Republic of the Philippines
Department of Trade and Industry
SECURITIES AND EXCHANGE COMMISSION
SEC Bldg. EDSA, Greenhills, Mandaluyong City

EN BANC

In the Matter of Revocation of the Articles of Incorporation of:

DOMEL REALTY & DEVELOPMENT CORPORATION (CS200905931) [Cynthia Jose Lopez, Jorge Alexander Jose Lopez II (deceased), Jorge Alfredo Jose Lopez III, Jorge Armando Jose Lopez IV, and Jorge Andrew Jose Lopez V],
Respondent-Appellees,

SEC En Banc Case No. 02-11-229
For: Revocation of Corporate Registration

LUIS MARIO R. JOSE,
Complainant-Appellant.
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DECISION

For resolution of the Commission *En Banc* is the Appeal dated 31 January 2011 filed by Luis Mario R. Jose, herein Complainant-Appellant, from a Decision by the Company Registration and Monitoring Department *("CRMD")* dated 19 January 2011, the dispositive portion of which reads as follows:

> "WHEREFORE, premises considered, the Complaint is hereby DENIED. The Subject Corporation is directed to submit the consent from the stockholders representing a majority of the outstanding capital stock of the "Old Domel" or change its corporate name by amending its Articles of Incorporation within fifteen (15) days from receipt hereof and submit the amended articles of incorporation to this Commission for approval within 15 days from the date of the amendment."

The relevant facts of the case as culled from the records are as follows:

Domel Realty and Development Corporation *("Old Domel")* was registered with the Commission on 30 September 1958, with SEC Registration

No. 14492. As it failed to file an application for the extension of its corporate term, its corporate existence expired on 30 September 2008.

On 28 April 2009, the subject corporation, Domel Realty & Development Corporation *("New Domel")*, was incorporated, with SEC Registration No. CS200905931. It appears that the registration of the New Domel was allowed because the reservation and approval of the name of the New Domel was secured through a representation that the same is for re-registration of the expired corporation.

On 8 July 2010, Mr. Luis Mario R. Jose, a donee-transferee of substantial shares of stock of the Old Domel, filed a Complaint with the Enforcement and Prosecution Department *("EPD")* of the Commission, seeking the revocation of the registration of the New Domel, on the ground that prior to the incorporation of the New Domel, there was already a corporation, the Old Domel, bearing the same name registered with the Commission.

The Complaint was forwarded by the EPD to the CRMD for appropriate action, which resulted in the Decision dated 19 January 2011, and from which the instant appeal was filed on 01 February 2011.

An Order to file reply memorandum was issued on 02 February 2011, addressed to Domel Realty & Development Corporation, with address at 206 Miguelin Street, Sampaloc, Manila. The Order was received by a Mr. Jaime Razo, a resident of 205 Miguelin Street, Sampaloc, Manila and employee of Mr. Gerardo Jose, who, in the CRMD case, claimed to be the President of the New Domel. Because this Order was not duly served, it was re-issued and served again to Domel Realty & Development Corporation at 206 Miguelin Street, Sampaloc, Manila, and to Cynthia Jose Lopez, treasurer of the corporation, at 1245 Lardizabal Street, Sampaloc, Manila. According to the affidavit of service dated 23 March 2011, sworn to by Mr. Jaime R. Rodil, the employee of the Commission who served the Order, Mrs. Lopez refused service. Applying the 2006 Rules of Procedure of the Commission, that provides:

> "**Sec. 3-16. Proof of Service.** – Proof of service shall consist of a written admission of the party served, **or the official return of the server,** or the affidavit of the party serving, containing a full statement of the date, place and manner of service. xxx",

the Order was deemed served, despite the refusal of Mrs. Lopez to receive it.

Due process dictates that all parties concerned must be given the opportunity to be heard. However, the New Domel cannot defeat the purpose of the law by delaying the process through its refusal to receive the Order of the Commission. In the case of *Antonio Navale, et al. vs. Court of Appeals,* where there was a refusal to receive summonses, the Supreme Court has stated that:

> "In the present case, the record shows that summonses were duly served on petitioners but that they, not only refused to receive the same, but that they also declined to give their names. xxx
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> In the absence of contrary evidence, a presumption exists that a sheriff has regularly performed his official duty. To overcome the presumption arising from the sheriff's certificate, the evidence must be clear and convincing. However, no such proof of irregularity in the Sheriff's return was ever presented by petitioners.
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> **We have held that the refusal of a defendants (the petitioners in this case) to receive the summons is a technicality resorted to in an apparent attempt to frustrate the ends of justice."[1] (Emphasis supplied.)**

In the *Navale* case, the process in question was the service of summons, which has stricter requirements as service of summons determines jurisdiction over the person of the defendant or respondent. There is no reason that this cannot be applied to the case at bar, because here, the process in question is an Order to file Reply Memorandum, which is already a step in an Appeal. In addition, as shown on the Notice of Appeal filed by Mr. Jose, the New Domel was furnished by registered mail with a copy of the Notice of Appeal and the Memorandum on Appeal.

Respondent corporation, therefore is considered to have been duly served with the Order to file Reply Memorandum. Since it did not file its Reply Memorandum, the New Domel is considered to have waived its right to file its Reply Memorandum. The instant appeal is thus ripe for resolution.

The issues presented by the Memorandum on Appeal filed by Mr. Jose are: (1) whether or not the Certificate of Registration of the New Domel should be revoked; and (2) whether or not the New Domel should be required to use a name other than Domel Realty & Development Corporation.

Anent the first issue, Complainant-Appellant points out that Mr. Jorge Armando Jose Lopez IV, one of the incorporators of the New Domel, misrepresented as his own Tax Identification Number (TIN) the TIN belonging to Ms. Emilia R. Jose. Complainant-Appellant alleges that this was done to make it appear that New Domel is merely continuing the corporate life of the Old Domel through a re-incorporation of a new entity with the same name.

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[1] G.R. No. 109957, February 20, 1996.

CRMD stated in the assailed Decision that on 17 August 2010, EPD wrote the Bureau of Internal Revenue *("BIR")* with a request for verification or certification as to whether or not Jorge Armando Jose Lopez IV is assigned the TIN 150-881-993; after which, in September 2010, the BIR issued a certification stating that Jorge Armando Jose Lopez IV is not a registered taxpayer and the said TIN was issued to Ms. Emilia Del Rosario Jose.

In its Decision, CRMD disposed of this matter by relying on Section 3 of SEC Memorandum Circular No. 20, series of 1999, *("SEC MC No. 20, s.1999")* that imposes on the corporation, partnership and/or natural person a fine of P1,000.00 for indicating a false or invalid TIN in the documents submitted to the Commission. The provision states:

> "SECTION 3. A fine of P1,000.00 shall be imposed on the corporation, partnership and/or natural person who committed any of the following and such other sanctions provided in the Internal Revenue Code and other pertinent laws and regulations:
>
> A. Use of double or multiple TINs by the same taxpayer
> B. Use of TIN other than that assigned to the taxpayer
> C. Use of spurious TIN."

Mr. Jose, in its assignment of errors, asserts that the CRMD gravely erred in not revoking the registration of the New Domel based on its use of a false TIN in procuring its Certificate of Registration. He submits that the registration should be revoked based on SEC Resolution No. 358, series of 2010. The resolution quoted in the Memorandum on Appeal actually comes from SEC Resolution No. 359, adopted in a Commission Meeting held on 12 August 2010, that authorizes the CRMD to revoke, after complying with due process, Certificates of Incorporation of registered partnerships or corporations on several grounds, among which:

> "8. If any of the incorporators submits false addresses and Tax Identification Numbers."

This ground stems from Executive Order No. 98[2] which mandated the incorporation of TIN in all forms, papers and documents. It also required that "permits, licenses and clearances, whenever possible and where applicable, shall not be issued to person or entities without a duly issued TIN."[3]

EO No. 98 was also the basis for the aforementioned SEC MC No. 20, s.1999, which the CRMD used.

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[2] Executive Order No. 98 - Directing All Government Agencies, Instrumentalities, Local Government Units, and Government-Owned and/or Controlled Corporations (GOCCs) to Include the Taxpayer Identification Number (TIN) as Part of the Essential Requirements in All Applications for a Government Permit, License, Clearance, Official Paper or Document (1999).
[3] *Ibid.* Section 2.

We rule in favor of the Complainant-Appellant.

The Commission has ruled, in SEC Administrative Case No. 07-10-120, *In The Matter of Maypajo J.P. Rizal Public Market Vendors Association, Inc. Enforcement and Prosecution Department, Petitioner*[4], that:

> "It is worth stressing that Executive Order No. 98, series of 1999 was issued so that "tax monitoring, leading to increased compliance with tax laws, will be greatly improved if such Taxpayer's Identification Number will be made a mandatory requirement in all applications for any government permit, license, clearance, official paper or document by the transacting public."
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> This shows that the submission of the correct TINs in the Articles of Incorporation filed with the Commission is a material fact relied upon by the Commission in the issuance of the certificate of incorporation. Thus, the misrepresentation of the TINs is tantamount to fraud, regardless of intention to deceive or not, considering that such misrepresentation is contrary to the public interest and public policy in that it prejudices the government's tax monitoring efforts. The succeeding discussion will further elucidate that good faith or bad faith is immaterial in the present case.
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> There are two types of fraud: actual and constructive. To constitute actual fraud there must be such fraud as affects the conscience — i.e., there must be the element of deceit or intentional deception. However, in constructive fraud, intention is immaterial. There is constructive fraud for as long as the act done or omitted constitutes a misrepresentation, which in the contemplation of the courts and tribunals is tantamount to a fraud because of its detrimental effect on public interest.
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> We clarify that "fraud" as used in Section 6, paragraph i(1) of P.D. 902-A includes constructive or legal fraud, and not just actual or moral fraud. The subject provision is not concerned with a crime or felony. And thus, criminal intent or intent to deceive is not essential. It is concerned with the regulation of the grant of a special privilege. Bear in mind that incorporation is not a matter of right but merely a special privilege extended by the state. Thus, in order to enjoy such privilege, the requirements and procedures for the grant thereof must be strictly complied with. To this end, the state prescribes and gives notice, through statutes and rules, of the necessary requirements and procedures for the grant of the privilege or franchise. Anyone interested in applying for a franchise must then exercise due diligence, and familiarize themselves with such statutes or rules in order to ensure that they will be able to strictly comply with the prescribed requirements and procedures. In other words, applicants

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[4] Decision dated 14 October 2010, issued by the Commission En Banc.

> are duty bound to know the regulations, and they can never be allowed to feign ignorance thereof as good faith excusing non-compliance therewith, and then demand a franchise from the state as a matter of right.
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> Thus, in the present case, it is of no consequence whether the incorporators were in good faith or not when they stated fake TINs in the subject Articles of Incorporation. The undisputed and admitted fact is that six of the incorporators knowingly and deliberately provided fake TINs in the Articles of Incorporation. Such misrepresentation was relied upon by the Commission in issuing the Association's certificate of registration. Were it not for the fake TINs, the Commission would have never accepting the Articles of Incorporation and issued the Association's certificate of registration.
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> And, it is well settled that the filing of false and fraudulent articles of incorporation is sufficient ground to sustain proceedings for forfeiture of corporate charter. Thus, there can be no doubt that the subject certificate of registration merits revocation due to the fraudulent statement of the TINs in the articles of incorporation."

While it is true that SEC MC No. 20, s.1999, imposes a fine of P1,000.00 for the use of a false TIN, it does not mean that the Commission is precluded from imposing other penalties for this violation. In the aforequoted *Maypajo* decision, the Commission has stated that:

> "Further, the Association's argument that, in line with Section 3 of SEC MC No. 20, Series of 1999, the imposable fine should only be P1,000.00, is an erroneous interpretation of the circular. It must be stressed that nowhere in the said provision does it state that the penalties provided therein are exclusive, and to the exclusion of other penalties imposed under other laws and regulations. Besides, a mere circular cannot supersede a statute, i.e., P.D. 902-A."

As may be gleaned from the 2009 Articles of Incorporation of the New Domel, that Jorge Armando Jose Lopez IV signed with his TIN indicated as 150-881-993, and the 2005 General Information Sheet of the Old Domel where Emilia R. Jose's TIN appears as 150-881-933, and the Certification issued by the BIR that Jorge Armando Jose Lopez IV is not a registered taxpayer and that the TIN 150-881-933 was issued to Emilia Del Rosario Jose, it is beyond question that a false TIN was used by Jorge Armando Jose Lopez IV as one of the incorporators of the New Domel. Clearly this is fraud in procuring its certificate of registration, and a ground for revocation of the certificate of registration of the corporation, as provided in P.D. 902-A, Section 6(i)(1).

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Based on the foregoing, there is no need to discuss the second issue regarding consent of the Old Domel for the use of its corporate name by the New Domel, as this issue is already moot.

WHEREFORE, premises considered, the Certificate of Registration of Respondent-Appellee **DOMEL REALTY & DEVELOPMENT CORPORATION** with Company Registration No. CS200905931 is hereby **REVOKED**.

This is without prejudice to any further actions that may be taken against the responsible incorporators, directors, and officers of the subject corporation.

Let a copy of this Decision be furnished to the Company Registration and Monitoring Department for appropriate action. And, let this Revocation Order be posted at the Commission's website for purposes of giving notice to the public.

SO ORDERED.

Mandaluyong City, 10 May 2010.

TERESITA J. HERBOSA
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner