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

VICSEV REALTY AND DEVELOPMENT CORPORATION,
Appellant,

-versus-

BENITO A. CATARAN, in his capacity as Director of the COMPANY REGISTRATION AND MONITORING DEPARTMENT,
Appellee.

SEC En Banc Case No. 04-07-0044
For: Appeal from an Order of Revocation dated 23 March 2006 by the Company Registration and Monitoring Department

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DECISION

For consideration is the Letter-Appeal of Appellant Vicsev Realty and Development Corporation (Vicsev) dated 23 February 2007 appealing the Order issued by the Company Registration and Monitoring Department (CRMD) dated 23 March 2006, revoking Vicsev's Certificate of Incorporation.

FACTS OF THE CASE

In the application for incorporation of Vicsev, Ramon Cruz, one of the incorporators thereof, executed a Deed of Assignment transferring all his rights and interests in two (2) parcels of land covered by Transfer Certificates of Title (TCT) Nos. T-103993 and T-105015, both located in Tanza, Cavite, in favor of Vicsev in exchange for 104,000 shares of Vicsev's outstanding capital stock.

On 11 December 2003, CRMD issued Vicsev's Certificate of Incorporation (SEC Registration No. CS200324512) with a condition that Vicsev must submit, within ninety (90) days from the date of incorporation, the proof of transfer to its name of the aforesaid TCTs.[1] However, Vicsev failed to comply with the said condition within the prescribed period.

During a conference of CRMD with Vicsev on 19 October 2005, the latter informed CRMD that the aforesaid TCTs have not yet been transferred to Vicsev's name due to delays in the Department of Agrarian Reform and the Bureau of Internal Revenue. Thus, CRMD apprised Vicsev of the consequences of its non-compliance with the SEC requirements.

On 23 March 2006, CRMD issued the assailed Order revoking Vicsev's Certificate of Incorporation for failure to comply with the conditions incorporated therein.

On 10 January 2007, Vicsev submitted the required TCTs to CRMD. However, in a letter dated 26 January 2007, CRMD informed Vicsev that its Certificate of Incorporation had already been revoked on 23 March 2006.

In a letter-appeal dated 23 February 2007, Vicsev requested the lifting of the aforesaid Order of Revocation alleging as follows:

1. The parcels of land are agricultural lands, and to register and transfer the titles in its name, Vicsev had to secure clearances from the Municipal Agrarian Reform Office and the Provincial Agrarian Reform Office of the Department of Agrarian Reform, a process which took some time owing to the long list of requirements;
2. Vicsev was required to secure from the Bureau of Internal Revenue (BIR) a Certificate of Authority to Register, which also took some time owing to another long list of requirements;
3. There were supervening events that contributed to the delay, i.e., a fire gutted a portion of the Office of the Register of Deeds and the political controversy at the Provincial Capitol Building which resulted in the barricading of the premises by the supporters of Governor Maliksi; thus, preventing the public from transacting business therein; and
4. After securing clearances from the aforesaid government agencies, Vicsev had to comply also with the stringent list of requirements at the Office of the Register of Deeds.

On 25 September 2007, an Order was issued directing CRMD to file its Reply Memorandum. On 09 October 2007, CRMD filed its Reply Memorandum contending as follows:

1. Vicsev's Certificate of Incorporation was approved on 11 December 2003 with a corresponding letter attached thereto, informing Vicsev that the

[1] As required by the Securities and Exchange Commission Guidelines Covering the Use of Properties that Require Ownership Registration as Paid-up Capital of the Corporation dated 15 November 1994.

approval of the Certificate of Incorporation is subject to the conditions set forth in the Guidelines Covering the Use of Properties that Require Ownership Registration as Paid-up Capital of the Corporation;
2. Vicsev was properly notified of the requirement of the Commission when it received the letter dated 11 December 2003 and in the conference held on 19 October 2005;
3. From the time of approval of Vicsev's Certificate of Incorporation up to 23 March 2006, Vicsev did not comply with the requirements of the Commission. Vicsev was therefore delinquent in the submission of the titles transferred in its name from 11 March 2004 to 10 January 2007.
4. Vicsev cannot invoke the defenses in its letter-appeal since it never filed a request alleging justifiable reasons for the extension of the prescribed period.

ISSUE

The sole issue in the present appeal is whether the Commission should set aside the Order revoking Vicsev's Certificate of Incorporation.

RULING

The answer is in the NEGATIVE.

Paragraph 1(a) of the SEC Guidelines Covering the Use of Properties that Require Ownership Registration as Paid-up Capital of the Corporation ("the Guidelines") provides:

> *"In the interest of investors and creditors in stock corporations, the following guidelines are hereby adopted by the Commission, in connection with land, and other properties requiring ownership registration, such as motor vehicles, sea vessels, aircraft, firearms and shares of stock, which are used as paid-up capital of stock corporations:*
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> 1. *That where any of the aforesaid properties is conveyed to a corporation as payment on subscription to the shares of stock of the latter, the Commission's approval of the related application filed thereon shall be subject to the following conditions:*
>
>   a. *Where the payment made is in the form of land, the corresponding shares of stock to be issued thereon shall be held in escrow by the Commission and shall be released only after proof of the transfer of the certificate of ownership thereon, in the name of the transferee-corporation, is submitted to this Commission within ninety (90) days from the date of approval of the application extendible for justifiable reasons;*

xxx *xxx* *xxx*

> 2. ***That the non-submission of the documents*** *as required above,* ***within the prescribed period****, after due notice and hearing,* ***shall be sufficient ground for the revocation of the related application*** *approved by the Commission or for the institution of appropriate action as the Commission may deem fit under the circumstances.*

xxx *xxx* *xxx"*(emphasis supplied)

The aforesaid guidelines were issued pursuant to the Commission's authority under Sections 6(i) and 6(l) of Presidential Decree 902-A, as amended, which reads:

> *"**Sec. 6**. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:*
>
> *xxx* *xxx* *xxx*
>
> *i) To impose fines and/or penalties for violation of this Decree or any other laws being implemented by the Commission, the pertinent rules and regulations, its orders, decisions and/or rulings;*
>
> *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:*
>
> *xxx* *xxx* *xxx"*

In the matter of *P.S.J. Carlos Development Corporation*[2], the defunct Prosecution and Enforcement Department of the Commission ordered the revocation of a corporation's certificate of registration due to its failure to comply with the aforesaid guidelines within the specified period despite repeated notice and several extensions. The said corporation's failure to transfer titles of ownership in favor of or under its name resulted to the insufficiency of its initial paid-up capital as required under Section 13 of the Corporation Code of the Philippines which reads:

> *"**Sec. 13. Amount of capital stock to be subscribed and paid for the purposes of incorporation.** — At least twenty-five percent (25%) of the authorized capital stock as stated in the articles of incorporation must be subscribed at the time of*

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[2] PED Case No. 95-1915, January 13, 1997.

> *incorporation, and at least twenty-five (25%) per cent of the total subscription must be paid upon subscription, the balance to be payable on a date or dates fixed in the contract of subscription without need of call, or in the absence of a fixed date or dates, upon call for payment by the board of directors: Provided, however, That in no case shall the paid-up capital be less than five Thousand (P5,000.00) pesos. (n)"*

In the present case, the same situation prevails considering that without the aforesaid two (2) parcels of land covered by TCT Nos. T-103993 and T-105015 which represent the payment for the subscription of Vicsev's shares of stock, the total amount of Vicsev's subscribed shares will only be One Hundred Thousand Pesos (Php 100,000.00) or far less than the twenty-five percent (25%) of the Ten Million Five Hundred Thousand Pesos (Php 10,500,000.00) required to be subscribed by law.

First, Vicsev cannot claim denial of due process in the revocation of its certificate of incorporation considering that it was given ample time and notice to comply with the requirements under the aforesaid guidelines. Records show that from 11 March 2004, the date the aforesaid requirements are originally due, Vicsev enjoyed a grace period of over a year and a half before a conference was held on 19 October 2005 wherein CRMD notified Vicsev of its non-compliance with the requirements as well as the consequences thereof. Moreover, from the date of the said conference until the issuance of the assailed Order on 23 March 2006, Vicsev enjoyed another five-month extension. Truly, Vicsev was accorded the due notice and hearing referred to in Section 6 of Presidential Decree 902-A, as amended.

Second, granting that its various excuses for non-submission are true, Vicsev should have consistently moved for extension of time to comply with the aforesaid requirements as provided under Section 1(a) of the Guidelines. Records show that Vicsev sent only two (2) letters to CRMD requesting for extension. The first letter dated 07 February 2004 requested an extension of sixty (60) days from 11 March 2004. The second letter dated 21 April 2004 requested another extension of sixty (60) days from 11 May 2004 or until 10 July 2004. However, after its second letter, Vicsev chose not to file any additional request for extension despite the fact that it had not yet complied with the requirements. Thus, it can be inferred that Vicsev had already assumed the possible consequences of its non-compliance within the authorized period.

Furthermore, Vicsev cannot argue that it made another request for extension during the 19 October 2005 conference. The flimsy explanations it gave during the said conference cannot be considered as a request for extension as they were neither substantiated nor put into writing.

The aforesaid guidelines are fairly clear that the period is extendible only "for justifiable reasons". The Commission is under no obligation to accept at face value the alleged reasons for the delay. It is axiomatic that the party that makes an affirmative allegation bears the burden of proving it.[3] Thus, Vicsev should have supported its request with competent evidence rather than simply making bare allegations.

Moreover, by invoking several reasons for its non-submission, Vicsev assumed the burden of not only proving the truth of its allegations but of establishing how exactly said reasons prevented it from submitting its proof of transfer for over three (3) years from the date of its incorporation.

Conspicuously, Vicsev failed to discharge this burden, both during the 2005 conference and in its pleadings.

WHEREFORE, premises considered, the instant appeal is hereby **DENIED.** The Order of Revocation dated 23 March 2006, revoking the Certificate of Incorporation of Vicsev Realty and Development Corporation, is hereby **AFFIRMED** without prejudice to its filing of a new application to incorporate. Let the Company Registration and Monitoring Department be furnished with a copy of this Decision for its appropriate action.

SO ORDERED.

Mandaluyong City, 11 February 2010.

FE B. BARIN
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner

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[3] Uy v. Phela Trading Corp., G.R. No. 152900, February 11, 2005, *citing* Manzano vs. Perez, G.R. No. 112485, Aug. 9, 2001 and United Airlines vs. Court of Appeals, G.R. No. 124110, April 20, 2001.