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

Office of the General Counsel

In the matter of:
PHILBIO RENEWABLE ENERGY RESOURCES CORP.,

SEC Admin Case No. 11-10-124

ENFORCEMENT AND PROSECUTION DEPARTMENT ,

Petitioner.

x--x

27 April 2016

TO:

PHILBIO RENEWABLE ENERGY RESOURCES CORP.
#42 Sixto Gaerlan, Baguio City

GUIA L. RAMIREZ
Incorporator PhilBio Renewable Energy Resources Corp.
#42 Sixto Gaerlan, Baguio City

ENFORCEMENT & INVESTOR PROTECTION DEPARTMENT
Securities and Exchange Commission
5th Floor, SEC Building, EDSA, Greenhills, Mandaluyong City

G R E E T I N G S:

Please take notice that on 27 April 2016 a **DECISION** was issued in the above-entitled case, the original of which is now on file with this office.

Mandaluyong City, Philippines

By Authority of the Commission *En Banc:*

ARMANDO A. PAN, JR.
Officer-in-charge
Office of the Commission Secretary

tlt/avf

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ENFORCEMENT AND PROSECUTION DEPARTMENT,

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DECISION

This resolves the *Petition (for Revocation of Certificate of Incorporation and Imposition of Administrative Penalties)*[1] filed on 11 November 2010 by the Enforcement and Prosecution Department (**EPD**)[2] seeking to revoke the certificate of registration of PHILBIO RENEWABLE ENERGY RESOURCES CORPORATION (*for brevity* "**PHILBIO**"), on the ground of serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public as provided for under Section 6, paragraph (L) (2) of P.D. No. 920-A; and imposing the appropriate penalties and fines against PHILBIO for violation of Section 8 of the Securities Regulation Code (SRC).

Facts of the Case

PHILBIO is a domestic stock corporation registered with the Commission on 19 March 2009 under SEC Company Registration No. CS200925858[3]. Its principal office is located at #42 Sixto Gaerlan Street, Baguio City. Its incorporators are: 1) Ferdinand Carlos A. Ramirez; 2) Guia L. Ramirez; 3) Carl Milagros L. Ramirez; 4) Carl Mari L. Ramirez; 5) Marvin V. Perez[4]. Its purposes are:

> *"A.) that the primary purpose of this corporation is to study, educate, produce, maintain, and use fuel generated from biodegradable raw materials that are locally found.*
> *B.) That the secondary purpose of this corporation is to unite with the rest of the world towards a clean environment; and to gain*

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[1] Dated 10 November 2010; Records pp. 1-202.
[2] Presently Enforcement and Investor Protection Department.
[3] Certificate of Incorporation, Annex "A" of the Petition; Records pp. 190.
[4] Articles of Incorporation of PHILBIO, Annex "B" of the Petition, Records pp. 183-188.

freedom from the dependence on imported fuel for energy generation."[5]

EPD received an email from a certain Kathleen Abando (Abando), on March 27 and 30, 2009, inquiring on the legitimacy of PHILBIO's business operations. According to Ms. Abando, a certain Guia Ramirez (Ramirez) enticed her to invest in PHILBIO's Jathropa Processing Plant (biodiesel) in Sablan, Benguet. Ramirez claimed that an investor can invest in PHILBIO in the amount of Php 25,000.00 (minimum) to Php 500,000.00 (maximum) with a promised return amounting to 180% of the investment per year in 12 equal payments[6].

On the basis of Abando's statement, EPD formed a team (EPD team) to conduct an investigation on PHILBIO's investment-taking activities. EPD's investigation revealed that PHILBIO, through its incorporator Ramirez, was advertising investment programs in www.sulit.com and www.pinoymoneytalk.com. These websites showed that PHILBIO offers to the public an investment program wherein an investor can invest Php 25,000.00 to Php 500,000.00 with a guaranteed 180% return of investment per annum or at least 6% per month[7]. The said websites further showed that there were around 39 individuals who were inquiring about PHILBIO's investment program.

EPD's further investigation revealed that PHILBIO is not a registered issuer of securities and not licensed to offer or issue securities to the public, as per certification of the Commission's Corporate Finance Department[8] (CFD)[9].

This prompted EPD to request the Commission's Baguio Extension Office (SEC-BEO) to further investigate and verify PHILBIO's investment-taking activities[10]. SEC-BEO contacted PHILBIO, through a dummy account - mgjocson@aol.com (Jocson account) under a fictitious name "Miguel Jocson" (Jocson) who pretended to be an interested investor. Ramirez replied and introduced the PHILBIO biodiesel business. Ramirez claimed that the Biodiesel refinery plant in Baguio will be the first among many that will be the source of biofuel for the public transport groups in the Philippines. Likewise, Ramirez declared that they are looking for prospective investors because they are building more storage tanks. Thus, she invited Jocson to invest a minimum amount of Php 50,000.00 in PHILBIO with a promised return on investment of 180%. She also provided Jocson with PHILBIO's business plan, company profile and investment agreement[11]. She offered Jocson to buy 2 lots of 10,000 shares of PHILBIO's common stocks at Php 50,000.00 each[12].

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[5] Ibid.

[6] Annexes "C" and "D" of the Petition; Records pp. 179-182.

[7] Annexes "E" and "F" of the Petition; Records pp. 48-178.

[8] presently Corporate Governance and Finance Department.

[9] Annex "G" of the Petition; Records pp. 47.

[10] Annex "I" of the Petition; Records pp. 38-45.

[11] Annex "J" SEC-BEO's Report; Records pp. 35-37.

[12] Records page 33.

Thereafter, SEC-BEO invited Ramirez for a conference on 20 July 2009 to shed light on the operations of PHILBIO[13]. During said conference, Ramirez confirmed that there was an internet advertisement of PHILBIO's business and that the corporation does not have a secondary license to offer/sell securities. SEC-BEO directed Ramirez to refrain from soliciting investments from the public until PHILBIO obtains a secondary license from the Commission.[14]

Thereafter, SEC-BEO, using the Jocson account, again contacted Ramirez through her new email – tagabaguio@consultant.com, to verify if she still continues to solicit investments for PHILBIO. Ramirez again replied and invited Jocson to invest in PHILBIO[15]. To further confirm said findings, SEC-BEO created another dummy account – flgapuz@gmail.com (Gapuz account) under a fictitious name "Floramel Gapuz" (Gapuz) to pose as an interested investor. Again, Ramirez replied and invited Gapuz to invest in PHILBIO[16]. She offered Gapuz to invest a minimum amount of Php 100,000.00 to a maximum amount of Php 1,000,000.00 with a return on investment of 150% per year payable in 12 equal payments every month starting 30 days after day of investment[17].

On 26 January 2010, SEC-BEO invited all of PHILBIO's incorporators for a conference. It was only Ramirez and Ferdinand Carlo A. Ramirez who appeared before the SEC-DEO.[18] During said conference, Ramirez denied that she was soliciting investments from the public. She admitted that PHILBIO still does not have a secondary license to offer/sell securities to the public. SEC-BEO gave Ramirez one (1) month to file PHILBIO's registration statement with the Commission.

Finally, EPD, upon verification with CFD, found out that PHILBIO did not file its registration statement[19]. Thus, on 11 November 2010, EPD filed the instant petition for revocation.

The Commission issued *Summonses*[20] to PHILBIO and its officers to file their *Answer* to EPD's *Petition*. The said *Summons* was duly served upon Ramirez[21] on 26 November 2010, but to date, PHILBIO did not file any *Answer* to EPD's *Petition.* Hence, the instant case was submitted for resolution.

Issue/s

Whether or not PHILBIO RENEWABLE ENERGY RESOURCES CORPORATION violated Section 8 of the Securities Regulation Code for offering

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[13] Records pp. 16-17.
[14] Records pp. 14-15.
[15] Annexes "L" and "M" of the Petition; Records pp. 7-8.
[16] Annex "N" of the Petition; Records pp. 4-6.
[17] Records page 5.
[18] Annex "O" of the Petition; Records pp. 3.
[19] Annexes "P" and "Q" of the Petition; Records pp. 1-2.
[20] Dated 12 November 2010; Records pp. 203.
[21] Affidavit of Service dated 01 December 2010 executed by Joel C. Fernandez; Records pp. 210.

and/or selling unregistered securities (investment contract) based on the evidence presented.

Whether or not the subject corporation's certificate of registration should be revoked on ground of serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public as provided for under Section 6, paragraph (l) (2) of P.D. No. 920-A based on the evidence presented.

Ruling

Before we delve into the merits of the case, we first resolve the procedural issue at hand. PHILBIO failed to file its *Answer* despite the fact that *Summons* was duly served upon Ms. Guia Ramirez, one of the incorporators. Thus, pursuant to Section 3-12[22] of the 2006 Rules of Procedure of the Commission, PHILBIO is considered as in default. Consequently, the Commission shall render judgment on the basis of the *Petition* and the evidence on record.

We find merit in the *Petition*.

Unregistered Securities

Securities are shares, participation or interests in a corporation or in a commercial enterprise or profit-making venture and evidenced by a certificate, contract, instruments, whether written or electronic in character. One of the types of securities are investment contracts[23].

In *Power Homes Unlimited Corporation v. Securities and Exchange Commission*[24], the Supreme Court declared that an investment contract in our jurisdiction, to be a security subject to regulation by the Commission, must be proved to be **(1) an investment of money; (2) in a common enterprise; (3) with expectation of profits, (4) primarily from efforts of others**. Under this definition, whenever an investor relinquishes control over his or her funds and submits their control to another for the purpose of deriving profits from them, he or she is in fact investing in a security.[25]

In the case at bar, investors place Php 25,000.00 to Php 50,000.00 as investment in PHILBIO. These investments are pooled together to fund PHILBIO's biodiesel business operations. Investors expect to earn 80% to 180% from the company which is managed and controlled by Ramirez. The investors simply earn profits by placing money in PHILBIO as they merely rely on latter's operations to

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[22] SEC. 3-12. *Effect of Failure to Answer.* – If the respondent fails to answer the complaint within the above stated period, he shall be considered as in default. The hearing Panel or Officer shall, *motu proprio*, proceed to render judgment granting the complainant such relief as the complaint may warrant, unless the Hearing Panel or Officer determines that the complainant should be required to submit *ex parte* additional evidence.

[23] Section 3, (b) of the SRC.

[24] G.R. No. 164182, 26 February 2008.

[25] *Investment Co. Institute v. Camp*, 274 F. Supp. 624 (D. D.C. 1967).

receive the promised return. Thus, it is evident that all the requisites of an investment contract is present.

These findings are supported by the exchange of emails between Ramirez and the dummy accounts, PHILBIO's company profile[26], business plan[27] and investment agreement[28]. Hence, it can be clearly seen that PHILBIO is offering/selling securities in the form of investment contracts.

As a rule, all securities shall not be sold or offered for sale or distribution within the Philippines, without a registration statement duly filed with and approved by the Commission[29]. In the case at bar, CFD (then the pertinent operating Department) certified that PHILBIO is not a registered issuer of securities and not licensed to offer or issue securities to the public.

Public offering means a random or indiscriminate offering of securities in general to any who will buy, whether solicited or unsolicited. One of the modes that is presumed to be a public offering is advertisement or announcement in any radio or television or any online or e-mail system[30]. Based on EPD's investigation, PHILBIO, through Ramirez, is publicly advertising/promoting its investment program in www.sulit.com and www.pinoymoneytalk.com.

In view of the above discussions, we see two (2) violations by PHILBIO.

First, non-registration of securities. Under the law, unless what is involved are exempt securities or exempt transactions which are not covered by the requirement of registration, securities shall not be sold or offered for sale or distribution within the Philippines, without a registration statement duly filed with and approved by the Commission.[31] Prior to such sale, information on the securities, in such form and with such substance as the Commission may prescribe, shall be made available to each prospective purchaser.[32] As discussed above, PHILBIO is engaged in the offering and selling of securities in the form of investment contracts which need prior registration with the Commission.

Second, non-registration as broker or dealer. The law provides that no person shall engage in the business of buying or selling securities in the Philippines as a broker or dealer unless registered as such with the Commission.[33] In the instant case, PHILBIO, through Ramirez, is acting as either broker or dealer without being registered as such.

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[26] Records page 32.
[27] Records pages 23-31.
[28] Records pages 20-22.
[29] Section 8.1 of the SRC.
[30] Rule 3, paragraph 1, sub-paragraph N of the Amended Implementing Rules and Regulations of the SRC.
[31] Section 8.1., SRC.
[32] *Id.*
[33] Section 28.1., SRC.

Serious Misrepresentation

Section 6 (l), sub-paragraph 2 of P.D. No. 902-A, provides that the Commission has exclusive jurisdiction over actions for revocation/cancellation of the primary franchise or certificate of registration of a corporation, on the following grounds: "*2.) Serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public; x x x*".

In the instant case, PHILBIO's primary purpose is to study, educate, produce, maintain and use fuel from biodegradable raw materials. It is also stated in its *Certificate of Incorporation* that it not authorized to undertake business activities requiring a secondary license from the Commission.[34] In this connection, EPD presented evidence of the fact that PHILBIO is engage in offering/selling of securities in the form of investment contracts without the requisite registration statement or secondary license as required by law.

EPD's investigation show that PHILBIO solicits investments using the websites - www.sulit.com and www.pinoymoneytalk.com. Further, SEC-BEO's investigation corroborated and verified EPD's findings when they contacted PHILBIO by e-mail. In fact, SEC-BEO was able to elicit admissions from Ramirez that PHILBIO solicits investments, through the internet, and it has no secondary license to do so[35]. Likewise, CFD also certified that PHILBIO is not a registered issuer of securities and not licensed to offer or issue securities to the public[36].

From the foregoing, it is indubitable that PHILBIO misrepresented itself to the public that it can solicit investments despite the fact that it is not one of the purposes of the corporation. Worse, it does not have a license to offer/sell securities. PHILBIO operates an investment-taking scheme which is therefore considered as an *ultra vires act*[37]. These acts constitute serious misrepresentation as to what the corporation can do or doing to the great prejudice to the general public.

Moreover, a corporation as a creature of the State is presumed to exist for the common good. Hence, the special privileges and franchises it receives are subject to the laws of the State and the limitations of its charter. There is therefore a reserved right of the State to inquire how these privileges had been employed, and whether

[34] Philbio's Certificate of Incorporation - "This Certificate grants juridical personality to the Corporation but does not authorized it to undertake business activities requiring a Secondary License from this Commission such as but not limited to acting as: broker or dealer in securities, government securities eligible dealer (GSED), investment adviser of an investment company, close-end or open-end investment company, investment house, transfer agent, commodity/financial futures exchange/broker/merchant, financing company, pre-need plan issuer, general agent in pre-need plans and time shares/club shares/membership certificates issuers or selling agent thereof. Neither does this Certificate constitute as permit to undertake activities for which other government agencies require a license or permit."

[35] Note 14, Supra.

[36] Note 9, Supra.

[37] An *ultra vires act* is "one committed outside the object for which a corporation is created as defined by the law of its organization and, therefore, beyond the powers conferred upon it by law. - Republic vs. Acoje Mining Co., Inc. G.R. No. L18062, February 28, 1963 (citing 19 C.J.S., Section 965, p. 419).

they have been abused.[38] Hence, a corporation's juridical existence, being a mere privilege granted by the sovereign, may, at any time, be withdrawn on grounds provided for by law[39].

In summary, it was clearly established that PHILBIO is selling securities in the form of investment contracts without a secondary license. Thus, it violated Section 8 of the SRC. Also, it misrepresented to the public that it can sell securities despite the fact that it has no license to do so. Hence, it violated Section 6 (l), sub-paragraph 2 of P.D. No. 902-A. Due to these severe violations, the Commission is constrained to impose the supreme penalty of revocation.

WHEREFORE, premises considered, the instant petition is hereby **GRANTED**. The *Certificate of Incorporation* of **PHILBIO RENEWABLE ENERGY RESOURCES CORPORATION** is hereby **REVOKED**, based on Section 6 (l) sub-paragraph 2 of Presidential Decree No. 902-A without prejudice to any criminal offense/s that may be filed.

Let a copy of this *Decision* be furnished to the Company Registration & Monitoring Department and the Economic Research &Training Department for their information and appropriate action.

SO ORDERED.

Mandaluyong City, Philippines; 27 April 2016.

TERESITA J. HERBOSA
Chairperson

MANUEL HUBERTO B. GAITE
Commissioner

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG*
Commissioner

BLAS JAMES G. VITERBO**
Commissioner

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[38] Yun Kwan Byung vs. Philippine Amusement and Gaming Corporation, G.R. No. 163553, 11 December 2009.
[39] In the Matter of: Maasin Traders Lending Corporation, SEC Case No. 02-07-169.
*On Leave
**On Official Business