

FIRST DIVISION

[G.R. No. 164182, February 26, 2008]

**POWER HOMES UNLIMITED CORPORATION, Petitioner, vs.
SECURITIES AND EXCHANGE COMMISSION AND NOEL MANERO,
Respondents.**

D E C I S I O N

PUNO, CJ.:

This petition for review seeks the reversal and setting aside of the July 31, 2003 Decision^[1] of the Court of Appeals that affirmed the January 26, 2001 Cease and Desist Order (CDO)^[2] of public respondent Securities and Exchange Commission (SEC) enjoining petitioner Power Homes Unlimited Corporation's (petitioner) officers, directors, agents, representatives and any and all persons claiming and acting under their authority, from further engaging in the sale, offer for sale or distribution of securities; and its June 18, 2004 Resolution^[3] which denied petitioner's motion for reconsideration.

The facts: Petitioner is a domestic corporation duly registered with public respondent SEC on October 13, 2000 under SEC Reg. No. A200016113. Its primary purpose is:

To engage in the transaction of promoting, acquiring, managing, leasing, obtaining options on, development, and improvement of real estate properties for subdivision and allied purposes, and in the purchase, sale and/or exchange of said subdivision and properties through network marketing.^[4]

On October 27, 2000, respondent Noel Manero requested public respondent SEC to investigate petitioner's business. He claimed that he attended a seminar conducted by petitioner where the latter claimed to sell properties that were inexistent and without any broker's license.

On November 21, 2000, one Romulo E. Munsayac, Jr. inquired from public respondent SEC whether petitioner's business involves "legitimate network marketing."

On the bases of the letters of respondent Manero and Munsayac, public respondent SEC held a conference on December 13, 2000 that was attended by petitioner's incorporators John Lim, Paul Nicolas and Leonito Nicolas. The attendees were requested to submit copies of petitioner's marketing scheme and list of its members with addresses.

The following day or on December 14, 2000, petitioner submitted to public respondent SEC copies of its marketing course module and letters of

accreditation/authority or confirmation from Crown Asia, Fil-Estate Network and Pioneer 29 Realty Corporation.

On January 26, 2001, public respondent SEC visited the business premises of petitioner wherein it gathered documents such as certificates of accreditation to several real estate companies, list of members with web sites, sample of member mail box, webpages of two (2) members, and lists of Business Center Owners who are qualified to acquire real estate properties and materials on computer tutorials.

On the same day, after finding petitioner to be engaged in the sale or offer for sale or distribution of investment contracts, which are considered securities under Sec. 3.1 (b) of Republic Act (R.A.) No. 8799 (The Securities Regulation Code),^[5] but failed to register them in violation of Sec. 8.1 of the same Act,^[6] public respondent SEC issued a CDO that reads:

WHEREFORE, pursuant to the authority vested in the Commission, POWER HOMES UNLIMITED, CORP., its officers, directors, agents, representatives and any and all persons claiming and acting under their authority, are hereby ordered to immediately CEASE AND DESIST from further engaging in the sale, offer or distribution of the securities upon the receipt of this order.

In accordance with the provisions of Section 64.3 of Republic Act No. 8799, otherwise known as the Securities Regulation Code, the parties subject of this Cease and Desist Order may file a request for the lifting thereof within five (5) days from receipt.^[7]

On February 5, 2001, petitioner moved for the lifting of the CDO, which public respondent SEC denied for lack of merit on February 22, 2001.

Aggrieved, petitioner went to the Court of Appeals imputing grave abuse of discretion amounting to lack or excess of jurisdiction on public respondent SEC for issuing the order. It also applied for a temporary restraining order, which the appellate court granted.

On May 23, 2001, the Court of Appeals consolidated petitioner's case with CA-G.R. [SP] No. 62890 entitled **Prosperity.Com, Incorporated v. Securities and Exchange Commission (Compliance and Enforcement Department), Cristina T. De La Cruz, et al.**

On June 19, 2001, petitioner filed in the Court of Appeals a Motion for the Issuance of a Writ of Preliminary Injunction. On July 6, 2001, the motion was heard. On July 12, 2001, public respondent SEC filed its opposition. On July 13, 2001, the appellate court granted petitioner's motion, thus:

Considering that the Temporary Restraining Order will expire tomorrow or on July 14, 2001, and it appearing that this Court cannot resolve the petition immediately because of the issues involved which require a further study on the matter, and considering further that with the continuous implementation of the CDO by the SEC would eventually result to the sudden demise of the petitioner's business to their prejudice and an irreparable damage that may possibly arise, we hereby resolve to

grant the preliminary injunction.

WHEREFORE, let a writ of preliminary injunction be issued in favor of petitioner, after posting a bond in the amount of P500,000.00 to answer whatever damages the respondents may suffer should petitioner be adjudged not entitled to the injunctive relief herein granted.^[8]

On August 8, 2001, public respondent SEC moved for reconsideration, which was not resolved by the Court of Appeals.

On July 31, 2003, the Court of Appeals issued its Consolidated Decision. The disposition pertinent to petitioner reads:^[9]

WHEREFORE, x x x x the petition for certiorari and prohibition filed by the other petitioner Powerhomes Unlimited Corporation is hereby DENIED for lack of merit and the questioned Cease and Desist Order issued by public respondent against it is accordingly AFFIRMED IN TOTO.

On June 18, 2004, the Court of Appeals denied petitioner's motion for reconsideration;^[10] hence, this petition for review.

The issues for determination are: (1) whether public respondent SEC followed due process in the issuance of the assailed CDO; and (2) whether petitioner's business constitutes an investment contract which should be registered with public respondent SEC before its sale or offer for sale or distribution to the public.

On the first issue, Sec. 64 of R.A. No. 8799 provides:

Sec. 64. *Cease and Desist Order.* – 64.1. The Commission, after proper investigation or verification, *motu proprio* or upon verified complaint by any aggrieved party, may issue a cease and desist order without the necessity of a prior hearing if in its judgment the act or practice, unless restrained, will operate as a fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public.

We hold that petitioner was not denied due process. The records reveal that public respondent SEC properly examined petitioner's business operations when it (1) called into conference three of petitioner's incorporators, (2) requested information from the incorporators regarding the nature of petitioner's business operations, (3) asked them to submit documents pertinent thereto, and (4) visited petitioner's business premises and gathered information thereat. All these were done before the CDO was issued by the public respondent SEC. Trite to state, a formal trial or hearing is not necessary to comply with the requirements of due process. Its essence is simply the opportunity to explain one's position. Public respondent SEC abundantly allowed petitioner to prove its side.

The second issue is whether the business of petitioner involves an investment contract that is considered security^[11] and thus, must be registered prior to sale or offer for sale or distribution to the public pursuant to Section 8.1 of R.A. No. 8799, viz:

Section 8. Requirement of Registration of Securities. – 8.1. Securities shall not be

sold or offered for sale or distribution within the Philippines, without a registration statement duly filed with and approved by the Commission. Prior to such sale, information on the securities, in such form and with such substance as the Commission may prescribe, shall be made available to each prospective purchaser.

Public respondent SEC found the petitioner “as a marketing company that promotes and facilitates sales of real properties and other related products of real estate developers through effective leverage marketing.” It also described the conduct of petitioner’s business as follows:

The scheme of the [petitioner] corporation requires an investor to become a Business Center Owner (BCO) who must fill-up and sign its application form. The Terms and Conditions printed at the back of the application form indicate that the BCO shall mean an independent representative of Power Homes, who is enrolled in the company’s referral program and who will ultimately purchase real property from any accredited real estate developers and as such he is entitled to a referral bonus/commission. Paragraph 5 of the same indicates that there exists no employer/employee relationship between the BCO and the Power Homes Unlimited, Corp.

The BCO is required to pay US\$234 as his enrollment fee. His enrollment entitles him to recruit two investors who should pay US\$234 each and out of which amount he shall receive US\$92. In case the two referrals/enrollees would recruit a minimum of four (4) persons each recruiting two (2) persons who become his/her own down lines, the BCO will receive a total amount of US\$147.20 after deducting the amount of US\$36.80 as property fund from the gross amount of US\$184. After recruiting 128 persons in a period of eight (8) months for each Left and Right business groups or a total of 256 enrollees whether directly referred by the BCO or through his down lines, the BCO who receives a total amount of US\$11,412.80 after deducting the amount of US\$363.20 as property fund from the gross amount of US\$11,776, has now an accumulated amount of US\$2,700 constituting as his Property Fund placed in a Property Fund account with the Chinabank. This accumulated amount of US\$2,700 is used as partial/full down payment for the real property chosen by the BCO from any of [petitioner’s] accredited real estate developers.^[12]

An investment contract is defined in the Amended Implementing Rules and Regulations of R.A. No. 8799 as a “contract, transaction or scheme (collectively ‘contract’) whereby a person invests his money in a common enterprise and is led to expect profits **primarily** from the efforts of others.”^[13]

It behooves us to trace the history of the concept of an investment contract under R.A. No. 8799. Our definition of an investment contract traces its roots from the 1946 United States (US) case of **SEC v. W.J. Howey Co.**^[14] In this case, the US Supreme Court was confronted with the issue of whether the **Howey** transaction constituted an “investment contract” under the Securities Act’s definition of “security.”^[15] The US Supreme Court, recognizing that the term “investment contract” was not defined by the Act or illumined by any legislative report,^[16] held