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

ALFREDO J. NON,
Petitioner-Appellant,

\- versus -

SEC En Banc Case No. 04-12-254

PHILIPPINE INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS,
Respondent-Appellee.

x---x

DECISION

Before the Commission *En Banc* is an Appeal of the Decision of the Company Registration and Monitoring Department ("CRMD") of the Commission dated 06 March 2012, the dispositive portion of which states as follows:

> "WHEREFORE, premises considered, the instant Petition praying for the revocation of certificate of incorporation and annulment of the amended articles of incorporation of PHILIPPINE INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS, approved on 05 September 1996, is hereby DISMISSED for lack of jurisdiction."

On 02 April 2012, Mr. Alfredo J. Non (hereinafter referred to as "Petitioner-Appellant") filed its Notice and Memorandum of Appeal[1] assailing CRMD's decision dated 06 March 2012 on the following grounds: (a) SEC has jurisdiction over petitions for revocation of certificate of incorporation, and (b) fraud committed by the Philippine Institute of Certified Public Accountants (hereinafter referred to as "Respondent-Appellee") was clearly established by documents obtained from Respondent-Appellee.

On 10 April 2012, the Commission issued an Order requiring Respondent-Appellee to file its Reply-Memorandum. On 24 April 2012, the Respondent-Appellee filed its Reply-Memorandum,[2] arguing that (a) Petitioner-Appellant has

[1] Records, p. 67.
[2] Id, p. 91.

no evidence sufficient and/or admissible to overcome the presumption of regularity in the issuance of Respondent-Appellee's Certificate of Filing of Amended Articles of Incorporation, and (b) the conflict between Petitioner-Appellant and Respondent-Appellee is an intra-corporate controversy which is within the jurisdiction of regular courts.

The relevant facts are narrated below.

Respondent-Appellee was originally incorporated on 25 April 1947 with a corporate term of fifty (50) years or until 25 April 1997 and that it filed with the Commission an application for the extension of its corporate life for fifty (50) years or until 25 April 2047. In the Certificate of Amendment,[3] the directors of Respondent-Appellee certified under oath that:

> 2. The said amendment was approved by a majority vote of the Board of Directors of the Association at their meeting on February 22, 1996; and
>
> 3. The same amendment was likewise approved by the affirmative vote of the members owning and/or representing two thirds (2/3) of the members of the Corporation at their meeting held on May 10, 1996.

On 05 September 1996, the Commission approved the amendment of Respondent-Appellee's Articles of Incorporation, extending its corporate term.

On 18 July 2011, Petitioner-Appellant filed with the CRMD a Petition[4] for Revocation of the Certificate of Incorporation and Annulment of the Amended Articles of Incorporation of Respondent-Appellee on the ground that the Certificate of Amendment submitted by its directors relative to the extension of its corporate life was false and fraudulent. He alleged that on or around 24 March 2010, he inspected the corporate books and records of Respondent-Appellee and discovered that:

> a. The matter of extending the corporate term of Respondent-Appellee was never discussed nor approved during the alleged 22 February 1996 meeting of the Board of Directors. There was no board resolution to that effect. During the meeting, the president merely informed the directors that Respondent-Appellee's corporate term will

---

[3] Id, p. 32.
[4] Id, p. 46.

expire in 1996 and, thus, requested the legal counsel to work on the amendment;

b. The Board of Directors only approved the proposed amendment to extend the corporate life of Respondent-Appellee during its 10 May 1996 meeting in Boracay Island, Aklan;

c. There was no members' meeting and consequently, there was no ratification by the members on the proposed extension as it was impossible that a members' meeting has taken place on 10 May 1996 because on the same date, Respondent-Appellee's Board of Directors and Officers, who should have presided over the meeting, were in Boracay Island, Aklan;

d. No notice was sent to the members to inform them of the time and place of the meeting and the proposal to extend the corporate term of Respondent-Appellee.

Petitioner-Appellant also submitted photocopies of documents entitled "Minutes of the Meeting, 1996 National Board of Directors, held on February 22, 1996, 2:30 p.m." and "Minutes of Meeting of the 1996 National Board of Directors held on May 10, 1996, 9:00 p.m.," which are allegedly referred to in the Certificate of Amendments as submitted by Respondent-Appellee to the Commission.

On 12 October 2011, Respondent-Appellee filed its Answer,[5] alleging that:

a. As can be gleaned from the Minutes of the 22 February 1996 meeting, the issue on extension of term was brought up without any opposition interposed by the Members of the Board then present. The absence of any objection during the meeting signifies the Board's implied consent or approval to have the term extended since the same is beneficial to respondent-appellee;

b. During the 10 May 1996 meeting in Boracay Island, Aklan, the board merely confirmed or reaffirmed the already approved amendment extending Respondent-Appellee's term for another fifty (50) years;

c. Respondent-Appellee has no knowledge sufficient to form a belief as to the veracity of the allegations of false and fraudulent representation in the Certificate of Amendments as its incumbent members are not the officers and board members in 1996, the time when

---

[5] Id, p. 13.

the questioned amendment was presented and approved by the Commission. Likewise, the former board and officers did not turn-over the documents to the present board members;

d. The issue raised partakes the nature of intra-corporate controversy since it centers on the legality or validity of the amendment process extending the corporate charter, which includes the regularity of the conduct of meeting, notice and quorum. Thus, beyond the jurisdiction of this Commission; and

e. Petitioner-Appellant filed the instant case after fifteen (15) long years wherein laches had already set in.

On 14 November 2011, Petitioner-Appellant filed his Reply,[6] alleging that:

a. Respondent-Appellee's claim of implied consent or approval during the 22 February 1996 meeting to have its term extended is an admission that there was indeed no board resolution approving the extension of corporate term. Implied consent is not a valid ground for corporate action or approval. There is nothing in the Minutes of the 22 February 1996 meeting which will show that the board of directors approved the extension of its corporate term;

b. The extension of corporate term of Respondent-Appellant was approved for the first time on 10 May 1996 meeting. There is nothing in the Minutes of the 10 May 1996 meeting which will show that the Board of Directors approved the extension of its corporate term;

c. Respondent-Appellee is a continuing entity and the acts and omission of its officers and board members will bind the organization as well as its current officers and trustees regardless of the claim that the incumbent members were not yet officers and board members in year 1996;

d. The Commission has jurisdiction over revocation of amended Certificate of Incorporation on the ground of fraud in procuring the same; and

e. The defense of laches is not applicable because laches cannot cure an act that is fraudulent and void ab initio. Further, Petitioner-Appellant only came to know of the fraudulent misrepresentation by Respondent-Appellee when he inspected its corporate books and records

[6] Id, p. 9.

on 24 March 2010. He filed the instant case for revocation after a year and four months from the discovery of fraud.

During the preliminary conference held on 02 December 2011, Petitioner-Appellant contended that he is a member of good standing of Respondent-Appellee since 1968 including the time when the supposed 22 February 1996 and 10 May 1996 meetings were held. He conceded, however, that he was not able to attend all the meetings of Respondent-Appellee including the annual meetings subsequent to the 12 December 1996 meeting, as stated in Respondent-Appellee's 1996 General Information Sheet.

Respondent-Appellee, on the other hand, denied the existence and authenticity of the subject Minutes of the Meetings submitted by Petitioner-Appellant. It maintained that the current board of directors has no knowledge of the actual conduct of said meetings which were held approximately fifteen years ago since there was no formal turn-over of records by its previous board of directors or officers.

Petitioner-Appellant moved for the issuance of subpoena against the past members of the board of directors and officers alleging that there are factual issues that must be threshed out.

On 7 March 2012, the CRMD issued a Decision dismissing the case for lack of jurisdiction. Citing the Commission's power to investigate and revoke the approval it has given for a particular application on the ground of fraud attendant to the registration, the CRMD pointed out that Petitioner-Appellant failed to overcome the presumption of regularity of the duly notarized Certificate of Amendments submitted to the Commission by Respondent-Appellee. It explained that the Minutes of the Meetings relied upon by Petitioner-Appellant does not offer any clear indication that there was fraud in procuring the extension of corporate term. It further discussed that the heart of the controversy goes with the acts or omissions of the board of directors, the conduct of meetings and all acts that transpire within the corporate board room, which are intra-corporate controversies outside the jurisdiction of the Commission.

Hence, the instant appeal.

ISSUE

The pertinent issue to be resolved is whether or not the Amended Articles of Incorporation extending Respondent-Appellee's corporate term and alleged to have been fraudulently procured should be revoked.

RULING

In *Benguet Consolidated Mining Co. v. Pineda,*[7] the Supreme Court had occasion to discuss the importance of a corporation's term of existence, *viz* -

> The State and its officers also have an obvious interest in the term of life of associations, since the conferment of juridical capacity upon them during such period is a privilege that is derived from statute. . . . And the State is naturally interested that this privilege be enjoyed only under the conditions and not beyond the period that it sees fit to grant; and particularly, that it be not abused in fraud and to the detriment of other parties; and for this reason, it has been ruled that 'the limitation (of corporate existence) to a definite period is an exercise of control in the interest of the public.

Similarly, the State has a continuing interest in the extension of a corporation's term of existence in a sense that it is also a privilege acquired and enjoyed only under the conditions of the law.

The Commission has jurisdiction to cancel or revoke any amendment found to be non-compliant with the requirements of the law. As pointed out by CRMD itself in its Decision, the Commission has the power to investigate and revoke the approval it has given for a particular application on certain grounds, including "fraud in the procurement of certificate of registration.[8]" The bone of contention, however, is if there are sufficient grounds therefor.

The fraud contemplated in Presidential Decree No. 902-A refers to fraud attendant in the registration and the same must be contained or connected with the documents and/or papers presented to the Commission for the registration

---

[7] 98 Phil 711 (1956).
[8] Section 5(a) and (c), Securities Regulation Code and Section 6 (i), Presidential Decree No. 902-A, as amended.

of the said corporation, partnership or association.[9] Accordingly, the pertinent issue at hand is whether or not the amendment to the Articles of Incorporation of respondent-appellee, approved on 05 September 1996, was fraudulently obtained and/or non-compliant with the requirements of the law.

Section 16 of the Corporation Code provides the formal requirements for the amendment of articles of incorporation, *viz* –

> Sec. 16. *Amendment of Articles of Incorporation.* - Unless otherwise prescribed by this Code or by special law, and for legitimate purposes, any provision or matter stated in the articles of incorporation may be amended by a **majority vote of the board of directors or trustees** and the vote or written assent of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock, without prejudice to the appraisal right of dissenting stockholders in accordance with the provisions of this Code, or **the vote or written assent of at least two-thirds (2/3) of the members if it be a non-stock corporation.**
>
> The original and amended articles together shall contain all provisions required by law to be set out in the articles of incorporation. Such articles, as amended shall be indicated by underscoring the change or changes made, and **a copy thereof duly certified under oath by the corporate secretary and a majority of the** directors or **trustees stating the fact that said amendment or amendments have been duly approved by the required vote of the** stockholders or **members, shall be submitted to the Securities and Exchange Commission.** x x x (Emphasis Supplied).

However, an extension of corporate term is a grant of fresh license for a corporation to act as a juridical being endowed with the powers expressly bestowed by the State and as such, it is not just an ordinary amendment. Thus, Section 37 of the Corporation Code, which is primarily applicable to the case at hand, must also be considered, *viz* –

> Sec. 37. *Power to Extend or Shorten Corporate Term.* – A private corporation may extend or shorten its term as stated in the articles of incorporation when approved by a majority vote of the board of directors or trustees and ratified at a meeting by the stockholders representing at least two-thirds (2/3) of the outstanding capital stock or by at least two-thirds (2/3) of the members in case of non-stock corporations. Written notice of the proposed action and of the time and place of the meeting

---

[9] In the Matter of Charlyn Marketing Enterprise Corporations, SEC Case No. 03-05-49.

> shall be addressed to each stockholder or member at his place of residence as shown on the books of the corporation and deposited to the addressee in the post office with postage prepaid, or served personally: Provided, That in case of extension of corporate term, any dissenting stockholder may exercise his appraisal right under the conditions provided in this Code.

From the foregoing, it is therefore necessary that the extension of corporate term should be approved by the required two-third (2/3) vote of the outstanding capital stock or members. The above provision being mandatory, mere assent will not suffice.[10]

Corollary thereto, records on file with the Commission show that Respondent-Appellee's amendment for the extension of corporate term has been compliant with the requirements of Sections 16 and 37 of the Corporation Code. The required Certificate of Amendments certifies that the amendment extending the corporate term was approved by the majority vote of the Board of Directors and at least two-thirds (2/3) vote of the members in separate meetings held for that purpose. It was signed by the majority of the directors including the corporate secretary and certified under oath before a notary public.

The Commission, through the CRMD, is constrained to rely on said sworn certificates of the members of the Board and corporate secretary as to Respondent-Appellee's compliance with the provisions of the Corporation Code on amendments. Being a duly notarized document, the Certificate of Amendments submitted by Respondent-Appellee with the Commission enjoys the presumption of regularity and is, by law, entitled to full faith and credit upon its face. In fact, jurisprudence dictates that notarial documents, celebrated with all the legal requisites under the safeguard of a notarial certificate, is evidence of a high character.[11] It is *prima facie* evidence of the truth of the facts stated therein and a conclusive presumption of its existence and due execution.[12] The act of notarization by a notary public converts a private document into a public document making it admissible in evidence without further proof of authenticity. Accordingly, regularity in the execution of the documents submitted as well as Respondent-Appellee's dealings with the Commission is presumed.

---

[10] Rosario Lopez, The Corporation Code of the Philippines, Book 2, page 523, 1994.
[11] Mendezona v. Philippine Sugar Estates Development Co., 41 Phil. 475.
[12] Ocampo v. Landbank of the Philippines, G.R. No. 164968, July 3, 2009, citing Santos v. Lumbao, G.R. No. 169129, March 28, 2007, 519 SCRA 408, 426-427.

To overcome this presumption, there must be presented evidence that is clear and convincing.[13] Absent such evidence, the presumption must be upheld. In *P.T. Cerna Corporation vs. Court of Appeals,* [14] the Supreme Court held that "to contradict facts in a notarial document and the presumption of regularity in its favor, the evidence must be clear, convincing and more than merely preponderant."

In the instant case, the CRMD, as shown in the Assailed Decision, evaluated the evidence presented before it as well as the records on file with the Commission. In the Assailed Decision, the CRMD finds that the allegations made and the evidence submitted by Petitioner-Appellant fails to overcome the presumption of regularity and truthfulness of the statements contained in the sworn certificates submitted by Respondent-Appellee.

We agree that Petitioner-Appellant, upon whom the burden of proof rests, having alleged the contrary, failed to present clear and convincing evidence sufficient to overcome the presumption of regularity and truthfulness of the statements contained in the notarized Certificate of Amendment, for the following reasons:

> (a) Petitioner-Appellant solely relies on the contents of the photocopied Minutes of the Meetings of 22 February 1996 and 10 May 1996. Well-settled is the rule that "when the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself.[15]" The reason for requiring the original document is to ensure that the contents of the same are not altered or tampered.
>
> (b) Even assuming that the photocopied Minutes of the Meetings relied upon by Petitioner-Appellant are admissible, it does not offer any clear indication that the amendment of the Articles of Incorporation extending the corporate term of Respondent-Appellee was tainted with fraud. Jurisprudence dictates that acts of fraud and misrepresentation must be proved by clear and convincing evidence, mere preponderance of evidence is not

---

[13] Id.
[14] G.R. No. 91622. April 6, 1993.
[15] Rule 130, Section 3, Rules of Court.

adequate.[16] The rule is that one who alleges a fact has the burden of proving it.[17]

While the purported 22 February 1996 Minutes of the Meeting does not categorically state that the amendment was voted upon, the same alone is not convincing proof that no Board approval was obtained. At any rate, the purported 10 May 1996 Minutes of the Meeting expressly states that the Board approved the amendments to the Articles of Incorporation extending Respondent- Appellee's corporate life.

As to the allegation that there was no members' meeting because the directors were in Boracay, still this is not sufficient to rebut or thwart the presumption engendered by the Certificate of Amendments, particularly the approval by two thirds (2/3) vote of the members of the Corporation of the extension of corporate term. This does not mean that the members could not have conducted a separate meeting without the Directors. Whether or not such meeting without Directors is valid would be an intra-corporate dispute, which is outside of the Commission's jurisdiction.

Accordingly, absent any indication of fraud, the documents presented to support the amendments made by Respondent-Appellee are presumed to be regular. Unless proven otherwise by clear and convincing evidence, there is no valid ground to revoke Respondent-Appellee's Certificate of Registration on the ground of fraud in the procurement of Certificate of Registration.

As to Petitioner-Appellant's allegations that no notice was sent to the members to inform them of the time and place of the meeting and the proposal to extend the corporate term of Respondent-Appellee, the same does not point to fraud in the procurement of certificate of registration but to an intra-corporate or association controversy which is outside the jurisdiction of the Commission. Note, that the Commission's jurisdiction over controversies arising out of intra-corporate or association relations between and among members; between any or all of them and the association of which they are members prior to the

---

[16] Sampaco v. Lantud, G.R. No. 163551, 18 July 2011; Palada v. Solidbank Corp., G.R. No. 172227, 29 June 2011.
[17] Exodus International Construction Corp. et al. v. Biscocho, G.R. No. 166109, February 23, 2011; Basay v. Hacienda Consolacion, G.R. No. 175532, April 19, 2010; Machica v. Roosevelt Services Center, Inc., G.R. No. 168664, May 4, 2006.

enactment of Securities and Regulations Code[18] has since been transferred to the appropriate regional trial court.[19]

WHEREFORE, premises considered, the instant appeal is hereby **DENIED** for lack of merit.

SO ORDERED.

Mandaluyong City, 06 December 2012.

TERESITA J. HERBOSA
Chairperson

MA. JUANITA E. CUETO
Commissioner

MANUEL HUBERTO B. GAITE*
Commissioner

ELADIO M. JALA
Commissioner

ANTONIETA FORTUNA-IBE
Commissioner

*On official leave.

[18] R.A. 8799 took effect 9 August 2000.
[19] SRC, Section 5.2.