

EIGHTH DIVISION

[CA-G.R. SP No. 123703, October 31, 2014]

**REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE
SECURITIES AND EXCHANGE COMMISSION, PETITIONER, VS.
HON. CESAR O. UNTALAN AND PET PLANS, INC., RESPONDENTS.**

DECISION

GARCIA-FERNANDEZ, J.:

This is a petition for *certiorari* under Rule 65 of the Rules of Court filed by the Securities and Exchange Commission (SEC) on behalf of the Republic of Philippines (Republic), seeking to annul and set aside the resolutions dated February 22, 2011^[1] and December 9, 2011,^[2] issued by public respondent Judge Cesar O. Untalan of the Regional Trial Court (RTC) of Makati City, Branch 149 in S.P. Proc. No. M-6289 entitled In the Matter of the Petition for Corporate Rehabilitation with Prayer for Suspension of Payments, PET Plans, Inc., petitioner. The February 22, 2011 resolution modified the approved rehabilitation plan of respondent PET Plans, Inc. (PET Plans), while the December 9, 2011 resolution denied SEC's motion for reconsideration and ordered the termination of the PET Plans' rehabilitation.

PET Plans filed a petition for rehabilitation with the RTC of Makati City on June 22, 2006. Finding the petition sufficient in form and substance, the RTC issued a stay order and appointed Professor Danilo Concepcion as rehabilitation receiver.

On March 12, 2007, PET Plans submitted its modified rehabilitation plan.^[3] Under its modified rehabilitation plan, 1) PET Plans shall continue its pre-need business and apply for a dealer's license with the SEC to develop and sell new pre-need products; 2) The existing plans will also be modified or *novated* to reflect a new and reasonable face value called the *net plan value* (NPV), which will be converted into a single new type of plan called the enhanced value plan (EVP); 3) The three (3) existing trust funds for each plans (educational, pension and life) will be unified into a single trust fund to realize better profits and to save on the administrative costs; 4) The unified trust fund will be called the enhanced value fund (EVF) and will be further enhanced by (i) the earnings and growth of the assets of and investments of the unified trust fund, ranging from 8% to 12% per annum, and (ii) PET Plan's annual contributions of 15% of its net income after tax generated from the continuance of its pre-need business for a period of ten (10) years from the approval of the modified rehabilitation plan. An EVP planholder can immediately avail of his new plan or allow it to grow over time and avail for a much higher amount and, thus, reap the enhanced value of its new plan.^[4]

The modified rehabilitation plan was approved by respondent judge on April 30, 2007.^[5] Thus:

WHEREFORE, premises considered, this Court hereby APPROVES the Modified Rehabilitation Plan dated March 12, 2007 of [PET Plans] subject to the following terms and conditions:

1. For the Board of Directors, Stockholders and Officers of Petitioner:

- a. The stockholders with deposits for future stocks subscription shall not be paid or reimbursed under any circumstances whatsoever during the rehabilitation that begun at the filing of this petition.
- b. They are hereby ordered to dispose and sell all these subsidiaries not later than December 31, 2009, listed in page 19 of the audited financial statements issued by Laya Managhaya & Co for year ending December 31, 2004 and 2004;
- c. They are prohibited to make any transfer of funds or assets of whatever kind or nature from one subsidiary to another or from one affiliate to another related entity during the rehabilitation period that started from the filing of this petition.
- d. They are hereby ordered to arrange for the recovery of whatever amount receivables from these subsidiaries not later than December 31, 2008 as stated under the footnotes of the financial statements submitted by external auditor Laya Managhaya & Co. appearing in page 19 thereof.
- e. They are prohibited to declare any kind of dividend, whatsoever, during the period of rehabilitation that started from date of filing of this petition. They are further prohibited to increase any of their salaries fringe benefits or emoluments during the rehabilitation period. Moreover, they are hereby ordered to adopt personnel streamlining, as proposed by Dean Eduardo delos Angeles, to effected (sic) within three months from receipt of this resolution.
- f. They shall remit to [PET Plans] whatever they may receive as honorarium, director's fee and/or compensation for their attendance with any board or body, whereby they represent the interest of petitioner from date of filling of this petition until the rehabilitation period has been terminated particularly from the subsidiaries stated in page 19 of the auditor's report.
- g. They are hereby ordered to comply and execute faithfully the approved Modified Rehabilitation Plan dated March 12, 2007 including but not limited to the herein below terms and conditions:

2. For the rehabilitation receiver:

He shall have the following powers and authority, in addition to what the Interim Rules on Corporate Rehabilitation has provided:

- i. He shall exercise supervision over the Chief Finance Officer of [PET Plans]. Said Chief Finance Officer shall report directly to the rehabilitation receiver.
- ii. He shall give clearance to all major transactions to be entered into by by petitioner and all the Trust Funds. Initially this Court hereby sets as the minimum amount as major transaction in the sum of P30,000.00.
- iii. He shall see to it that the plan holders shall be given priority in cash releases.

3. For all the trustees bank.

They are hereby prohibited to release, encumber, enter into a contract of whatever kind or nature affecting the trust funds, without prior clearance from the rehabilitation receiver during the rehabilitation period. It is understood that the rehabilitation period has started from the time of the filing of the complaint.

They are also hereby required to submit to this court within thirty (30) days from receipt of this detailed report of the nature of assets, funds, investments, instruments, comprising the trust funds indicating the date and cost of the acquisition and other details that an evaluator of an investment fund needs.

4. Schedule of payments for plan holders. This court adopts the outline of payments described from page 8 to page 24 of the Modified Rehabilitation plan dated March 12, 2007, except that those lapsed plans are given six (6) months from receipt of the order or knowledge of this approved plan, whichever comes first. Moreover, the computation of the Net Plan Value (NPV) shall include the proceeds of the sale of those subsidiaries stated in number 1(b) and fees in number 1(f) hereof.

Such owners of lapsed plans are hereby ordered to communicate immediately with the receiver or with [PET Plans].

5. For the employees – they shall be paid in accordance with the terms and conditions of the CBA from the remaining available funds without affecting the amount scheduled to be paid to no. 4 hereof.
6. For secured and unsecured creditors shall be paid in accordance with the modified rehabilitation plan.

It is understood that this approval of the modified Rehabilitation Plan is only good for two (2) years, hence a review of the compliance of all the terms and conditions of the plan and of this approval shall be made not later than March 30, 2009, unless there is a good reason for the early withdrawal of this approval.

SO ORDERED.^[6]

In November 2007, PET Plans converted its existing plans into an EVP and established the enhanced value fund (EVF), owned by the planholders and managed by the Bank of the Philippine Islands (BPI). It also complied with the other terms and conditions provided by the RTC for the approval of the plans, except its commitment to contribute 15% of its net income after tax from its pre-need business to the EVF. ^[7]

On October 4, 2010, PET Plans filed an omnibus motion^[8] to revive and amend the modified rehabilitation plan, and to exit from rehabilitation. PET Plans alleged that it failed to contribute 15% of its net income after tax to the EVF because it was unable to generate any new sales or income from the pre-need business for lack of necessary license from the SEC; that PET Plans ventured into non pre-need business like insurance, but its income was marginal over the past three (3) years; and that it was restricted from pursuing and developing new business or venturing into other line of business because it is under rehabilitation. Thus, PET Plans sought the amendment and revision of the second key provision of its modified rehabilitation plan and proposed to make an outright asset contribution to the EVF in the amount P2,000,000.00 in cash, and real properties in La Residencia Subdivision, Silang, Cavite with a cumulative market value of P3,496,500.00) or a total of P5,496,500.00; and prayed that it be allowed to exit from rehabilitation upon payment of its contribution so it can pursue other lines of business.

In his comment on the motion, the rehabilitation receiver confirmed PET Plans' compliance with the terms and conditions of the modified rehabilitation plan and its allegation that it was unable to generate income from its pre-need business due to lack of license from the SEC and to the deteriorating market conditions since 2007. He considered the amendment and revision of the second key provision of PET Plans' Rehabilitation Plan and the proposal for an outright contribution of cash and real properties of P5,496,500.00 more favorable and advantageous to the planholders considering that the proposed amount is double the company's projected income contribution and its effect on the EVP is immediate.

The SEC opposed the motion asserting that PET Plan's desired substitute contribution of cash and real properties amounting to P5,496,500.00 and the subsequent exit from rehabilitation are material modifications of an approved rehabilitation plan which the Rules on Rehabilitation does not allow; that the modification and alteration allowed by the rules is limited to the means by which the desired targets or goals may be met or achieved, and does not cover modification or alteration of the goal or target as prayed for by PET Plans; that PET Plans' failure to achieve the desired targets or goals of the rehabilitation plan warrants the termination of the rehabilitation proceedings and would pave the way for its liquidation. SEC prayed for the denial of PET Plans' omnibus motion to amend the

rehabilitation plan, and requested a review of the same, including its financial statement. It also prayed for liquidation of PET Plans to ensure the return of the P76,000,000.00 loan from EVF or the return of the corporate assets for liquidation to its planholders.^[9]

The rehabilitation receiver filed a clarification and manifestation stating that PET Plans had no P76,000,000.00 loan obligation to EVF and stressed that the modified rehabilitation plan had only two (2) key main provisions.^[10]

On February 22, 2011, respondent judge issued a resolution granting PET Plans' prayer for the modification of its approved rehabilitation plan and held that a modification of an approved rehabilitation plan is necessary to achieve the desired targets or goals set forth therein and is allowed by the Rules of Procedure on Corporate Rehabilitation; that the substitute undertaking appears more immediate and realizable, and will significantly augment the EVF, which is the underlying target and goal of the rehabilitation of PET Plans. However, respondent judge denied the motions to exit rehabilitation proceedings and to exit pre-need business. Thus:

WHEREFORE, the Omnibus Motion is partially granted.

Accordingly, the Modified Rehabilitation Plan, as approved in the Resolution dated April 30, 2007, is hereby REVIVED and modified to provide that [PET Plans] shall contribute the amount of P2,000,000.00 cash and to transfer real property with market value of P3,496,500.00.00 or the total amount of P5,496,500.00 to the Enhanced Value Fund as of this approval, in lieu of the projected 15% net income after tax generated from the continuance of its pre-need business.

The [PET Plans] is hereby directed to inform this Court of its compliance within thirty (30) days of (sic) its accomplishment.

The Rehabilitation Receiver is directed to render his report on [PET Plans'] compliance within thirty (30) days.

As to the motion to exit rehabilitation and to terminate rehabilitation proceedings, the same are denied for being premature and without basis.

The motion to exit pre-need business is likewise denied for non-observance of due process.

SO ORDERED.^[11]

The SEC filed a motion for reconsideration,^[12] insisting that the modification of the modified rehabilitation plan is not allowed, and PET Plans cannot be excused from its obligation of contributing 15% of its annual income after tax from its pre-need and non pre-need business and that the intended infusion of P5,496,500.00 worth of cash and real properties should be made on top of the mandated 15% annual contribution; that assuming that a modification of the rehabilitation plan is allowed, PET Plans must disclose the complete list of planholders including the computation of their shares in the enhanced value plan and in the intended infusion, to safeguard