Republic of the Philippines
Department of Finance
Securities and Exchange Commission

In the matter of:
KAPA-COMMUNITY MINISTRY INTERNATIONAL, INC.

SEC Admin. Case No. 02-19-181
For: Petition for Revocation with Prayer for Issuance of a Cease and Desist Order

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,
Petitioner.
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RESOLUTION

For consideration of the Commission En Banc is the Manifestation dated 01 March 2019 filed by Kapa through its counsel, SEDALAW, formally withdrawing its first Manifestation dated 28 February 2019 manifesting that it has filed through registered mail[1] an Urgent Omnibus Motion (1) To Lift Cease and Desist Order; and (2) To Revoke and Remove SEC Advisory dated 03 October 2018. Kapa argues in its second Manifestation that it has not yet received the official copy of the purported Cease and Desist Order dated 14 February 2019.

Movant EIPD, filed its Compliance[2] and averred that:

"xxx

3. On 20 February 2019, in compliance with the said Order, the undersigned SEC-designated Special Sheriff,[3] proceeded to Bislig City, Surigao Del Sur via Cagayan De Oro City. Upon arrival at Cagayan De Oro City, undersigned met with Mr. Romy Diango of SEC-CDO Extension Office and thereafter proceeded to Bislig City, Surigao Del Sur. At Bislig City, undersigned together with Mr. Diango, went to the Philippine National Police (PNP) Bislig Station to seek their assistance in locating the principal/office address of KAPA, as indicated in the CDO. The PNP assisted us and also provided security through PO3 Herbert T. Nable and seven (7) other policemen.

4. On 21 February 2019, the undersigned together with Mr. Diango, P03 Nable and 7 other policemen went to Garay Arcade, Barreda Street, Caramcam District, Barangay Mangagoy, Bislig City, Surigao Del Sur, the address indicated in the CDO and the Articles of Incorporation (AOI) of KAPA, to serve and post the said CDO. When we arrived at around 10:00 o' clock in the morning of thursday at Garay Arcade, we saw rows of stalls of different businesses. We, however, did not see any

[1] On 26 February 2019
[2] Dated 27 February 2019.
[3] Per SEC Resolution No. 586, s. of 2015.

sign or signboard that displays the name of KAPA that would indicate that KAPA was holding office thereat. We then ask the people in the vicinity, one of whom was the owner of a dress shop, if they knew KAPA. According to the people there, KAPA used to occupy the stall that was now the dress shop. This was confirmed by the owner of the dress shop. She said that KAPA used to occupy the area which is now her dress shop but KAPA was not there anymore because KAPA was driven away by the Mayor of Bislig two (2) years ago.

5. Despite this fact, the undersigned posted the CDO at the main entrance of the last known address of KAPA (which is now a dress shop), with the permission of its new owner.[4] Since, the office of KAPA is no longer operating at the said address, service to its officers, employees, etc. is no longer feasible. Nonetheless, the CDO was likewise posted at the Bislig City LGU public bulletin board.[5]

6. Afterwards, we then proceeded to the address of Nonita S. Urbano and Junnie G. Apolinario, two of KAPA's incorporators, at P-1 Cumawas, Bislig City (the address indicated in the CDO and AOI) to also serve the CDO to them. We were able to locate the address of Nonita S. Urbano but we were told that she was out of town. Hence, the certified true copy of the CDO was served to Justine Lee S. Urbano, the son of Nonita Urbano, as shown by his signature on the CDO's receiving copy, which is hereto attached and made integral part hereof as Annex "C." The signature of Lee S. Urbano on page 2 of the receiving copy of the CDO is marked as Annex "C-1."

7. With regard to Junnie G. Apolinario, we were told that he lives in P-2 (or Phase 2) Cumawas, Bislig City (not P-1 as indicated in the AOI). We also found the address of Junnie G. Apolinario, through the help of the residents of P-1, but he was likewise out of town according to his father-in-law, Cresencio Dalumpines. Thus, the certified true copy of the CDO was served to Cresencio Dalumpines, as shown by his signature on page 2 of the CDO's receiving copy.[6] Anent the stated addresses of Joel Apolinario, Nelia V. Niño, Maria Pella B. Sevilla and Jouelyn A. Del Castillo, these addresses are reported as critical areas of concern in the city for possible presence of members belonging to the New People's Army. We were therefore advised not to proceed to the said addresses.

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On 06 March 2019, an Order was issued to movant, EIPD, to file its comment on the Manifestations of Kapa through its counsel SEDALAW.

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[4] Annex "A" of the Compliance
[5] Annex "B" of the Compliance

[6] Annex "C-2."

Movant EIPD filed its Comment on 11 March 2019. It avers that by the subsequent Manifestation which withdraws the first Manifestation, the issue regarding the lifting of the CDO and the removal of the SEC Advisory has been rendered moot and academic and no longer needs any further consideration.

As for Kapa's claim in its Manifestation of Withdrawal that it has not yet received the official copy of the CDO, the EIPD argues that the said claim is self-serving and belied by Kapa's filing of an Urgent Omnibus Motion (1) To Lift the Cease and Desist Order; and (2) To Revoke and Remove the SEC Advisory. To the EIPD, the fact that it has filed said motion meant that Kapa already received a copy of the CDO and was already notified of its provisions.

The EIPD likewise avers that as per the Compliance (Annex "A" of the Comment) of the Special Sheriff who served the CDO, it can be gleaned that the CDO was posted at Kapa's registered address and was validly served to it on 21 February 2019. The EIPD contends that the prescribed method or manner under Section 4-2, Rule IV, Part I of the 2016 SEC Rules of Procedure has been complied with.

The EIPD further argues that with the withdrawal of the Urgent Omnibus Motion to Lift the CDO and considering that Kapa has not filed before the Commission any other appropriate pleading of the same nature within five days from the receipt of the Order or from the date of withdrawal of its Urgent Omnibus Motion, the CDO is deemed permanent in accordance with Section 4-3, Rule IV, Part II of the 2016 SEC Rules of Procedure.

ISSUES

(1) Whether Kapa Community Ministry International, Inc. has been properly served with the CDO.

(2) Whether the CDO, as a matter of course, has become permanent since effectively no Motion to Lift has been filed.

DISCUSSION

The Commission rules that Kapa has been properly served with the CDO dated 14 February 2019.

The manner of service of papers, orders, formal charges, decisions, and resolutions emanating from the Commission is governed by Section 4-2 (b), Rule IV, Part I of the 2016 SEC Rules of Procedure (Rules) which reads:

> "b. To Corporations, Partnerships, Associations or Entities. -Service of papers, orders, including formal charges, decisions and resolutions emanating from the Commission under these Rules to a juridical person shall be done by ***tendering a copy of the same to its*** president, managing partner, general manager, corporate secretary, treasurer, compliance officer, in house counsel, director or trustee, ***incorporator***, or such other officer identified in the latest available records filed with the Commission, its managing or general agent or any other agent authorized by appointment, **in any method specified in paragraph (a) of this Section**." (emphasis supplied)

Paragraph (a) referred to in the above-quoted provision reads:

a.To Individuals. - Papers, orders, including formal charges, decisions and resolutions emanating from the Commission under these Rules shall be served to the individual or to his agent authorized by appointment to receive such order.

Service to an individual or his authorized agent shall be made or effected (i) by handing a copy thereof to him in person; (ii) by leaving a copy at his principal office or regular place of business with a clerk or some other person in charge thereof; (iii) ***by leaving a copy at his dwelling house or residence with some person of suitable age and discretion then residing therein***; (iv) by sending a copy thereof addressed to him in a sealed envelope by registered mail or by private courier at his last known or registered office or residence address, with instructions to the postmaster or the courier to immediately provide proof of delivery, and obtaining a proof of service; (v) by sending him a copy at his email address if he consented expressly in writing either in the entry of appearance or written explanation or (vi) when allowed by these Rules, by publication of such order, decision or resolution of the Commission once in a newspaper of general circulation and in such places, including the Commission's website.

Xxx" (emphasis supplied)

In the Cease and Desist Order dated 14 February 2019 the EIPD was directed to:

(1) serve this Order to KAPA COMMUNITY MINISTRY INTERNATIONAL, INC., its President, General Manager, Corporate Secretary, Treasurer, In-House Counsel or partners; and
(2) post copies of the Order at the entrance of the main office and/or branches, if any, of KAPA COMMUNITY MINISTRY INTERNATIONAL, INC.

Based on the records, movant EIPD, has complied with the first directive in posting the CDO at the main office or any of the branch of Kapa.[7] The registered address of Kapa with the Commission is at "Garay Arcade, Barreda Street, Caramcam District, Brgy. Mangagoy, Bislig City, Surigao del Sur".[8] The posting of the CDO in the registered address of Kapa with the Commission is already sufficient under Section 4-2 (d), Rule IV, Part I of the 2016 SEC Rules of Procedure which provides "***service to the last known or registered address with the Commission of the person being served is already sufficient***."

Also, contrary to the allegation of Kapa that it has not received the copy of the CDO, the fact that it was served at the residence of two of its incorporators namely Junnie Apolinario through his father-in-law, Cresencio Dalumpines, (Annex "C-2" of the Compliance) and Nonita Urbano through her son, Lee S. Urbano (Annex "C-1" of the Compliance) already suffice that the CDO was served to the incorporators. Service to the incorporators is already service to the corporation under the 2016 Rules which provides that service to corporations can be made by serving a copy of the order to its incorporators by leaving a copy at his dwelling house or residence with some person of suitable age and discretion then residing therein. In fact, the EIPD or the SEC designated sheriff is "***not duty-bound to ensure that the person upon whom service was actually made delivers the summons to the defendant or informs him about it. The law presumes that for him.*** It is immaterial that defendant does not receive actual notice."[9] ***Since the Rules on Service provided under the Rules has been complied with, service to incorporators Junnie Apolinario and Nonita Urbano is deemed service to Kapa***.

Furthermore Kapa cannot evade the fact that there has been proper service of the CDO by averring that it "has not yet received its official copy of the purported Cease and

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[7] Evidenced by Annex "A" of the Compliance
[8] As indicated in Kapa's 2018 GIS
[9] Dolores Montefalcon & Laurence Montefalcon versus Ronnie S. Vasquez, G.R. No. 165016, 17 June 2008

Desist Order dated 14 February 2019".[10] For one, it was in remiss of its duty to update the Commission with its current principal office address. It must be pointed out that the other tenants in Garay Arcade told the special sheriff that Kapa was driven out of Bislig City two years ago or in 2017; ***yet, all these years, Kapa has not updated the Commission of its new of address***. As a matter of fact, the same address was used by Kapa in its 2018 GIS or a year after it has been driven out of the City.

On the second issue, from the time the CDO is served on Kapa on 21 February 2019 it had five days within which to file a Motion to Lift the CDO. While it did file an Urgent Omnibus Motion through registered mail on 26 February 2019 as per its Manifestation dated 28 February 2019; however, in the second Manifestation it filed through its counsel, it formally manifested its withdrawal of the Urgent Omnibus Motion. Therefore, Kapa has effectively withdrawn its Urgent Omnibus Motion and as correctly argued by movant EIPD, ***Kapa has not filed any pleading or motion for the lifting of the CDO within five days from its receipt***, as such, ***the Cease and Desist Order dated 14 February 2019 is deemed permanent***.[11]

Be that as it may, the counsel on record for Kapa remains to be SEDALAW. They have formally entered their appearance in the Urgent Omnibus Motion. In the second Manifestation dated 01 March 2019, SEDALAW did not make any withdrawal of their appearance. In fact, the second Manifestation states as follows:

> "**KAPA-COMMUNITY MINISTRY INTERNATIONAL, INC.** ("KMCII"), represented by Pastor Joel A. Apolinario ("Pastor Apolinario"), ***by counsel***, respectfully manifests that it will no longer pursue and is hereby formally withdrawing its **URGENT OMNIBUS MOTION (1) To lift Cease and Desist Order; and (2) To Revoke and Remove SEC Advisory dated 03 October 2018** which it filed on 26 February 2019 before this Honorable Office." (emphasis supplied)

Furthermore, the Rules specifically provide that "any withdrawal of counsel shall be made in accordance with Section 26, Rule 138 of the Rules of Court and any amendments thereto." SEDALAW has not filed its withdrawal as counsel for Kapa; thus, its appearance remains and stands.

WHEREFORE, premises considered, the Commission finds that Kapa-Community Ministry International, Inc. has been properly served with the CDO dated 14 February 2019. Since it did not file any motion for the lifting of the CDO within five days from 21 February 2019, ***the CDO dated 14 February 2019 is hereby made permanent*** pursuant to Section 4-3 (c), Rule IV, Part II of the 2016 SEC Rules of Procedure. To reiterate, the dispositive portion of the CDO dated 14 February 2019 reads:

> "**WHEREFORE,** premises considered, **KAPA COMMUNITY MINISTRY INTERNATIONAL, INC., KAPA KABUS PADATUON (ENRICH THE POOR), KAPA/KAPPA (KABUS PADUTOON) KAPA-CO CONVINIENCE STORE AND GENERAL MERCHANDISE, KAPA WORLDWIDE MINISTRY,** and/or **Mr. JOEL APOLINARIO,** their partners, officers, directors, agents, representatives, conduits, assigns and ANY AND ALL PERSONS CLAIMING AND ACTING FOR AND IN THEIR BEHALF are hereby ordered to **IMMEDIATELY CEASE AND DESIST UNDER PAIN OF CONTEMPT,** from engaging in activities of selling and/or offering for sale securities in the form of investment contracts in the guise of a donation or any other forms of the same nature, as discussed above.
>
> Furthermore, the subject entities and individuals are directed to CEASE from promoting its investment scheme through the internet and/or delete or remove

[10] Paragraph 2 of the Manifestation dated 01 March 2019
[11] Section 4-3 (c), Rule IV, Part II of the 2016 Rules.

immediately the promotional presentation of such investment scheme from the websites."

SO ORDERED.

Pasay City, 14 March 2019.

EMILIO B. AQUINO
Chairperson

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner