Republic of the Philippines
Department of Finance
Securities and Exchange Commission
COMMISSION EN BANC

IN THE MATTER OF PESO2GO

SEC CDO Case No 09-19-055

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,
Movant.
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RESOLUTION

This resolves the *Motion to Lift Cease and Desist Order (Motion to Lift)* filed on 25 September 2019 by Snapcash Lending, Inc. doing business under the name PESO2GO ("PESO2GO") through counsel Villaraza & Angangco Law Office praying that the *Cease and Desist Order* dated 20 September 2019 *(Assailed CDO)* be lifted, the dispositive portion reads:

> "WHEREFORE, premises considered, the operators and owners of the following online lending applications: CASH WHALE; CASH 100; CASHAFIN; CASHFLYER; CASHMAYA; CASHOPE; CASHWARM; CASHWOW; CREDITPESO; ET EASY LOAN; and PESO2GO, their agents, representatives and promoters, as well as the owners of the hosting sites of these Online Lending Operators and all persons acting for and on their behalf are hereby ordered to IMMEDIATELY CEASE AND DESIST UNDER PAIN OF CONTEMPT from engaging in, promoting and facilitating such unauthorized lending activities/transactions.

THE FACTS

Snapcash Lending, Inc. (Snapcash) is a stock corporation with SEC Registration No. CS201804836 and office address at U802, 8/F Centerpoint Condominium, Julio Vargas Avenue corner Garnet Street, Ortigas Center, Pasig City, Metro Manila.

On 20 September 2019, the Commission issued the *Assailed CDO* against PESO2GO among others, directing it to immediately cease and desist from engaging in, promoting and facilitating such unauthorized lending activities/transactions. Aggrieved, PESO2GO filed on 25 September 2019, a

Motion to Lift praying that the Commission lift the *Assailed CDO* based on the following substantial grounds:

I. Snapcash, operating under the name and style PESO2GO, is a duly licensed lending company with a valid and subsisting authority to operate issued by the SEC;
II. Snapcash, operating under the name and style PESO2GO, is not engaged in abusive collection practices, misrepresentations, nor has it issued unreasonable terms and conditions in the conduct of its lending activities.

During the scheduled hearing on the *Motion to Lift,* Snapcash reiterated the grounds alleged in its motion. After the parties' oral arguments, Snapcash was given ten (10) days to file its Comment from the date of hearing. Then the Enforcement and Investor Protection Department (EIPD) was also given the same period to file its Reply Comment.

Snapcash filed its *Position Paper* on 08 October 2019. The EIPD did not file any *Reply Comment.*

With no remaining issues to be clarified, the hearing on the *Motion to Lift* is terminated and submitted for resolution on 28 October 2019.

ISSUE

The issue to be resolved is whether or not Snapcash presented sufficient grounds or evidence to overcome the findings in the Commission's Cease and Desist Order.

RULING

We find the instant *Motion to Lift* bereft of merit.

The *Assailed CDO* was based on EIPD's findings that PESO2GO do not have the requisite Certificate of Authority to Operate as a Lending Company from the Commission.

In support of the said findings, EIPD presented the following evidence: (1) A Memorandum dated 16 September 2019 from the Corporate Governance and Finance Department (CGFD), showing a list of Online Lending Applications which have not been issued Certificates of Authority to Operate as Lending Companies or Financing Companies; (2) screenshot of

websites/facebook accounts/online applications most of which do not state the name of the corporations or entities operating them; (3) Copies of the complaints received by the CGFD alleging that the online lending operators impose and charge high interest rates, unilaterally implement onerous and unreasonable terms and conditions, make misrepresentations as to non-collection of charges and fees, and violate the right to privacy of debtors.

In Snapcash's *Motion to Lift*, it pointed out that Snapcash and PESO2GO are one and the same entity. In fact, Snapcash applied for and was granted by the Intellectual Property Office of the Philippines (IPO-Phil) the right to use PESO2GO as its Service Mark. Snapcash is a duly organized stock corporation with the requisite authority to operate as a lending company as evidenced by its Certificate of Authority to Operate as a Lending Company dated 13 April 2018. Considering that Peso2Go is merely the name under which the lending company, Snapcash operates, it concluded that Peso2Go/Snapcash may validly operate as a lending company.

It must be emphasized that at the time of the issuance of the *Assailed CDO*, there is no indication in the Articles of Incorporation (AOI) of Snapcash that it has a different business name or tradename. On the basis of the foregoing, the Commission cannot accept Snapcash's position that Snapcash and PESO2GO are one and the same entity. It is the Commission's policy that: "Business or trade name which is different from the corporate or partnership name shall be indicated in the articles of incorporation or partnership xxx."[1]

We note the Certificate of Authority (CA) to Operate as a Lending Company issued to Snapcash. We also note that Snapcash already complied with SEC Memorandum Circular (MC) No. 19 series of 2019 (Disclosure Requirements on Advertisements of Financing Companies and Lending Companies and Reporting of Online Lending Platforms) which requires full disclosure of the online lending platforms owned/operated/utilized by the Company. The Affidavit of Compliance (SEC Form 1- Existing Online Lending Platforms) submitted states that Snapcash have registered PESO2GO as a business name of the Company as provided in its Application for the amendment of AOI.

However, the fact that Snapcash has a CA to Operate as a Lending Company does not mean that it was automatically granted the authority to establish, operate and maintain an online lending application. A prior approval by the Commission is necessary for this purpose.

Pursuant to the Implementing Rules and Regulations of the Lending Company Regulation Act of 2007[2], "No lending company shall establish or

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[1] SEC Memorandum Circular no. 13, series of 2019
[2] REPUBLIC ACT NO. 9474

operate a branch, extension office or unit or satellite office without prior approval by the SEC."

An online lending application such as PESO2GO should be treated as separate from Snapcash's in-store/physical lending office. The AOI of Snapcash did not mention any lending activity via internet.

Thus, when Snapcash established and operated PESO2GO online application without prior approval of the Commission, it committed "serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public.[3]" Such misrepresentation is so grave that it warrants the suspension or revocation of the Certificate of Registration of a corporation.

As for Snapcash's argument in its *Motion to Lift* that it has not engaged in abusive collection practices, misrepresentations; nor has it issued unreasonable terms and conditions in the conduct of its lending activities, we find the same unmeritorious.

It bears emphasis that the allegation of Snapcash that it has not violated the right to privacy of its clients [see paragraph 11.5 of its *Motion to Lift*[4]] is negated by Snapcash's admission that Section 39 of PESO2GO's Terms and Conditions indicates that the borrower agrees to the use of his or her phonebook list in case of default for more than two (2) days past due for the limited purpose of advising/reminding the borrower of his/her payment.

While it is provided that the use of the phonebook list is limited for the purpose of advising/reminding the borrower of their payment, we received numerous complaints showing that the phonebook list was used to actually threaten and/or harass borrowers.

Section 1 of SEC MC No. 18 series of 2019 (Prohibition on Unfair Debt Collection Practices of Financing Companies and Lending Companies) provides that notwithstanding the borrower's consent, contacting the persons in the borrower's contact list other than those who were named as guarantors or co-makers shall also constitute unfair debt collection practice.

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[3] Section 6 (l) (2) of Presidential Decree No. 902-A

[4] "11.5. xxx Moreover, as indicated in Section 39 of the Peso2Go Terms and Conditions, the borrower agrees to the use of his or her phonebook list in case of default for more than two (2) days past due for the limited purpose of advising/reminding the borrower of his/her payment, to wit:

> "Section 39. USE OF DATA.XXX
> XXX
> The borrower agrees that the lender may use the phonebook list in case of default for more than two (2) days past due or similar instances, to advise/remind the borrower of his/her payment xxx."

The statement of Snapcash on the use of its borrower's phonebook list in its *Motion to Lift* binds said company under the principle of estoppel.

Article 1431 of the Civil Code provides that, "Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon."[5]

Under the doctrine of estoppel, an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon. A party may not go back on his own acts and representations to the prejudice of the other party who relied upon them. In the law of evidence, whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it."[6]

The doctrine of estoppel is based upon the grounds of public policy, fair dealing, good faith and justice, and its purpose is to forbid one to speak against his own act, representations, or commitments to the injury of one to whom they were directed and who reasonably relied thereon. The doctrine of estoppel springs from equitable principles and the equities in the case. It is designed to aid the law in the administration of justice where without its aid injustice might result. It has been applied by this Court wherever and whenever special circumstances of a case so demand.[7]

Similarly, Rule 130, Section 26 of the Revised Rules on Evidence provides that "The act, declaration or omission of a party as to a relevant fact may be given in evidence against him." For well-settled is the rule that "a man's acts, conduct and declaration, wherever made, if voluntary, are admissible against him, for the reason that it is fair to presume that they correspond with the truth, and it is his fault if they do not. If a man's extrajudicial admissions are admissible against him, there seems to be no reason why his admissions made in open court, under oath, should not be accepted against him." [8] This is the reason why Rule 129, section 4 of the Revised Rules on Evidence dispenses with the requirement of proof for admissions made by a party in the course of the proceedings in the same case.

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[5] *Philippine National Bank v. Intermediate Appellate Court, G.R. No. 66715, [September 18, 1990], 267 PHIL 720-730*

[6] *Equitable PCI Banking Corp. v. RCBC Capital Corp., G.R. No. 182248, [December 18, 2008], 595 PHIL 537-589*

[7] *Philippine National Bank v. Court of Appeals*, 183 Phil. 54, 63-64 (1979)

[8] U.S. vs. Ching Po, 23 Phil. 578, 583 [1912] cited in *Cuison v. Court of Appeals, G.R. No. 88539, [October 26, 1993], 298 PHIL 162-172*

Applying the foregoing principles, Snapcash is estopped from claiming that it has not violated the privacy of its clients.

When Snapcash declared in its *Motion to Lift* that it secured the consent of its borrowers to use the phonebook list, and actually used the same, it cannot at this time claim before the Commission that it has not committed unfair debt collection practice.

Thus, the terms and conditions of PESO2GO requiring access to the borrower's phonebook list as a condition precedent to the grant of the loan constitutes unfair debt collection practice which is prohibited under SEC MC No. 18, series of 2019 and warrants the issuance of a cease and desist order (CDO).

The authority of the SEC and the manner by which it can issue CDOs are provided in Section 156 of the Revised Corporation Code (RCC), to wit:

> SEC. 156. Cease and Desist Orders. – Whenever the Commission has reasonable basis to believe that a person has violated, or is about to violate, this Code, a rule, regulation, or order of the Commission, it may direct such person to desist from committing the act constituting the violation. The Commission may issue a cease and desist order ex parte to enjoin an act or practice which is fraudulent or can be reasonably expected to cause significant, imminent, and irreparable danger or injury to public safety or welfare. The ex parte order shall be valid for a maximum period of twenty (20) days, without prejudice to the order being made permanent after due notice and hearing. Thereafter, the Commission may proceed administratively against such person in accordance with Section 158 of this Code, and/or transmit evidence to the Department of Justice for preliminary investigation or criminal prosecution and/or initiate criminal prosecution for any violation of this Code, rule, or regulation.

Based on the foregoing, a prior hearing is not required whenever the Commission finds it appropriate to issue a cease and desist order that aims to curtail fraud or irreparable danger or injury to public safety or welfare. 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.[9]

Further, in relation to the CDO under Section 156 of the RCC, Section 158 provides that a permanent CDO may be issued as an administrative sanction for any violation of the RCC, rules and orders of the Commission, to wit:

[9] Primanila Plans, Inc. vs. SEC, G.R. No. 193791, August 6, 2014

> SEC. 158. Administrative Sanctions. – If, after due notice and hearing, the Commission finds that any provision of this Code, rules or regulations, or any of the Commission's orders has been violated, the Commission may impose any or all of the following sanctions, taking into consideration the extent of participation, nature, effects, frequency and seriousness of the violation: (a) Imposition of a fine ranging from Five thousand pesos (P5,000.00) to Two million pesos (P2,000,000.00), and not more than One thousand pesos (P1,000.00) for each day of continuing violation but in no case to exceed Two million pesos (P2,000,000.00); **(b) Issuance of a permanent cease and desist order**; (c) Suspension or revocation of the certificate of incorporation; and (d) Dissolution of the corporation and forfeiture of its assets under the conditions in Title XIV of this Code. (Emphasissupplied)

Accordingly, the unfair debt collection practice which constitutes as a violation of SEC MC No. 18, series of 2019 is sufficient ground for the issuance of the *Assailed CDO*.

WHEREFORE, premises considered, ***The Motion to Lift Cease and Desist Order*** filed by Snapcash is hereby **DENIED** for lack of merit. The CEASE AND DESIST ORDER issued against the operation of PESO2GO online application is hereby **MADE PERMANENT**.

Let a copy of this Resolution be posted in the Commission's website; and published in a national newspaper of general circulation and furnished to all operating departments and offices of the Commission for their information and appropriate action.

Further, the CGFD is hereby DIRECTED to investigate on the unfair debt collection practice relative to the operation of Snapcash Lending, Inc. and if necessary impose additional penalties, as applicable.

SO ORDERED.
Pasay City, Philippines; 05 November 2019.

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner

* On official business