



Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Building, EDSA, Greenhills, Mandaluyong City

Uniwide Sales, Inc., Uniwide Holdings, Inc.,
NAIC Resources and Development Corp.,
Uniwide Sales Realty and Resources Corp.,
First Paragon Corporation, and Uniwide
Warehouse Club, Inc.,

SEC En Banc Case No. 12-09-183
(SEC Case No. 06-99-6340)

Petitioners,

versus

The Hearing Panel in SEC Case No. 06-99-6340,
Respondent.

X-----X

In the Matter of the Petition for Declaration
of Suspension Of Payment, Formation and
Appointment of a Rehabilitation Receiver/
Committee and Approval of a Rehabilitation
Plan,

Uniwide Sales, Inc., Uniwide Holdings, Inc.,
NAIC Resources and Development Corp.,
Uniwide Sales Realty and Resources Corp.,
First Paragon Corporation, and Uniwide
Warehouse Club, Inc.

SEC En Banc Case No. 01-10-193
(SEC Case No. 06-99-6340)

Petitioners-Appellants,

Philippine National Bank,

Oppositor-Appellee.

X-----X

DECISION

For resolution of the Commission *En Banc* are the two (2) cases consolidated by the Commission in an Order dated 30 September 2010, namely:

SEC - OGC



1) SEC EN BANC CASE NO. 12-09-183 entitled: *Uniwide Sales, Inc., Uniwide Holdings, Inc., NAIC Resources and Development Corporation, Uniwide Sales Realty and Resources Corporation, First Paragon Corporation, and Uniwide Warehouse Club, Inc., Petitioners, versus The Hearing Panel, Respondent in SEC Case No. 06-99-6340 ("Petition for Certiorari")*, filed with the Commission on 04 December 2009; and

2) SEC EN BANC CASE NO. 01-10-193 entitled: *In the Matter of the Petition for the Declaration of Suspension of Payments, Formation and Appointment of A Rehabilitation Receiver/Committee and Approval of Rehabilitation Plan, Uniwide Sales Inc., Uniwide Holdings, Inc., NAIC Resources and Development Corporation, Uniwide Sales Realty and Resources Corporation, First Paragon Corporation, and Uniwide Warehouse Club, Inc. Petitioners- Appellants, Philippine National Bank, Oppositor-Appellee ("Memorandum of Appeal")* filed on 22 January 2010.

The Uniwide Group filed the instant Petition for Certiorari¹ on 04 December 2009,² pursuant to Rule XII of the 2006 Rules of Procedure of the Securities and Exchange Commission (2006 Rules). They assail: 1) the *Hearing Panel (HP)* Order dated July 30, 2009 directing the reappraisal of the Metro Mall property, 2) *Special Hearing Panel (SHP)* Order dated September 17, 2009, directing petitioners to show cause why the rehabilitation proceedings should not be terminated, and 3) SHP Order dated November 6, 2009 denying their Motion for Reconsideration dated 19 August 2009 of HP Order dated July 30, 2009, and their Motion for Partial Reconsideration dated 28 October 2009 of the Order dated 17 September 2009.

The Memorandum of Appeal is an appeal from the Resolution of the SHP dated 13 January 2010, which denied petitioners' *Motion to Approve the Revised Third Amendment to the Group Rehabilitation Plan (Revised TARP)*, and granted the motions to declare petitioners' rehabilitation plan "not feasible" and to terminate the rehabilitation case.

The six companies shall be referred to herein collectively as the "Uniwide Group," or "Petitioners-Appellants."

Pending resolution of the consolidated cases, the following companies of the Uniwide Group filed the following:

- 1) *Urgent Manifestation and Motion* filed on 06 December 2012 by *Uniwide Sales Realty and Resources Corporation* praying that it be considered withdrawn from the pending petitions before the SEC En Banc, alleging that it has started negotiations for

¹ Dated 23 November 2009.

² Records Vol. I p. 115.

settlement with Grandholdings Investments (successor in interest of Allied Banking Corporation) and PNB, allegedly its only remaining creditors.

- 2) *Urgent Manifestation and Motion* filed on 04 January 2013 by Uniwide Sales, Inc. praying that it be considered withdrawn from the pending petitions before the SEC En Banc, alleging that it has substantially paid all of its obligations with various creditors.³
- 3) *Urgent Manifestation and Motion* filed on 04 January 2013 by *Uniwide Holdings, Inc.* praying that it be considered withdrawn from the pending petitions before the SEC En Banc, alleging that it has substantially paid all of its obligations with various creditors.

FACTS OF THE CASE

The Uniwide Group is composed of stock corporations duly organized under Philippine laws, with office address at Central Business Park II, Roxas Boulevard, Coastal Road Junction. They are engaged in various areas of business activities and investments, as follows: 1) Uniwide Sales, Inc. - Retail; 2) Uniwide Holdings, Inc.- Franchising and Real Estate; 3) Naic Resources & Development Corporation - Real Estate; 4) Uniwide Sales Realty and Resources Corp. - Real Estate; 5) First Paragon Corporation - Retail; and 6) Uniwide Sales Warehouse Club, Inc. - Retail.

On 25 June 1999, the Uniwide Group filed a petition with the Commission docketed as SEC Case No. 06-99-6340 praying for 1) the appointment of a receiver; 2) a suspension order pursuant to Sections 3 and 4 of the Insolvency Law in relation to P. D. No. 902-A; and 3) the approval of a Rehabilitation Plan.⁴ This was prompted by the adverse impact on petitioners' finances allegedly due to slowdown in sales, slow collection of receivables, high interest payments and mounting debts accumulated because of aggressive expansion.⁵

On 29 June 1999, the Commission granted the petition, suspending all claims, actions and proceedings against the Uniwide Group before any court, tribunal, office, board, body and/or commission.

On 26 July 1999, the Commission constituted an Interim Receivership Committee ("IRC"), that submitted the rehabilitation plan on 18 October 1999, which was anchored on the following principles: return to core business of retailing; debt reduction via cash settlement and *dacion en pago*; loan restructuring; waiver of penalties & charges;

³ On 16 January 2013, *Uniwide Sales, Inc.* filed an Amended Urgent Manifestation and Motion amending paragraph 4 of the 04 January 2013 Urgent Manifestation and Motion from "*Uniwide Sales Realty*" to *Uniwide Sales, Inc.*

⁴ Petition filed 4 December 2009 par. 3.4, Records Vol. I, p. 113.

⁵ Special Hearing Panel (SHP) Resolution dated 13 January 2010, Records, Vol. II p. 86.

freezing of interest payments; restructuring of credit of suppliers, contractors and private lenders.⁶

The approval of this plan was deferred because of the negotiations with strategic investor, *Casino Guichard Perrachon* (Casino), envisioned to infuse Php 3.7 billion fresh capital into the group. The *Group Amended Rehabilitation Plan* (GARP) which projected the entry of *Casino* (the third largest retailing outlet in France), was submitted on 14 February 2000 and was approved by the Commission on April 11, 2000.⁷

On 04 January 2001, the IRC filed a disclosure report, revealing that *Casino* abandoned its plans of investment because of the petitioners' alleged inability to convince all creditors to agree to the *Group Amended Rehabilitation Plan* (GARP).⁸

THE SAGARP

Thus, the IRC submitted the *Second Amendment to the Group Amended Rehabilitation Plan* ("SAGARP") on October 11 2001, which was approved by the Hearing Panel (HP) in an Order dated December 23, 2002. In the absence of fresh cash which was expected from *Casino*, the only alternative brought forth was to generate fresh cash from petitioners' retail operations.⁹

In short, the success of *SAGARP* is primarily anchored on the profitability of retail business. In a nutshell, the key features of petitioners' rehabilitation plan are as follows:

1. Retail Business. Even without an investor, petitioners will be able to operate on their own and implement measures to achieve targets. Petitioners believe that their retail business is still viable. Petitioners will consolidate retail operations to seven (7) stores. Petitioners are confident that they will be able to increase sales through aggressive marketing programs and efficient operations. Operating expenses will be closely managed to keep these below 10% of the net sales.

2. Debt Settlement with Secured Creditors. Petitioners have debt of P6.61 billion with secured creditors. The *SAGARP* intends to pay off petitioners debts with secured creditors through *dacion en pago* arrangements. The residual debt with Land Bank amounting to P44.14 million shall be restructured into a five-year term loan and payment shall depend on cash flow from retail operations net of priority payments.

3. Debt Settlement with Unsecured Creditors. Petitioners have P2.54 billion debt with unsecured creditors which include trade suppliers, contractors, private lenders and non-trade creditors. The *SAGARP* intends to pay off petitioners' debts with unsecured creditors amounting to P2.33 billion as follows:
(a) 50% of the unsecured debt by 15-year convertible notes which are redeemable

⁶ SHP Resolution dated 13 January 2010, Records, Vol. II p. 86.

⁷ Petition par. 3.7 Records Vol. I, p. 112; also Comprehensive Report of the Receiver dated 04 June 2010 states 11 April 2000 – see Records Vol. III p. 1.

⁸ *Id.*, par. 3.8 Records, Vol. I, p. 112.

⁹ Order dated 23 December 2002 Records, Vol. I, pp. 45-46.

any time at the option of Uniwide; (b) the other half (50%) of the unsecured debt shall be restructured into 10-year term loan inclusive of a 3-year grace period, and payment will start in year 4. The SAGARP intends to settle portion of the debt to contractors with liens and claims on Coastal Mall via *dacion* of Coastal Mall proportionately with other claimants.”¹⁰

Several issues prevented the realization of the desired goals of SAGARP, such as: 1) the unexpected refusal of some creditors to comply with all the terms of the SAGARP; 2) the closure of stores, namely Uniwide EDSA, its second most profitable outlet, due to the renovation of EDSA Central Mall, the Cabuyao Store and the Baclaran Store; 3) lack of supplier support for supermarket operations; and 4) unprogrammed operating expenses and uncertain political climate.¹¹

On 11 July 2007, the petitioners-appellants submitted a Third Amendment to the Group Rehabilitation Plan (TARP) for approval.

However, before the Commission can act on the TARP, the petitioners-appellants filed on 29 September 2008 a Revised Third Amendment to the Group Rehabilitation Plan (*Revised TARP*) for approval.¹² According to the petitioners-appellants, the Revised TARP is primarily aimed at the immediate settlement of all the obligations accruing to the *unsecured creditors*, through a *dacion* of part of the Metro Mall property in Las Pinas City.¹³

The following are the salient features of the *Revised TARP*:

“1. Petitioners has still outstanding debt amounting to P5.533 billion. Of that amount, P3.155 billion is owed to secured creditors Land Bank, EBC, RCBC, Global Bank, Allied Bank, PNB, ING Bank and syndicate banks. The amount of P2.377 billion is owed to unsecured creditors consisting of trade suppliers, contractors, private lenders and non-trade suppliers.

2. Settlement of outstanding debt shall be through *dacion en pago* of Metromall property owned by Uniwide. Petitioners claim that the Metromall property has an appraised value of P3.067 billion.

3. The unsecured creditors shall be paid via *dacion en pago* of a portion of Metromall property. Transfer of ownership shall be through the formation of a special purpose company (SPC). The shares of SPC shall then be distributed to the creditors as payment for the outstanding debt.

The total amount to be settled with unsecured creditors is P2.327 billion, while the value of the portion Metromall property to be transferred to unsecured creditors is P800 million. Hence, the *dacion* amount shall fully settle the total unsecured debt at 65% discount.

¹⁰ SHP Resolution dated 13 January 2010, Records, Vol. II p. 79.

¹¹ Petition filed 4 December 2009 pars. 3.13-3.15 Records, Vol. I pp. 107-111 and Receiver's Comprehensive Report dated 04 June 2010, Records Vol. III pp. 10-11.

¹² Special Hearing Panel (SHP) Resolution dated 13 January 2010, p. 3, Vol. II Records p. 85.

¹³ Petition filed 4 December 2009 par. 318, Records, Vol. I p.106.

[Under the SAGARP, unsecured creditors are supposed to be paid through convertible notes and cash payments from retail operations.]

4. The secured creditors (PNB, Allied Bank, EBC) shall also be paid via *dacion en pago* of Metromall property. The total debt of petitioners to said creditor banks amounts to P1.737 billion or P1.630 billion if the premium of 20% given to EBC is excluded.

5. Petitioners will rehabilitate the retail operations in order to save 1,500 direct jobs and 10,000 to 15,000 indirect jobs. Retail business will continue to cater to "C" and "D" income bracket market. Uniwide will increase its daily-per-store sales. Thus, Uniwide will solicit support of trade suppliers for additional or longer credit terms. It will improve efficiency on inventory management to enhance turnover. It will improve gross profit margin by enhancing inventory mix to increase non-supermarket items which yields higher gross profit margin. It will maintain minimum operating expenses."¹⁴

**HP ORDER DATED JULY 30, 2009; SHP ORDER DATED SEPTEMBER 17, 2009;
AND SHP ORDER DATED NOVEMBER 6, 2009.**

Petition for Certiorari

During the hearing on the Revised TARP on 22 June 2009, LNC (SPV-AMC) Corporation (LNC), successor-in-interest of Equitable PCI Bank, moved for the re-appraisal of the Metromall property in Las Pinas, subject of the Revised TARP. All the creditors present unanimously seconded the motion. This was due to the difference between the fair market value of the subject property stated in the 30 September 1999 Appraisal Report which was One Billion Three Hundred Seven Million Four Hundred Eighty-Eight Thousand Pesos (Php 1,307,488,000.00) and the 11 April 2008 Appraisal Report, wherein the value dropped to Six Hundred Fifty-Nine Million Nine Hundred Sixty-Six Thousand Pesos (Php 659,966,000.00). For clarity, the scope of the 1999 Appraisal Report covers the whole Metromall property consisting of "land, buildings, other land improvements and machinery and equipment" while that of the 2008 Appraisal Report covers only such land.¹⁵

Accordingly, the HP granted the motion and issued its Order dated July 30, 2009, directing the reappraisal and updating of the 30 September 1999 appraisal of the Metromall property. The HP ruled that it is the lone property in the asset pool of the proposed SPC whose shares shall be distributed to the unsecured creditors as payment for their claims, thus, it must be reasonably valued especially since it is now being disputed by creditors.¹⁶

On 14 September 2009, the Commission issued SEC Office Order No. 287 Series of 2009 creating a *Special Hearing Panel* ("SHP") for Corporate Rehabilitation and

¹⁴ SHP Resolution dated 13 January 2010, Records, Vol. II pp. 84-85.

¹⁵ Order dated 30 July 2009, Records Vol. I, p.86.

¹⁶ *Id.*

Liquidation Cases, naming new members to the panel, and listing the cases under liquidation, which includes the Uniwide Group.¹⁷

On 17 September 2009, the SHP issued its Order¹⁸ directing the Uniwide Group to show cause within thirty (30) days from receipt thereof, why the Rehabilitation proceeding should not be terminated considering that more than ten (10) years have passed since they filed the Petition for Declaration of Suspension of Payments, Formation and Appointment of a Rehabilitation Receiver/Committee and Approval of Rehabilitation Plan and that the Rehabilitation Plan had undergone several revisions. The creditors and other claimants were likewise enjoined to manifest, within thirty days from receipt of Order, whether or not they still want the Rehabilitation proceedings to continue citing reasons therefor.

The Uniwide Group filed Motions for Partial Reconsideration¹⁹ of both Orders dated 30 July 2009 and 17 September 2009, which were denied by the SHP in its Order dated 06 November 2009²⁰ on the ground that a Motion for Reconsideration is a prohibited pleading under Section 3-5 of the Commission's 2000 Revised Rules of Procedure and Section 3-5 of the 2006 Rules of Procedure of the Commission (2006 Rules), and the SEC Rules of Procedure on Corporate Recovery (RPCR)²¹ provides that every Order issued under said Rules is immediately executory.

Thus, the Uniwide Group filed the instant Petition for Certiorari pursuant to Rule XII of the 2006 Rules. They alleged that the Orders could potentially jeopardize their ongoing rehabilitation, raising the following issues:

- 1) Whether the Hearing Panel committed grave abuse of discretion in ordering the reappraisal of one of the properties in petitioner's asset pool; and
- 2) Whether the Special Hearing Panel committed grave abuse of discretion in *motu proprio* issuing a show cause order, directing petitioners to show cause why the rehabilitation should not be terminated.

RESOLUTION OF THE SPECIAL HEARING PANEL DATED 13 JANUARY 2010

Pending resolution of the Petition for Certiorari, the SHP issued the Resolution (the "SHP Resolution") dated 13 January 2010 in SEC Case No. 06-99-6340, to wit:

"1. Petitioners' Motion to Approve *Revised Third Amendment to the Group Rehabilitation Plan (Revised TARP)* is **DENIED**.

¹⁷ Records Vol. I p. 89.

¹⁸ Records, Vol. I, p. 91.

¹⁹ pars. 3.19-3.20 Vol. I p. 106.

²⁰ Records Vol. I pp. 93-94.

²¹ Issued by the Commission on December 21, 1999, effective 15 January 2000.

2. The motions to declare petitioners' rehabilitation plan "not feasible" are **GRANTED**. Consequently, the instant rehabilitation case is **TERMINATED** and the stay order is lifted and dissolved. **This case is deemed finally disposed of pursuant to Section 5.2 of Republic Act No. 8799.** The Rehabilitation Receiver, Atty. Julio C. Elamparo, is directed to submit his final report within thirty (30) days from receipt hereof."

After a careful analysis of the financial condition of the petitioners-appellants, the SHP found that they were already insolvent since 2003, or just one year of implementation of the SAGARP.²² The SHP noted that *the SAGARP is primarily anchored on the profitability of retail business*. However, while petitioners-appellants exceeded their sales target in CY 2002, the sales target for 2009, which is Php 11.574 billion, was not met because the actual sales realized by the end of September 2009 is merely Php 74.927 million. The SHP found that the Uniwide Group had failed to achieve the goals of the SAGARP. The SHP also observed that petitioners have metamorphosed from being "solvent but distressed"²³ to "technically insolvent"²⁴ and then to unmistakably "insolvent"²⁵ conglomerate.

The SHP found that the proposed Revised TARP of the Uniwide Group (i.e., the proposal to settle petitioner's outstanding debt with secured and unsecured creditors *via dacion en pago* of Metromall property) for which petitioners-appellants sought approval is not feasible. Majority of the secured creditors rejected it and moved for the termination of the rehabilitation proceedings. The SHP also concluded that the opposition to the Revised TARP is justified.

Consequently, on January 22, 2010, the Uniwide Group filed the instant Memorandum of Appeal dated 21 January 2010, with the Commission *En Banc*. They prayed for: 1) the reversal of the Special Hearing Panel's 13 January 2010 Resolution, 2) an Order for the continuation of the rehabilitation proceedings, and 3) the approval of the Revised TARP. This petition was docketed as SEC *En Banc* Case No. 01-10-193.

STATUS QUO ORDER

Because of petitioners' timely appeal to the Commission *En Banc*, an Order dated 18 March 2010 was issued by the Commission *En Banc*, as follows:

"WHEREFORE, in order to preserve the parties' rights during the pendency of the appeal, the Commission *En Banc* hereby directs the parties to observe the

²² A debtor is insolvent if its assets are not sufficient to cover its liabilities. (Sec. 4-1 SEC Rules of Procedure on Corporate Recovery) SHP Resolution, Records, Vol. II p. 70.

²³ Solvent but distressed company has sufficient assets to cover all its debts but foresees difficulty of meeting them when they fall due. (Section 5[d], PD No. 902-A ; Section 3-1, SEC Rules of Procedure on Corporate Recovery), Records, Vol. II p. 86.

²⁴ Technical insolvency - the corporation has sufficient assets to cover all its debts but it foresees its inability to pay its obligations for more than one year. (Section 3-12, SEC RPCR), *Id.*

²⁵ Actual insolvency - the corporation's assets are not enough to cover its liabilities. (Section 5[d], PD 902-A ; Section 4-1, SEC RPCR) *Id.*

status quo prevailing before the issuance of the Special Hearing Panel's 13 January 2010 Resolution." (Emphasis supplied)²⁶

The Commission *En Banc* also issued an Order dated 27 April 2010, ordering the rehabilitation receiver, Atty. Julio C. Alamparo, to submit the following in consideration of the petitioners' appeal from the SHP's 13 January 2010 Resolution: 1) a comprehensive report on the progress of the implementation of the SAGARP; and 2) petitioners' audited financial statements for the fiscal year 2009.²⁷

CONSOLIDATION OF CASES

The Commission consolidated the two cases SEC *En Banc* Case No. 12-09-183 and SEC *En Banc* Case No. 01-10-193 in an Order dated 30 September 2010, as follows:

"Before the appeals can be resolved, the Commission needs an updated audit and report on the financial condition of the distressed corporations. Thus, on 27 April 2010, the Commission *En Banc* issued an Order directing the rehabilitation receiver, Atty. Julio C. Elamparo, to submit the following: (1) a comprehensive report on the progress of the implementation of the Second Amended Rehabilitation Plan; and (2) petitioners' audited financial statements for the fiscal year 2009 (Emphasis ours).

However, the rehabilitation receiver has yet to comply with the said Order despite due notice of the same received by him on 18 May 2010 (Emphasis ours).

WHEREFORE, premises considered, cases docketed as SEC *En Banc* Case No. 01-10-193 and SEC *En Banc* Case No. 12-09-183 are hereby **CONSOLIDATED**, and the petitioners are hereby **DIRECTED** to submit to an audit to be conducted by the Commission's Office of the General Accountant.

The petitioners are hereby **ORDERED** to cooperate with the audit, and submit any and all documents, papers, files and records as well as books of accounts, which will be required by the Office of the General Accountant.

The Office of the General Accountant is hereby **DIRECTED** to conduct the audit and submit its report within 90 days from receipt of this Order.

Petitioners are hereby **WARNED** that non-compliance with this Order is a ground for termination of the rehabilitation proceedings, and lifting of the Stay Order."

SO ORDERED.

On 12 October 2010, the Commission *En Banc* received the *Manifestation and Comprehensive Report* ²⁸ (the Comprehensive Report) dated 04 June 2010 from the

²⁶ Records, Vol. II pp. 213-214.

²⁷ Records, Vol. II p. 393.

²⁸ Records, Vol. III p.19.

Receiver, Atty. Julio C. Elamparo. He manifested that he has been following up from Uniwide and Sycip Gorres Velayo & Co. (SGV) the audited financial statements for the year 2009. As of their last meeting on 27 May 2009, SGV and Uniwide promised to rush the completion of the audited financial statements (AFS), but as of that date (07 October 2010), the AFS were not available.

On 10 November 2010, the Office of the General Accountant (OGA) reported its findings to the Commission *En Banc*,²⁹ citing the Comprehensive Report (Receiver's Report) submitted on 04 June 2010 by Atty. Elamparo. OGA narrated that the subject Receiver's Report has an attached Annex "A" which presents a summary of financial information of the Uniwide Group for periods 1999-2008. OGA noted that the financial data indicated in subject Receiver's Report itself are not based on the summary of financial information contained in said Annex "A." More particularly, the amounts of the petitioners' debts and assets indicated in pages 1 and 2 of subject Receiver's Report do not tally with the figures presented in the summary of financial information, Annex "A", and are not supported by any documents. OGA also found material discrepancies when they compared the 2008 and 2007 figures in said summary with the Group's audited financial statements ("AFS") as of 31 December 2008 and 31 December 2007. The discrepancy was due to the question of whether or not to include the financial statements of the Uniwide Sales Warehouse Club Inc. (USWCI).³⁰

In a Memorandum to the Commission *En Banc* dated 19 January 2011, the OGA acknowledged that the ninety (90) day period set to complete the mandated examination lapsed on 04 January 2011. OGA narrated that on 29 December 2010, OGA had a conference with SGV and two finance officers of the Group wherein they discussed the *dacion en pago* transactions and the impairment of Investment Properties of the Group. ***By then, SGV had completed the audit of Group's 2009 FS, but the Group's legal counsel raised certain issues on the accrual of liabilities.***

On 04 January 2011, the Legal Counsel and finance officers appeared to submit the ***draft FS*** and to discuss the pending issues raised on the accrual of liabilities. They informed OGA that a meeting with the unsecured creditors will be held on 14 January 2011. ***A commitment was made to submit the Uniwide Group's 2009 Audited Financial Statement (AFS) as audited by the SGV in close coordination with OGA, in February 2011.*** Due to the deadline set by the Commission, the OGA was constrained to conduct an evaluation and report.

The petitioner-appellants failed to deliver the 2009 AFS in February 2011. In a letter dated 29 April 2011, the counsel of petitioner - appellants apologized for the delay

²⁹ Memorandum dated 10 November 2010, Records Vol. III, p.8.

³⁰ This discrepancy was settled by the SHP Memorandum dated 23 August 2011 wherein the SHP clarified that they used the Uniwide Group Consolidated Balance Sheets and Income Statements submitted by petitioner-appellants on 13 October 2009 in the 13 January 2010 Resolution. Although the financial statements do not enumerate the specific companies under the Uniwide Group, the resolution made reference to the retail operations of the warehouse clubs of USWCI (Records Volume III, p. 197).

and wrote that "the Corporation commits and undertakes to ensure submission of the 2009 AFS on 30 May 2011." On 10 June 2011, counsel of petitioners – appellants apologized for not submitting the 2009 AFS, and did not commit to a date of submission. Up to even date, the 2009 AFS of the petitioners-appellants have not been submitted to the Commission.³¹

THE ISSUES

1. Whether or not the *Urgent Manifestation and Motion* to withdraw from the pending cases SEC En Banc case No. 12-09-183 and SEC En Banc case No. 12-09-183 filed by Uniwide Sales Realty and Resources Corporation, Uniwide Sales, Inc. and Uniwide Holdings, Inc. should be granted.
2. Whether or not the HP committed grave abuse of discretion in ordering the reappraisal of the Metromall property in Las Pinas, one of the properties in petitioners-appellants' asset pool (HP Order dated 30 July 2009); and in *motu proprio* issuing a show cause order, directing petitioners to show cause why the rehabilitation should not be terminated (SHP Order dated 17 September 2009); and
3. Whether or not the SHP erred and gravely abused its discretion in disapproving the proposed Revised TARP and in terminating the rehabilitation proceedings.

OUR RULING

AS TO THE FIRST ISSUE

The *Urgent Manifestations and Motions* to withdraw from the pending cases SEC En Banc Case No. 12-09-183 and SEC En Banc Case No. 12-09-183 filed by Uniwide Sales Realty and Resources Corporation, Uniwide Sales, Inc. and Uniwide Holdings, Inc. cannot be given due course.

When the Uniwide Group filed its petition for rehabilitation on 25 June 1999, *the companies filed their petition as a group*, pooling together all their assets for the purpose of satisfying their combined liabilities to their various creditors. To consider them as individual, separate companies at this stage would be prejudicial to their creditors who have relied on the rehabilitation plan wherein the group of companies have combined their assets for the benefit of their creditors.

³¹ Records, Vol. III pp. 160-161; 184-185

The Consolidated Balance Sheets and Income Statements submitted by the petitioners –appellants on 13 October 2009, which was used by the SHP in its 13 January 2010 Resolution, have included all the assets of the six companies in the Uniwide Group. All the assets of the group were precisely pooled together and consolidated for the benefit of the creditors. The rehabilitation plan was drawn and approved based on it.

The OGA has likewise consolidated the financial statements of the six companies in the group. Consequently, the withdrawal of the three companies from the two cases herein would necessarily result in the diminution of the assets pooled together for the benefit of the creditors. Moreover, the consolidated cases are now ripe for decision, as in fact, they are now being resolved.

AS TO THE SECOND ISSUE

Reappraisal of the Metromall Properties

The Uniwide Group alleged that the HP committed grave abuse of discretion in ordering the reappraisal of the Metromall property in Las Pinas, one of the properties in the asset pool, because it effectively invalidated the property's previous appraisal. Petitioners-appellants assert that the 1999 Appraisal Report is incorporated in the SAGARP therefore anyone who questions its terms must file a case disputing the subject appraisal report. They insist that the subject appraisal report is binding upon the debtor and creditors, and that altering the values in any of the appraisal reports would upset the foundation and mechanics of Petitioners-appellants' rehabilitation.³²

The HP issued the order for re-appraisal due to the drop in value of the subject property from Php 1.308 billion, as stated in the 1999 Appraisal Report, to Php 660 million, as mentioned in the 11 April 2008 Appraisal Report of Royal Asia Appraisal, which was engaged by LNC (SPV-AMC), successor in interest of Equitable PCI Bank.

Section 4-10 of the SEC RPCR provides that "the Commission may, upon motion or *motu proprio* terminate, modify, or set conditions for the continuance of the suspension order xxx upon showing that xxx (b) a creditor does not have adequate protection over the property securing its claim." The creditor lacks adequate protection if it can be shown that "depreciation of the property is increasing to the extent that the creditor is undersecured." Moreover, the Commission has plenary powers to consider matters which are inherent and/or incidental (i.e. the reappraisal of the Metromall property) to the determination of the pending motion/request (i.e. Motion to Approve Revised TARP).

³² Petition filed 04 December 2009, Records Vol. I pp.104-105.

The 1999 Appraisal Report can no longer be binding because the circumstances of the Group have changed since the SAGARP. This is why they submitted the Revised TARP, which now primarily hinges on the Metromall property. Thus, it was appropriate for the HP under the circumstances, to order the reappraisal of subject property, especially considering the huge discrepancy between the two appraisal reports, and the fact that the property owes Las Pinas City substantial amount of back taxes. There is no need for any of the creditors to file a case disputing the Appraisal Report as alleged by the Petitioners-appellants, inasmuch as the Commission has, as above-stated, the power to *motu proprio* order it. Moreover, there was a unanimous motion for reappraisal by the creditors present during the 22 June 2009 hearing. Lastly, petitioner-appellants' accounts with creditors are still subject to reconciliation as of the Third Quarter Report of the Rehabilitation Receiver dated 13 October 2009³³ contradicting their claim that altering the values of the appraisal reports would upset the foundation of the rehabilitation proceedings.

Show Cause Order

To recall, the Petition for Rehabilitation sought by the petitioners-appellants was approved on 29 June 1999. Due to the non-entry of *Casino*, which was expected to provide for fresh capital, the SAGARP was submitted, and was approved on 23 December 2002. By the time the show cause order was issued by the SHP, the rehabilitation proceeding of the petitioners-appellants has been going on for more than ten years. Hence, on 17 September 2009, the SHP directed petitioners to show cause within thirty (30) days from receipt thereof, why the Rehabilitation proceeding should not be terminated considering that more than ten (10) years have passed since they filed the instant Petition and that the Rehabilitation Plan had undergone several revisions.

The petitioners-appellants alleged that the SHP committed grave abuse of discretion in *motu proprio* issuing the show cause order, because there is no basis to ask them to justify the continuation of the rehabilitation proceedings, since there was no motion or any other event which could have prompted the issuance of the order. They alleged that the rehabilitation plan has been successfully, partially implemented and that petitioners-appellants' full recovery is very much imminent.³⁴

Despite the upbeat outlook of the petitioner-appellants, however, the figures reveal a different financial status of the Uniwide Group. The Consolidated Balance Sheets filed by petitioners-appellants on 14 October 2009, and the Third Quarter Report

³³ SHP Resolution dated 13 January 2010 Records Vol. II p. 80.

³⁴ Petition filed 04 December 2009, Records Vol. I pp. 100-104.

of Rehabilitation Receiver dated 13 October 2009 show that the net sales of the Uniwide Group in 2002 was Php 6.5 billion, but as of 30 September 2009 this dropped to Php 74.9 million. The net profit (LOSS) in 2002 was Php 401.486 million while in 2009 LOSS was Php 133.599 million.³⁵

When the SHP issued the show cause order subject of this petition for certiorari, the petitioners-appellants were operating under the SAGARP. In the petition itself, they admitted that several issues aforementioned, prevented the realization of the desired goals of SAGARP. The glaring fact is that their claim that full recovery is imminent is doubtful, due to their overall poor performance under the SAGARP.

The petitioners-appellants are mistaken in thinking that a motion is needed for the SHP to issue them the subject show cause order. Section 4-26 of the SEC RPCR prescribes that "xxx the Commission shall upon motion, *motu proprio* or upon the recommendation of the Interim or Rehabilitation Receiver terminate the proceedings. xxx" Hence, a motion is only one of three instances when the Commission may terminate the proceedings. The Commission may *motu proprio* order it, too.

However, in this case, the SHP issued a show cause order, and did not order the termination of the rehabilitation proceeding under Section 4-26 of the SEC RPCR. In doing so, it merely complied with the processes necessary to achieve its purpose under SEC Office Order No. 287 Series of 2009. Thus, a motion is not necessary, as alleged by the petitioners-appellees.

For having ordered the reappraisal of the Metromall property and issuing a show cause order, the petitioners-appellees believe that the Commission acted with grave abuse of discretion. The term grave abuse of discretion is defined as a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility.³⁶

The foregoing circumstances discussed illustrate that the claim of grave abuse of discretion is misplaced, for the Commission merely fulfilled its mandate under the law.

AS TO THE THIRD ISSUE

The appeal from the Resolution of the SHP dated 13 January 2010 is also without merit.

³⁵ Table of the petitioners-appellants' retail business performance, SHP Resolution Records, p. 75.

³⁶ Tan vs. Spouses Antazo G.R. No. 187208 February 23, 2011.

The Revised TARP Rejected By Creditors

In determining whether to approve or reject the proposed Revised TARP, the SHP applied the following provisions of the SEC RPCR:

"Section 2-8 Decision by creditors – Whenever a number of creditors is required in these Rules for a decision to be taken, for an act to be done, or for the rejection of a proposal, the said number shall refer to the total amount of their claims counted separately by each class of creditors.

XXXXXX

Section 2-10 Classification of creditors – For purposes of these Rules, creditors shall be classified into secured or unsecured.

XXXXXX

Section 4-20 Approval of the Rehabilitation Plan – No Rehabilitation Plan shall be approved by the Commission if opposed by a majority of any class of creditors. The Commission may, upon motion, however, override said disapproval if such is manifestly unreasonable. The Rehabilitation Plan shall be deemed *ipso facto* disapproved and the petition dismissed if the Commission fails to grant the motion to override within thirty (30) days from the time it is submitted for resolution.

XXXXXX

Section 4-23 Alteration or modification of the Rehabilitation Plan – An approved Rehabilitation Plan may, on motion, be altered or modified if, in the judgment of the Commission, such alteration or modification is necessary to achieve the desired targets or goals set forth therein. No alteration or modification of an approved Rehabilitation Plan shall be allowed if opposed by a majority of any class of creditors unless such opposition is manifestly unreasonable."

The SHP decided as follows:

"Petitioners still owe their secured creditors approximately PhP 3.155 billion. The outstanding obligation of petitioners to secured creditors and the claims of secured creditors opposing the *Revised TARP* are shown below:

Secured Creditors	Amount* (PhP Million)	Claims Opposing The Revised TARP
Philippine National Bank	832.96	832.96
Allied Bank	360.65	360.65
Land Bank	36.91	36.91
LNC SPV-AMC Corp. (successor of EBC)	493.42	493.42
RCBC	471.42	

Secured Creditors	Amount* (PhP Million)	Claims Opposing The Revised TARP
Global Bank	50.51	
ING Bank	171.29	
Syndicate Banks (net of BPI)	738.55	
<i>including East West Bank [P 100 M]</i>		100.00
TOTAL	3,155.71	1,823.94
Percentage	100 %	57.80 %
+Land Bank (dacion amounts)	686.00	686.00
TOTAL	3,841.71	2,546.00
	100 %	66.27 %
<i>*Third Quarter Report of Rehabilitation Receiver dated 13 October 2009.</i>		

Based on the above data, it is clear that secured creditors holding about PhP 1.823 billion of the PhP 3.155 billion secured debt are against the revision of the rehabilitation plan. The claims opposing the Revised TARP represent at least fifty seven percent (57%) of the outstanding secured debt. Those against the modification of the rehabilitation plan include secured creditors Allied Bank, Land Bank, LNC SPV-AMC Corp. as well as PNB and East West Bank since these two banks preferred outright termination of the rehabilitation proceedings.

But we must go further. Land Bank brought to our attention that petitioners have repudiated the dacion and restructuring agreements they executed with the bank from 2002 to 2004. In 2007, petitioners filed with RTC Parañaque City a case to nullify said contracts.³⁷ The subject agreements are supposed to settle PhP 686 million debt of petitioners with Land Bank. It is therefore misleading for petitioners to claim that they have substantially paid their obligation with Land Bank and that they owe Land Bank only PhP 36.91 million. As it stands, petitioners' unsettled debt with Land Bank is approximately PhP 723 million.

Now, if we use the amount of PhP 723 million in computing petitioners' total debt with secured creditors, the total outstanding secured debt of petitioners is PhP 3.842 billion. On the other hand, the total claims opposing the *Revised TARP* will amount to PhP 2.546 billion. This means that creditors holding

³⁷ Complaint of Uniwide dated 30 August 2007 and Order of RTC Parañaque City dated 20 February 2009.

approximately sixty six percent (66.27%) of the secured claims are against the revision of the rehabilitation plan.

Clearly, more than the majority of secured creditors are opposing the *Revised TARP*. This alone is sufficient cause to reject petitioners' instant motion.³⁸

The SHP merely applied the pertinent provisions of the SEC RPCR, and there is no showing by the Uniwide Group that such a finding that votes were met is invalid. **Thus there was no grave abuse of discretion when the panel decided to reject the proposed Revised TARP.**

The contents of the table on the outstanding secured debts reproduced above have substantial basis, as they are based on the Third Quarter Report of the Rehabilitation Receiver dated 13 October 2009, which was not refuted by the Uniwide Group. Thus, the SHP was justified in relying on the data as basis for determining compliance with the majority requirement in Section 4-23 of the RCPR.

The Uniwide Group argues that the Revised TARP cannot be deemed opposed by the majority of the remaining secured creditors, because the Revised TARP affects only two (2) of these secured creditors, PNB and Allied, mortgagees of the Metromall property. The petitioner-appellants asserted that Land Bank "has practically been fully paid with the transfer of several of their prime properties in its favor, **notwithstanding the pending civil case.**" Petitioner-appellants claim that Land Bank and East West "have no business interfering in the Revised TARP as they are not affected parties." The Uniwide Group also declared that the objection of LNC is a self-serving claim that the value of the Metromall property supposedly dropped to only Php 660 million.³⁹

The Uniwide Group's allegation that Land Bank "has practically been fully paid" is **not correct**. In its Reply Memorandum filed on 05 April 2010, Land Bank informed the Commission that it cannot dispose of the properties *dacioned* in its favor because of the pending civil case filed by the petitioners-appellants against the bank, which the Uniwide Group admitted, as mentioned in the preceding paragraph. In addition, the Uniwide Group has not paid Land Bank a single centavo on their restructured loan, which is part of the SAGARP. Land Bank stated that as of 30 November 2008, the petitioners-appellants debt is in the total amount of Php 165.34 Million which includes rental arrearages, interests, and charges.⁴⁰ This is a lot more than the Php 36.91 Million listed in the table of the SHP.

The Uniwide Group's assertion that the objection of LNC is self-serving is likewise **incorrect**. The value of said property per the 11 April 2008 Appraisal Report of Royal Asia Appraisal Corporation is Php 659,966,000.00.⁴¹

³⁸ SHP Resolution, Records Vol. II pp. 81-83.

³⁹ Memorandum on Appeal pars. 6.80-6.81,, Records Vol. II pp. 99-100.

⁴⁰ Land Bank Reply Memorandum filed 05 April 2010 Records, Vol. II pp. 346, 355.

⁴¹ Hearing Panel Order dated 30 July 2009, Records Vol. I p.86.

At any rate, Sec. 4-23 is clear that all creditors are entitled to vote on any amendment, thus: "xxx No alteration or modification of an approved Rehabilitation Plan shall be allowed if opposed by a majority of **any class of creditors** unless such opposition is manifestly unreasonable."

The opposition of the majority of the creditors is not "manifestly unreasonable." There was a drop in value of the Metromall property from Php 1.308 billion, as stated in the 1999 Appraisal Report, to Php 660 million, as mentioned in the 11 April 2008 Appraisal Report of Royal Asia Appraisal. In addition, the unpaid real property taxes on the subject property being claimed by Las Pinas City amounts to Php 362,332,754.39.⁴² More importantly, the act of the petitioner-appellants in filing the civil case against Land Bank that frustrated the implementation of the *dacion* executed by petitioners-appellants in favor of Land Bank is a clear manifestation of bad faith on the part of the Uniwide Group. The element of trust essential in a creditor-debtor relationship has been lost, due to the act of petitioners-appellants. These are more than adequate reasons why the opposition of the secured creditors to the approval of the Revised TARP is not manifestly unreasonable.

Moreover, the proposal to settle petitioners-appellants outstanding debt with secured and unsecured creditors via *dacion en pago* of Metromall property is not feasible. Under the *Revised TARP*, petitioners-appellants intend to settle their debt with secured and unsecured creditors via *dacion en pago* of Metromall property. They offered to transfer ownership of the Metromall property to Allied Bank, PNB, LNC SPV-AMC Corp. and the group of unsecured creditors. The problem is that the Metromall property is mortgaged to Allied Bank and PNB and these banks strongly oppose any arrangement that will result in the surrender of their mortgage rights over Metromall property.⁴³ Correctly pointed out by the SHP, these banks have property rights under their existing security arrangements with petitioners that cannot be put asunder without their consent or unless in exchange for valuable consideration that preserves at least the value of their property rights. Being a form of contract, the *dacion en pago* agreement cannot be perfected without the consent of the parties involved.⁴⁴

Termination of the Rehabilitation Proceedings

Section 4-26 of the SEC RPCR provides:

"Section 4-26: Termination of Proceedings. - xxx in case of the failure of the rehabilitation of the debtor because of **failure to achieve the desired targets or goals as set forth therein or the failure of the said debtor to perform its obligations under the said Plan, or a determination that the Rehabilitation**

⁴² Computed as of May 2010, Urgent Motion and Manifestation par. 3, filed 06 August 2010 by the Counsel and Co-Counsel of City of Las Pinas. Records, Vol. II p. 239.

⁴³ SHP Resolution, Records, Vol. II p. 81.

⁴⁴ Bank of the Philippine Islands vs. ASB Holdings Inc., GR-164641, December 20, 2007.

Plan may no longer be implemented in accordance with its terms, conditions, restrictions, or assumptions, the Commission shall upon motion, motu proprio or upon the recommendation of the Interim or Rehabilitation Receiver terminate the proceedings. The proceedings shall also terminate upon the successful implementation of the Rehabilitation Plan. Until the proceedings are terminated, the parties may apply for relief with the Commission by filing in the same proceedings the appropriate pleading therefore. Upon the termination thereof for reason other than the success of the rehabilitation, the debtor shall be dissolved and liquidated in accordance with the succeeding Rule.” (Emphasis ours)

Section 3-13 of SEC RPCR provides:

“Section 3-13. Supervening insolvency or violation of Suspension Order.- If at any time during the pendency of the proceedings, the petitioner has become or is shown to be insolvent, whether actual or technical, or that it has violated any of the conditions of the suspension order, or has failed to make payments on its obligations in accordance with the approved Repayment Schedule, the Commission shall terminate the proceedings and dismiss the petition. Instead of terminating the proceedings, however, the Commission may, upon motion, treat the petition as one for rehabilitation of the debtor. Thereupon, the pertinent provisions of the succeeding Rule shall govern the proceedings.”

The SHP found that the goals and plans under the SAGARP have not been achieved. Data show that *petitioners-appellants’ retail business is a dismal failure*. To reiterate, the viability of the rehabilitation plan was based on the success of their *core business, their retail operations*. The SHP illustrated the financial hemorrhage experienced by petitioners-appellants by presenting the data they have gathered and analyzed and comparing their goals under the rehabilitation plan and the actual results.

When the SAGARP was approved in 2002, the petitioners-appellants exceeded their *sales target*. Nevertheless, from 2003 onwards, their sales data have been in steep decline and never recovered: net sales of Php 6.565 Billion in 2002 to only Php 344 million in 2008.⁴⁵ It is undeniable that the projected sales target for 2009 in the amount of *PhP 11.574 billion* could not be met because the actual sales realized by the end of September 2009 is only *PhP 74.927 million*.⁴⁶

Under the SAGARP, petitioners-appellants planned to operate seven stores, for they are the main source of their revenues. However, as of date of the SHP Resolution, petitioners-appellants operate only five warehouse clubs (drop from eight warehouse clubs) and one department store (drop from two department stores). This reduction in number of *operating stores* only contribute to severe losses.⁴⁷

⁴⁵ From the Consolidated Balance Sheets filed by petitioners on October 14, 2009, and the Third Quarter Report of Rehabilitation Receiver dated 13 October 2009. Records, Vol. II p.75.

⁴⁶ Projected Net Sales from the Projected Income Statements of SAGARP dated October 12, 2001, Records, incorporated in the SHP Resolution Vol. II pp.74..

⁴⁷ SHP Resolution Records Vol. II p. 74 and p.1.

Under the *SAGARP*, petitioners intended to keep their *operating expenses* below 10% of the net sales. This means that if net sales is PhP 6.565 billion (CY 2002), then the operating expenses must be kept below PhP 656 million. And, if net sales is PhP 344.118 million (CY 2008), then the operating expenses must not exceed PhP 34.412 million. However, the table of operating expenses and net sales from 2002 to 2009 shows that from 2002 to 2005, petitioners' operating expenses ranged from 22% to 27% of net sales. In 2006, operating expenses jumped to 94% of net sales, and as of 30 September 2009 operating expenses net of sales was 407%. Very clearly, petitioners-appellants never achieved the goal of taming their operating expenses.⁴⁸

Debt settlement with secured creditors is incredibly slow. At the time of submission of the *SAGARP* in 2001, petitioners had a secured debt of about PhP 5.82 billion, net of those settled earlier. Based on SHP's computation, the amount of secured debt settled by petitioners under the *SAGARP* is PhP 2.027 billion which is a mere 34.84 % of the secured debt. Under the *SAGARP*, petitioners intend to pay off debts with secured creditors through *dacion en pago* arrangements. As of date of the SHP Resolution, the *dacion en pago* with Allied Bank, PNB, LNC SPV-AMC Corp. and other secured creditors have not taken place. This has been a plan since 2001. The Group's debt with Land Bank in the amount of PhP 723.10 million was treated by the SHP as unsettled since it sought nullification of the *dacion* and restructuring agreements.⁴⁹

Petitioners-appellants' *settlement of unsecured debt is way off the target.* The *SAGARP* shows that as of 30 June 1999 petitioners have PhP 2.54 billion debt with unsecured creditors, but as of 13 October 2009, petitioners still owe unsecured creditors approximately PhP 2.377 billion.⁵⁰ This means that they have settled a measly 6.3% of their unsecured debt over a period of ten years.

Under the *SAGARP*, petitioners intended to settle 50% of the unsecured debt by way of 15-year convertible notes, in the total amount of PhP 1.077 billion redeemable any time at the option of petitioners.⁵¹ As of 30 September 2009, **only a total of PhP 71.05 million convertible notes or 6.6% of the target PhP 1.077 billion convertible notes were issued.** To date, issuance of convertible notes has been deferred.⁵²

Under the *SAGARP*, the other half (50%) of the unsecured debt shall be restructured into 10-year term loan inclusive of a 3-year grace period. Cash payment for the principal should start in year 4 following the approval of the plan.⁵³ Nonetheless, not

⁴⁸ SHP Resolution Records Vol. II p. 73.

⁴⁹ SHP Resolution, relying on the Revised TARP, pp. 7-8; and the Third Quarter Report dated 13 October 2009, pp. 2-4., Records, Vol. II pp. 72-73.

⁵⁰ SHP Resolution, citing Third Quarter Report of Rehabilitation Receiver dated 13 October 2009, Records, Vol. II, pp. 71-72.

⁵¹ SHP Resolution citing *SAGARP*, p. 9. Records, Vol. II p. 71.

⁵² Uniwide SEC Form 17-Q dated 30 September 2009, p. 31.

⁵³ SHP Resolution citing *SAGARP*, p. 9. Records, Vol. II p. 71.

a single cash payment for the restructured debt was made as projected because of the consistent negative results of retail operations.⁵⁴

Inasmuch as the retail operations continuously suffered losses, the *annual cash payments* for the restructured unsecured debts and bank loan⁵⁵ which were to come from retail operations never took place. Those annual cash payments were supposed to begin in 2006, and their non-fulfillment resulted in negative reactions from the creditors. The SHP concluded that the disastrous results of retail operations indicate that petitioner-appellants' rehabilitation does not stand a chance of success. The SHP noted that these findings debunk petitioners' ridiculous assertion that their retail business is fairly stable⁵⁶ and Rehabilitation Receiver's report that petitioners retail business is still viable.⁵⁷

Under the *SAGARP*, petitioners intended to settle a portion of the debt to contractors with liens and claims on Coastal Mall via *dacion* of Coastal Mall proportionately with other claimants.⁵⁸ However, petitioners-appellants disclosed that all members of Coastal Mall syndicate refused to implement the *dacion* of Coastal Mall.⁵⁹

The foregoing findings are based on substantial evidence, and have not been effectively refuted by the Uniwide Group through presentation of convincing contrary evidence. In fact, even Atty. Elamparo admitted in the Comprehensive Report⁶⁰ that the targets of the Rehabilitation Plan have not been completely met, citing the following reasons: 1) He claimed that Allied/PNB refused to implement the *dacion* of Metromall; on the other hand, PNB manifested that the Uniwide Group wants the same property *dacioned* to PNB to be shared with unsecured creditors, which was not the original agreement; 2) the Coastal Mall creditors also refuse to implement the *dacion* of the Coastal Mall; 3) Eventual closure of stores; 4) lack of supplier support for supermarket operations; and 5) unprogrammed operating expenses and uncertain political climate. The Receiver also admitted that the quarterly reports he submitted readily show that the payment to unsecured creditors from retail operations is no longer achievable because of the steady and continuing decline in net sales revenue.⁶¹

The Uniwide Group declares that the SHP Resolution reeks of bias and unexplained animosity against them, and that the conclusions were based on "erroneous figures, wrong premises and faulty reasoning."⁶² Petitioners-appellants argue that the rehabilitation plan has been "generally successful and substantially implemented," and that failure to achieve some objectives of the Rehabilitation Plan is not attributable to the

⁵⁴ Third Quarter Report of Rehabilitation Receiver dated 13 October 2009, p. 5.

⁵⁵ Like the PhP 1.15 billion restructured debt with unsecured creditors and PhP 44 million residual debt with Land Bank.

⁵⁶ Petitioners' Motion for Partial Reconsideration dated 28 October 2009, p.13.

⁵⁷ Third Quarter Report of Rehabilitation Receiver dated 13 October 2009, p. 6.

⁵⁸ *SAGARP*, p. 9. Cited in SHP Resolution, Records, Vol. II. p.71.

⁵⁹ SHP Resolution, Records, Vol. II. p.71.

⁶⁰ Records, Vol. III pp. 10-11.

⁶¹ Records, Vol. III. p. 10.

⁶² Memorandum of Appeal dated 21 January 2010 par. 1.1, Records, Vol. II pp. 136-137.

Uniwide Group.⁶³ The group points out the five reasons it enumerated in its petition for certiorari and the alleged refusal of PNB and Allied Bank (to whom they owe a total of Php 1.2Billion) to cooperate in the implementation of the SAGARP.⁶⁴ Philippine National Bank (PNB- oppositor- appellee), responded, that petitioners-appellants' present ruinous state *vis-à-vis* their past efforts to remedy it do not support their claim.⁶⁵

The petitioners-appellants claim that in less than five years of the implementation of the SAGARP, they have substantially paid off their debts from around Php 11 Billion to around Php 5 Billion. They alleged that only less than Php 100 Million of the unsecured credits are still pursuing their credits, and that they EXPECT to receive quitclaims from ING Bank (around Php 171.00 million), EBC, now LNC (around Php 493.42 million), Global Bank now LNC (around Php 50.51 million) Syndicated Banks – LNC (around Php 150.00 million), RCBC now Star 2 (around 471.00 million), and Syndicated Banks- Star/LNC around Php 604.27). This totals around 1.94 Billion. They believe that AFTER full settlement of these loans, only debts to PNB, Allied Bank, Land Bank (which they claim to be a “small portion”), syndicated banks and unsecured creditors, amounting to Php 1.4 Billion, will remain.⁶⁶

The Uniwide Group believes that the targets and goals of the SAGARP relating to the payment of the **secured loans** have been substantially achieved in five to seven years and that the remaining obligations to PNB (Php 832.96 million, which is the same figure as in the SHP Resolution) and Allied Bank (Php 360.65 million, which is the same figure as in the SHP Resolution) can be settled by “simply implementing” the SAGARP’s provisions, thus there is no reason to terminate the proceedings insofar as the secured creditors are concerned. They allege that they have “substantially paid” their obligations to Land Bank, EBC, and RCBC.⁶⁷

The Uniwide Group admits that the remaining balance of its debt to the **unsecured creditors** amounts to Php 2.3 Billion which is the same amount indicated in the SHP Resolution. The petitioners-appellants claim that most of the unsecured creditors are “relatively very small they may have written off the Uniwide Group’s debts due to their very long and profitable business relationships with the Group.” They believe that a “reasonable estimate of the remaining obligations to the unsecured creditors would be less than Php 100 million.” They reiterated that the SAGARP has been substantially implemented, successfully at that, and considering that less than 20% of the original debt remains to be addressed, there is absolutely no valid ground to terminate the proceedings.⁶⁸

⁶³ *Id.*, par. 6.4 Records, Vol. II p. 124.

⁶⁴ *Id.*, Vol. II pp. 116-125.

⁶⁵ Reply dated 04 February 2010 Vol. II p. 163.

⁶⁶ Memorandum on Appeal pars. 4.13-4.16, Records Vol. II pp.128-130.

⁶⁷ *Id.*, pars. 6.7-6.11 Records, Vol. II pp.122-123.

⁶⁸ *Id.*, pars. 6.12-6.15 Records, Vol. II pp. 120-122.

The Uniwide Group's belief that the targets and goals of the SAGARP relating to the payment of the secured loans have been substantially achieved in five to seven years, cannot stand. The findings of the SHP,⁶⁹ that the petitioners-appellants' have paid only Php 2.07 Billion or 34.84% of the secured debt under the SAGARP, is credible for it is based on no less than the Third Quarter Report of the Receiver dated 13 October 2009 and the Revised TARP. On the other hand, petitioners-appellants' claim that they have settled almost 60% of the secured debts under the SAGARP is 1) unsubstantiated, and 2) misleading, considering that in arriving at such settlement rate, they still included those secured debts already settled before the SAGARP.⁷⁰ Further, their alleged payment to Land Bank is questionable because the SHP found that petitioners-appellants sought nullification of the *dacion* and restructuring agreements with Land Bank aimed at settling Php 723.10 million debt. As a result, Land Bank could not dispose of the *dacioned* properties. As of date of the SHP Resolution, the *dacion en pago* with Allied Bank, PNB, LNC SPV-AMC Corp. and other secured creditors have not taken place even though this has been a plan since 2001.⁷¹

The speculation of petitioners-appellants that most of the unsecured creditors "may have written off" their debts, thus decreasing their obligation to the unsecured creditors from Php 2.3 Billion to Php 100 million, is unacceptable. The Commission cannot resolve cases based on speculation. Whoever makes any allegations must submit convincing evidence, which the Uniwide Group failed to do. The findings of the SHP⁷² that over a period of ten years, a mere 6.3% debt settlement of the unsecured debt has been achieved by the Uniwide Group is convincing, as it is based on the same Report and Revised TARP.

Thus, the petitioners-appellants' claim that their total liabilities are down to Php 1.4 Billion,⁷³ must necessarily fail, especially since there is no financial statement to support the same. In fact, the claim that their total remaining debts have decreased to around Php 1.4 Billion⁷⁴ is contrary to the Comprehensive Report on the implementation of the SAGARP, dated 04 June 2010 submitted to the SHP by the Rehabilitation Receiver, Atty. Julio C. Elamparo. In the said Comprehensive Report, Elamparo presented the debt profile of the Uniwide Group of companies in this manner:

"Total Debt:	Php 10,450.14 B
Secured Debt:	Php 7, 525.12 B
Unsecured Debt:	Php 2,925.02 B" ⁷⁵

⁶⁹ Based on the Revised TARP, pages 7-8, and the Third Quarter Report of the Receiver dated 13 October 2009, pp. 2-4, SHP Resolution Records, Vol. II p. 72.

⁷⁰ In arriving at the 34.84% settlement rate, the SHP correctly excluded those secured debts settled prior to submission of the SAGARP.

⁷¹ SHP Resolution Records Vol. II p. 72.

⁷² *Id.* Records Vol. II p. 71.

⁷³ Memorandum of Appeal (MOA) dated 21 January 2010 Records, Vol. II pp. 115-117.

⁷⁴ *Id.*, MOA, Conclusion par. 7.2, Records Vol. II p. 97.

⁷⁵ Comprehensive Report dated 04 June 2010, Records, Vol. III p. 19.

The foregoing figures appearing in the Comprehensive Report dated 04 June 2010 translate into trillions, which is inaccurate, because the debt amounts to billions and not trillions. Therefore, the appropriate letter indicator should have been "M" to mean that the total debt is Php 10,450.14 million, which is equal to ten billion four hundred fifty million one hundred forty thousand pesos, or more than Php 10.4 B. Since petitioners-appellants claim that their debt has decreased to around Php 1.4 Billion, there is a discrepancy between their claim and the report of their Receiver in the amount of Php 9.05 Billion.

To reiterate, the SHP found that the Uniwide Group has paid off Php 2.027 Billion (34.84% of the secured debt) of its more or less Php 5.82 Billion debt to its secured creditors, thus having a balance of about Php 3.80 Billion debt to its secured creditors.⁷⁶ As to the unsecured creditors, petitioners-appellants still owe them approximately Php 2.377 Billion, which translates into 6.3% debt settlement over a period of ten years.⁷⁷ Thus, the SHP found that the Uniwide Group owes unsecured creditors a total amount of Php 6.17 Billion.

Hence, there is a discrepancy as to the debt profile of the petitioner-appellants that they have admitted, the report of the Receiver, and the findings of the SHP. The findings of the SHP are based on the Third Quarter Report of the Rehabilitation receiver dated 13 October 2009, Uniwide Consolidated Interim Balance Sheets, ending September 30, 2009, Quarterly Report (SEC Form 17-Q) dated 30 September 2009, and the Consolidated Balance Sheets filed by the Uniwide Group on 14 October 2009. In the Receiver's Comprehensive Report dated 04 June 2010, Atty. Elamparo noted that he has been following up from Uniwide and SGV the audited financial statements (AFS), but as of date of the report, the AFS are not available and promised that he will submit them to the *En Banc* as soon as available.⁷⁸ The latest communication about the AFS from the petitioners-appellants was on 10 June 2011, when counsel of petitioners – appellants apologized for not submitting the 2009 AFS, and did not commit to a date of submission. As mentioned above, up to even date, the 2009 AFS of the petitioners-appellants have not been submitted to the Commission.⁷⁹

Accordingly, we cannot accept the allegation of the Uniwide Group that the SAGARP has been substantially and successfully implemented and that its only remaining debt is Php 1.4 Billion, for the Group failed to substantiate its claims and debunk the findings of the SHP. The Commission therefore adopts the findings of the SHP.

⁷⁶ Citing Third Quarter Report dated 13 October 2009 pp. 2-4, Resolution Records Vol. II pp. 71&73.

⁷⁷ Citing Third Quarter Report dated 13 October 2009 p. 4, Records, Vol. II p.71.

⁷⁸ Records, Vol. III p. 9.

⁷⁹ Records, Vol. III pp. 160-161; 184-185

Petitioners-Appellants Insolvent

The SHP observed that at the time of filing of the petition for rehabilitation on 25 June 1999, petitioners-appellants were solvent as their assets (PhP 19.864 billion) exceeded liabilities (PhP 11.101 billion), but they had difficulty meeting their obligations. By the time *SAGARP* was approved in December 2002, petitioners-appellants' assets plummeted to PhP 11.833 billion, while their liabilities stood at PhP 11.260 billion. From 2003 to 2009, petitioners' total liabilities consistently surpassed total assets. As of date of the SHP Resolution, petitioners assets are almost depleted and amount only to PhP 2.726 billion. In contrast, their total liabilities increased to PhP 12.292 billion. In other words, petitioners were **already insolvent**⁸⁰ since 2003 or just one year after the implementation of *SAGARP*.

Petitioners-appellants' have **very high debt-to-asset-ratio**⁸¹ A debt ratio greater than 1.0 means the company has negative net worth and is technically bankrupt. Petitioners-appellants' debt-asset ratios have always been greater than 1.0 since 2003. The debt-asset ratio started at 1.24 in 2003, climbed to 2.42 in 2005, and the grew to 3.95 in 2007. By 2009, petitioners-appellants' debt-asset ratio swelled to 4.51. This further validates petitioners' insolvency.

Based on **current ratio**, petitioners-appellants are **not liquid**.⁸² The rule of thumb prescribes a current ratio of 2.0, meaning, for every peso of short-term debt, there should be two pesos of cash or near cash available. Typically, there should be two pesos in cash, where one peso is for payment and another peso is for operation. The SHP found that petitioners- appellants' current ratio has always been less than 1. This means that they have more short term debts than current assets. This confirms petitioners' inability to meet current obligations as they fall due and contributes to petitioners' insolvency.

Petitioners-appellants have **negative debt-to-equity ratios**.⁸³ If a company has a debt-equity ratio of 2 to 1, it means that the company has two pesos of debt to every one peso shareholders invest in the company. In other words, the company is taking on debt at twice the rate that its owners are investing in the company. The general norm is that a company is considered sound if it has a low debt to equity ratio, that is, a higher

⁸⁰ A debtor is insolvent if its assets are not sufficient to cover its liabilities. (Section 4-1, SEC Rules of Procedure on Corporate Recovery), cited in SHP Resolution Records Vol. II p. 70.

⁸¹ The debt-asset ratio shows the proportion of a company's assets which are financed by borrowing. SHP Resolution, p. 19, Records Vol. II p. 69. citing *Weygandt, Jerry. Managerial Accounting, 2008, p. 637; Levy, Haim. Introduction To Investments, 1999, p.785.*

⁸² Current ratio is the firm's current assets to its current liabilities. It measures the firm's ability to immediately pay its current debts. SHP Resolution, p. 19, Records Vol. II p. 69 citing *Wild, John. Fundamental Accounting Principles, 2008, p. 685.*

⁸³ Debt to equity ratio compares a company's total debt to shareholders' equity. It is derived by dividing the company's total liabilities by its shareholders' equity. SHP Resolution, p. 20, Records Vol. II p. 68, citing *Warren, Earl. Managerial Accounting, 2002, p. 510; White, Gerald. The Analysis and Use of Financial Statements, 1998, p. 159.*

proportion of shareholder-supplied capital. A negative debt-to-equity ratio means the company's net worth is negative which, in turn, indicates that it has more debt than assets. A negative net worth means that the company has been losing and is in trouble. In this case, petitioners-appellants have **negative net worth of -1.28**, thus they have negative debt-to-equity ratios.

Petitioners-appellants were also found to suffer **chronic losses** annually.⁸⁴ From Php 6.978 billion in losses in 2002, petitioners' losses as of time of the SHP Resolution amount to Php 15.467 billion. The SHP surmised that this process seems irreversible considering the continuous negative results in retail business, which is the core of the rehabilitation plan.

The SHP also saw the **enormous capital deficit** of the petitioners-appellants. By the time the *SAGARP* was approved in December 2002, petitioners had already a capital deficiency of Php 1.362 billion. As of September 2009, petitioners' capital deficit stood at Php 9.567 billion which is a stark contrast to the Php 11.147 billion capital at the start of the rehabilitation proceedings. **Petitioners-appellants admitted that the huge capital deficiency indicates the existence of material uncertainty which casts significant doubt about their ability to continue as going concern.**⁸⁵

Added to the foregoing, there are no indications that fresh capital are forthcoming to rescue the Uniwide Group of companies. **These considerations convinced the SHP that petitioners-appellants can no longer be rescued.** Thus, the SHP concluded that petitioners-appellants' rehabilitation plan can no longer be implemented under the terms, conditions, restrictions and assumptions prescribed therein.⁸⁶

These findings on insolvency were never questioned by the Uniwide Group in its Memorandum on Appeal. Considering that the SHP Resolution is based on solid data, unlike the speculations, beliefs and unsubstantiated allegations of the petitioners-appellees, the Commission adopts its findings and conclusions.

The evaluation of OGA, per the Commission's records in the SEC iView system, is consistent with the findings of the SHP which ascertained the failure of the Uniwide Group to achieve the desired targets or goals as set forth in their approved Rehabilitation Plan. OGA's findings⁸⁷ are summarized as follows:

Comparative from 2005 to 2009

- Non-current assets which compose mainly of investment properties⁸⁸ continues to decline by 51.58% (2009), 8.70% (2008), 8.41% (2007),

⁸⁴ SHP Resolution Records Vol. II p.68.

⁸⁵ SHP Resolution citing Quarterly Report (SEC Form 17-Q) dated 30 September 2009, Records Vol.II p. 67.

⁸⁶ The foregoing discussion is culled from the SHP Resolution pages 12-21, Records, Vol. II pp. 67-76.

⁸⁷ OGA's Memorandum to the Commission *En Banc* dated 19 January 2011, Records Vol. III pp. 78-80.

⁸⁸ Used as collateral on debt.

- 5.96% (2006) and 20.75% (2005) due to *dacion* settlements, depreciation and impairments.
- Current liabilities continues to pile up by 2.51% (2008), 2.51% (2007), 2.28% (2006) and 3.28% (2005) due to annual recognition of accrued penalties and surcharges.
 - Revenues from operation decreased by 70.97% (2009), 4.95% (2008), 6.09% (2007), 8.65% (2006), 2.69% (2005), while other income and expenses fluctuates due to the recognition of gains from *dacion*, and recognition of impairment of assets, respectively.
 - Major accounts in the Balance Sheet consist of non-current assets and current liabilities which averages at 95% and 147% of total assets, respectively, however, current liabilities are much higher than the Group's total assets which reveals that there no sufficient assets to cover the Group's liabilities. Revenues from operations are also not sufficient to cover the expenses on a year-to-year basis.
 - Downfall of current ratio shows that the ability of the Group to settle its short term obligation continues to deteriorate.
 - Decreasing negative debt-to-equity ratio appears that the amount provided by creditors continues to rise up, while the amount provided by owners deflate due to the negative results of operations.
 - Mounting debt ratio means that the Group continues to rely on debt to finance its assets.

The Uniwide Group asserted that only one creditor, PNB moved for the termination of the rehabilitation proceedings and only five of the hundreds of creditors favored the motion. They insist that the rehabilitation proceedings should continue as they are on their path to recovery. PNB, Land Bank, East West Banking Corporation, Raycor Aircontrol Systems Inc., Galactica Food Corporation, and Diamond Laboratories, Inc. moved for, and are in favor of the termination of the rehabilitation proceedings.

As can be gleaned from the afore-quoted Section 4-26 of the RPCR, there is no requirement as to how many creditors should file the motion, hence, the SHP did not err in granting the petition of PNB to terminate the rehabilitation proceedings.

The foregoing discussion disprove the allegation that the SHP acted with grave abuse of discretion in terminating the rehabilitation proceedings of the Uniwide Group.

WHEREFORE, premises considered, the Petition for Certiorari (SEC En Banc Case No. 12-09-183) is hereby **DENIED**. The Order of the Hearing Panel dated 30 July 2009 and the Order of the Special Hearing Panel dated 17 September 2009 are hereby **AFFIRMED**.

The Appeal by the Uniwide Group of Companies (SEC En Banc Case No. 01-10-193) is hereby **DENIED**, and Special Hearing Panel Resolution dated 13 January 2010 is hereby **AFFIRMED**.

The Urgent Manifestations and Motions to Withdraw from the pending cases SEC En Banc case No. 12-09-183 and SEC En Banc case No. 12-09-183 filed by Uniwide Sales Realty and Resources Corporation, Uniwide Sales, Inc. and Uniwide Holdings, Inc. are hereby **DENIED**.

The **DISSOLUTION** of all the companies in the group, namely: 1) Uniwide Sales, Inc. 2) Uniwide Holdings, Inc. 3) Naic Resources & Development Corporation 4) Uniwide Sales Realty and Resources Corp. 5) First Paragon Corporation and 6) Uniwide Sales Warehouse Club, Inc. is hereby **ORDERED** pursuant to Section 6-1 of the SEC Rules of Procedure on Corporate Recovery, after which, **LIQUIDATION SHALL FOLLOW**.

SO ORDERED.

Mandaluyong City, 30 May 2013.


TERESITA J. HERBOSA
Chairperson


MA. JUANITA E. CUETO
Commissioner


MANUEL HUBERTO B. GAITE
Commissioner


ELADIO M. JALA
Commissioner


ANTONIETA F. IBE
Commissioner

SEC - OGC

