Republic of the Philippines
Department of Finance
SECURITIES AND EXCHANGE COMMISSION
SEC Building, EDSA, Greenhills
Mandaluyong City Metro Manila
Philippines

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SEC Opinion No. 06-21
Refusal to Issue Certificates of Stock; Remedies of a Successful Bidder in an Auction Sale of Shares of Stock

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Dear Atty. Gumpal:

We reply to your letter dated 25 February 2006 requesting opinion on the remedies available to a creditor who is a successful bidder in an auction sale of shares of stocks of a corporation in the event that the corporate secretary refuses to issue certificates of stock and record the auction sale in the stock and transfer book in favor of the judgment creditor.

It is stated in Section 63 of the Corporation Code that:

"xxx Shares of stock so issued are personal property and may be transferred by delivery of the certificate or certificates indorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer. No transfer, however, shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation showing the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred. xxx"

The foregoing rule presupposes compliance with certain legal requirements for the registration of the transfer, to wit:

1. there must be a delivery of the stock certificates;
2. the certificate must be indorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer;
3. there are no unpaid claims against the stock by the corporation;
4. payment of documentary stamp taxes; and
5. surrender of the original certificate of stock to the corporation."[1]

The Commission had the occasion to opine that the duty of the corporate secretary or transfer agent in case of listed corporations to issue stock certificates to those entitled thereto, upon demand, is a ministerial duty enforceable by mandamus.[2] The writ will only be granted if it is shown that the transferee has no other plain, speedy and adequate remedy and that there are no unpaid claims against the stocks whose transfer is sought to be recorded.[3]

The foregoing pronouncement was reiterated in the case of *Aegis Holdings Corporation, et al. vs. Peers Industrial, Corp., et al.*[4] where the Commission, citing the case of *Rural Bank of Salinas, Inc. vs. Court of Appeals*,[5] held that:

> "xxx the court characterized the corporation's obligation to register transferred shares of stock as ministerial. The court has consequently held that the corporation or the officers thereof who refuse registration of such transfer of stock may be compelled to do so through appropriate proceedings."

Another remedy that may be availed of is to file an action for specific performance and pray for an alternative relief by way of damages, thus:

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[1] Aegis Holdings Corporation, et al. vs. Peers Industrial, Corp., et al. SEC Case No. 10-99-6440 dated February 4, 2000.
[2] SEC Opinion dated 06 January 1999 addressed to Mr. Rafael Llave.
[3] Campos, Jr., Jose and Lopez-Campos, Maria Clara. THE CORPORATION CODE: COMMENTS, NOTES AND SELECTED CASES, Vol II, p. 309.
[4] *Supra.*
[5] G.R. No. 96674, June 26, 1992,

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"A corporation is bound to issue a certificate of stock to a stockholder who has fully paid for his subscription, and should the corporation refuse upon demand to issue a stock certificate to the person entitled thereto, the latter may sue the corporation for damages."[6]

Notice, however, that under Section 97 of the Corporation Code, the articles of incorporation of a close corporation may provide restrictions on the right to transfer shares.[7] Thus, if the transfer of stock is in breach of transfer qualifying conditions, the corporate secretary is not duty bound to record the transfer in the corporate books and he cannot be held liable for such refusal.[8]

In sum, if the corporation wrongfully refuses to issue a certificate of stock, the following are the remedies available to an assignee or transferee of shares of stock:

1. file a suit for specific performance of an express or implied contract;
2. file for an alternative relief by way of damages where specific performance cannot be granted; and
3. file a petition for mandamus to compel issuance of a certificate.[9]

Considering, however, that your letter failed to disclose the complete factual circumstances involved, the Commission shall refrain from identifying the best recourse that may be taken by the successful bidder in an auction sale of the shares of stock.

VERNETTE G. UMALI-PACO
General Counsel

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[6]Lopez, Rosario. THE CORPORATION CODE OF THE PHILIPPINES: ANNOTATED, Vol 2, p. 819 citing SEC Opinion dated February 10, 1981 addressed to Atty. Ofelia Francisco.
[7] "SECTION 97. Articles of incorporation. — The articles of incorporation of a close corporation may provide:

1. For a classification of shares or rights and the qualifications for owning or holding the same and restrictions on their transfers as may be stated therein, subject to the provisions of the following section; xxx"

[8]SEC Opinion dated 18 November 1992 addressed to Atty. Victor Africa.
[9] *Ibid*, p. 822.