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

**IN THE MATTER OF:**
**ETHEL ASUNCION MOON,**
*Petitioner-Appellant,*

-versus-

**SEC En Banc Case No. 08-19-461**
**Promulgated:** 13 October 2022

**SEA PINE SHIPPING CORPORATION,**
Represented by Rosalyn N. Tamares – in her personal capacity, Ma. Cecilia S. Zeta, Rosemarie Bermudez, Gyu Cho Lee, and Kyung Sook Yoon,
*Respondents-Appellees.*

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# DECISION

Before this Commission is the Memorandum on Appeal filed on 28 August 2019 by Ethel Asuncion Moon ("Appellant") assailing the Decision dated 17 July 2019 ("Assailed Decision") issued by Dir. Gerardo F. Del Rosario of the Company Registration and Monitoring Department (CRMD), which dismissed Appellant's Complaint dated 26 November 2018 on the ground of lack of jurisdiction, the dispositive portion of which reads:

> "**WHEREFORE**, in view of the foregoing, the Petition dated 26 November 2018 for the Revocation of the Certificate of Registration of Sea Pine Shipping Corp. is hereby **DISMISSED** for lack of jurisdiction."

## THE RELEVANT FACTS

Sea Pine Shipping Corp. ("Sea Pine") is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, having been issued Certificate of Registration No. A1997-9561 on 16 May 1997. Its principal office address is at the 6th Floor, Ramon Magsaysay Center, 1680 Roxas Boulevard, Manila.

Article EIGHT of the Articles of Incorporation of Sea Pine states Rosalyn N. Tamares, Ethel A. Moon, Ma. Cecilia S. Zeta, Gyo Cho Lee and Kyung Sook Yoon as incorporators.

On 26 November 2018, Appellant filed with the CRMD a Complaint seeking the cancellation of the Certificate of Registration of Sea Pine on the ground of fraud in the procurement thereof, and for alleged violation of Presidential Decree (PD) No. 108 or the "Anti-Dummy Law." Appellant alleged that she did not consent to being an incorporator of Sea Pine, and that her signature in the incorporation documents were all forged.[1] Appellant further alleged that she was used as a dummy to make it appear that Sea Pine complied with the foreign ownership restriction on shipping companies. Sea Pine, according to Appellant, is thus liable for the crime of simulation of Minimum Capital punished under the Anti-Dummy Law.

In its Answer dated 11 February 2019, Sea Pine prayed for the dismissal of the Complaint for lack of merit, for being barred by prescription, and for violation of the rule against forum shopping. In support thereof, Sea Pine denied having forged the signature of Appellant in the AOI of the corporation, and alleged that when the said AOI was returned to the corporation by Jong Gu Moon, Appellant's husband, the same already contained the signature of Appellant. This, according to Sea Pine, was not denied by Appellant.

In Appellant's Reply[2] and Supplemental Reply,[3] she alleged that Sea Pine, through its directors and officers, has the propensity of using falsified documents, and in making it appear that it is compliant with applicable laws.

On 17 July 2019, the CRMD issued the Assailed Decision dismissing the Complaint for lack of jurisdiction. The CRMD ratiocinated that while the Commission has jurisdiction over actions for revocation of Certificates of Registration which have been procured by means of fraud, such jurisdiction does not extend to cases which calls for the determination on whether forgery has been committed, as this is essentially a criminal action cognizable by the courts of law. The CRMD took administrative notice of the fact that complaints for falsification and the use of falsified documents have already been filed, and were pending with the proper fora. Finally, the CRMD accorded to the AOI the

[1] Pars. 20, 21, and 25 of the Complaint dated 26 November 2018
[2] Filed on 5 March 2019
[3] Dated 26 March 2019

presumption of regularity, being a notarized document, which constituted *prima facie* evidence of the truth of the facts stated therein.

In her Appeal, Appellant bewailed the dismissal of her Complaint and alleged that the CRMD erred in focusing only on the issue of fraud in the procurement of Sea Pine's AOI, despite a recital in her pleadings of the other violations committed by Sea Pine. Appellant maintained that the CRMD should have found that the AOI was procured by fraud because the evidence that she submitted showed the disparity of her true signature from her falsified signature.[4] Appellant further argued that the cancellation of the Certificate of Registration of Sea Pine is warranted by the alleged use by the latter of falsified documents which included its Amended AOI and GIS.

**ISSUE**

Whether the allegations and the evidence on record warrant the revocation of the Certificate of Registration of Sea Pine on the ground of fraud in the procurement thereof.

**RULING**

The Appeal is bereft of merit.

The Securities Regulation Code[5] (SRC) and the Revised Corporation Code[6] (RCC) both contain an express grant to the Commission of the power and authority, among others, to suspend or revoke the certificate of registration of corporations, after notice and hearing, based on the grounds provided for by law, thus:

> "Section 5. Powers and Functions of the Commission. – 5.1. 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:
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> xxx xxx xxx
>
> (m) **Suspend, or revoke, after proper notice and hearing the franchise or certificate of registration of**

[4] Pars. 40 to 42 of the Appeal
[5] Republic Act No. 8799
[6] Republic Act No. 11232

> **corporations**, partnership or associations, **upon any of the grounds provided by law**; xxx"[7]

> "Section 179. *Powers, Functions, and Jurisdiction of the Commission.* – The Commission shall have the power and authority to:
>
> xxx xxx xxx
>
> (j) Suspend or revoke the certificate of incorporation after proper notice and hearing;"[8]

Relative thereto, Section 6 of PD No. 902-A specifically provides for the grounds that will warrant the suspension or revocation of a certificate of registration, to wit:

> "Section 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:
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> 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:
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> 1. **Fraud in procuring its certificate of registration;**
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> 2. Serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public;
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> 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;
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> 4. Continuous in operation for a period of at least five (5) years;
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> 5. Failure to file by-laws within the required period;
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> 6. Failure to file required reports in appropriate forms as determined by the Commission within the prescribed period;" (Emphasis and underscoring supplied)

The use of the word "fraud" in its generic and unqualified sense in the afore-quoted provision means that it includes not only actual fraud but also, by reason of public policy, constructive fraud. The Supreme Court in *Care Best International, Inc. vs Securities and Exchange*

[7] Section 5.1(m) of the SRC
[8] Section 179(j) of the RCC

*Commission, et al.,*[9] affirmed the ruling of the Court of Appeals which includes, in part, the following:

> "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. 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 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." (Underscoring supplied)

Moreover, this Commission has consistently held that for purposes of Section 6(i)(1) of PD No. 902-A, fraud as a ground for the revocation of a certificate of registration refers to fraud attendant in the registration, and must be contained or connected with the documents or papers presented to the Commission, for purposes of registration.[10]

The purpose and policy of the law in including fraud in the procurement of the certificate of registration, as a ground for its revocation, is to ensure that every corporation established under the Corporation Code (now the RCC), which is entitled to enjoy the rights and privileges granted by the State, is truthful in each and every declaration and disclosure that it makes. Only through this mechanism can the public be assured that fictitious, bogus or sham corporations are allowed to operate. This is consistent with the mandate of the Commission in promoting the development of the capital market and in protecting investors,[11] among others. Thus, in *Care Best International, Inc. vs Securities and Exchange Commission, et al.,* the Supreme Court sustained the Court of Appeals and the Commission in revoking the certificate of registration of a corporation, on the basis of a finding that three (3) of its incorporators used their aliases instead of their real names

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[9] GR No. 215510. March 16, 2015

[10] "The fraud mentioned in Section 6, paragraph I, subparagraph 1 of P.D. 902-A as one of the grounds for revocation of a certificate of registration of a corporation, partnership or association refers to **fraud attendant in the registration of the corporation, partnership or association and the same must be contained or connected with the documents and/or papers presented to this Commission for the registration of the said corporation**, partnership or association." (Emphasis and underscoring supplied) [*In the Matter of Silvermoon Security & Investigation Agency, Inc.*, SEC Case No. 12-05-99 (Order), March 30, 2006.]

[11] See Section 2 of the Securities Regulation Code

in the AOI, and that such act rendered it difficult, if not impossible, for the Commission to determine if the requirements of Section 10 of the Corporation Code were complied with. The Court of Appeals significantly ruled in the case that an act of misrepresenting one's identity tended to confuse and defeat whatever claims the other corporate stakeholders, including the general public, may have against them. These circumstances, according to the appellate court, effectively placed the authenticity of the AOI under a "cloud of doubt."

In the instant case, there is no allegation in the Complaint that the incorporators of Sea Pine made a misrepresentation about their respective identities. Appellant is alleging that her signature in the AOI of the corporation was forged, because she never signed it and did not have any intention to become an incorporator. Necessarily, according to Appellant, the AOI of Sea Pine was procured by means of fraud.

Given the foregoing, the Commission agrees with the CRMD that the determination on whether a signature was forged is one that falls within the exclusive province of the courts which are required to conduct an independent examination of the questioned signature in order to arrive at a reasonable conclusion as to its authenticity.[12] Moreover, consistent with the established rule that forgery must be established by clear, positive, and convincing evidence,[13] the conduct of a full-blown trial by a court of competent jurisdiction is indispensable, as even the finding of probable cause by the city prosecutor that a forgery was committed, is still required to be threshed out in a full-blown trial.[14]

Relative thereto, the evidence on record shows that Appellant already filed a Complaint-Affidavit against private respondents for violation of Article 172 (Falsification by private individual and use of falsified documents) of the Revised Penal Code before the Office of the City Prosecutor (OCP) of Manila,[15] which was dismissed in a Resolution dated 26 May 2017[16] for lack of probable cause. The same Resolution was never assailed by Appellant. Further, the evidence shows that Appellant filed another criminal complaint[17] against private respondents for

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[12] *Jimenez v. Commission on Ecumenical Mission*, (G.R. No. 140472, [June 10, 2002], 432 PHIL 895-912)
[13] "**As a rule, forgery cannot be presumed and must be proved by clear, positive and convincing evidence, the burden of proof lies on the party alleging forgery. One who alleges forgery has the burden to establish his case by a preponderance of evidence, or evidence which is of greater weight or more convincing than that which is offered in opposition to it**. In this case, the respondent was not able to prove the fact that his signature was forged." (Philippine Trust Company vs Gabinete, G.R. No. 216120, March 29, 2017)
[14] Shu vs Dee (G.R. No. 182573, April 23, 2014)
[15] Answer to the Memorandum on Appeal dated 18 November 2021. Annex "5"
[16] *Ibid*. Annex "6"
[17] *Ibid*. Annex "8"

alleged Use of Falsified Document in any Transaction, which is currently pending with the OCP of Mandaluyong.

Finally, the argument of Appellant that the CRMD committed grave abuse of discretion when it considered the original AOI when such was not presented in evidence, is bereft of merit. It should be emphasized, lest Appellant forgets, that the Commission is the repository of all corporate documents filed with it, which, unless specifically provided by law, are considered public documents which this Commission can take administrative notice of.

**WHEREFORE**, premises considered, the Memorandum on Appeal is hereby **DISMISSED** for lack of merit. The Decision dated Order dated 17 July 2019 (the "Assailed Decision") issued by the Company Registration and Monitoring Department **STANDS.**

**SO ORDERED.**

Makati City, Philippines.

**EMILIO B. AQUINO**
Chairperson

**JAVEY PAUL D. FRANCISCO**
Commissioner

**KELVIN LESTER K. LEE**
Commissioner

**KARLO S. BELLO**
Commissioner

**MCJILL BRYANT T. FERNANDEZ**
Commissioner