Republic of the Philippines
Department of Finance
Securities and Exchange Commission
COMMISSION EN BANC

In The Matter of
BLUHIL EXPORT AND IMPORT CORPORATION

SEC En Banc Case No. 10-12-161

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,

Petitioner.

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DECISION

For consideration is the instant *Petition for Revocation of Certification of Incorporation* ("Petition") filed by the Enforcement and Protection Department (EPD), now Enforcement and Investor Protection Department ("EIPD"), of the Commission against Bluhil Export and Import Corporation ("Bluhil") on 01 October 2012.

THE PARTIES

Petitioner EIPD is one of the operating departments of the Securities and Exchange Commission ("Commission") tasked to ensure compliance by all market participants, issuers and individuals, and take appropriate enforcement action against them for infractions of the laws, rules and regulations implemented by the Commission. The same is vested with the primary authority to conduct investigations and administrative actions involving, among others, the selling, offering or transacting unregistered securities by entities without a secondary license, as well as to initiate petitions for revocation of corporate registration except those under the original authority of the Company Registration and Monitoring Department ("CRMD"). Finally, the EIPD is tasked to investigate, *motu proprio* or upon a verified complaint or referral, violations of laws, rules and regulations implemented by the Commission, as well as to initiate the issuance of a Cease and Desist Orders ("CDO") by the latter.

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Respondent Bluhil is a stock corporation with business address at Unit 2404-B Broadview Towers, 1408 Mayhaligue cor. Masankay Street, Sta. Cruz, Manila and incorporated through the Commission's Zamboanga extension office on 07 September 2007 for the following purpose:

> "To engage in, operate, carry on, or conduct the business of buying, selling, or wholesale marketing, promotion of and act as general/international trader, exporter, importer, commission agent, distribution of all kinds of manufactured or unmanufactured commodities and personal property of every class and description to the extent permitted by law.
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> Food product, aqua-marine products, marine products, poultry products, woodworks, agricultural products, equipment, handicrafts, industrial materials and accessories, commodities and all merchandise of all kinds such as mineral products, devices and other products which are lawful object [*sic*] of commerce."

Respondent Jonley W. Co aka "Xu Qinglie" (Respondent) is an incorporator, board member and the Corporate Secretary/Treasurer of Bluhil and may be served with summons and other processes of this Honorable Office at his business address at 1357 Magdalena St., Tondo, Manila.

FACTS

The case stemmed from an Affidavit of Complaint dated 09 May 2012 filed by Mr. Harvey S. Gan (Mr. Gan) containing allegations that Bluhil knowingly submitted to the Commission General Information Sheet (GIS) containing false information as to its officers and stockholders and the nationality of Respondent incorporator/director/corporate secretary/treasurer, for the years 2009-2011.

On 21 May 2012, Mr. Gan attended a conference before the EIPD where he narrated the facts attendant in his Complaint. According to Mr. Gan, Respondent is an acquaintance who approached him with the idea of forming Bluhil to carry out multiple businesses such as marble trading. Mr. Gan invited the other incorporators, who were his friends, to participate in the venture. However, sometime in mid-2008, Mr. Gan discovered that Respondent was conducting certain business transactions to his personal advantage without the knowledge of Bluhil's Board of Directors. He also x---x

discovered the true identity of the Respondent as "Xu Qinglie", a Chinese national contrary to his representation as a Filipino citizen. When he brought this to the attention of the other stockholders, they unanimously decided to leave Bluhil and sell their shares to the Respondent and cease all business dealings. Sometime in April 2012, Mr. Gan discovered that his name remained as the chairman and president of Bluhil in its GIS for the years 2009 to 2011.

On 23 May 2012 the EIPD requested for a Certification of foreign nationality status of the Respondent from the Bureau of Immigration (BI). The BI certified that they have no record of a Jonley W. Co but had an entry for Xu Qinglie who is a Chinese national born on 24 February 1977 and was only allowed entry to the Philippines as a temporary visitor.

In June 2012, in a meeting before the EIPD, Mr. Gan and the other incorporators appeared and submitted the latter's affidavits dated 18 June 2012 in support of Mr. Gan's Complaint. The other incorporators all testified that they had participated in the formation of Bluhil but sold their interests back to Respondent sometime in 2008. Later, they came to know through Mr. Gan that their names were still listed under Bluhil's GIS from 2008 to 2011 as stockholders and officers.

During the same period, Respondent, being the sole remaining officer of Bluhil, never submitted any audited financial statements (AFS) to the Commission.

Despite service of summons, Respondent failed to submit his Counter-Affidavit to the allegations contained in Mr. Gan's and other incorporator's affidavits.

On 02 October 2012, the instant Petition was filed with the Commission.

ISSUE

The sole issue is whether the *Petition* should be granted.

DISCUSSION

The Commission finds merit to the Petition.

The Corporate Secretary who is required to make an attestation under oath and the one under obligation to declare, under the penalty of perjury, that all matters set forth in the GIS were made in good faith and duly verified.

Relative thereto, any incomplete, inaccurate or false entries made in the GIS, especially if done deliberately and in bad faith, as in this case, constitutes a violation of the Corporation Code.

Thus, any person who willfully certifies the GIS knowing that the same contains incomplete, inaccurate, false or misleading information or statements shall be punished in accordance with Section 144 of the Corporation Code[1].

In this case, the Respondent holding the position of Corporate Secretary knowingly made false statements in Bluhil's GIS from the years 2009 to 2011. The falsified statements are considered material information as it deals with Bluhil's capital structure, i.e. number and circumstances of existing shareholders, officers and board of directors of the corporation.

Further, the misrepresentation of the Respondent as to his nationality affects the types of business that Bluhil is allowed to engage in under Philippine nationalization laws. Since Respondent represented himself to be a Filipino in Bluhil's Articles of Incorporation, its primary purpose was approved without any limitation against engaging in retail trade under Republic Act No. 8762, otherwise known as the Retail Trade Liberalization Act (RTLA) which restricts retail activities to 100% Filipino corporations. Thus, Respondent is deemed to have employed fraud in procuring Bluhil's Certificate of Registration. This, coupled with its failure to submit any AFS to the Commission are grounds for revocation under Section 6 (i) (1) and (6) of P.D. No. 902-A, to wit

> **Section 6.** In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:
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[1] Section 144. Violations of the Code. – Violations of any of the provisions of this Code or its amendments not otherwise specifically penalized therein shall be punished by a fine of not less than one thousand (P1,000.00) pesos but not more than ten thousand (P10,000.00) pesos or by imprisonment for not less than thirty (30) days but not more than five (5) years, or both, in the discretion of the court. If the violation is committed by a corporation, the same may, after notice and hearing, be dissolved in appropriate proceedings before the Securities and Exchange Commission: Provided, That such dissolution shall not preclude the institution of appropriate action against the director, trustee or officer of the corporation responsible for said violation: Provided, further, That nothing in this section shall be construed to repeal the other causes for dissolution of a corporation provided in this Code.

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i) 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:

1. Fraud in procuring its certificate of registration;

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6. Failure to file required reports in appropriate forms as determined by the Commission within the prescribed period;

WHEREFORE, premises considered, the instant petition is hereby GRANTED. The Certificate of Incorporation of BLUHIL EXPORT AND IMPORT CORPORATION is hereby REVOKED pursuant to Section 6 (i)(1) and 6 of P.D. No. 902-A.

For willfully making false statements in Bluhil's GIS for the years 2009 to 2011 and acting as a corporate secretary, a fine of ten thousand pesos (PhpP10,000.00) for each and every year of violation or a total of thirty thousand pesos (Php30,000.00) is hereby imposed against the Respondent Jonley W. Co pursuant to Section 144 in relation to Section 25 of the Corporation Code.

Let a copy of this *Decision* be furnished to the EIPD and the CRMD for their information and appropriate action.

SO ORDERED.

Pasay City, Philippines; 01 October 2019

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

* **JAVEY PAUL D. FRANCISCO**
Commissioner

* **KELVIN LESTER K. LEE**
Commissioner

KARLO S. BELLO
Commissioner

*On Leave