



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

**SECURITIES AND EXCHANGE
COMMISSION,**

Petitioner,

G.R. No. 195542

Present:

CARPIO, J.,
Chairperson,
BRION,
DEL CASTILLO,
PEREZ, and
REYES,* JJ.

- versus -

LOUDINE SANTOS,

Respondent.

Promulgated:

MAR 19 2014 *Alvin Cabalag/longsto*

X-----X

DECISION

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 Decision¹ of the Court of Appeals in CA-G.R. SP No.

* Per Special Order No. 1650 dated 13 March 2014.

¹ Penned by Associate Justice Isaias Dicedican with Associate Justices Stephen C. Cruz and Jane Aurora C. Lantion, concurring. *Rollo*, pp. 56-66.

112781 affirming the Resolutions² 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 *percentum* (%) 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.³

² Dated 18 April 2008 and 2 September 2008. Id. at 246-269 and 270-277.

³ Id. at 57.

Soon thereafter, the SEC, through its Compliance and Endorsement Division, filed a complaint-affidavit for violation of Sections 8,⁴ 26⁵ and 28⁶ 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 Sec. 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.

⁵ Sec. 26. **Fraudulent Transactions.** - It shall be unlawful for any person, directly or indirectly, in connection with the purchase or sale of any securities to:

26.1. Employ any device, scheme, or artifice to defraud;

26.2. Obtain money or property by means of any untrue statement of a material fact of any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

26.3. Engage in any act, transaction, practice or course of business which operates or would operate as a fraud or deceit upon any person.

⁶ Sec. 28. **Registration of Brokers, Dealers, Salesmen and Associated Persons.** - 28.1. No person shall engage in the business of buying or selling securities in the Philippines as a broker or dealer, or act as a salesman, or an associated person of any broker or dealer unless registered as such with the Commission.

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.⁷

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

⁷

Rollo, pp. 83-89.

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.⁸

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*

⁸ Id. at 112-113.

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.

x x x x

22. x x x.

Name of Investors	Broker / Agent	Bank/Location to which funds were transferred	Date	Account Number	Amount of Investment	Bank/Location x x x
x x x x						
23. Luisa Mercedes P. Lorenzo	Oudine Santos	RZB Austria, Singapore Branch	June 2007	R149432	US\$500,000	Not provided
x x x x						
32. Ricky Albino P. Sy	Oudine Santos	ABN-AMRO Bank Hongkong	9 October 2006	0800287 769	US\$40,000	BPI Pasong Tamo B ⁹

23. A careful perusal of the complaint-affidavits revealed that for every completed investment transaction, a company brochure, depending on the type of investment portfolio chosen, was provided to each investor containing the following information on Performance BVI and its

⁹ Id. at 177-182.

investment product called Performance Managed Portfolio or PMP, the points of which are as follows:

- a. 8 calendar week maturity period[,]
- b. principal investment (minimum of USD 40,000) is protected[,]
- c. investments maintained in strict confidentiality[,]
- d. features: security, liquidity, short term commitment,
- e. tax-exemption status for offshore investments.

24. The investment flow is described as follows:

- a. Investors' funds will be placed into a fixed deposit account with a PIPC designated bank and shall not be exposed for trading purposes. The PIPC designated bank shall then extend a margin line request for trading based on the deposit;
- b. PIPC shall open a separate account which will contain an amount of not more than 30% of its own funds to serve as a profit and loss account;
- c. Trading will commence with PIPC designated bank closely monitoring the performance to ensure that if losses are incurred trading will cease immediately should the 20% stop limit be hit;
- d. Profits will be credited into the Profit and Loss account with PIPC designated bank account. Losses will be debited from the same account up to the controlled 20% limit;
- e. Notice of withdrawals must be submitted two weeks prior to schedule of maturity otherwise investment is automatically rolled over to the next batch;
- f. At maturity, profits accumulated in the settlement account shall be distributed and deposited into each investor's dollar bank account within fourteen (14) banking days;
- g. The funds of various investors are pooled, batched and deposited with PIPC designated bank account acting as custodian bank, to form a massive asset base. This account is separate and distinct from the Profit and Loss Account. The line from this pooled fund is then entrusted to full time professional and experienced foreign traders who each specialize in the following currencies: Japanes Yen, Euro, British Pound, Swiss Francs and Australian Dollar. Profits generated from trading these major currencies is credited into the Profit and Loss Account, which at the end of the eight calendar week lock-in period, will be distributed among the investors. Investors are informed of their account status thru trading statements issued by PIPC every time there is a trade made in their respective accounts.

x x x x

25. Furthermore, it was relayed by the officers and agents to complainants-investors that PIPC Corp. is the Philippine office of the Performance Group of Companies affiliates situated in different parts of the world, particularly China, Indonesia, Hong Kong, Japan, Korea,

Singapore, and the British Virgin Islands (BVI), even reaching Switzerland. With such basic depiction of the legitimacy and stability of PIPC Corp., complainants-investors deduced that it was clothed with the authority to solicit, offer [and] sell securities. As regards the officers and agents of [PIPC Corp.], they secured proper individual licenses with the SEC as brokers/dealers of securities to enable to solicit, offer and/or sell the same.

26. Official SEC documents would show that while PIPC Corp. is indeed registered with the SEC, it having engaged in the solicitation and sale of securities was contrary to the purpose for which it was established which is only to act as a financial research. Corollarily, PIPC Corp.'s officers, agents, and brokers were not licensed to solicit, offer and sell securities to the public, a glaring violation of Sections 8 and 28 of the SRC.¹⁰

In refutation, Santos denied intentionally defrauding complainants Lorenzo and Sy:

12. I cannot understand how I can be charged of forming, or even of being a part of, a syndicate “formed with the intention of carrying an unlawful or illegal act, transaction, enterprise or scheme.” If this charge has reference to PIPC Corp. then I certainly cannot be held liable therefore. As I mentioned above, I joined PIPC Corp. only in **April 2005** and, by that time, the company was already in existence for over four years. I had no participation whatsoever in its creation or formation, as I was not even connected with PIPC Corp. at the time of its incorporation. In fact, I have never been a stockholder, director, general manager or officer of PIPC Corp. Further, PIPC Corp. was duly registered with the Securities and Exchange Commission and was organized for a legitimate purpose, and certainly not for the purpose of perpetrating a fraud against the public.

13. That I was an employee and, later on, an independent information provider of PIPC Corp. is of little consequence. My duties as such were limited to providing information about the corporate clients of PIPC Corp. that had been expressly requested by interested individuals. I performed my assigned job without any criminal intent or malice. In this regard, I have been advised that offenses penalized under the RPC are intentional felonies for which criminal liability attaches only when it is shown that the malefactors acted with criminal intent or malice. There can be no crime when the criminal mind is wanting. In this case, I performed my task of providing requested information about the clients of PIPC Corp. without any intent to violate the law. Thus, there can be no criminal liability.

[14]. I have also been advised that under the law, the directors and officers of a corporation who act for and in behalf of the corporation, who keep within the lawful scope of their authority, and act in good faith, do not become liable, whether civilly or otherwise, for the consequences of their

¹⁰ Id. at 174-184.

acts, as these acts are properly attributed to the corporation alone. The same principle should apply to individual, like myself, who was only acting within the bounds of her assigned tasks and had absolutely no decision-making power in the management and supervision of the company.

[15]. Neither can I be liable of forming a syndicate with respect to PIPC-BVI. To reiterate, at no time was I ever a stockholder, director, employee, officer or agent of PIPC-BVI. Said company is simply one of many companies serviced by PIPC Corp. I had no participation whatsoever in its creation and/or in the direction of its day-to-day affairs.

x x x x

19. Further, I have been advised by counsel that conspiracy must be established by positive and conclusive evidence. It cannot be based on mere conjecture but must be established as a fact. In this case, no proof of conspiracy was presented against me. In fact, it appears that I have been dragged in to this allegation based on the hearsay statement of Felicia Tirona that I was one of the in-house “account executives” or “work force” of PIPC-BVI and PIPC Corp. There was no allegation whatsoever of any illegal act done by me to warrant the institution of criminal charges against me. If at all, only Michael Liew should be held criminally liable, as he was clearly the one who absconded with the money of the investors of PIPC-BVI. Mr. Liew has since disappeared and efforts to locate him have apparently proved to be futile to date.

x x x x

23. In the first place, I did not receive any money or property from any of the complainants. As clearly shown by the documents submitted to this Honorable Office, particularly, the Portfolio Management Partnership Agreement, Security Agreement, Declaration of Trust, bank statements and acknowledgement receipts, complainants delivered their money to PIPC-BVI, not to PIPC Corp. Complainants deposited their investment in PIPC-BVI’s bank account, and PIPC-BVI would subsequently issue an acknowledgement receipt. No part of the said money was ever delivered to PIPC Corp. or to me.

24. Indeed, complainant’s own evidence show that the Portfolio Management Partnership Agreement, Security Agreement and Declaration of Trust were executed between PIPC-BVI and the individual complainants. Further, paragraph 2 of the Declaration of Trust explicitly stated that PIPC-BVI “hold the said amount of money UPON TRUST for the Beneficiary Owner.” The complainants cannot, therefore, hold PIPC Corp., or any of its officers or employees, with misappropriating their money or property when they were fully aware that they delivered their money to, and transacted solely with, PIPC-BVI, and not PIPC Corp.

25. It also bears stressing that of the twenty-one (21) complainants in this case, only complainant Ricky Albino Sy alleged that he had actually dealt

with me. Complainant Sy himself never alleged that he delivered or entrusted any money or property to me. On the contrary, complainant Sy admitted that he deposited his investment of U.S.\$40,000.00 by bank transfer to PIPC-BVI's account in the ABN Amro Bank. That the money was delivered to PIPC-BVI, and not to me, is shown by the fact that the receipt was issued by PIPC-BVI. I never signed or issued any acknowledgement receipt, as I never received any such money. Neither did I ever gain physical or juridical possession of the said money.¹¹ (Emphasis and underscoring supplied).

Santos' defense consisted in: (1) denying participation in the conspiracy and fraud perpetrated against the investor-complainants of PIPC Corporation, specifically Sy and Lorenzo; (2) claiming that she was initially and merely an employee of, and subsequently an independent information provider for, PIPC Corporation; (3) PIPC Corporation being a separate entity from PIPC-BVI of which Santos has never been a part of in any capacity; (4) her not having received any money from Sy and Lorenzo, the two having, in actuality, directly invested their money in PIPC-BVI; (5) Santos having dealt only with Sy and the latter, in fact, deposited money directly into PIPC-BVI's account; and (6) on the whole, PIPC-BVI as the other party in the investment contracts signed by Sy and Lorenzo, thus the only corporation liable to Sy and Lorenzo and the other complainants.

On 18 April 2008, the DOJ, in I.S. No. 2007-1054, issued a Resolution signed by a panel of three (3) prosecutors, with recommendation for approval of the Assistant Chief State Prosecutor, and ultimately approved by Chief State Prosecutor Jovencito R. Zuño, indicting: (a) Liew and Gonzalez-Tuason for violation of Sections 8 and 26 of the Securities Regulation Code; and (b) herein respondent Santos, along with Cristina Gonzalez-Tuason and 12 others for violation of Section 28 of the Securities Regulation Code. The same Resolution likewise dismissed the complaint against 8 of the respondents therein for insufficiency of evidence. In the 18 April 2008 Resolution, the DOJ discussed at length the liability of PIPC Corporation and its officers, employees, agents and all those acting on PIPC Corporation's behalf, to wit:

Firstly, complainant SEC filed the instant case for alleged violation by respondents [therein, including herein respondent, Santos,] of Section 8 of the SRC.

Sec. 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

¹¹ Id. at 202-207.

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.

Based on the above provision of the law, complainant SEC is now accusing all respondents [therein, including Santos,] for violating the same when they allegedly sold and/or offered for sale unregistered securities.

However, Section 8.5 thereof provides that “*The Commission may audit the financial statements, assets and other information of a firm applying for registration of its securities whenever it deems the same necessary to insure full disclosure or to protect the interest of the investors and the public in general.*”

The above-quoted provision is loud and clear and needs no further interpretation. It is the firm through its authorized officers that is required to register its securities with the SEC and not the individual persons allegedly selling and/or offering for sale said unregistered securities. To do otherwise would open the floodgates to numerous complaints against innocent individuals who have no hand in the control, decision-making and operations of said investment company.

Clearly, it is only the PIPC Corp. and respondents Michael H. Liew and Cristina Gonzalez-Tuason being the President and the General Manager respectively, of PIPC Corp. who violated Section 8 of the SRC.

x x x x

Respondents Liew and Tuason are directors and officers of PIPC Corp. who exercise power of control and supervision in the management of said corporation. Surely they cannot claim having no knowledge of the operations of PIPC Corp. vis-à-vis its scope of authority since they are the ones who actually created and manage the same. They are well aware that PIPC Corp. is a mere financial research facility and has nothing to do with selling or offering for sale securities to the general public. But despite knowledge, they continue to recruit and deceive the general public by making it appear that PIPC Corp. is a legitimate investment company.

Moreover, they cannot evade liability by hiding behind the veil of a corporate fiction. x x x.

x x x x

In the case at bar, the investors were made to believe that PIPC Corp. and PIPC-BVI is one and the same corporation. There is nothing on record that would show that private complainants were informed that PIPC Corp. and PIPC-BVI are two entities distinct and separate from one another. In fact, when they invested their money, they dealt with PIPC Corp. and the people acting on its behalf but when they signed documents they were provided with ones bearing the name of PIPC-BVI. Clearly, this obvious and intentional confusion of names of the two entities is designed

to defraud and later to avoid liabilities from their victims. Therefore, the defense of a corporate fiction is unavailing in the instant case.

x x x x

Buying and selling of securities is an indispensable element that makes one a broker or dealer. So if one is not engaged in the business of buying and selling of securities, naturally he or she cannot be considered as a broker or dealer. However, a person may be considered as an agent of another, juridical or natural person, if it can be inferred that he or she acts as an agent of his or her principal as above-defined. One can also be an investor and agent at the same time.

An examination of the records and the evidence submitted by the parties, we have observed that all respondents are investors of PIPC-BVI, same with the private complainants, they also lost thousands of dollars. We also noted the fact that most of the private complainants and alleged brokers or agents are long time friends if not blood related individuals. Notably also is the fact that most of them are highly educated businessmen/businesswomen who are financially well-off. Hence, they are regarded to be wiser and more prudent and expected to exercise due diligence of a good father of a family in managing their finances as compared to those who are less fortunate in life.

However, we still need to delve deeper into the facts and the [evidence] on record to determine the degree of respondents' participations and if on the basis of their actions, it can be inferred that they acted as employees-agents or investor-agents of PIPC Corp. or PIPC-BVI then are liable under Section 28 of the SRC otherwise, they cannot be [blamed] for being mere employees or investors thereof.

x x x x

Oudine Santos. Investment Consultant of PIPC Corp. who allegedly invited, convinced and assured private complainants Luisa Mercedes P. Lorenzo and Ricky Albino P. Sy to invest in PIPC Corp. To prove their allegations, respondents attached email exchanges with respondent Santos regarding the details in investing with PIPC-BVI. Respondent Santos failed to submit counter-affidavit despite subpoena.

x x x x

After painstakingly going over the record and the supporting documents attached thereto and after carefully evaluating the respective claims and defenses raised by all the parties, the undersigned panel of prosecutors has a reason to believe that Section 28 of the SRC has been violated and that the following respondents are probably guilty thereof and should, therefore, be held for trial:

1. Cristina Gonzalez-Tuason
2. x x x.

x x x x

13. Oudine Santos

The above-named respondents, aside from being officers, employees or investors, clearly acted as agents of PIPC Corp. who made representations regarding PIPC Corp. and PIPC-BVI investment products. They assured their clients that investing with PIPC-BVI will be 100% guaranteed. In addition, they also facilitated their clients' investments with PIPC-BVI and some, if not all, even received money investors as evidenced by the acknowledgement receipts they signed and on behalf of PIPC-BVI. The documentary evidence submitted by witnesses and their categorical and positive assertion of facts which, taken together corroborate one another, prevails over the defense of denial raised by the above-named respondents which are mostly self-serving in nature.

A formal or written contract of agency between two or more persons is not necessary for one to become an agent of the other for as long as it can be inferred from their actions that there exists a principal-agent relationship between them on the one hand and the PIPC Corp. or PIPC-BVI on the other hand, then, it is implied that a contract of agency is created.

As to their contention that they are not officers or employees of PIPC Corp., the Supreme Court ruled that one may be an agent of a domestic corporation although he or she is not an officer thereto. x x x. The basis of agency is representation; the question of whether an agency has been created is ordinarily a question which may be established in the same way as any other fact, either by direct or substantial evidence; though that fact or extent of authority of the agents may not, as a general rule, be established from the declarations of the agents alone, if one professes to act as agent for another, he or she is estopped to deny her agency both as against the asserted principal and third persons interested in the transaction in which he or she is engaged.

Further, they cannot raise the defense of good faith for the simple reason that the SRC is a special law where criminal intent is not an essential element. Mere violation of which is punishable except in some provisions thereof where fraud is a condition *sine qua non* such as Section 26 of the said law.

x x x x

WHEREFORE, the foregoing considered, it is respectfully recommended that this resolution be APPROVED and that:

1. An information for violation of Section 8 of the SRC be filed against respondent PIPC Corp., MICHAEL H. LIEW and CRISTINA GONZALEZ-TUASON;

2. An information for violation of Section 26 thereof be also filed against respondents MICHAEL H. LIEW and CRISTINA GONZALEZ-TUASON; and
3. An information for violation of Section 28 thereof be filed against respondents CRISTINA GONZALEZ-TUASON, MA. CRISTINA BAUTISTA-JURADO, BARBARA GARCIA, ANTHONY KIERULF, EUGENE GO, MICHAEL MELCHOR NUBLA, MA. PAMELA MORRIS, LUIS 'JIMBO' ARAGON, RENATO SARMIENTO, JR., VICTOR JOSE VERGEL DE DIOS, NICOLINE AMORANTO MENDOZA, JOSE 'JAY' TENGCO III, [respondent] OUDINE SANTOS AND HERLEY JESUITAS; and
4. The complaint against MAYENNE CARMONA, YEYE SAN PEDRO-CHOA, MIA LEGARDA, NICOLE ORTEGA, DAVID CHUA-UNSU, STANLEY CHUA-UNSU, DEBORAH V. YABUT, CHRISTINE YU and JONATHAN OCAMPO be dismissed for insufficiency of evidence.¹² (Emphasis supplied).

In sum, the DOJ panel based its finding of probable cause on the collective acts of the majority of the respondents therein, including herein respondent Santos, which consisted in their acting as employees-agent and/or investor-agents of PIPC Corporation and/or PIPC-BVI. Specifically alluding to Santos as Investment Consultant of PIPC Corporation, the DOJ found probable cause to indict her for violation of Section 28 of the Securities Regulation Code for engaging in the business of selling or offering for sale securities, on behalf of PIPC Corporation and/or PIPC-BVI (which were found to be an **issuer**¹³ of securities without the necessary registration from the SEC) without Santos being registered as a broker, dealer, salesman or an associated person.

On separate motions for reconsideration of the respondents therein, including herein respondent Santos, the DOJ panel issued a Resolution dated 2 September 2008 modifying its previous ruling and excluding respondent Victor Jose Vergel de Dios from prosecution for violation of Section 28 of the Securities Regulation Code, thus:

After an assiduous re-evaluation of the facts and the evidence submitted by the parties in support of their respective positions, the undersigned panel finds x x x [that the] rest of the respondents mainly rehashed their earlier arguments except for a few respondents who, in one way or another, failed to participate in the preliminary investigation; hence raising their respective defenses for the first time in their motions for reconsideration.

¹² Id. at 248-267.

¹³ SEC. 3. *Definition of Terms.* – x x x.

3.2 “*Issuer*” is the originator, maker, obligor, or creator of the security.

x x x x

With respect to respondents Luis “Jimbo” Aragon and Oudine Santos who also claimed to have not received subpoenas, this panel, after thoroughly evaluating their respective defenses, finds them to be similarly situated with the other respondents who acted as agents for and in behalf of PIPC Corp. and/or PIPC-BVI; hence, their inclusion in the information is affirmed.

x x x x

x x x As to the issue on whether or not PMPA is a security contract, we rule in the affirmative, as supported by the herein below provisions of the SRC, particularly:

Sec. 8. Requirement of Registration of Securities. – 8.1. Securities shall not be sold or offered for sale or distribution within the Philippines, without 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.

Securities have been defined as shares, participation or interest in a corporation or in a commercial enterprise or profit making venture and evidenced by a certificate, contract, instrument, whether written or electronic in character. It includes among others, investment contracts, certificates of interest or participation in a profit sharing agreement, certificates of deposit for a future subscription.

Under the SRC’s Amended Implementing Rules and Regulations, specifically Rule 3, par. 1 subpar. G, an investment contract has been defined 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. It is likewise provided in the said provision that an investment contract is presumed to exist whenever a person seeks to use the money or property of others on the promise of profits and a common enterprise is deemed created when two (2) or more investors “pool” their resources creating a common enterprise, even if the promoter receives nothing more than a broker’s commission. Undoubtedly, the PMPA is an investment contract falling within the purview of the term securities as defined by law.

x x x x

It bears to emphasize that the purpose of a preliminary investigation and/or confrontation between the party-litigants is for them to lay down all their cards on the table to properly inform and apprise the other of the charges against him/her, to avoid surprises and to afford the adverse party all the opportunity to defend himself/herself based on the evidence submitted against him/her. Thus, failure on the part of the

defaulting party to submit evidence that was then available to him is deemed a waiver on his part to submit it in the same proceedings against the same party for the same issue.

WHEREFORE, the foregoing premises considered, the undersigned panel of prosecutors respectfully recommends that the assailed resolution be *modified* by dismissing the complaint against Victor Jose Vergel De Dios and that the Information filed with the appropriate court for violation of Section 28 of the SRC be amended accordingly.¹⁴

Respondent Santos filed a petition for review before the Office of the Secretary of the DOJ assailing the Resolutions dated 18 April 2008 and 2 September 2008 and claiming that she was a mere clerical employee/information provider who never solicited nor recruited investors, in particular complainants Sy and Lorenzo, for PIPC Corporation or PIPC-BVI. Santos also claimed dearth of evidence indicating she was a salesman/agent or an associated person of a broker or dealer, as defined under the Securities Regulation Code.

The SEC filed its Comment opposing Santos' petition for review. Thereafter, the Office of the Secretary of the DOJ, through its then Undersecretary Ricardo R. Blancaflor, issued a Resolution dated 1 October 2009 which, as previously adverted to, excluded respondent Santos from prosecution for violation of Section 28 of the Securities Regulation Code. For a complete picture, we quote in full the disquisition of the Secretary of the DOJ:

[Santos] argues that while Luisa Mercedes P. Lorenzo and Ricky Albino P. Sy mentioned two (2) instances wherein she allegedly enticed them to invest, their own pieces of evidence, particularly the Annex "E" series (several "Details of Profit distribution & Renewal of Partnership Agreement" bearing different dates addressed to Ricky Albino P. Sy with stamped signature for PIPC-BVI), indicate that they invested and reinvested their money with PIPC-BVI repeatedly and even earned profits from these transactions through direct dealing with PIPC-BVI and without her participation. In addition, she maintains that Luisa Mercedes P. Lorenzo and Ricky Albino P. Sy had several opportunities to divest or withdraw their respective investments but opted not to do so at their own volitions.

x x x x

The sole issue in this case is whether or not respondent Santos acted as agent of PIPC Corp. or had enticed Luisa Mercedes P. Lorenzo or

¹⁴ *Rollo*, pp. 271-274.

Ricky Albino P. Sy to buy PIPC Corp. or PIPC-BVI's investment products.

We resolve in the negative.

Section 28 of the Securities Regulation Code (SRC) reads:

SEC. [28]. *Registration of Brokers, Dealers, Salesmen and Associated Persons.* – 28.1. No person shall engage in the business of buying or selling securities in the Philippines as a broker or dealer unless registered as such with the Commission.

28.2. No registered broker or dealer shall employ any salesman or any associated person, and no issuer shall employ any salesman, who is not registered as such with the Commission.

Jurisprudence defines an “agent” as a “business representative, whose function is to bring about, modify, affect, accept performance of, or terminate contractual obligations between principal and third persons.” x x x On the other hand, the Implementing Rules of the SRC simply provides that an agent or a “salesman” is a person employed as such or as an agent, by the dealer, issuer or broker to buy and sell securities x x x.

A judicious examination of the records indicates the lack of evidence that respondent Santos violated Section 28 of the SRC, or that she had acted as an agent for PIPC Corp. or enticed Luisa Mercedes P. Lorenzo or Ricky Albino P. Sy to buy PIPC Corp. or PIPC-BVI's investment products.

The annex “D” (“Welcome to PMP” Letter dated [17 April 2006] addressed to Luisa Mercedes P. Lorenzo signed by Michael Liew as president of PIPC-BVI), Annex “E” (Fixed Deposit Advice Letter dated [26 June 2006] addressed to Luisa Mercedes P. Lorenzo and stamped signature for PIPC-BVI), and Annex “H” (“Welcome to PMP” Letter dated [30 May 2007] addressed to Luisa Mercedes P. Lorenzo signed by Michael Liew as President of PIPC-BVI) of the complaint-affidavit dated [11 September 2007] of Luisa Mercedes P. Lorenzo show that she directly dealt with PIPC-BVI in placing her investment. The same is true with regard to Annex “A” series (Portfolio Management Partnership Agreement between Ricky Albino P. Sy and PIPC-BVI, Security Agreement between Ricky Albino P. Sy and PIPC-BVI, and Declaration of Trust between Ricky Albino P. Sy and PIPC-BVI), Annex “B” (Official Receipt dated 09 November 2006 issued by PIPC-BVI), Annex “C” (“Welcome to PMP” Letter dated [10 November 2006] addressed to Ricky Albino P. Sy and signed by Michael [Liew] as President of PIPC-BVI), and Annex “D” (Fixed Deposit Advice Letter dated [29 January 2007] addressed to Ricky Albino P. Sy with stamped signature for PIPC-BVI) of the complaint-affidavit dated [26 September 2007] of Ricky Albino P. Sy. These documents categorically show that the parties therein, i.e., Luisa Mercedes P. Lorenzo or Ricky Albino P. Sy and PIPC-BVI, transacted with each other directly without any participation from respondent Santos.

These documents speak for themselves. Moreover, it bears stressing that Luisa Mercedes P. Lorenzo and Ricky Albino P. Sy admit in their respective affidavits that they directly deposited their investments by bank transfer to PIPC-BVI's offshore bank account.

Annex "B" (Printed background of the PMP of [PIPC]-BVI enumerating the features of said product) and Annex "C" (Printed "Procedures in PMP Account Opening" instructing the client what to do in placing his/her investment) of the complaint-affidavit of Luisa Mercedes P. Lorenzo actually supports the allegations of respondent Santos that there were printed forms/brochures for distribution to persons requesting the same. These printed/prepared handouts contain the assurances or guarantees of PIPC-BVI and the instructions on where and how to deposit the investors' money.

Likewise, Luisa Mercedes P. Lorenzo's Annex "A" (2006 GIS of PIPC Corp. listing the stockholders, board of directors an[d] officers thereof), Annex "F" (Deposit Confirmation dated [14 June 2006] from Standard Chartered Bank) and Annexes "I" to "L" (SEC Certifications stating that PIPC Corp., PIPC, PIPC-BVI and Performance Investment Products Ltd., respectively, are not registered issuer of securities nor licensed to offer or sell securities to the public) are not evidence against respondent Santos. Her name is not even mentioned in any of these documents. If at all, these documents are evidence against PIPC Corp. and its officers named therein.

Further, it is important to note that in the "Request Form," one of the documents being distributed by respondent Santos x x x, it is categorically stated therein that said request "*shall not be taken as an investment solicitation x x x, but is mainly for the purpose of providing me with information.*" Clearly, this document proves that respondent Santos did not or was not involved in the solicitation of investments but merely shows that she is an employee of PIPC Corp. In addition, the "Information Dissemination Agreement" between her employer PIPC Corp. and PIPC-BVI readably and understandably provides that she is prohibited from soliciting investments in behalf of PIPC-BVI and her authority is limited only to providing interested persons with the "*necessary information regarding how to communicate directly with PIPC.*" Parenthetically, the decision to sign the partnership Agreement with PIPC-BVI to invest and repeatedly reinvest their monies with PIPC-BVI were made by Luisa Mercedes P. Lorenzo and Ricky Albino P. Sy themselves without any inducement or undue influence from respondent Santos.

x x x x

WHEREFORE, the assailed resolution is hereby MODIFIED, the Chief State Prosecutor is directed to EXCLUDE respondent Oudine Santos from the Information for violation of Section 28 of the Securities

and Regulation Code, if any has been filed, and report the action taken thereon within ten (10) days from receipt hereof.¹⁵

Expectedly, after the denial of the SEC's motion for reconsideration before the Secretary of the DOJ, the SEC filed a petition for *certiorari* before the Court of Appeals seeking to annul the 1 October 2009 Resolution of the DOJ.

The Court of Appeals dismissed the SEC's petition for *certiorari* and affirmed the 1 October 2009 Resolution of the Secretary of the DOJ:

Prescinding from the foregoing, a person must first and foremost be engaged in the business of buying and selling securities in the Philippines before he can be considered as a broker, a dealer or salesman within the coverage of the Securities Regulation Code. The record in this case however is bereft of any showing that [Santos] was engaged in the business of buying and selling securities in the Philippines, whether for herself or in behalf of another person or entity. Apart from [SEC's] sweeping allegation that [Santos] enticed Sy and Lorenzo and solicited from them investments for PIPC-BVI without first being registered as broker, dealer or salesman with SEC, no evidence had been adduced that shows [Santos'] actual participation in the alleged offer and sale of securities to the public, particularly to Sy and Lorenzo, within the Philippines. There was likewise no exchange of funds between Sy and Lorenzo, on one hand, and [Santos], on the other hand, as the price of certain securities offered by PIPC-BVI. There was even no specific proof that [Santos] misrepresented to Sy and Lorenzo that she was a licensed broker, dealer or salesperson of securities, thereby inducing them to invest and deliver their hard-earned money with PIPC-BVI. In fact, the Information Dissemination Agreement between PIPC Corporation, [Santos' employer], and PIPC-BVI clearly provides that [Santos] was prohibited from soliciting investments in behalf of PIPC-BVI and that her authority is limited only to providing prospective client with the "*necessary information on how to communicate directly with PIPC.*" Thus, it is obvious that the final decision of investing and reinvesting their money with PIPC-BVI was made solely by Sy and Lorenzo themselves.

X X X X

WHEREFORE, in view of the foregoing premises, the petition filed in this case is hereby **DENIED** and, consequently, **DISMISSED**. The assailed Resolutions dated [1 October 2009] and [23 November 2009] of the Secretary of Justice in I.S. No. 2007-1054 are hereby **AFFIRMED**.¹⁶

¹⁵ Id. at 313-317.

¹⁶ Id. at 65-66.

Hence, this appeal by *certiorari* raising the sole error of Santos' exclusion from the Information for violation of Section 28 of the Securities Regulation Code.

Generally, at the preliminary investigation proper, the investigating prosecutor, and ultimately, the Secretary of the DOJ, is afforded wide latitude of discretion in the exercise of its power to determine probable cause to warrant criminal prosecution. The determination of probable cause is an executive function where the prosecutor determines merely that a crime has been committed and that the accused has committed the same.¹⁷ The rules do not require that a prosecutor has moral certainty of the guilt of a person simply for preliminary investigation purposes.

However, the authority of the prosecutor and the DOJ is not absolute; it cannot be exercised arbitrarily or capriciously. Where the findings of the investigating prosecutor or the Secretary of the DOJ as to the existence of probable cause are equivalent to a gross misapprehension of facts, *certiorari* will lie to correct these errors.¹⁸

While it is our policy not to interfere in the conduct of preliminary investigations, we have, on more than one occasion, adhered to some exceptions to the general rule:

1. when necessary to afford adequate protection to the constitutional rights of the accused;
2. when necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions;
3. when there is a prejudicial question which is *sub judice*;
4. *when the acts of the officer are without or in excess of authority*;
5. where the prosecution is under an invalid law, ordinance or regulation;
6. when double jeopardy is clearly apparent;
7. where the court has no jurisdiction over the offense;
8. where it is a case of persecution rather than prosecution;
9. where the charges are manifestly false and motivated by the lust for vengeance;

¹⁷ *Po v. Department of Justice*, G.R. Nos. 195198 and 197098, 11 February 2013, 690 SCRA 214, 224-225.

¹⁸ *First Women's Credit Corporation v. Hon. Perez*, 524 Phil. 305, 308-309 (2006) citing *Hegerty v. Court of Appeals*, 456 Phil. 542, 547-548 (2003); *Punzalan v. Dela Peña*, 478 Phil. 771, 783 (2004).

10. when there is clearly no *prima facie* case against the accused and a motion to quash on that ground has been denied.¹⁹ (Italics supplied).

In excluding Santos from the prosecution of the supposed violation of Section 28 of the Securities Regulation Code, the Secretary of the DOJ, as affirmed by the appellate court, debunked the DOJ panel's finding that Santos was *prima facie* liable for either: (1) selling securities in the Philippines as a broker or dealer, or (2) acting as a salesman, or an associated person of any broker or dealer on behalf of PIPC Corporation and/or PIPC-BVI without being registered as such with the SEC.

To get to that conclusion, the Secretary of the DOJ and the appellate court ruled that no evidence was adduced showing Santos' actual participation in the final sale by PIPC Corporation and/or PIPC-BVI of unregistered securities since the very affidavits of complainants Lorenzo and Sy proved that Santos had never signed, neither was she mentioned in, any of the investment documents between Lorenzo and Sy, on one hand, and PIPC Corporation and/or PIPC-BVI, on the other hand.

The conclusions made by the Secretary of the DOJ and the appellate court are a myopic view of the investment solicitations made by Santos on behalf of PIPC Corporation and/or PIPC-BVI while she was not licensed as a broker or dealer, or registered as a salesman, or an associated person of a broker or dealer.

We sustain the DOJ panel's findings which were not overruled by the Secretary of the DOJ and the appellate court, that PIPC Corporation and/or PIPC-BVI was: (1) an issuer of securities without the necessary registration or license from the SEC, and (2) engaged in the business of buying and selling securities. In connection therewith, we look to Section 3 of the Securities Regulation Code for pertinent definitions of terms:

Sec. 3. *Definition of Terms.* – x x x.

x x x x

3.3. "Broker" is a person engaged in the business of buying and selling securities for the account of others.

3.4. "Dealer" means [any] person who buys [and] sells securities for his/her own account in the ordinary course of business.

¹⁹ *Filadas Pharma, Inc. v. Court of Appeals*, G.R. No. 132422, 30 March 2004, 426 SCRA 460, 470, citing *Mendoza-Arce v. Office of the Ombudsman (Visayas)*, 430 Phil. 101, 113 (2002).

3.5. “Associated person of a broker or dealer” is an employee thereof whom, directly exercises control of supervisory authority, but does not include a salesman, or an agent or a person whose functions are solely clerical or ministerial.

x x x x

3.13. “Salesman” is a natural person, employed as such [or] as an agent, by a dealer, issuer or broker to buy and sell securities.

To determine whether the DOJ Secretary’s Resolution was tainted with grave abuse of discretion, we pass upon the elements for violation of Section 28 of the Securities Regulation Code: (a) engaging in the business of buying or selling securities in the Philippines as a broker or dealer; or (b) acting as a salesman; or (c) acting as an associated person of any broker or dealer, unless registered as such with the SEC.

Tying it all in, there is no quarrel that Santos was in the employ of PIPC Corporation and/or PIPC-BVI, a corporation which sold or offered for sale unregistered securities in the Philippines. To escape probable culpability, Santos claims that she was a mere clerical employee of PIPC Corporation and/or PIPC-BVI and was never an agent or salesman who actually solicited the sale of or sold unregistered securities issued by PIPC Corporation and/or PIPC-BVI.

Solicitation is the act of seeking or asking for business or information; it is not a commitment to an agreement.²⁰

Santos, by the very nature of her function as what she now unaffectedly calls an information provider, brought about the sale of securities made by PIPC Corporation and/or PIPC-BVI to certain individuals, specifically private complainants Sy and Lorenzo by providing information on the investment products of PIPC Corporation and/or PIPC-BVI with the end in view of PIPC Corporation closing a sale.

While Santos was not a signatory to the contracts on Sy’s or Lorenzo’s investments, Santos procured the sale of these unregistered securities to the two (2) complainants by providing information on the investment products being offered for sale by PIPC Corporation and/or PIPC-BVI and convincing them to invest therein.

²⁰ <http://thelawdictionary.org/solicitation-2/> last visited 17 February 2014.

No matter Santos' strenuous objections, it is apparent that she connected the probable investors, Sy and Lorenzo, to PIPC Corporation and/or PIPC-BVI, acting as an ostensible agent of the latter on the viability of PIPC Corporation as an investment company. At each point of Sy's and Lorenzo's investment, Santos' participation thereon, even if not shown strictly on paper, was *prima facie* established.

In all of the documents presented by Santos, she never alleged or pointed out that she did not receive extra consideration for her simply providing information to Sy and Lorenzo about PIPC Corporation and/or PIPC-BVI. Santos only claims that the monies invested by Sy and Lorenzo did not pass through her hands. In short, Santos did not present in evidence her salaries as a supposed "mere clerical employee or information provider" of PIPC-BVI. Such presentation would have foreclosed all questions on her status within PIPC Corporation and/or PIPC-BVI at the lowest rung of the ladder who only provided information and who did not use her discretion in any capacity.

We cannot overemphasize that the very information provided by Santos locked the deal on unregistered securities with Sy and Lorenzo.

In fact, Sy alleged in his affidavit, which allegation was not refuted by Santos, that he was introduced to Santos while he performed routine transactions at his bank:

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;²¹

Santos countered that:

28. I also categorically deny complainant Sy's allegation that I "enticed" him to enter into a Partnership Agreement with PIPC-BVI. In the first place, I came to know complainant Sy only when he was referred to me by a mutual acquaintance, Ms. Ana Liliosa Santos, who was then the Manager of the Bank of the Philippine Islands, Pasong Tamo Branch. Ms. Ana Santos set up a meeting between complainant Sy and me because complainant Sy wanted to know more about PIPC-BVI. As with the other individuals who expressed interest in PIPC Corp.'s client companies, I then provided complainant Sy with additional information about PIPC-BVI. The decision to enter into the aforementioned Partnership Agreement with PIPC-BVI was made by complainant Sy alone without any inducement or undue influence from me, as in fact I only met him twice – the first one was on the meeting set up by Ms. Ana Santos and the second one was to introduce him to Michael Liew. Indeed, complainant Sy appears to be a well-educated person with years of experience as a businessman. It is reasonable to assume that before entering into the said Partnership Agreement with PIPC-BVI, complainant Sy had fully understood the nature of the agreement and that in entering thereto, he had been motivated by a desire to earn a profit and had believed, as I myself have been led to believe, that PIPC-BVI was a legitimate business concern which offered a reasonable return on investment. Moreover, complainant Sy could have withdrawn his initial investment of US\$40,000.00 on its date of maturity, *i.e.*, 26 January 2007, as indicated in the PIPC-BVI's letter dated 10 November 2006, a copy of which is attached to complainant Sy's Sworn Statement. Complainant Sy, however, obviously decided on his own volition to keep his investment with PIPC-BVI presumably because he wanted to gain more profit therefrom. Complainant Sy in fact admitted that he received monetary returns from PIPC-BVI in the total amount of US\$2,439.12.²²

What is palpable from the foregoing is that Sy and Lorenzo did not go directly to Liew or any of PIPC Corporation's and/or PIPC-BVI's principal officers before making their investment or renewing their prior investment. However, undeniably, Santos actively recruited and referred possible investors to PIPC Corporation and/or PIPC-BVI and acted as the go-between on behalf of PIPC Corporation and/or PIPC-BVI.

²¹ *Rollo*, p. 112.

²² *Id.* at 208-209.

The DOJ's and Court of Appeals' reasoning that Santos did not sign the investment contracts of Sy and Lorenzo is specious. The contracts merely document the act performed by Santos.

Individual complainants and the SEC have categorically alleged that Liew and PIPC Corporation and/or PIPC-BVI is not a legitimate investment company but a company which perpetrated a scam on 31 individuals where the president, a foreign national, Liew, ran away with their money. Liew's absconding with the monies of 31 individuals and that PIPC Corporation and/or PIPC-BVI were not licensed by the SEC to sell securities are uncontroverted facts.

The transaction initiated by Santos with Sy and Lorenzo, respectively, is an investment contract or participation in a profit sharing agreement that falls within the definition of the law. When the investor is relatively uninformed and turns over his money to others, essentially depending upon their representations and their honesty and skill in managing it, the transaction generally is considered to be an investment contract.²³ The touchstone is the presence of an investment in a common venture premised on a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others.²⁴

At bottom, the exculpation of Santos cannot be preliminarily established simply by asserting that she did not sign the investment contracts, as the facts alleged in this case constitute fraud perpetrated on the public. Specially so because the absence of Santos' signature in the contract is, likewise, indicative of a scheme to circumvent and evade liability should the pyramid fall apart.

Lastly, we clarify that we are only dealing herein with the preliminary investigation aspect of this case. We do not adjudge respondents' guilt or

²³ *People v. Petralba*, 482 Phil. 362, 377 (2004).

²⁴ *Id.*


the lack thereof. Santos' defense of being a mere employee or simply an information provider is best raised and threshed out during trial of the case.

WHEREFORE, the petition is **GRANTED**. The Decision of the Court of Appeals in CA-G.R. No. SP No. 112781 and the Resolutions of the Department of Justice dated 1 October 2009 and 23 November 2009 are **ANNULLED** and **SET ASIDE**. The Resolution of the Department of Justice dated 18 April 2008 and 2 September 2008 are **REINSTATED**. The Department of Justice is directed to include respondent Oudine Santos in the Information for violation of Section 28 of the Securities and Regulation Code.

SO ORDERED.


JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson


ARTURO D. BRION
Associate Justice

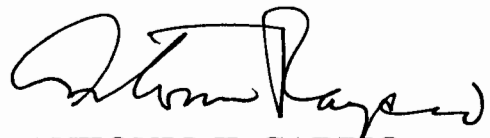

MARIANO C. DEL CASTILLO
Associate Justice



BIENVENIDO L. REYES
Associate Justice

ATTESTATION

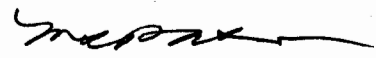
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice