

## SECOND DIVISION

[ G.R. No. 195542, March 19, 2014 ]

**SECURITIES AND EXCHANGE COMMISSION, PETITIONER, VS.  
OUDINE SANTOS, RESPONDENT.**

### D E C I S I O N

**PEREZ, J.:**

Before us is another cautionary tale of an investment arrangement which, at the outset, appeared good, unraveling unhappily as a deal **too-good-to-be-true**.

This petition for review on *certiorari* under Rule 45 of the Rules of Court assails the Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. SP No. 112781 affirming the Resolutions<sup>[2]</sup> of the Secretary of Justice in I.S. No. 2007-1054 which, among others, dismissed the criminal complaint for violation of Section 28 of Republic Act No. 8799, the Securities Regulation Code, filed by petitioner Securities and Exchange Commission (SEC) against respondent Oudine Santos (Santos).

Sometime in 2007, yet another investment scam was exposed with the disappearance of its primary perpetrator, Michael H.K. Liew (Liew), a self-styled financial *guru* and Chairman of the Board of Directors of Performance Investment Products Corporation (PIPC-BVI), a foreign corporation registered in the British Virgin Islands.

To do business in the Philippines, PIPC-BVI incorporated herein as Philippine International Planning Center Corporation (PIPC Corporation).

Because the head of PIPC Corporation had gone missing and with it the monies and investment of a significant number of investors, the SEC was flooded with complaints from thirty-one (31) individuals against PIPC Corporation, its directors, officers, employees, agents and brokers for alleged violation of certain provisions of the Securities Regulation Code, including Section 28 thereof. Santos was charged in the complaints in her capacity as investment consultant of PIPC Corporation, who supposedly induced private complainants Luisa Mercedes P. Lorenzo (Lorenzo) and Ricky Albino P. Sy (Sy), to invest their monies in PIPC Corporation.

The common recital in the 31 complaints is that:

x x x [D]ue to the inducements and solicitations of the PIPC corporation's directors, officers and employees/agents/brokers, the former were enticed to invest their hard-earned money, the minimum amount of which must be US\$40,000.00, with PIPC-BVI, with a promise of higher income potential of an interest of 12 to 18 *per centum* (%) per annum at relatively low-risk investment program. The private complainants also claimed that they were made to believe that PIPC Corporation refers to Performance Investment

Product Corporation, the Philippine office or branch of PIPC-BVI, which is an entity engaged in foreign currency trading, and not Philippine International Planning Center Corporation.<sup>[3]</sup>

Soon thereafter, the SEC, through its Compliance and Endorsement Division, filed a complaint-affidavit for violation of Sections 8,<sup>[4]</sup> 26<sup>[5]</sup> and 28<sup>[6]</sup> of the Securities Regulation Code before the Department of Justice which was docketed as I.S. No. 2007-1054. Among the respondents in the complaint-affidavit were the principal officers of PIPC: Liew, Chairman and President; Cristina Gonzalez-Tuason, Director and General Manager; Ma. Cristina Bautista-Jurado, Director; and herein respondent Santos.

Private complainants, Lorenzo and Sy, in their affidavits annexed to SEC's complaint-affidavit, respectively narrated Santos' participation in how they came to invest their monies in PIPC Corporation:

1. Lorenzo's affidavit

x x x x

2. I heard about PIPC Corporation from my friend Derrick Santos during an informal gathering sometime in March 2006. He said that the investments in PIPC Corporation generated a return of 18-20% p.a. every two (2) months. He then gave me the number of his sister, **Oudine Santos** who worked for PIPC Philippines to discuss the investment further.

3. I then met with Oudine Santos sometime during the first week of April 2006 at PIPC Philippines' lounge x x x. Oudine Santos conducted for my personal benefit a presentation of the characteristics of their investment product called "Performance Managed Portfolio" (PMP). The main points of her presentation are indicated in a summary she gave me, x x x:

x x x x

4. I asked Oudine Santos who were the traders, she said their names were "confidential."

5. Oudine Santos also emphasized in that same meeting that I should keep this transaction to myself because they were not allowed to conduct foreign currency trading. However, she assured me that I should not worry because they have a lot of "big people" backing them up. She also mentioned that they were applying for a seat in the "stock exchange."

6. I ultimately agreed to put in FORTY THOUSAND US DOLLARS (US\$40,000.00) in their investment product.

7. Oudine Santos then gave me instructions on how to place my money in PMP and made me sign a Partnership Agreement. x x x.

x x x x

8. Soon thereafter, pursuant to the instructions Oudine Santos gave me, I remitted US\$40,000.00 to ABN-AMRO Hong Kong.

9. Afterwards, I received a letter dated 17 April 2006, signed by Michael H.K. Liew, welcoming my investment.

x x x x

10. Sometime on May 2006, I added another US\$ 60,000.00 to my then subsisting account #181372, thus totaling US\$100,000.00. This amount, pursuant to the instructions of Oudine Santos, was remitted to Standard Chartered Bank.

x x x x

14. Then sometime on May 2007, I planned to pull out my remaining US\$100,000.00 investment in PIPC Philippines. On 22 May 2007, I met with Oudine Santos at the 15th Floor of Citibank Tower in Makati City. I told her I wanted to terminate all my investments.

15. Oudine Santos instead said that PIPC Philippines has a new product I might be interested in. x x x She explained that this product had the following characteristics:

x x x x

16. Oudine Santos reiterated these claims in an email she sent me on 22 May 2007. x x x.

17. Enticed by these assurances and promises of large earnings, I put in FOUR HUNDRED THOUSAND US DOLLARS (US\$400,000.00) in PMP (RZB), which became account # R149432.

18. Pursuant to the instructions Oudine Santos gave me, I remitted the amount of US\$ 400,000.00 to RZB Austria, Singapore Branch.

x x x x

22. I tried calling Oudine Santos and was finally able to reach her at around 7 in the morning. She confirmed what Leah Caringal told me. I told her then that I want full recovery of my investment in accordance with their 100% principal guarantee. To this day[,] I have not received my principal investment.<sup>[7]</sup>

## 5. Sy's affidavit

2. I have been a depositor of the Bank of the Philippine Islands (BPI) Pasong Tamo branch for the past 15 years. Sometime in the last quarter of 2006, I was at BPI Pasong Tamo to accomplish certain routine transactions. Being a client of long standing, the bank manager[,] as a matter of

courtesy, allowed me to wait in her cubicle. It was there that the bank manager introduced me to another bank client, Ms. Oudine Santos. After exchanging pleasantries, and in the course of a brief conversation, Ms. Santos told me that she is a resident of Damariñas Village and was working as an investment consultant for a certain company, Performance Investment Products Corporation [PIPC]. She told me that she wanted to invite me to her office at the Citibank Tower in Makati so that she could explain the investment products that they are offering. I gave her my contact number and finished my transaction with the bank for that day;

3. Ms. Santos texted me to confirm our meeting. A few days later, I met her at the business lounge of [PIPC] located at the 15th Floor of Citibank Tower, Makati. During the meeting, Ms. Santos enticed me to invest in their Performance Managed Portfolio which she explained was a risk controlled investment program designed for individuals like me who are looking for higher investment returns than bank deposits while still having the advantage of security and liquidity. She told me that they were engaged in foreign currency trading abroad and that they only employ professional and experienced foreign exchange traders who specialize in trading the Japanese Yen, Euro, British Pound, Swiss Francs and Australian Dollar. I then told her that I did not have any experience in foreign currency trading and was quite conservative in handling my money;

4. Ms. Santos quickly allayed my fears by emphasizing that the capital for any investment with [PIPC] is secure. She then trumpeted [PIPC's] track record in the Philippines, having successfully solicited investments from many wealthy and well-known individuals since 2001;

5. Ms. Santos convinced me to invest in Performance Management Portfolio I x x x [which] features full protection for the principal investment and a 60%-40% sharing of the profit between the client and [PIPC] respectively;

6. In November of 2006, I decided to invest USD 40,000 specifically in Performance Management Portfolio I x x x. After signing the Partnership Agreement, x x x, I was instructed by Ms. Santos to deposit the amount by telegraphic transfer to [PIPC's] account in ABN AMRO Bank Hong Kong. I did as instructed;

x x x x

8. Sometime January to March of 2007, [Santos] was convincing me to make an additional investment under a second product, Performance Management Portfolio II [PMP II] which provides a more limited guarantee for the principal investment of USD 100,000 and a 80%-20% sharing of the profit between the client and [PIPC] respectively. In both schemes, the client's participation will be limited to choosing two currencies which will in turn be traded by professional traders abroad. Profit earned from the transaction will then be remitted to the client's account every 8 weeks;

x x x x

10. After I made my USD 40,000 PMP I investment, Ms. Santos invited me to meet Mr. Michael Liew in the business lounge some time during the first

quarter of this year. My impression was that he was quite unassuming considering that he was the head of an international investment firm. x x x.<sup>[8]</sup>

On the whole, Lorenzo and Sy charge Santos in her capacity as investment consultant of PIPC Corporation who actively engaged in the solicitation and recruitment of investors. Private complainants maintain that Santos, apart from being PIPC Corporation's employee, acted as PIPC Corporation's agent and made representations regarding its investment products and that of the supposed global corporation PIPC-BVI. Facilitating Lorenzo's and Sy's investment with PIPC Corporation, Santos represented to the two that investing with PIPC Corporation, an affiliate of PIPC-BVI, would be safe and full-proof.

In SEC's complaint-affidavit, it charged the following:

x x x x

12. This case stems from the act of fraud and chicanery masterfully orchestrated and executed by the officers and agents of PIPC Corp. against their unsuspecting investors. *The deception is founded on the basic fact that neither PIPC Corp. nor its officers, employees and agents are registered brokers/dealers, making their numerous transactions of buying and selling securities to the public a blatant violation of the provisions of the SRC, specifically Sections 8 and 28 thereof.* Their illegal offer/sale of securities in the form of the "Performance Management Partnership Agreement" to the public was perpetrated for about nine (9) years and would have continued were it not for the alleged, and most probably, contrived and deliberate withdrawal of the entire funds of the corporation by Michael H.K. Liew. The [scam] was masked by a supposed offshore foreign currency trading scheme promising that the principal or capital infused will be guaranteed or fully protected. Coupled with this [full] guarantee for the principal is the prospect of profits at an annual rate of 12 to 18%. [One of] the other enticements provided by the subject company were free use of its business either for personal or business purposes, free subscription of imported magazines, [trips] abroad, and insurance coverage, just to name a few. Fully convinced and enamored [by the] thought of earning higher rates of interest along with the promise of a guaranteed [capital] the investors placed and entrusted their money to PIPC Corp., only to find out later [that they] had been deceived and taken for a ride.

x x x x

17. Sometime in 2006, an investigation was undertaken by the [Compliance and Enforcement Division of the SEC] on the [account] of PIPC Corp. Per its Articles of Incorporation, PIPC Corp. was authorized to engage [in the] dissemination of information on the current flow of foreign exchange (forex) as x x x precious metals such as gold, silver, and oil, and items traded in stock and securities/commodities exchanges around the world. To be more specific, PIPC Corp. [was] authorized to act only as a research arm of their foreign clients.