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

ESMAR POSADAS REALTY CORPORATION,
Appellant,

SEC En Banc Case No. 08-13-298

- *versus* -

DIR. FERDINAND B. SALES, In his capacity as Director of the Company Registration and Monitoring Department, AND LUIS M. POSADAS,
Appellees.

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DECISION

This resolves the Notice of Appeal and Memorandum of Appeal dated 07 August 2013 (the "Appeal") filed by Appellant Esmar Posadas Realty Corporation ("ESMAR"), assailing the Order dated 24 June 2013 (the "Assailed Order") of the Company Registration and Monitoring Department ("CRMD"), represented by then Director Ferdinand B. Sales, revoking its Certificate of Incorporation.

THE PARTIES

Respondent-Appellant ESMAR is a domestic stock corporation registered with the Commission on 21 July 2006 under SEC Registration No. CS200628671, with office address at Dona Pilar Bldg., Bankerohan, Davao City.

Complainant-Appellee LUIS M. POSADAS ("Appellee") is a Filipino, of legal age, grandson of the deceased Estela Marfori Posadas and a resident of 1343 Leon Guinto Street, Ermita, Manila.

STATEMENT OF RELEVANT FACTS

The Articles of Incorporation dated 5 August 2004 of ESMAR (AOI) show that its five (5) incorporators namely, Estela Marfori Posadas, Ma. Elena M. Posadas, Ma. Lourdes D. Gahol, Augusto P. de los Angeles and Jose Ma. P. Marfori, executed, signed, and had the same acknowledged by a Notary Public on 30 September 2004.

Estela Marfori Posadas (Estela Posadas) and ESMAR executed a Deed of Assignment dated 5 August 2004 (the "Deed")[1] where Estela Posadas assigned the real properties registered under her name subject of the Deed to ESMAR as full payment of her stock subscription[2] consisting of 99% of the latter's authorized capital stock.

On 25 June 2005, Estela Posadas died in Davao City. Ma. Lourdes Gahol, an incorporator of ESMAR and the granddaughter Estela Posadas was the informant thereof.

On 23 November 2005,[3] the Commission, through its Davao Extension Office, received an application for the incorporation of ESMAR consisting, among others, of the AOI and By-Laws (BL).

On 21 July 2006, the Commission, through its Davao Extension Office, acting on the entries and the declarations made by ESMAR in its application documents, specifically the AOI, approved its application and issued its Certificate of Incorporation.

On 18 December 2012, Appellee Luis M. Posadas (Mr. Posadas), grandson of Estela Posadas, filed a Complaint praying for the revocation of the Certificate of Incorporation of ESMAR on the ground of fraud in the procurement of its certificate of registration. Mr. Posadas argued that at the time of the filing of the application for incorporation, Sections 10 and 14 of Batas Pambansa Blg. 68 (the "Corporation Code") were not complied with as there were only four (4) incorporators. Mr. Posadas maintained that because of the concealment and misrepresentation, the Commission was misled into the belief that the requirements of the Corporation Code were complied with.

On 6 March 2013, ESMAR filed an Answer praying for the dismissal of the Complaint on the ground of failure to state or lack of cause of action, improper venue and lack of merit. ESMAR maintained that the Complaint constitutes a collateral attack on the corporation which is proscribed under Section 20 of the Corporation Code. ESMAR also questioned the legal standing of Mr. Posadas, and the failure of the Complaint to state a cause of action on the ground that Mr. Posadas is not a real-party-in-interest under the 2006 Rules of Procedure of the Commission[4].

On 2 April 2013, Mr. Posadas filed his Reply dated 26 March 2013 reiterating his prayer for the revocation of ESMAR's Certificate of

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[1] Acknowledged before a Notary Public on 4 October 2004.
[2] 28,644,760 Shares in the amount of PhP28,644,760.00
[3] Certification issued by SEC Davao Extension Office dated December 19, 2012.
[4] Rule II, Section 2.2

Incorporation on the basis of Section 6(l)(1) of PD 902-A, as amended, and insisted that the Commission has jurisdiction over the Complaint.

On 8 April 2013, ESMAR filed its Rejoinder reiterating its position that the Complaint is dismissible for having been filed not by a real party in interest. ESMAR also argued that since the authenticity of the signature of Estela Posadas in the AOI was not contested, there was no fraud in the incorporation of ESMAR.

On 24 June 2013, the CRMD issued the Assailed Order revoking the Certificate of Registration of ESMAR. The dispositive portion of the Assailed Order reads:

> "**WHEREFORE**, premises considered, the Certificate of Registration of ESMAR POSADAS REALTY CORPORATION under SEC Registration No. CS200628671, approved on July 21, 2008, is hereby **REVOKED**.
>
> Let a copy of this Order be attached to the corporate records of the respondent on file with this Commission and its "*Revoked*." (sic) status be entered in the SEC database.
>
> **SO ORDERED.**"

ISSUES

1. Whether the CRMD has jurisdiction over the Complaint.
2. Did ESMAR violate Section 6(l)(1) of PD 902-A, as amended?

DISCUSSION

The Commission denies the Appeal for lack of merit.

1. The Commission, through the CRMD, has jurisdiction over the instant case.

In its Appeal, ESMAR maintained that the CRMD gravely erred and acted with grave abuse of discretion in assuming jurisdiction and giving due course to the Complaint of Mr. Posadas. In support thereof, ESMAR argued that the Complaint which sought the revocation of its Certificate of Incorporation is proscribed under Section 20 of the Corporation Code as it constitutes a collateral attack on ESMAR's franchise. ESMAR insisted that its Certificate of Incorporation can only be assailed by the State, through the Office of the Solicitor General, in a *quo warranto* proceeding.

The Commission disagrees.

The Supreme Court (the "Court") defined and discussed the concept of jurisdiction in *People v. Mariano*[5], to wit:

> "The word "Jurisdiction" is derived from two Latin words "juris" and "dico" — "I speak by the law" — which means fundamentally the power or capacity given by the law to a court or tribunal to entertain, hear, and determine certain controversies. Bouvier's own definition of the term "jurisdiction" has found judicial acceptance, to wit: "Jurisdiction is the right of a Judge to pronounce a sentence of the law in a case or issue before him, acquired through due process of law;" it is "the authority by which judicial officers take cognizance of and decide cases." In Herrera vs. Barretto, (September 10, 1913), 25 Phil. 254, 251, this Court, defined "jurisdiction" simply as the authority to hear and determine a cause — the right to act in a case. "Jurisdiction" has also been aptly described as the right to put the wheels of justice in motion and to proceed to the final determination of a cause upon the pleadings and evidence." (Emphasis supplied)

In the Philippines, it is settled in law and jurisprudence that nothing is as elementary as the concept of jurisdiction, for the same is the foundation upon which the courts exercise their power of adjudication, and without which, no rights or obligation could emanate from any decision or resolution issued by a court or quasi-judicial body. In *Mitsubishi Motors Philippines Corporation v. Bureau of Customs,*[6] the Court reiterated the foregoing principle, to wit:

> "Jurisdiction is defined as the power and authority of a court to hear, try, and decide a case. In order for the court or an adjudicative body to have authority to dispose of the case on the merits, it must acquire, among others, jurisdiction over the subject matter. It is axiomatic that jurisdiction over the subject matter is the power to hear and determine the general class to which the proceedings in question belong; it is conferred by law and not by the consent or acquiescence of any or all of the parties or by erroneous belief of the court that it exists. Thus, when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action." (Emphasis supplied)

Applying the foregoing established doctrines, We hold that the CRMD did not commit reversible error in taking cognizance of, and in hearing and deciding on the Complaint filed by Mr. Posadas.

Section 5.1 (a), (m) and (n) of Republic Act No. 8799 (the "Securities Regulation Code") provides:

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[5] G.R. No. L-40527, June 30, 1976.
[6] G.R. No. 209830, June 17, 2015.

"The Commission shall act with transparency and shall have the powers and functions provided by this Code, Presidential Decree No. 902-A, the Corporation Code, the Investment Houses Law, the Financing Company Act and other existing laws. Pursuant thereto the Commission shall have, among others, the following powers and functions:

(a) Have jurisdiction and supervision over all corporations, partnerships or associations who are the grantees of primary franchises and/or a license or permit issued by the Government;

(m) 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**; and

(n) Exercise such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted the Commission to achieve the objectives and purposes of these laws." (Emphasis supplied)

Section 6 of Presidential Decree No. 902-A (PD 902-A), as amended, reiterates the grant to the Commission of power and authority, among others, to suspend, or revoke, after proper notice and hearing, the franchise or certificate of registration of corporations.[7] More importantly, Section 6(l) of PD 902-A, as amended, specifically provides for the grounds which justifies the revocation of a certificate of incorporation by the Commission, to wit:

"SECTION 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:

xxx xxx xxx

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:

1. Fraud in procuring its certificate of registration;
2. Serious misrepresentation as to what the corporation can

[7] P.D. 902-A, SEC Reorganization Act, as amended by P.D. 1653 and PD 1758 states in part:

do or is doing to the great prejudice of or damage to the general public;

3. Refusal to comply or defiance of any lawful order of the Commission restraining commission of acts which would amount to a grave violation of its franchise;
4. Continuous inoperation for a period of at least five (5) years;
5. Failure to file by-laws within the required period;
6. Failure to file required reports in appropriate forms as determined by the Commission within the prescribed period;

k) To exercise such other powers as implied, necessary or incidental to the carrying out the express powers granted to the Commission or to achieve the objectives and purposes of this Decree."

The afore-quoted provisions of the SRC and PD 902-A clearly and categorically grants the Commission the power and authority to revoke a certificate of incorporation based on a finding of the grounds provided therein. **On the basis of this express statutory grant of power and authority, the Commission is legally and duty-bound to take cognizance of and determine complaints for violation of PD 902-A**, consistent with and pursuant to the *verbal legis* rule which was emphasized by the Court in *Cubillo v. Social Security System*[8], thus:

> "The elementary rule in statutory construction is that when the words and phrases of the statute are clear and unequivocal, their meaning must be determined from the language employed and the statute must be taken to mean exactly what it says. <u>If a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation</u>. This is what is known as the plain-meaning rule or verba legis. It is expressed in the maxim, index animi sermo, or speech is the index of intention. Furthermore, there is the maxim verba legis non est recedendum, or f<u>rom the words of a statute there should be no departure. Guided by these principles, courts have no alternative but to apply the law according to its clear language</u>." (Emphasis supplied)

In the light of the fact that the Complaint specifically alleges violation by ESMAR of Section 6(l)(1) of PD 902-A, as amended, in relation to Section 10 of the Corporation Code, the position of ESMAR that the same is dismissible for being a collateral attack on its franchise is clearly wanting of a leg to stand on. The grant of jurisdiction to the Commission over cases covered by Section 6(l)(1) of PD 902-A, as amended, is clear.

Moreover, it bears emphasis that Section 4.6 of the SRC specifically authorizes the Commission to delegate its powers and functions to the various departments of the Commission to ensure efficiency in the performance of its mandate, thus:

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[8] G.R. No. 221067 (Notice), January 14, 2019

> "The Commission may, for purposes of efficiency, delegate any of its functions to any department or office of the Commission, an individual Commissioner or staff member of the Commission except its review or appellate authority and its power to adopt, alter and supplement any rule or regulation."

On the basis of the foregoing, the Commission issued SEC Resolution No. 359, s. of 2010 delegating to the CRMD the power and authority to revoke, after notice and hearing, Certificates of Incorporation of registered partnerships or corporations on the ground that an incorporator is already deceased at the time of incorporation.[9] For purposes of consistency and with due regard for its expertise on the matter, the Commission deemed it proper that the authority to revoke certificates of incorporation for the same ground remains with, and is exercised by the CRMD. Hence, the 2016 Rules of Procedure of the Securities and Exchange Commission grants to the CRMD the power to decide on petitions for revocation of Certificate of Registration on the ground, among others, that an incorporator is already deceased at the time of incorporation.[10]

In a number of decided cases[11], the Court affirmed and sustained the act of the Commission in taking cognizance of, and deciding on complaints seeking the revocation of certificates on incorporation on the basis of Section 6(l) of PD 902-A, as amended, in relation to the applicable provisions of the Corporation Code. **The instant case should not be an exception as the jurisdiction of the Commission over the same is based on a clear statutory grant**. The foregoing finds support in *Provident International Resources Corporation v. Joaquin T. Venus*[12] where the Court ruled that:

> "xxx it can be said that the SEC's regulatory authority over private corporations encompasses a wide margin of areas, touching nearly all of a corporation's concerns. This authority more vividly springs from the fact that a corporation owes its existence to the concession of its corporate franchise from the state. Under its regulatory responsibilities, **the SEC may pass upon applications for, or may suspend or revoke (after due notice and hearing), certificates of registration of corporations, partnerships and associations (excluding cooperatives, homeowners' association, and labor unions);** compel legal and regulatory compliances; conduct inspections; and impose fines or other penalties for violations of the Revised Securities Act, as well as implementing rules and directives of the SEC, such as may be warranted." (Emphasis supplied)

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[9] SEC Resolution No. 359, Series of 2010 states in part

> "***RESOLVED,*** *To* ***AUTHORIZE*** *the Company Registration and Monitoring Department to revoke, after complying with due process, Certificates of Incorporation of registered partnerships or corporations on the following grounds:*
> *x x x*
> *5. If any of the incorporators is already deceased at the time of incorporation.*"

[10] Part I, Rule II, Section 2.2 (a), 2016 Rules of Procedure of the Securities and Exchange Commission.
[11] See Care Best International, Inc. vs SEC (GR No. 215510, October 5, 2015); Skyworld Condominium Owners Association, Inc. vs SEC (GR No. 95778, July 17, 1992)
[12] G.R. No. 167041, 17 June 2008

2. The CRMD did not commit reversible error in finding that ESMAR violated Section 6(l)(1) of PD 902-A, as amended.

In its Appeal, ESMAR maintained that there was no bad faith or fraud on its part when it applied for incorporation considering that Estela Posadas duly executed the Articles of Incorporation and By-Laws (AOI and BL) of ESMAR prior to her death. ESMAR argued that the "*mere fact that Estela died after the execution of the Articles of Incorporation and prior to the issuance of the SEC of a Certificate of Incorporation, is not tantamount to fraud which would warrant revocation of ESMAR's certificate of incorporation*."

ESMAR's argument fails to convince.

Section 10 of the Corporation Code provides for the required number and qualification of incorporators, thus:

> "Number and Qualifications of Incorporators. — Any number of **natural persons not less than five** (5) but not more than fifteen (15), **all of legal age** and a **majority of whom are residents of the Philippines**, may form a private corporation for any lawful purpose or purposes. Each of the incorporators of a stock corporation **must own or be a subscriber to at least one (1) share** of the capital stock of the corporation." (Emphasis supplied)

Moreover, Section 19 of the Corporation Code specifically provides the exact moment when a corporation breath in its first air as a juridical person or when it commences to have corporate existence i.e. from the date the Securities and Exchange Commission issues a certificate of incorporation under its official seal, thus:

> "<u>A private corporation formed or organized under this Code commences to have corporate existence and juridical personality</u> and is deemed incorporated <u>from the date the Securities and Exchange Commission issues a certificate of incorporation</u> under its official seal; and thereupon the incorporators, stockholders/members and their successors shall constitute a body politic and corporate under the name stated in the articles of incorporation for the period of time mentioned therein, unless said period is extended or the corporation is sooner dissolved in accordance with law." (Emphasis supplied)

The afore-quoted provisions reveal that an applicant must have the requisite minimum number of incorporators, **and** such incorporators must possess and comply with all the requirements prescribed under Section 10 of the Corporation Code not only at the time of the filing of the application for incorporation but more importantly at the time of the issuance of the certificate of incorporation. The relevance and importance of the date of the approval by the Commission relates to the performance of its mandate in ensuring that only those who have complied with the legal and regulatory requirements are granted a franchise, the same being a privilege granted by the State. The foregoing finds affirmation in *Mindanao Savings and Loan Association, Inc. v. Edward Willcom*[13], where the Court categorically ruled, to wit:

> "**The merger, however, does not become effective upon the mere agreement of the constituent corporations**. Since a merger or consolidation involves fundamental changes in the corporation, as well as in the rights of stockholders and creditors, there must be an express provision of law authorizing them.
>
> xxx xxx xxx
>
> **Clearly, the merger shall only be effective upon the issuance of a certificate of merger by the SEC, subject to its prior determination that the merger is not inconsistent with the Corporation Code or existing laws**. Where a party to the merger is a special corporation governed by its own charter, the Code particularly mandates that a favorable recommendation of the appropriate government agency should first be obtained." (Emphasis supplied)

On the basis of the foregoing, We hold that the execution of the AOI and BL during the lifetime of Estela Posadas did not satisfy the requirement that the applicant must have five (5) incorporators who must be alive at the time of approval and issuance of ESMAR's Certificate of Incorporation. Moreover, the fact that the AOI and BL of ESMAR were executed by all incorporators fell short in complying with the requirements under Section 10 of the Corporation Code because at the time of its approval, only four (4) incorporators were alive.

The Corporation Code obviously took into consideration the possibility that from the time of the filing of the application for incorporation and its approval, circumstances may transpire that will require the modification of, or the submission of additional documents to ensure that all the statutory/legal requirements are complied with by the applicant. Thus, Section 17 of the Corporation Code specifically directs the Commission to give incorporators a reasonable time within which to correct or modify objectionable portions of the articles of incorporation.

Section 17 of the Corporation Code is very important because instead of an outright denial of an application which does not comply with the statutory and regulatory requirements, the Commission may give the applicant a reasonable time within which to rectify/modify its application documents for the sole purpose of fully complying with all the requirements prescribed

[13] G.R. No. 178618, October 11, 2010.

by law, rules and regulations. It is thus incumbent upon the applicant to promptly inform the Commission of any circumstance or event that relates to, or affects its compliance with the legal and/or regulatory requirements. This will enable the Commission to act properly on the same and determine if a reasonable time should be given to allow the applicant to correct any error in its application or to address deficiencies therein. **The action of the Commission on any application is however based only on the information given and the declarations made by the applicants in the documents submitted**.

In the instant case, the records show that at the time of the filing of its application for registration on 23 November 2005, Estela Posadas was already dead. This fact was not disclosed to the Commission by ESMAR. There is also no showing that ESMAR had the intention to disclose the fact of death of Estela Posadas considering that, based on its arguments on record, it consistently believed that its registration was not legally infirm.

It is however clear that on 23 November 2005, ESMAR had only four (4) incorporators which is short of the number required in Section 10 of the Corporation Code. On 23 November 2005, there were only four (4) incorporators who were of legal age, residents of the Philippines and owners or subscribers of at least one (1) capital stock of ESMAR. Having died on 25 June 2005, Estela Posadas could no longer be a party to a contract with the State on 23 November 2005 when the AOI and BL were filed, and on 21 July 2016, when the Certificate of Incorporation was approved and issued by the Commission. ESMAR however argues that this fact does not warrant the revocation of its Certificate of Incorporation because the subsequent death of Estela Posadas prior to its issuance does not constitute fraud under Section 6(l)(1) of PD 902-A, as amended.

We do not agree.

Section 6(l)(1) of PD 902-A, as amended, used the word “fraud” in its generic and unqualified sense. The foregoing finds affirmation in *Care Best International, Inc. v. Securities and Exchange Commission*,[14] where the Court categorically ruled, thus:

> “Fraud can be classified as either actual or constructive. Actual or positive fraud proceeds from an intentional deception practiced by means of the misrepresentation or concealment of a material fact. Constructive fraud is construed as a fraud because of its detrimental effect upon public interest, and public or private confidence, even though the act is not done with an actual design to commit positive fraud or injury upon other persons. <u>Since Section 6(i)(1) of PD 902-A simply speaks of fraud without limiting its use of the term, then the section must include not only actual fraud, but</u>

[14] GR No. 215510. October 5, 2015.

> constructive fraud as well. Since the provision is not concerned with a crime or a felony, criminal intent or intent to deceive is not essential. Consequently, even assuming that incorporators Evita and Solivio were in good faith does not detract from the undisputed commission of the falsity when they used fictitious names in petitioner's Articles of Incorporation." (Emphasis supplied)

Among the requirements required in incorporating an entity is the preparation, execution and filing of the articles of incorporation and by-laws of a corporation in the form and substance prescribed by law.[15] It defines the charter of the corporation and the contractual relationships between the State and the corporation, the stockholders and the State, and between the stockholders and the corporation.[16] Necessarily, at the time of the filing of the application, all the incorporators who must at least be five (5) in number, must be alive and must have legal capacity to enter into a contract with the State. If it should happen that one of the incorporators dies or ceases to have the capacity to act prior to the issuance of the certificate of incorporation, it is incumbent upon the applicant to promptly inform the Commission of such fact so that it can be given reasonable time within which to take in a new incorporator and to fully comply with the legal and regulatory requirements.

The Commission notes with concern the fact that not one of the incorporators informed it of the fact of death of Estela Posadas which was about five (5) months prior to the date of filing of the application and the submission of the required documents with the Commission. The fact that Estela Posadas subscribed to 99% of ESMAR's authorized capital stock and paid for the same with her real properties is, however, telling. Without Estela Posadas' subscription and investment, ESMAR would not have the means to conduct business and to carry out the purpose set forth in its AOI. ESMAR thus made it sure that the name of Estela Posadas as an incorporator remains in its AOI and BL.

In the instant case, ESMAR filed its AOI and BL with the Commission five (5) months after the death of Estela Posadas. On its face, this clearly constitutes fraud and misrepresentation because on 23 November 2005, ESMAR (or the other four [4] incorporators) was aware, or was presumed to be aware that Estela Posadas was already dead and could no longer be an incorporator, and yet it proceeded to file its AOI and made the Commission believe that it had five (5) incorporators. It bears emphasis that ESMAR was not legally bound to file its AOI and BL on a date certain which gave it sufficient time to find a replacement of Estela Posadas to ensure that at the time of the filing of its AOI and BL, it is fully compliant with Section 10 of the Corporation Code. ESMAR nonetheless decided to file a document with

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[15] Republic vs Hernandez. GR No. 117209, February 9, 1996.
[16] Lanuza vs Court of Appeals. GR No. 131394, March 28, 2005.

a false information which was relied upon by the Commission and which resulted in the issuance of its Certificate of Incorporation.

We quote with affirmation the finding of the CRMD, thus:

> "Suffice to say, the submission of the duly executed articles of incorporation is relied upon by this Commission to be informed of material facts concerning the corporation before the latter can be granted a certificate of registration. Hence, any misrepresentation or non-disclosure of material facts therein that would run counter to the statutory requirements of the Corporation Code of the Philippines is tantamount to fraud regardless of the intention to deceive or not considering that such misrepresentation is contrary to public interest and public policy in that it prejudices the Commission's registration efforts."

Even granting, *ex gratia,* that ESMAR was not aware of the death of Estela Posadas at the time of the filing of the AOI, it still had sufficient time to inform the Commission of such fact and to rectify the same considering that its Certificate of Incorporation was issued only on 21 July 2006. The records show that ESMAR was intent on concealing the fact of death of Estela Posadas because in the Registration Data Sheet of ESMAR dated 5 August 2005,[17] Ma. Elena M. Posadas certified that there were five (5) directors which included Estela Posadas notwithstanding the fact that the latter was already dead. **Had the Commission been informed that Estela Posadas was already dead at the time of the filing of the AOI and BL, ESMAR's application would not have been approved**. The Commission would have directed ESMAR to replace Estela Posadas with another person who has legal capacity to comply with the requirements prescribed for incorporators.

To reiterate, "fraud" under Section 6, (l)(l) of P.D. 902-A, as amended, 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 of said corporation, partnership or association.[18] This covers not only actual or moral fraud, but also constructive or legal fraud. The Court has consistently ruled that bad faith does not simply connote bad judgment or negligence.[19] It imports a dishonest purpose or some moral obliquity and conscious doing of wrong.[20] It means a breach of a known duty through some motive or interest or ill will that partakes of the nature of fraud.[21]

On a final note, it must be emphasized that the Commission will not renege in performing its duty and mandate to fully implement the provisions

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[17] Reply-Memorandum of Luis M. Posadas, Annex "A".
[18] In the Matter of Charyn Marketing Enterprise Corporations, SEC Case No. 03-05-49
[19] *Ford Philippines v. CA*, G.R. 99039, February 3, 1997
[20] *Id*.
[21] *Id.*

of the Corporation Code[22], and to exact strict compliance of the requirements provided therein considering that the grant of a certificate of incorporation is merely a privilege granted by the State to those who show, to the satisfaction of the Commission, that they are deserving of the same. In relation to the foregoing, the ruling of the Court in *Care Best International, Inc. v. Securities and Exchange Commission*[23] is instructive, thus:

> "Incorporation is a grant of privilege from the State, and the State is entitled to preserve the value of such privilege. Thus **in order to enjoy such privilege, the requirements and procedure for the grant thereof must be strictly complied with**. To this end, the State prescribes and gives notice, through statutes and regulations of the necessary requirements and procedures for the grant of the privilege. In this jurisdiction, the Corporation Code prescribes the requirements for the grant of a corporate franchise, and the certificate of registration may be acquired only if the conditions required by the statutes are complied with; therefor, any material statement in the Articles of Incorporation which is a falsehood may be considered fraudulent, regardless of the intent of the incorporators." (Emphasis supplied)

In view of the foregoing, We do not find any cogent reason to disturb the Assailed Order of CRMD considering that the same was substantiated by the evidence on record, and is based on applicable laws and jurisprudence.

WHEREFORE, premises considered, the Memorandum of Appeal filed by ESMAR is hereby **DENIED** for lack of merit. The Order of the CRMD dated 25 September 2013 is hereby **AFFIRMED.**

SO ORDERED.

Pasay City, Philippines, 07 July 2020.

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

[Took No Part]
JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner

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[22] Now Republic Act No. 11232 (the "Revised Corporation Code").
[23] *Ibid*