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

COMMISSION *EN BANC*

IN THE MATTER OF:

CANCELLATION OF THE AMENDED ARTICLES OF INCORPORATION OF ALLIED COALITION OF ASSOCIATION OF SENIOR CITIZENS IN THE PHILS. (SENIOR CITIZENS), INC.

GODOFREDO V. ARQUIZA,
Petitioner-Appellee

SEC En Banc Case No. 07-12-264
(SEC CRMD Case No. 12-289)

For:

Cancellation of the Amended Articles of Incorporation approved on 11 August 2011

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DECISION

This resolves the appeal of Francisco G. Datol, Jr., Plutarco E. Vazquez, Arsenio B. Alvarez, Marcelo M. Landicho, and Charlito G. Cariño, Respondents-Appellants herein, from the Order of the Company Registration and Monitoring Department (CRMD), dated 4 July 2012, in SEC CRMD Case Number 12-289.

BACKGROUND OF THE CASE

Petitioner-Appellee Godofredo V. Arquiza is the President of the Coalition of Associations of Senior Citizens in the Philippines (Senior Citizens), Inc. ("Senior Citizens", for brevity), a non-stock, non-profit corporation which is registered under SEC Registration Number CN200340764.

On 13 February 2012, Petitioner-Appellee filed a complaint with the CRMD, alleging that: (a) the name of the corporation was illegally changed from "Coalition of Associations of Senior Citizens in the Philippines (Senior Citizens), Inc." to "Allied

Coalition of Associations of Senior Citizens in the Philippines (Senior Citizens), Inc.";[1] (b) its principal office address was illegally changed from 15 Balungao, Calumpit, Bulacan to S-307, The One Executive Building, Number 5, West Avenue, Quezon City;[2] (c) the named Trustees in the "Trustees' Certificate", which was submitted in support of the 5 August 2011 application for amendment, are not legitimate members of the Board of Trustees of Senior Citizens;[3] and (d) the Tax Identification Numbers (TIN) of four out of these five persons who represented themselves as Trustees of Senior Citizens were spurious.[4] Petitioner-Appellee prayed for the cancellation of the issuance of the Certificate of Amended Articles of Incorporation of the Coalition of Associations of Senior Citizens in the Philippines, Inc. and the reversion to the original name and office address of the corporation.[5]

On 3 April 2012, Respondents-Appellants Francisco G. Datol, Jr., Plutarco E. Vazquez, Arsenio B. Alvarez, Marcelo M. Landicho, and Charlito G. Cariño filed their Answer with Motion to Dismiss, raising the following defenses: (a) Petitioner-Appellee is guilty of forum shopping;[6] (b) the amendments to the Articles of Incorporation of Senior Citizens were agreed upon by a majority of the new set of officers of Senior Citizens, whose identities were disclosed in the General Information Sheet (GIS) filed with the SEC on 1 March 2011;[7] (c) the TINs of the named Trustees, although erroneously indicated, were mere typographical errors which are not substantial to invalidate the whole document;[8] and (d) the case is an intra-corporate dispute, which is beyond the jurisdiction of the SEC.[9]

It does not appear from the records that a Preliminary Conference was held before the CRMD as provided by Section 5-1, Rule V of the 2006 Rules of Procedure of the SEC ("2006 Rules", for brevity).

On 4 July 2012, the CRMD issued an Order granting the Petition. In resolving the Petition, the CRMD ruled that Petitioner-Appellee's assertion that Respondents-Appellants are not members of the Board of Trustees of Senior Citizens is an intra-corporate dispute which is cognizable by the regular courts. However, it upheld Petitioner-Appellee's assertion that Respondents-Appellants' submission of invalid TINs in support of their application for amendment is a valid ground to revoke an approved application, in view of Section 17 of the Corporation Code and Section 6, paragraph 1, subparagraph 1 of P.D. No. 902-A.

[1] Paragraph 2, Petition, dated 6 February 2012.
[2] Paragraph 3, Petition.
[3] Paragraphs 5 to 6, Petition.
[4] Paragraph 11, Petition.
[5] Prayer, Petition.
[6] Paragraphs 1 to 5, Answer with Motion to Dismiss, dated 3 April 2012.
[7] Paragraph 10, Answer.
[8] Paragraphs 14 and 15, Answer.
[9] Paragraphs 16 to 17, Answer.

On 17 July 2012, and within the reglementary period for filing the appeal, Respondents-Appellants filed their Notice of Appeal and Memorandum of Appeal.

On 23 July 2012, the Commission issued an Order directing Petitioner-Appellee to file his Reply Memorandum within ten (10) days from receipt of the Order. Petitioner-Appellee received the Order on 25 July 2012. However, it was only on 22 August 2012 when Petitioner-Appellee filed his Reply Memorandum.

On 27 July 2012, Respondents-Appellants filed their Manifestation (In support of the appeal). They filed a Manifestation with Motion for Early Resolution on 31 August 2012. On 21 September 2012, Respondents-Appellants filed their Counter-Manifestation with 2nd Motion for Early Resolution, supposedly in reply to the Manifestation filed by Petitioner-Appellee. It must be noted, however, that it was only on 1 October 2012 when the OGC received a copy of Petitioner-Appellee's Manifestation, dated 17 September 2012, through an endorsement made by the CRMD on the same date.

ISSUES

The following issues were raised in Respondents-Appellants' Memorandum of Appeal:

a. That Petitioner-Appellee violated the rules on forum shopping when he filed his second complaint for cancellation of the amended Articles of Incorporation of Respondents-Appellants;

b. That Respondents-Appellants did not commit fraud by providing invalid TINs in procuring their Amended Certificate of Registration;

c. That the CRMD failed to hold a preliminary conference, in violation of the 2006 Rules;

d. That Petitioner-Appellee came to the Commission with dirty hands;

e. That Respondents-Appellants had substantially complied with the basic requirements of the SEC in applying for the amendment of the Articles of Incorporation of Senior Citizens; and

f. That Petitioner-Appellee had filed a wrong pleading.

DECISION

In view of the numerous errors designated in Respondents-Appellants' Memorandum of Appeal, we shall first discuss the procedural issues raised therein, to wit:

1. That Petitioner-Appellee violated the rules on forum shopping when he filed his second complaint for cancellation of the amended Articles of Incorporation of Respondents-Appellants.

2. That the CRMD failed to comply with the mandatory rule on preliminary conference.

3. That Petitioner-Appellee filed the wrong pleading.

A. That Petitioner-Appellee violated the rules on forum shopping when he filed his second complaint for cancellation of the amended Articles of Incorporation of Respondents-Appellants.

On 1 September 2011, Petitioner-Appellee sent a letter addressed to SEC Chairperson Teresita J. Herbosa complaining of illegal amendments on the Articles of Incorporation of the Allied Coalition of Association of Senior Citizens of the Philippines. The letter alleged, among others, that "[t]he group which caused the said amendment has been trying very hard, through illegal means, to illegitimately take over of the Senior Citizens. The amendment may be the first of a series of criminal acts to be undertaken by this group. x x x"[10] The letter was treated as a complaint and docketed as SEC CRMD Case No. 11-236.[11]

In its Decision, dated 4 November 2011, the CRMD dismissed SEC CRMD Case No. 11-236, stating that:

> "The Commission does not have jurisdiction over the subject matter of the case because the principal issue involves an intra-corporate dispute or a controversy arising out of intra-corporate relations between and among members and in the

[10] Paragraph 21, Page 3, Letter of Rep. Godofredo V. Arquiza, dated 31 August 2011, addressed to Hon. Teresita J. Herbosa.
[11] Paragraphs 28 to 30, Page 4, 4 November 2011 Decision of CRMD in SEC CRMD Case No. 11-236.

election or appointments of trustees and officers. Jurisdiction over such intra-corporate cases pertains to the regular courts."

"It is worth noting that this case involves claims pertaining to the composition of its board of trustees and officers that approved the subject amendments. Records also shows that the corporation submitted two GIS for the year 2011, one for the group of Cong. Arquiza submitted on June 1, 2011 and the other was submitted by the group of Mr. Datol on March 1, 2011. Thus, it is clear that there is existing board of trustees/officers squabble."

x x x

"Thus, we need not belabor upon the allegations of both parties regarding their claim that they are the legitimate board of trustees/officers of the corporation. Even assuming that both or one of the parties presented strong and credible claims, still the Commission may not arrogate upon itself the jurisdiction to decide the same. This is in order not to interfere with the adjudicative powers of the regular courts to decide the controversy."

Petitioner-Appellee did not appeal the 4 November 2011 Decision of the CRMD.[12] Instead, he filed a petition for cancellation of the Amended Articles of Incorporation of Senior Citizens on 13 February 2012. The petition, which is the subject of this appeal, was docketed as SEC CRMD Case No. 12-289. Petitioner-Appellee alleged therein, among others, that the persons who caused the amendment to the Articles of Incorporation of Senior Citizens are not legitimate members of the Board of Trustees of the corporation[13] and that the TINs of four out of five of these persons were spurious[14]. He attached a Verification/Certification to the Petition, paragraph 3 which states:

"I hereby certify that **I have not commenced any similar action, involving similar parties, and with similar cause of action in the Supreme Court, Court of Appeals, or in any other tribunal, or agency, and to the best of my knowledge, no such action is pending in the Supreme Court, Court of Appeals, Court or tribunal or agency**, and if I should learn that a similar action has been filed, I undertake to report the

[12] Paragraph 4, Page 2, Petitioner's Reply Memorandum, dated 21 August 2012.
[13] Paragraph 6, Petition.
[14] Paragraph 11, Petition.

said fact into this Honorable Commission within 5 days therefrom." *(Emphasis supplied)*

Respondents-Appellants alleged in their Answer with Motion to Dismiss[15] and reiterated in their Memorandum of Appeal[16] that, by failing to state in his Verification/Certification that he had filed a previous case before the SEC (SEC CRMD Case No. 11-236), Petitioner-Appellee submitted a false certification against forum shopping; hence, the petition (SEC CRMD Case No. 12-289) should have been dismissed.

In the case of Young vs. Seng[17], where the respondent failed to disclose the fact that he had filed a previous case in his Certification against Forum Shopping, the Supreme Court ruled, that:

> "Nonetheless, strengthening our ruling on the First Issue, **we hold that substantial justice requires the resolution of the present controversy on its merits. It must be noted that the verification requirement is a formal, not a jurisdictional, requirement.** Moreover, the ground for the dismissal of the First Case was lack of cause of action, which means that essentially, no case was filed, because the Complaint was fatally defective on its face. Hence, its dismissal was not determinative of the Second Case." *(Emphasis supplied)*
>
> "We repeat: the First Case was dismissed because of lack of cause of action. It was thus a dismissal without prejudice; respondent was not barred from filing a new suit against petitioner involving the same facts, but raising a cause of action arising therefrom. In fact, respondent actually filed the Second Case, even if he failed to disclose in his certification that he had commenced the First Case against the same defendant, herein petitioner. Furthermore, we must bear in mind that, **whenever possible and feasible, procedural rules should be liberally construed to ensure the just, speedy and inexpensive disposition of actions and proceedings on their merits**." *(Emphasis supplied)*
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> "In *Loyola v. Court of Appeals*, we said that the rule on non-forum shopping was designed to promote and facilitate the

[15] Paragraphs 1 to 5, Answer.
[16] Paragraphs 9 to 19, Memorandum of Appeal.
[17] G.R. No. 143464, 5 March 2003.

> orderly administration of justice and, therefore, should not be interpreted literally at all times."
>
> "The fact that the Circular requires that it be strictly complied with merely underscores its mandatory nature in that it cannot be dispensed with or its requirements altogether disregarded, but it does not thereby interdict substantial compliance with its provisions under justifiable circumstances."

Applying strict procedural rules, the Petition should have been dismissed because Petitioner-Appellee failed to disclose the fact that he had previously filed a case (SEC CRMD Case No. 11-236) seeking the same relief of cancellation of the Amended Articles of Incorporation of the corporation. However, as pointed out by the Supreme Court in the aforementioned case of Young vs. Seng, the interest of justice would be best served by the resolution of the case on the merits, which shall put an end to the controversy between the parties involved. Hence, it was proper for the CRMD to have taken cognizance of and decided the case on the merits despite Petitioner-Appellee's attachment of a defective Verification/Certification against forum shopping.

Aside from the submission of a false certification against forum shopping, Respondents-Appellants further alleged that the subject matter of SEC CRMD Case No. 11-236 and SEC CRMD Case No. 12-289 are the same, i.e., the revocation or cancellation of the amended Articles of Incorporation of Senior Citizens[18]. The only difference between the two complaints, allegedly, is that the second complaint added the ground of submission of alleged invalid TINs[19]. For Respondents-Appellants, this is another instance of forum shopping on the part of Petitioner-Appellee.

We disagree. As explained by the CRMD in its 4 July 2012 Decision, although in essence both actions are between the same parties similarly seeking to nullify and/or cancel subject corporation's Amended Articles of Incorporation approved on 11 August 2011, the grounds relied upon in each action are different. SEC CRMD Case No. 11-236 is intra-corporate in nature and was properly dismissed by the CRMD, whereas SEC CRMD Case No. 12-289, which is the subject of this appeal, relies upon Respondents-Appellants' non-compliance with documentary requirements. The inclusion of the issue of non-compliance with documentary requirements in SEC CRMD Case No. 12-289 justifies the liberal construction of the rules on forum shopping and warrants the adjudication of this case on the merits.

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[18] Paragraphs 11 to 12, Memorandum of Appeal.
[19] Paragraph 13, Memorandum of Appeal.

Is Petitioner-Appellee, then, guilty of forum shopping? Forum shopping can be committed in three ways: (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) filing multiple cases based on the same cause of action, but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*).[20]

Petitioner-Appellee's alleged act of forum shopping does not fall within the first category, considering that the first complaint, which was docketed as SEC CRMD Case No. 11-236, was already dismissed when Petitioner-Appellee filed the second petition, which was docketed as SEC CRMD Case No. 12-289. Petitioner-Appellee's filing of a second action likewise would not fall under the third category of forum shopping. As previously discussed, Petitioner-Appellee had different causes of action in the two cases: an intra-corporate dispute in SEC Case No. 11-236 and non-compliance with the documentary requirements in SEC Case No. 12-289.

Did Petitioner-Appellee commit forum shopping under the second category? The Supreme Court clarified the doctrine of *res judicata* as applied to forum shopping in the case of Chu, et al. vs. Spouses Cunanan, et al[21], thus:

> "Under the doctrine of res judicata, a final judgment or decree on the merits rendered by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits and on all points and matters determined in the previous suit. The foundation principle upon which the doctrine rests is that the parties ought not to be permitted to litigate the same issue more than once; that when a right or fact has been judicially tried and determined by a court of competent jurisdiction, so long as it remains unreversed, should be conclusive upon the parties and those in privity with them in law or estate."
>
> "Yet, **in order that res judicata may bar the institution of a subsequent action, the following requisites must concur:– (a) the former judgment must be final; (b) it must have been rendered by a court having jurisdiction of the subject matter and the parties; (c) it must be a judgment on the merits; and (d) there must be between the first and second**

[20] Chua, et al. vs. Metropolitan Bank & Trust Company, et al. G.R. No. 182311. 19 August 2009.
[21] G.R. No. 156185. 12 September 2012.

> **actions (i) identity of parties, (ii) identity of the subject matter, and (iii) identity of cause of action**." *(Emphasis ours)*

Admittedly, the 4 November 2011 Decision of the CRMD in SEC CRMD Case No. 11-236 has become final. SEC CRMD Case No. 11-236 and SEC CRMD Case No. 12-289, which is the subject of this appeal, also involved the same parties, Petitioner-Appellee and Respondents-Appellants, and the same subject matter, i.e., the cancellation of the amendments to the Articles of Incorporation of Senior Citizens. However, the 4 November 2011 Decision in SEC CRMD Case No. 11-236 was rendered precisely for lack of jurisdiction. As a necessary consequence of the dismissal for lack of jurisdiction, there was no judgment on the merits. Finally, the causes of action are different: SEC CRMD Case No. 11-236 involved purely intra-corporate issues while SEC CRMD Case No. 12-289 also involved non-compliance with documentary requirements. Clearly, then, the decision in SEC CRMD Case No. 11-236 does not constitute *res judicata* to bar the filing of SEC CRMD Case No. 12-289 and make Petitioner-Appellee liable for forum shopping.

B. That SEC-CRMD failed to comply with the mandatory rule on preliminary conference.

Section 5-1, Rule V of the 2006 Rules provides in part:

> "SEC. 5-1. Preliminary Conference. – In any action and upon assignment by the Director of the Operating Department concerned, **the Hearing Panel or Officer shall, in compliance with the existing rules on alternative dispute resolution, set the case for conference within ten (10) days after the last pleading allowed** under Section 3-13 is filed or upon expiration of the period within which to file the reply or rejoinder mentioned therein. x x x" *(Emphasis supplied)*

In their Memorandum of Appeal, Respondents-Appellants alleged that had there been a preliminary conference on the instant case, the CRMD would have been enlightened on the alleged existence of fraud[22] and the alleged violation of the rule on forum shopping in the case at bar[23].

Although it appears that the holding of a preliminary conference is mandatory because of the verb "shall", it does not necessarily follow that the absence of a preliminary conference would nullify the proceedings before the CRMD. A preliminary conference is held to consider the possibility of an amicable settlement,

[22] Paragraph 38, Memorandum of Appeal.
[23] Paragraph 39, Memorandum of Appeal.

the simplification of the issues, and such other matters that may aid in the just and speedy disposition of the case.[24]

More importantly, the absence of a preliminary conference did not cause substantial prejudice to Respondents-Appellants. Neither did it impair in any way the decision rendered by the CRMD. It must be noted that the issues raised by the parties were fairly simple: (a) whether the persons who caused the amendment of the Articles of Incorporation of Senior Citizens were authorized to do so; and (b) whether the amendment of the Articles of Incorporation of Senior Citizens was valid in view of the submission of invalid TINs. The parties did not disagree over these issues and instead chose to present arguments in support of their claims. Finally, despite the absence of a preliminary conference, the parties were able to discuss exhaustively their respective arguments by filing their respective pleadings, which resulted in the just and speedy disposition of the case.

C. That Petitioner-Appellee filed the wrong pleading.

Respondents-Appellants assert that Petitioner-Appellee should have appealed the 4 November 2011 CRMD Decision in SEC CRMD Case No. 11-236 to the Commission En Banc instead of filing another complaint.[25]

Although in both cases Petitioner-Appellee raised the issue that the persons who procured the amendment of the Articles of Incorporation of Senior Citizens were not the legitimate members of the corporation's Board of Trustees, the second petition raised an additional issue of submission of false TINs, which, by itself, constitutes a separate cause of action for the cancellation of the Amended Articles of Incorporation. Plaintiff-Appellee cannot be compelled to flog a dead horse, so to speak, by requiring him to appeal the 4 November 2011 Decision of the CRMD in SEC CRMD Case No. 11-236. Another remedy was available to Plaintiff-Appellee, i.e., the cancellation of the Amended Articles of Incorporation for non-compliance with documentary requirements, which he correctly pursued. This is in accordance with the doctrine of election of remedies, as explained by the Supreme Court in the case of Mellon Bank, N.A. vs. Hon. Magsino, et al,[26] vis:

> "As a technical rule of procedure, the purpose of the doctrine of election of remedies is not to prevent recourse to any remedy, but to prevent double redress for a single wrong. It is regarded as an application of the law of estoppel, upon the

[24] Section 5-1, Rule V, 2006 Rules of Procedure of the Securities and Exchange Commission.
[25] Paragraph 56, Page 21, Memorandum of Appeal.
[26] G.R. No. 71479, 18 October 1990.

theory that a party cannot, in the assertion of his right occupy inconsistent positions which form the basis of his respective remedies. **However, when a certain state of facts under the law entitles a party to alternative remedies, both founded upon the identical state of facts, these remedies are not considered inconsistent remedies. In such case, the invocation of one remedy is not an election which will bar the other, unless the suit upon the remedy first invoked shall reach the stage of final adjudication or unless by the invocation of the remedy first sought to be enforced, the plaintiff shall have gained an advantage thereby or caused detriment or change of situation to the other.** It must be pointed out that ordinarily, election of remedies is not made until the judicial proceedings has gone to judgment on the merits."

To reiterate, Petitioner-Appellee had the alternate remedy of seeking the cancellation of the Amended Articles of Incorporation of Senior Citizens for non-compliance with documentary requirements.

D. That Petitioner-Appellee filed his Reply to the Memorandum of Appeal out of time.

This omission was not raised in the Answer or in the Memorandum of Appeal. Nonetheless, the Commission En Banc shall address the same to finally put to rest the procedural issues in this case.

On 25 July 2012, Petitioner-Appellee received the 23 July 2012 Order of this Commission requiring him to file a Reply Memorandum within ten (10) days from receipt thereof. It was only on 22 August 2012 – **thirteen (13) days from his deadline of 9 August 2012** – when Petitioner-Appellee filed his Reply Memorandum without presenting any justifiable ground therefor. Petitioner-Appellee's submission of an incorrect Verification/Certification against forum shopping has been treated with much leniency in the interest of substantial justice. It appears, however, that instead of encouraging Petitioner-Appellee and/or his counsel to comply with the 2006 Rules of Procedure, such leniency has emboldened Petitioner-Appellee and/or his counsel to disregard the provisions of the 2006 Rules of Procedure. In this vein, Petitioner-Appellee and his counsel are reminded that procedural rules should not be disdained as mere technicalities. They may not be ignored to suit the convenience of a party. Public order and our system of justice are well served by a conscientious observance by the parties of the procedural rules.[27]

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[27] Po vs. Dampal. G.R. No. 173329. 21 December 2009.

Pursuant to Section 11-5, Rule XI of the 2006 Rules of Procedure[28], Petitioner-Appellee's Reply Memorandum and Manifestation relative to the appeal are hereby expunged. The appeal shall be based on Respondents-Appellants' Memorandum of Appeal, the documents attached in support thereof, and the documents submitted in the original case.

Having disposed of the procedural issues raised by Respondents-Appellants and discovered by the Commission En Banc on appeal, we shall now proceed to the resolution of the substantive issues raised on appeal, to wit:

1. That Respondents-Appellants did not commit fraud in procuring their Amended Certificate of Registration for giving invalid TINs;

2. That Respondents-Appellants substantially complied with the basic requirements of the SEC in applying for the amendment of the Articles of Incorporation of Senior Citizens; and

3. That petitioner came to the Commission with dirty hands.

A. That Respondents-Appellants did not commit fraud in procuring their Amended Certificate of Registration for giving invalid TINs.

Respondents-Appellants did not deny that the TINs that they submitted were inaccurate. In their defense, they alleged that the inaccuracies were mere typographical errors.[29]

The following are the TINs of Respondents-Appellees as stated in the Trustees' Certificate[30] and compared with the TINs verified by the BIR[31] the Certification from the Bureau of Internal Revenue (BIR), dated 25 November 2011:

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[28] "**SEC. 11-5. Reply Memorandum.** – The appellee shall file seven (7) copies of the reply memorandum with the Commission En Banc, furnishing copies thereof to the appellant within ten (10) days from receipt of the Order to file reply memorandum."
"Failure to file the reply memorandum within the prescribed period in the Order shall be construed as a waiver to file the same."
[29] Paragraph 14, Page 5, Answer.
[30] Annex "B" of the Petition.
[31] Annexes "J" to "M", Memorandum of Appeal.

NAME	TIN AS APPEARING IN TRUSTEES' CERTIFICATE	TIN AS VERIFIED BY BIR/APPEARING IN CERTIFICATION ISSUED BY BIR
1. Francisco G. Datol, Jr.	907-110-400	907-110-406
2. Arsenio B. Alvarez	302-054-521	209-200-510
3. Charlito Cariño	138-932-69	138-932-692
4. Plutarco E. Vazquez	113-362-466	113-362-466
5. Marcelo Landicho	107-175-662	107-175-662[32]

It appears that, indeed, the inaccuracies in the TINs of Francisco G. Datol, Jr. and Charlito Cariño are mere typographical errors. However, there is no satisfactory explanation for the invalid TINs of Arsenio B. Alvarez and Marcelo M. Landicho.

Arsenio B. Alvarez attributed the error in his TIN to his old age and his reliance in good faith on a number – which he believed was his TIN – found on a scrap of paper in his wallet.[33] This defense is self-serving. Arsenio B. Alvarez should have been more prudent and checked his Taxpayer's Identification Card to ascertain his TIN, considering that the same was needed in a document that is required by the Government. Instead, he merely relied on a scrap of paper which may contain several numbers that may yield innumerable combinations for identification purposes. The acts of Arsenio B. Alvarez display gross negligence amounting to fraud, if not outright fraud.

As for Marcelo Landicho, the 25 November 2011 BIR Certification reflects that the TIN which was stated in the Trustees' Certificate as Marcelo Landicho's belonged to a certain Isabelita De la Cruz Landicho. Section 236(j) of the National Internal Revenue Code provides:

> "Any person required under the authority of this Code to make, render or file a return, statement or other document shall be supplied with or assigned a Taxpayer Identification Number (TIN) which he shall indicate in such return, statement or document filed with the Bureau of Internal Revenue for his proper identification for tax purposes, and which he shall indicate in certain documents, such as, but not limited to the following:

[32] Same as TIN of Isabelita De la Cruz Landicho
[33] Affidavit, dated 12 July 2012, of Arsenio B. Alvarez. Annex "M-1" to the Memorandum of Appeal.

x x x

"(5) Documents to be registered with the Securities and Exchange Commission.

"**Only one Taxpayer Identification Number (TIN) shall be assigned to a taxpayer.** Any person who shall secure more than one Taxpayer Identification Number shall be criminally liable under the provision of Section 275 on 'Violation of Other Provisions of this Code or Regulations in General'." *(Emphasis supplied)*

Marcelo Landicho's use of the TIN belonging to Isabelita De la Cruz Landicho constitutes willful misrepresentation that would justify the cancellation of the Amended Articles of Incorporation of Senior Citizens in accordance with Section 5.i.1 of Presidential Decree Number 902-A.[34]

Even if the errors made in the designation of the TINs were made in good faith, the cancellation of the Amended Articles of Incorporation of Senior Citizens is still warranted. Fraud is not an essential element in the rejection or disapproval of the articles of incorporation under Section 17.1 of the Corporation Code[35]. Mere non-compliance with the form prescribed is a ground for such rejection or disapproval. In line therewith, SEC Memorandum Number 22, Series of 1999 provides:

"Section 1. No application for registration or licensing shall be accepted by the Commission unless the Tax Identification Number (TIN) of the corporation, partnership, incorporators, stockholders, members, partners, directors and officers or any person acting in behalf of the corporation and partnership are indicated in the following registration forms/documents filed with this Commission:

x x x

[34] "Sec. 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving:

x x x

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:

x x x

1. Fraud in procuring its certificate of registration x x x"

[35] "Sec. 17. **Grounds when articles of incorporation or amendment may be rejected or disapproved.** – The Securities and Exchange Commission may reject the articles of incorporation or disapprove any amendment thereto if the same is not in compliance with the requirements of this Code: *Provided*, That the Commission shall give the incorporators a reasonable time within which to correct or modify the objectionable portions of the articles or amendment. The following are grounds for such rejection or disapproval:

1. That the articles of incorporation or any amendment thereto is not substantially in accordance with the form prescribed herein; x x x"

H. Any document submitted for registration/approval.

Thus, applying Section 17.1 of the Corporation Code and SEC Memorandum Number 22, Series of 1999 in relation to Section 236(J)(5) of the National Internal Revenue Code, Respondents-Appellees' Amended Articles of Incorporation must be cancelled for non-compliance with the requirement of submission of valid TINs.

B. That Respondents-Appellants substantially complied with the basic requirements of the SEC in applying for the amendment of the Articles of Incorporation of Senior Citizens.

Respondents-Appellants rely on the 4 November 2011 Decision of the CRMD in SEC CRMD Case No. 11-236 which states that the Amended Articles of Incorporation are compliant with the requirements of Section 16 of the Corporation Code.

It must be noted, however, that Respondents-Appellants' submission of invalid TINs was not raised as an issue in SEC CRMD Case No. 11-236. On the other hand, it was one of the main issues in SEC CRMD Case No. 12-289. It was only at this point when the CRMD was able to scrutinize in detail the TINs submitted by Respondents-Appellants and discovered that, indeed, some of the TINs provided by Respondents-Appellants were invalid. The CRMD should not be bound by its previous findings in the previous case but, instead, should be given an opportunity to correct itself in view of the presentation of additional issues and evidence in support thereof. Consequently, the CRMD was correct in overturning its previous pronouncements in SEC CRMD Case No. 11-236 that Respondents-Appellants had substantially complied with the requirements for the amendment of the Articles of Incorporation of Senior Citizens upon perusal of the TINs of Respondents-Appellants, which revealed the submission of invalid TINs.

C. That petitioner came to the Commission with dirty hands.

Respondents-Appellants claim that the Petition should be dismissed because Petitioner himself and his allies provided invalid TINs in Petitioner's Trustees' Certificate, which was attached to the Petition.

This allegation is immaterial. The issue raised in the Petition is whether Respondents-Appellants submitted invalid TINs. Petitioner-Appellee presented a Certification from the Bureau of Internal Revenue to this effect. Thus, the burden to disprove Petitioner-Appellee's contention shifts upon Respondents-Appellants. Unfortunately, however, Respondents-Appellants were not able to substantially disprove the claim.

We note that **ALL of the SEVEN** (7) signatories to the Trustees Certificate dated 10 February 2012 and the General Information Sheet for the Year 2011 submitted by Petitioner-Appellee and the other alleged members of the Board of Trustees of Senior Citizens are invalid as certified by the BIR.[36] It is unfortunate that this will not detract from the fact that Respondents-Appellants themselves submitted inaccurate TINs. Neither can this justify a collateral attack on the validity of the 2011 GIS submitted by Petitioner-Appellee and his allies. The law provides Respondents-Appellants with numerous remedies to address this matter; unfortunately, this appeal is not one of those remedies.

WHEREFORE, premises considered, the **APPEAL** is hereby **DISMISSED.**

SO ORDERED.

Mandaluyong City, 6 December 2012.

TERESITA J. HERBOSA
Chairperson

MA. JUANITA E. CUETO
Commissioner

MANUEL HUBERTO B. GAITE*
Commissioner

ELADIO M. JALA
Commissioner

ANTONIETA F. IBE
Commissioner

*On official leave.

[36] Certification, dated 13 July 2012. Annex "N" of Memorandum of Appeal.