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

IN THE MATTER OF:
TALBOT AND REESE, INC.

SEC Admin Case No. 05-10-116
For: Revocation of Corporate Registration

ENFORCEMENT AND PROSECUTION DEPARTMENT,

Petitioner.

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DECISION

For consideration is the instant Petition for Revocation of Corporate Registration ("Petition," for brevity) of Talbot and Reese, Inc. ("Respondent," for brevity)[1] filed by petitioner Enforcement and Prosecution Department ("EPD," for brevity) of the Commission on 26 May 2010.

The Petition is anchored on Respondent's alleged violation of Section 6(l)(1) of Presidential Decree No. 902-A ("PD 902-A," for brevity), as amended, for fraud in the procurement of its certificate of registration consisting of use of fictitious addresses for its incorporators.

In an Order dated 31 May 2010, the Commission ordered the publication of the Petition, Summons and Order for Publication, in a newspaper of general circulation and for posting thereof on the SEC website. On 12 October 2010, the EPD submitted its Compliance[2] with the same.

To date, the Corporation has not filed its Answer or any responsive pleading in the instant case.

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[1] SEC Reg. No. CS200703153, and registered with the Commission on 28 February 2007.
[2] Dated 11 October 2010.

FACTS OF THE CASE:

The instant controversy arose from four (4) different letter-complaints, all sent via email, from various individuals addressed to the EPD[3] over the period of 2007-2008. These correspondences were from the following:

1) A certain Tham Tze Wayn, in an email dated 02 April 2007, wrote that he had been contacted by a venture capitalist company allegedly based in the Philippines, Talbot and Reese, which he believes to be a scam. In his email, he narrated that he was informed that the Respondent was trying to raise money for an initial public offering ("IPO") for a company called Tricoastal Oil and Gas Ltd. ("Tricoastal," for brevity) where the return on investment offered was ridiculously high in a short period of time. Tham Tze Wayn attached to his email two (2) e-mails which he received from a certain Kurt Daniels, Account Executive of the herein Respondent.

2) A certain Giacomo Orlandi, in an email dated 11 April 2007, submitted two (2) facsimiles from a certain Beatrice Gonzales, representing herself to be an Account Executive of the Respondent. Gonzales recommended that Orlandi invest in Tricoastal, since the company either anticipates to list on an Asian Stock Exchange or that there would be a buyout situation, where "(e)ither outcome would represent a substantial return on investment dollars."

3) A certain Felicia Yau, in an email dated 26 June 2008, alleged that the Respondent had contacted her in June 2007, promising her a return of 150% on her investment, and that she began buying shares in Tricoastal. Eventually, when the deal fell through, Yau tried to recover her money and was informed that to avail of an earlier payout or recovery of her investment, she would have to buy shares from the Respondent's institutional client, Oxfam International. Oxfam International informed Yau that it had no dealings with the Corporation. Yau alleged that she had lost in total about US$250,000 (two hundred fifty thousand US dollars) from investments in Tricoastal, and claimed that there were other victims from Singapore, Norway, Belgium, and South Africa.

4) Finally, a certain Dui Sian Ling, a Singaporean, in an email dated 24 June 2008, likewise complained that he and a group of Singaporeans had been "conned" to invest close to US$500,000 (five hundred thousand US dollars) by the Respondent, which likewise informed him

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[3] *Records*, pp. 16-23.

that it was already under receivership and operating under the Davis Mayer Group ("DMG").

Acting on these complaints, the investigating team first visited the office address of the Respondent at Unit 5E-1, 5th Floor, Burbank Tower 3, California Gardens Square, Mandaluyong City ("Burbank address"), as stated in its Articles of Incorporation. However, Arngel C. Basconcillo, the security guard employed by Megaforce Security and detailed at Burbank Tower 3, and Mrs. Adelaine Dans, the present tenant of the condominium unit, stated that the Corporation ***never*** occupied the said address.[4] Meanwhile, Respondent entered into a Contract of Lease[5] dated 23 March 2007 over Unit 218 Cityland Pasong Tamo located at 6264 Calle Estacion Pio Del Pilar, Makati City ("Cityland address"), effective on 01 March 2007, or the day after the issuance of its certificate of registration by the Commission.

The investigating team then verified the truthfulness of the addresses of the incorporators of the Respondent, and procured the relevant barangay certifications. To wit:

SUMMARY OF THE FINDINGS OF THE INVESTIGATING TEAM OF THE EPD[6]

Name	Nationality	Address	Barangay Certification
Talberto B. Santiago	Filipino	409 E. Rodriguez Ave., Cubao	Not a known resident, address does not exist[7]
Respicio A. Noellanosa	Filipino	1379 San Gregorio St., Paco, Manila	Not a known resident, address does not exist[8]
Jan William P. Moran	Filipino	Unit 5E, 5th Floor, Burbank Tower 3, California Gardens Square, Mandaluyong City	Not a resident[9]
Liberty O. Santos	Filipino	43 Yakal St. Palmera Heights, Cainta, Rizal	No longer a resident[10]
Woodnell C. Veliganio	Filipino	89 Lavander St. Greenheights, Newtown, Antipolo City	Non-existent person and address[11]

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[4] *Records*, 14-15.
[5] *Id.*, 6-13.
[6] *Id.*, 1-5.
[7] *Id.*, 3.
[8] *Id.*, 4.
[9] *Id.*, 2.
[10] *Id.*, 1.
[11] *Id.*, 5.

The investigating team found that three (3) of the incorporators used addresses that are non-existent and/or fictitious. Two (2) of the incorporators supplied valid addresses but upon investigation, they were not residents thereof. Likewise, when the EPD sent notices of conference to the incorporators in connection with the instant case, these returned to sender because either the address was unknown or there was no known person residing at the said address.

Based on the foregoing findings, the EPD initiated the instant petition, alleging that "the fictitious addresses used by the incorporators in the Articles of Incorporation is more than a mere coincidence. Rather, it manifests the malicious intent on the part of TALBOT and its incorporators to commit fraud against the SEC and the public."[12]

ISSUE:

The sole issue for consideration is whether or not the corporate registration of Respondent should be revoked based on fraud in the procurement of its registration.

RULING:

The petition is impressed with merit.

Section 6(l)(1) of PD 902-A, as amended provides:

> "Section 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:
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> l) To ***suspend, or revoke,*** after proper notice and hearing, the franchise or certificate of registration of corporations, partnerships or associations, upon any of the grounds provided by law, including the following:
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> 1) ***Fraud in procuring its certificate of registration***. xx"

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[12] *Records*, 45.

A corporation's Articles of Incorporation is in essence the document defining the charter of a corporation and its relations with the State, to which it owes its privilege of license to exist. A corporation "owes its life to the state, its birth being purely dependent on its will."[13]

A corporation's charter "evidences the agreement by which a stockholder consents to be bound. It measures and determines the stockholder's rights, obligations and liabilities, and also the nature and extent of the powers conferred on the corporation."[14]

It cannot be over-emphasized that under the Corporation Code of the Philippines[15] ("Code," for brevity) the names, nationalities and residences of the incorporators of a corporation are required by law to be stated in the Articles of Incorporation, and the same is likewise acknowledged before a notary public as the free, voluntary act and deed of the incorporators therein.[16] The statement of the residences is required to show that majority of the incorporators are residents of the Philippines as mandated by Section 10 of the Code. The requirement gains more significance in light of the fact that the incorporators, who, as in this case, usually act as the first set of directors, may be held personally liable for certain acts or omissions under Section 31[17] of the Code.

The Articles of Incorporation must then be evaluated and approved by the Commission to be in accordance with the requirements under the law before a corporation can be issued its certificate of registration.[18] By the same token, the same certificate of registration can be suspended or revoked if the Commission determines that there was fraud attendant in the procurement of the same.

As previously ruled by the Commission in the case of *Urban Poor of Pasig Incorporated vs. Nonesio Rivera*, SEC Case No. 02-94-4869 (December 26, 1995):

> "(T)he fraud mentioned in Section 6, paragraph I, subparagraph 1 of P.D. No. 902-A as amended as one of the grounds for revocation of a certificate of registration of a corporation, partnership or association refers to fraud

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[13] *Tayag vs. Benguet Consolidated, Inc.* 26 SCRA 242 (1968) at 242, *cited* in C.L. Villanueva, Philippine Corporate Law (2010 edition), at 12.
[14] Fletcher Cyc. Corp. (Vol. 7A) §3634, 224, citations omitted.
[15] Batas Pambansa, Blg. 68 (1980).
[16] See Sections 11, 14 and 15 of the Code.
[17] "SECTION 31. Liability of directors, trustees or officers. – Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.xxx"
[18] See Sec. 17 of the Code.

> attendant in the registration of the corporation, partnership, or association and the same must be contained or connected with the documents and/or papers presented to this Commission for the registration of the said corporation, partnership or association."

While the instant case originated from the complaints of alleged "boiler room" operations and perpetration of investment scams, it appears that fraud was perpetrated in the procurement by the Respondent of its corporate registration.

Three (3) of the incorporators used fictitious addresses in the Articles of Incorporation. Based on the barangay certifications issued respectively, the incorporators Talberto B. Santiago, Respicio A. Noellanosa and Woodnell C. Veliganio stated non-existent addresses in the Articles of Incorporation. Worse, in the notarial acknowledgment, these same incorporators appeared before the notary public and presented their respective residence certificates, as proof of residence therein. The intent to defraud the Commission is evident, considering the efforts exerted by the incorporators to make their addresses appear valid and legitimate. Had the Commission known that the incorporators used fictitious addresses, the Articles of Incorporation of Respondent would not have been approved.

In addition, the circumstances surrounding Respondent's aforementioned contract of lease over the Cityland address – i.e., the date of effectivity of the contract a day after the registration of Respondent, together with the investigation report[19] that Respondent never occupied its Burbank address, indicate that Respondent had no intention to conduct a legitimate business. Respondent ostensibly used its principal office, i.e. its Burbank address in its dealings merely to give the impression of legitimacy of its operations to the investing public.

"A corporation as known to Philippine jurisprudence is a creature without any existence until it has received the imprimatur of that state acting according to law. It is logically inconceivable therefore that it will have rights and privileges of a higher priority than that of its creator."[20]

Pursuant to the statutory authority of the Commission to suspend or revoke the registration of a corporation for fraud in procuring the same, the Commission thus holds that Talbot and Reese, Inc. violated Section 6(l)(1) of PD 902-A for which the appropriate sanctions must be imposed.

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[19] See Note 4, *supra.*
[20] *Tayag vs. Benguet Consolidated, Inc.* 26 SCRA 242 (1968) at 242, *cited* in C.L. Villanueva, Philippine Corporate Law (2010 edition), at 12.

WHEREFORE, premises considered, the Certificate of Registration of TALBOT AND REESE, INC. (SEC Reg. No. CS200703153) is hereby **REVOKED.**

Let a copy of this Decision be furnished the Company Registration and Monitoring Department for its information and appropriate action.

Lastly, let copies of this Decision be furnished the Economic Research and Information Department and all the extension offices of this Commission for dissemination to the general public.

SO ORDERED.

Mandaluyong City, 16 February 2012.

TERESITA J. HERBOSA
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner