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

In the matter of

MAYPAJO J.P. RIZAL PUBLIC MARKET VENDORS ASSOCIATION INC.

SEC Admin. Case No. 07-10-120
For: Revocation of Certificate of Incorporation

ENFORCEMENT AND PROSECUTION DEPARTMENT
Petitioner.

x---x

14 October 2010

TO:

MAYPAJO J. P. RIZAL PUBLIC MARKET VENDORS ASSOCIATION INC.
J. P. Rizal Street, Maypajo,
Caloocan City

GREGORIO S. LIM
President
Maypajo J.P. Rizal Public Market
Vendors Association, Inc.
9-P Istanislao St., Maypajo,
Caloocan City

ECONOMIC RESEARCH AND INFORMATION DEPARTMENT
Securities and Exchange Commission
7th Floor, SEC Building, EDSA,
Greenhills, Mandaluyong City

ENFORCEMENT AND PROSECUTION DEPARTMENT
Securities and Exchange Commission
5th Floor, SEC Building, EDSA,
Greenhills, Mandaluyong City

COMPANY REGISTRATION AND MONITORING DEPARTMENT
Securities and Exchange Commission
2nd Floor, SEC Building, EDSA,
Greenhills, Mandaluyong City

Greetings:

Please take notice that on 14 October 2010, a **DECISION** was issued in the above-entitled case, the original of which is now on file with this Commission.

Mandaluyong City, Philippines.

By Authority of the Commission:

C.A. GERARD M. LUKBAN
Commission Secretary

ERID
RECEIVED
by Nerdi on 10/15

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

In the Matter of

MAYPAJO J.P. RIZAL PUBLIC MARKET VENDORS ASSOCIATION INC.

SEC Adm. Case No. 07-10-120
[Ref: CED Case No. 09-2899]

Enforcement and Prosecution Department,

Petitioner.

x---x

DECISION

This resolves the Petition for Revocation of the Certificate of Revocation of MAYPAJO J.P. RIZAL PUBLIC MARKET VENDORS ASSOCIATION, INC, filed by the Enforcement and Prosecution Department (EPD) on 09 July 2010.

In the Petition, the EPD alleges that the incorporators committed fraud in the procurement of the Association's primary registration by using fake Tax Identification Numbers (TIN) in the Articles of Incorporation.

Section 1 of **Executive Order No. 98** dated 28 April 1999, provides for the inclusion of the Tax Identification Number as part of the essential requirements in all applications for a government permit, license, clearance, official paper or document, *viz*:

> "**SECTION 1**. All government agencies and instrumentalities, including Government-Owned and/or Controlled Corporation, and all Local Government Units, are hereby directed to incorporate the Tax Identification Number (TIN) in all forms, permits, licenses, clearances, official papers and documents which they issue to persons transacting business with them, be they natural or judicial.

To implement Executive Order No. 98, The Commission issued **SEC**

Memorandum Circular No. 20 Series of 1999, which 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:
>
> A. Cover Sheet for Any Application
> B. Registration Data Sheet (for regular processing)
> C. Express Lane Form of Articles of Incorporation and By-laws (Express Lane does not require RDS)
> D. Company Data Maintenance Form
> E. Name Relationship Data Maintenance Form
> F. General Information Sheet
> G. Letter-request for Opinion
> H. Any Document submitted for registration/approval
> I. Renewal Applications for Secondary License
> J. Forms 19-BD, 19-BDR, 19-S, 19-SR, 40-TA, 40-AR
> K. Personal Information Sheet of Directors/Officers of Financing Companies
>
> xxx xxx xxx
>
> Section 3. A fine of P1,000.00 shall be imposed on the corporation, partnership and/or natural person who committed any of the following and such other sanctions provided in the Internal Revenue Code and other pertinent laws and regulations:
>
> A. Use of double or multiple TINs by the same taxpayer
> B. Use of TIN other than that assigned to the taxpayer
> C. Use of spurious TIN."

The subject Association is a non-stock corporation duly registered with the Commission on 15 October 2008 under SEC Registration No. CN200816338.

On 13 January 2009, Maypajo Market Multi-Purpose Cooperative ("MPC", for brevity) through its General Manager, Ramon C. Galicia filed a verified complaint against the Association with the EPD.[1]

The verified complaint alleged that the procurement of the primary registration of the Association was tainted with fraud because some of its incorporators were not really market vendors at the time when the Association was incorporated and that some of its incorporators made use of fake TINs in the Articles of Incorporation.

EPD investigated the issues raised in the complaint. Verification of the Association's registration and filings with the Commission revealed that the primary purposes for which the Association was incorporated are the following:

> "1. To promote, encourage unity and cooperation among members who are vendors in Maypajo Public Market
>
> 2. To integrate and coordinate their activities with city government having control and supervision of public market
>
> 3. To promote, encourage and work together for the upliftment in livelihood, moral and socio economic
>
> 4. And such other acts which may tend to improve further the condition and well-being of the members of the Association."[2]

After verifying the Association's registration, the EPD investigating team conducted a conference with the incorporators and trustees of the Association on 28 January 2009.

During the conference, the incorporators namely: Gregorio S. Lim, Charles G. Forto, Ramona D. Marcial, Ma. Alma D. Arteta, Aurelio Degenia, and Jose E. Samonte, stated that they were market vendors even before the Association was incorporated. Consequently, the EPD directed the incorporators to submit the Association's corporate books and records to confirm the statements they made during the conference. However, the incorporators did not comply with this directive.

In the meantime, the EPD verified the validity of the incorporators' TIN as indicated in the Association's Articles of Incorporation. The Bureau of Internal Revenue District Office No. 27 of Caloocan City ("BIR-RDO No. 27", for brevity) issued a letter-certification confirming that six (6) out of the ten (10) incorporators used incorrect TIN, or TIN belonging to somebody else.[3] The certification provided:

---

[1] Petition, Annex "C".
[2] The Association's Articles of Incorporation, Article 1.
[3] Petition, Annex E.

"Sir:

Relative to your request for certification for the TINs of the incorporators of Maypajo J.P. Rizal Public Market Vendors Assn. Inc. which we received last June 24, 2009, our verification thru ITS (Integrated Tax System) and TIN Web showed the following results:

Names	**TIN submitted**	**Verification/Remarks**
Gregorio Sarmiento Lim	199-089-615	Correct/Valid
Ramona Dayao Marcial	248-716-473	Valid TIN but owned by another person
Maria Alma Dayao Arteta	228-999-175	Valid TIN but owned by another person
Erlinda Ramos Bato	194-091-462	Valid TIN but owned by another person
Antonette Sosa Manlapit	236-935-221	Invalid TIN (Correct TIN 203-932-992)
Jose Echano Samonte	253-364-714	Invalid TIN (No TIN record)
Charles Garcia Forto	212-393-271	Correct/Valid
Marissa Lorenzo Del Rosario	101-380-498	Correct/Valid
Aurelio Pasco Dugenia	241-327-364	Valid TIN but owned by another person
Carmelo Crespo Yapchangco	243-385-716	Correct/Valid

xxx xxx xxx"

Thus, on 27 April 2010 the EPD issued letters[4] to the Association and its president Gregorio S. Lim, informing them that the BIR-RDO No. 27 confirmed that invalid TINs were used in the Association's Articles of Incorporation. Further, the EPD required the Association to pay a fine in the amount of P12,000.00, and to correct the invalid TINs in Articles of Incorporation within thirty (30) days from receipt of the letter.

The Association received notice of the letter on 29 April 2010. On 27 May 2010, the EPD received a letter from Gregorio S. Lim dated 21 May 2010 stating that they will amend their Articles of Incorporation as soon as possible but requested for the cancellation of the fine in the amount of P12,000.00. [5]

In a letter dated 31 May 2010, EPD denied the request for cancellation of the fine. Further, the EPD required the Association to pay the P12,000.00 fine, and to amend its Articles of Incorporation within fifteen (15) days from notice of the denial of the request.[6]

Gregorio S. Lim received the said letter on 31 May 2010. However, after the lapse of the 15-day period, the Association failed to pay the fine and amend its Articles of Incorporation. Thus, the EPD filed the present petition.

The Commission ordered the Association to answer the petition on 09 July 2010. Accordingly, the Association filed its answer on 29 July 2010. The EPD then

[4] Petition, Annexes "F" and "G."
[5] Petition, Annex "H."
[6] Petition, Annex "I."

filed a reply on 13 August 2010. And finally, the Association filed a rejoinder on 31 August 2010. Thus, the issues in this proceeding have been sufficiently joined, and are ripe for resolution.

In their answer and rejoinder, the Association raises the following defenses:

1) It was denied due process since it was not given notice of the verified complaint filed by MPC, and given the opportunity to answer the same.

2) The Association admits that its incorporators indicated fake TINs in the Articles of Incorporation. However, it maintains that the same does not constitute fraud in the procurement of the certificate of registration.

3) The Association filed a Petition for Correction of the Articles of Incorporation and Amended General Information Sheet with the Commission on 10 June 2010 to correct the fake TINs.

4) That SEC Memorandum Circular No. 20 series of 1999, Section 3 provides that:

   "SECTION 3. A fine of P1,000.00 shall be imposed on the corporation, partnership and/or natural person who committed any of the following and such other sanctions provided in the Internal Revenue Code and other pertinent laws and regulations:
   A. Use of double or multiple TINs by the same taxpayer
   B. Use of TIN other than that assigned to the taxpayer.
   C. Use of spurious TIN"

   Accordingly, the maximum penalty that can be imposed against the Association is a fine of P1,000.00.

We find that the petition is meritorious, and the defenses raised by the Association are untenable.

The Association's argument that it was denied due process is untrue. It is well-settled that "the essence of due process in administrative proceedings is the opportunity to explain one's side or seek a reconsideration of the action or ruling complained of. As long as the parties are given the opportunity to be heard before judgment is rendered, the demands of due process are sufficiently met."[7]

In this case, the facts, particularly the procedural history discussed earlier, show that the Association and its incorporators were given by the EPD with numerous instances, through conferences and correspondences, to explain the reason for the use of the fake TINs. Indeed, the Association, through Gregorio S.

---

[7] *Montemayor vs. Bundalian, et.al.*, G.R. No. 149335, July 1, 2003.

Lim's letter dated 21 May 2010, was able to explain the reason for the fake TINs, thus:

> "May kaugnayan sa maling T.I.N. na naisumite ng aking mga kasama ng aking alamin sa kanila "may nagsabi daw kasi sa kanila na baka puwede na iyong number ng kanilang anak o kamag-anak, without knowledge sa memorandum circular ng komisyon. Ako po ay humihingi ng paumanhin sa hindi sina(s)adyang pagkakamaling ito, at sana po ay mabigyan kami ng konsiderasyon na huwag na ipataw sa Asosasyon (Maypajo J.P. Rizal Public Market Vendors Asso. Inc.) ang multa. xxx"[8]

Thus, the requirements of due process were sufficiently met throughout the proceedings.

The parties do not dispute that six of the incorporators made use of fake TINs in the Association's Articles of Incorporation. Thus, the issue that needs to be resolved is whether or not the use of fake TINs constitutes fraud in the procurement of the certificate of registration, which results in revocation of the corporation's registration.

Section 6, paragraph L (1) of Presidential Decree No. 902-A, as amended, states:

> "Sec. 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:
>
> l)To suspend, or revoke, after proper notice and hearing, the franchise or certificate of registration of corporations, partnership or Associations, upon any of the grounds provided by law, including the following:
>
> 1. Fraud in procuring its certificate of registration;
>
> xxx xxx xxx"

The respondent argues that the incorporators, being market vendors who are not so educated, were unaware or ignorant of the requirement for stating authentic TINs, and thus, what they did was a simple mistake made in good faith.

However, we find it impossible for any reasonable person, whatever his level of education might be, to knowingly make a false statement, and still remain in good faith. Generally, a reasonable person will not in good conscience tell a falsehood. To what end was the employment of fake TINs made if not for the purpose of evading the requirement, and defeating the government's policy?

---

[8] Petition, Annex H.

It is worth stressing that Executive Order No. 98, series of 1999[9] was issued so that "tax monitoring, leading to increased compliance with tax laws, will be greatly improved if such Taxpayer's Identification Number will be made a **mandatory** requirement in all applications for any government permit, license, clearance, official paper or document by the transacting public."[10]

This shows that the submission of the correct TINs in the Articles of Incorporation filed with the Commission is a material fact relied upon by the Commission in the issuance of the certificate of incorporation. Thus, the misrepresentation of the TINs is tantamount to fraud, regardless of intention to deceive or not, considering that such misrepresentation is contrary to the public interest and public policy in that it prejudices the government's tax monitoring efforts. The succeeding discussion will further elucidate that good faith or bad faith is immaterial in the present case.

There are two types of fraud: actual and constructive. To constitute actual fraud there must be such fraud as affects the conscience – i.e., there must be the element of deceit or intentional deception. However, in constructive fraud, intention is immaterial. There is constructive fraud for as long as the act done or omitted constitutes a misrepresentation, which in the contemplation of the courts and tribunals is tantamount to a fraud because of its detrimental effect on public interest.

We clarify that "fraud" as used in Section 6, paragraph L (1) of P.D. 902-A includes constructive or legal fraud, and not just actual or moral fraud. The subject provision is not concerned with a crime or felony. And thus, criminal intent or intent to deceive is not essential. It is concerned with the regulation of the grant of a special privilege. Bear in mind that incorporation is not a matter of right but merely a special privilege extended by the state. Thus, in order to enjoy such privilege, the requirements and procedures for the grant thereof must be strictly complied with. To this end, the state prescribes and gives notice, through statutes and rules, of the necessary requirements and procedures for the grant of the privilege or franchise. Anyone interested in applying for a franchise must then exercise due diligence, and familiarize themselves with such statutes or rules in order to ensure that they will be able to strictly comply with the prescribed requirements and procedures. In other words, applicants are duty bound to know the regulations, and they can never be allowed to feign ignorance thereof as good faith excusing non-compliance therewith, and then demand a franchise from the state as a matter of right.

Thus, in the present case, it is of no consequence whether the incorporators were in good faith or not when they stated fake TINs in the subject Articles of Incorporation. The undisputed and admitted fact is that six of the incorporators knowingly and deliberately provided fake TINs in the Articles of Incorporation. Such

---

[9] 28 April 1999.
[10] E.O. No. 98, 4th clause; Emphasis ours.

misrepresentation was relied upon by the Commission in issuing the Association's certificate of registration. Were it not for the fake TINs, the Commission would have never accepting the Articles of Incorporation and issued the Association's certificate of registration.

And, it is well settled that the filing of false and fraudulent articles of incorporation is sufficient ground to sustain proceedings for forfeiture of corporate charter.[11] Thus, there can be no doubt that the subject certificate of registration merits revocation due to the fraudulent statement of the TINs in the articles of incorporation.

Further, the Association's argument that, in line with Section 3 of SEC MC No. 20, Series of 1999, the imposable fine should only be P1,000.00, is an erroneous interpretation of the circular. It must be stressed that nowhere in the said provision does it state that the penalties provided therein are exclusive, and to the exclusion of other penalties imposed under other laws and regulations. Besides, a mere circular cannot supersede a statute, i.e., P.D. 902-A.

Incidentally, the Association's 2010 General Information Sheet reveals that incorporators Ramona Dayao Marcial, Maria Alma Dayao Arteta, Erlinda Ramos Bato, Aurelio Pasco Dugenia, Antonette Sosa Manlapit and Jose Echano Samonte still indicated invalid and false TINs or TINs which are assigned to another person. Indubitably, these acts not only belie their claim of good faith but also constitute further violations of SEC Memorandum Circular No. 20, Series of 1999 which calls for the imposition of additional fines against them.

WHEREFORE, premises considered, the Certificate of Registration of respondent MAYPAJO J.P. RIZAL PUBLIC MARKET VENDORS ASSOCIATION INC., with Company Registration No. CN200816338 is hereby **REVOKED**.

Further, the incorporators namely, RAMONA DAYAO MARCIAL, MARIA ALMA DAYAO ARTETA, ERLINDA RAMOS BATO, AURELIO PASCO DUGENIA, ANTONETTE SOSA MANLAPIT and JOSE ECHANO SAMONTE are hereby **ORDERED** to pay a fine of two thousand pesos each (Php 2,000.00) for two violation of SEC Memorandum Circular No. 20 Series of 1999 in that they made use of fake TINs in the Articles of Incorporation and again in the 2010 GIS of the Respondent Association.

This is without prejudice to any further actions that may be taken against the responsible incorporators, directors, and officers of the subject Association.

---

[11] State ex rel. Brown v. Bailey, 16 Ind 46.

Let a copy of this Decision be furnished to the Company Registration and Monitoring Department for appropriate action. And, let this Revocation Order be posted at the Commission's website for purposes of giving notice to the public.

SO ORDERED.

Mandaluyong City, 14 October 2010.

FE B. BARIN
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner