 *Withdrawal of Appeal* dated 8 March 2016.

2 Memorandum on Appeal dated 4 February 2016 and filed on 5 February 2016, par. 3.1; and, per records, Certificate of Registration issued on 11 February 1997 and Second Article of the Articles of Incorporation of Caliraya.

3 Per records, Certificate of Permit to Offer Securities for Sale issued on 6 June 1997.

4 Caliraya failed to file the following: (i) 2001 and 2002 Annual Reports (SEC Form 17-A); and (ii) 2002 3rd Quarter Report (SEC Form 17-Q).

5 Reply Memorandum dated 17 February 2016 and filed on 22 February 2016, par. 2.

6 SRC Rule 13 provides that the Order of Revocation shall not exempt the company from its reporting obligations under Section 17.2 of the SRC.

7 Caliraya was required to file periodic and annual reports prescribed by Section 17 of the Securities Regulation Code of 2000 (Republic Act No. 8799) starting 30 September 2007.

8 Reply Memorandum dated 17 February 2016 and filed on 22 February 2016, par. 3; and Memorandum on Appeal dated 4 February 2016 and filed on 5 February 2016, par. 4.2.

On 10 December 2013, the Corporate Governance and Finance Department (CGFD) endorsed the matter for further action to the Enforcement and Investor Protection Department (EIPD).[9]

On 4 February 2014, the CGFD assessed a penalty against Caliraya in the amount of Php 14,326,250.00 for its non-filing of reports[10] prior to and after the revocation of its Secondary License, but prior to the revocation of its primary license.[11]

On 10 February 2014, the EIPD issued a Show Cause Order directing Caliraya to explain why it should not be held liable for non-payment of the above-mentioned penalty. However, Caliraya failed to comply with the Show Cause Order, and the EIPD issued an Order against the former to pay the said penalty. Thereafter, on 31 May 2014 the Order became final and executory since Caliraya failed to appeal the same.[12]

In fact, a Writ of Execution was issued by the EIPD, and the assistance of the Office of the Clerk of Court of the Regional Trial Court (RTC) of Sta. Cruz, Laguna was sought for the implementation of the said writ.

On 28 October 2015, Caliraya filed with the EIPD a *Petition to Lift Order of Revocation of Permit to Sell Securities to the Public and Certificate of Registration* (Petition) with a Settlement Offer. In the Settlement Offer, Caliraya offered to pay 25% of the assessed penalties or Php 3,581,562.50 as full payment and settlement.[13]

In response to the Settlement Offer, the EIPD, in its Letter dated 25 January 2016, proposed that the offer of Caliraya be increased to 50% of the assessed penalty.[14]

On 5 February 2016, Caliraya filed its Memorandum on Appeal assailing the Letter of the EIPD dated 25 January 2016, and praying that the said letter be reversed and that the Settlement Offer be accepted by the Commission.[15]

On 22 February 2016, the EIPD filed its Reply Memorandum praying for the dismissal of the appeal, considering that the appeal is not proper since the results of the evaluation of the Settlement Offer is not a final order.[16]

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[9] Reply Memorandum dated 17 February 2016 and filed on 22 February 2016, par. 1.

[10] Caliraya failed to file the following reports: (i) Annual Reports (SEC Form 17-A) from 2004-2010; (ii) Quarterly Reports (SEC Form 17-Q) from 3rd quarter of 2004 to 2nd quarter of 2011; (iii) Information Statements from 2005 to 2010; (iv) Certificates of Attendance of Directors to Board Meetings from 2005 to 2010; and (v) Certificates on the Extent of Compliance with its MCG from 2005 to 2010.

[11] Reply Memorandum dated 17 February 2016 and filed on 22 February 2016, pars. 4 and 5; and Memorandum on Appeal dated 4 February 2016 and filed on 5 February 2016, par. 4.3.

[12] *Id.*, pars. 6-8.

[13] *Id.*, par. 9.

[14] Memorandum on Appeal dated 4 February 2016 and filed on 5 February 2016, par. 4.6 (Letter of the EIPD dated 25 January 2016).

[15] *Id.*, p. 9.

[16] Reply Memorandum dated 17 February 2016, par. 20.

On 9 March 2016, Caliraya filed the instant Withdrawal of Appeal stating that it mistakenly interpreted the Letter of the EIPD dated 25 January 2016 as a final order. Thus, Caliraya stated that it is formally withdrawing the appeal.[17]

However, the withdrawal of the appeal is not a matter of right, but within the discretion of the Commission pursuant to Section 3, Rule 50 of the Rules of Court which is suppletorily applied[18], to wit -

> "Section 3. Withdrawal of appeal. - **An appeal may be withdrawn as of right at any time before the filing of the appellee's brief. Thereafter, the withdrawal may be allowed in the *discretion* of the court**." (Emphasis supplied)

It should be noted that appellee (EIPD) has already filed a responsive pleading in the form of a Reply Memorandum. However, there appears to be reasonable grounds to allow the Withdrawal of Appeal considering that the Letter of the EIPD is not a final order. The Letter is merely a proposal to increase the Settlement Offer to 50% of the latter's assessed penalty.

But more importantly, it must be noted that the assessed penalty on Caliraya for the non-filing of its reports should not have been the subject of a Settlement Offer considering that SRC Rule 55.1[19] provides that "non-filing of required reports" shall not be the subject thereof. Further, the rule provides that a settlement offer can no longer be made after an "order resolving the case has become final and executory". In which case, considering that the order has become final and executory, the available remedy is a request for a reduction of penalty from the CGFD since it imposed the assessed penalty. Clearly, Caliraya's settlement offer is improper if its objective is to reduce the assessed penalty.

Lastly, we note that Caliraya erred in filing its Petition with the EIPD. With respect to the lifting the order revoking the Certificate of Registration of Caliraya, it should have, instead, filed a petition to lift such order with the Company Registration and Monitoring Department (CRMD) of the Commission since the latter has the authority to act over petitions for the lifting of the revocation of such license;[20] on the other hand, with respect to the lifting the order revoking the Secondary License, Caliraya should have filed a petition with the CGFD since the latter has authority to act over issuers of proprietary membership certificates such as those issued by Caliraya.[21]

However, before the Commission can act on the lifting of the orders and in the interest of orderly proceedings, Caliraya must first address the above-mentioned assessed

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[17] Withdrawal of Appeal, pars. 10 and 11.

[18] 2006 Rules of Procedure of the Commission is silent on the procedure for the withdrawal of pending appeals.

[19] SRC Rule 55.1 of the 2015 Implementing Rules and Regulations of the SRC provides the following: "**the following cases shall not be the subject of settlement:** [1] **Non-filing of required reports**; [2] Late-filing of required reports; [3] Cases involving the Foreign Investments Act of 1991; [4] Fines for violation of the Corporation Code; and [5] Violations of the Revised Penal Code and special laws."

[20] SEC Resolution No. 175, series of 2008.

[21] SEC Office Order No. 819, Series of 2014 (Re: Revision of SEC Office Order No. 512, series of 2013 on the Renaming of Departments/Divisions Realignment of Functions and Reassignment of Personnel).

penalties and any other penalties imposed by the Commission. Once such penalties are paid, Caliraya must file a petition to lift the order revoking its Certificate of Registration or Primary License with the CRMD in order reacquire its juridical personality, before it can reacquire its Secondary License. After Caliraya's Certificate of Registration or Primary License is revived by the CRMD, then the former may file a petition with the CGFD requesting for the lifting of the order revoking its Secondary License.

WHEREFORE, premises considered, *Withdrawal of Appeal* filed by Caliraya Springs Golf Club, Inc. (Caliraya) on 9 March 2016 is hereby GRANTED. However, before the Commission can act on the lifting of the Orders revoking the Certificate of Registration and the Permit to Sell Securities to the Public of Caliraya, the latter must first address any penalties imposed by the Commission. Once such penalties are paid, Caliraya must file a petition to lift the order revoking its Certificate of Registration with the Company Registration and Monitoring Department (CRMD) in order to reacquire its juridical personality. After Caliraya's Certificate of Registration is revived by the CRMD, then it may file a petition with the Corporate Governance and Financing Department requesting for the lifting of the order revoking its Secondary License.

SO ORDERED.

Pasay City, 27 October 2016.

TERESITA J. HERBOSA*
Chairperson

MANUEL HUBERTO B. GAITE
Commissioner

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

BLAS JAMES G. VITERBO*
Commissioner

*On Official Business