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

PERPETUAL HELP NEIGHBORHOOD ASSOCIATION OF GUADALUPE BLISS, INC., represented by its President, Mrs. Vilma Estidola,
Petitioner-Appellant,

-versus-

SEC EB CASE NO. 11-07-121
(SEC CASE NO. 04-05-57)
For: Change of Name

GUADALUPE BLISS URBAN DWELLERS INC., represented by its President, Mr. Carlo Glinoga and Vice-Pres. Mr. Rodolfo T. Pena,
Respondent-Appellee.

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DECISION

For consideration of the Commission *En Banc* is the appeal filed on 16 November 2007 by PERPETUAL HELP NEIGHBORHOOD ASSOCIATION OF GUADALUPE BLISS, INCORPORATED, ("PHNAGBI"/ "petitioner-appellant") praying that the Order of the Office of the General Counsel of the Commission ("SEC-OGC") dated 7 November 2007 (the "Order"), which denied petitioner-appellant's Omnibus Motion dated 6 December 2007, be reversed, and compel the change of name of GUADALUPE BLISS URBAN DWELLERS, INC. ("respondent -appellee") or revoke the corporate franchise of the same.

FACTS OF THE CASE

Both parties in this case are non-stock corporations. Petitioner-appellant was registered on March 6, 2001 with SEC Registration No. A200100461. Previously, its name was GUADALUPE BLISS URBAN DWELLERS, INC. ("GBUDI-1") which was registered on 26 June 1990 with SEC Registration No. 178536 but its term of existence expired on 26 June 2000. Respondent-appellee was registered on November 17, 2004 with SEC Registration No. CN200418111. Respondent-appellee GUADALUPE BLISS URBAN DWELLERS, INC. ("GBUDI-2") used the name of GBUDI-1 after the expiry of the latter's term of existence.

GBUDI-1 was organized as a result of an inter-agency recommendation directed by then President Corazon Aquino to facilitate the relocation of squatters occupying the Guadalupe Bliss Project IV in Cembo, Makati. GBUDI-1 was granted funding by the Home Insurance and Guaranty Corporation ("HIGC") for the construction of housing units in the relocation site, thirty per cent (30%) amounting to Php 3,722,347.00 of which was released on 21 November 1995 to GBUDI-1. However, its then President Daniel Tiamzon and Treasurer Teodora Abanto allegedly absconded with the same, except for the amount of Php 500,000.00 which was deposited in Metrobank.[1]

Vilma Estidola, representing petitioner-appellant, assumed the presidency of GBUDI-1, and pursued the continuation of the housing project. Because the corporate papers were allegedly taken by Tiamzon, who purportedly became a fugitive, the officers of GBUDI-1 were not able to extend the life of the association, during its existence as required by law.[2] Upon the advice of the Commission and HIGC, they formed the PERPETUAL HELP NEIGHBORHOOD ASSOCIATION OF GUADALUPE BLISS, INCORPORATED ("PHNAGBI"), the petitioner-appellant in this case. [3]

After Tiamzon fled, Carlo Glinoga became the Officer in Charge of GBUDI-1. With the authority from the Board of Trustees of GBUDI-1, Glinoga initiated the filing of an estafa case against Tiamzon and Abanto and the civil action for the recovery of Php500, 000.00 against Abanto. Rodolfo Pena was Vice-President of GBUDI-1 who, together with Glinoga had problems with the association in connection with their assignment to negotiate for a MERALCO connection. Both have transferred residences and have ceased to be members of GBUDI-1.[4]

Nevertheless, petitioner-appellant alleged that Glinoga personally appeared before the Regional Trial Court Branch (RTC) 132 of Makati where the civil case for the recovery of the amount of Php 500,000.00 was pending and claimed that he was the representative of GBUDI-1.[5] However, the RTC issued an Order stating that "Carlo V. Glinoga has no personality to appear in this case, as he is not a plaintiff as he purports to be."[6] The Court of Appeals likewise held that there is no proper showing that Glinoga is duly authorized to represent GBUDI-1 so he elevated the Order all to the way to the

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[1] Petition dated 30 March 2005, pp.1-5; Memorandum on Appeal dated 12 November 2007, pp.3-4.
[2] In extending corporate life, all necessary steps to affect the extension must be taken **during the life of the corporation** xxx (SEC Opinion dated 15 May 2000 addressed to Terminal Facilities & Services Corp.)
[3] Memorandum on Appeal filed 16 November 2007, p. 6.
[4] Id., pp. 5-6.
[5] Memorandum on Appeal, pp. 3-8.
[6] *Id.*, Annex "H."

Supreme Court, but failed, as indicated in Supreme Court Resolution dated January 12, 2004.[7]

Knowing that the corporate term of GBUDI-1 has expired, Glinoga and Pena caused the registration on November 17, 2004 of respondent-appellee, with the same name, office address, and contents of Articles of Incorporation of GBUDI-1. Petitioner-appellant likewise believes that Glinoga and Pena have a keen interest in the recovery of the Php 3,722,347.00 absconded fund of GBUDI-1.[8]

Concerned that the petitioner-appellant and its members may be prejudiced by the alleged schemes of Glinoga, *et al.*,[9] petitioner-appellant filed a Petition for Change of Corporate Name on 25 April 2005 praying that an Order be issued to change the corporate name of respondent-appellee, for violating Section 18 of the Corporation Code, and/or to have the certificate of registration of respondent-appellee revoked or withdrawn.[10]

On 14 December 2005, SEC-OGC issued an Order *dismissing* the petition, concluding that the corporate names of the contending parties are clearly not identical, deceptive or confusingly similar, pursuant to Section 18 of the Corporation Code. The Order also resolved that respondent's name contains two (2) dominant terms "Urban" and "Dweller" which clearly differ from the petitioner's name "Perpetual," "Help" and "Neighborhood," respondent-appellee's adoption of two (2) distinct words satisfies the SEC Revised Guidelines in the Approval of Corporate and Partnership Names (SEC Memorandum Circular No. 14, series of 2000).[11] However, the Order was silent on the prayer for revocation.[12] Dissatisfied, petitioner-appellant filed an Omnibus Motion dated 6 December 2006 ("Omnibus Motion"), which the SEC-OGC denied in an Order dated 7 November 2007, for lack of merit.

Hence, this appeal.

ISSUE

Whether the 7 November 2007 Order of the SEC-OGC ("Order") should be reversed and set aside.

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[7] *Id.*, Annexes "I" & "J."
[8] Memorandum on Appeal p.6.
[9] *Id.*,p.9.
[10] Petition, p.13.
[11] Order dated 14 December 2005, pp. 3-4.
[12] Sec Memorandum Circular No. 14-00 dated October 24, 2000.

RULING

We affirm the Order.

In the Omnibus Motion, petitioner-appellant prayed, among others for SEC-OGC: 1) To conduct a formal hearing for the motions submitted by petitioner-appellant; 2) To set aside the Order dated 14 December 2005 considering that the Commission had already resolved an issue not alleged by petitioner-appellant; 3) To inhibit the Hearing Officer for being partial in treating the case; and 4) To take notice of respondent's non-submission of documents and other evidence to support their allegations.[13]

The Order resolved the issues brought forth by the petitioner-appellant, as follows: First, the proceedings under the Revised Rules of Procedure 2000 of the Commission is summary in nature.[14] Thus, the position papers submitted by both parties were sufficient to resolve the case in lieu of a formal hearing. Second, the Commission had resolved the Omnibus Motion in its 14 December 2005 Order taking into consideration the prayer[15] of the petitioner-appellant in its Petition filed on 25 April 2005, to compel the respondent-appellee to change its corporate name on the basis of Section 18 of the Corporation Code.

In the Omnibus Motion, petitioner-appellant acknowledged the dissimilarity of its name with that of respondent-appellee, thus: "The obvious dissimilarity between the corporate names of the petitioner corporation with that of respondent corporation, is beyond question which petitioners did not contend as an issue."[16] In the same motion however, petitioner-appellant alleged that respondent-appellee's name, GUADALUPE BLISS URBAN DWELLERS, INC. ("GBUDI-2") is identical, deceptively or confusingly similar to GUADALUPE BLISS URBAN DWELLERS, INC. ("GBUDI-1") which was registered on 26 June 1990 with SEC Registration No. 178536 but whose term of existence expired on 26 June 2000.

The Order applied SEC Memorandum Circular No. 14, series of 2000, which provides:

> "The name of a dissolved firm shall not be allowed to be used by other firms *within three (3) years after the approval of the dissolution* of the corporation by the Commission, unless allowed by the last stockholders

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[13] Order dated 7 November 2007 p. 1.

[14] Section 1-4 Nature of the Proceedings:— Subject to the requirements of due process, proceedings before the Commission **shall be summary in nature** not necessarily adhering to or following the technical rules of evidence obtaining in the regular courts. Provided, however, that the Rules of Court may apply in a suppletory manner whenever practicable.

[15] Petition, p.13.

[16] Omnibus Motion dated 6 December 2006, p.2.

representing at least majority of the outstanding capital stock of the dissolved firm."

Although amendment of Articles of Incorporation ("Articles") to extend its corporate term is allowed by SEC Resolution No. 35, series of 2000,[17] GBUDI-1 failed to amend its Articles within three (3) years conformably with the liquidation period as prescribed by said resolution. Therefore, it was deemed dissolved by such expiration without need of further action on the part of the corporation or the State.[18] As a rule, the corporation is *ipso facto* dissolved as soon as its term expires.[19] Consequently, when respondent-appellee, GBUDI-2 adopted its name on 17 November 2004, exactly four (4) years and five (5) months after the corporate term of GBUDI-1 expired, it was in compliance with Section 18 of the Corporation Code and SEC Memo Circular 2000 No. 14, series of 2000.

Third, on the allegation that the Hearing Officer was partial in treating the instant case, the Order cited the Latin legal principle, *ei incumbit probatio qui dicit, non qui negat* which means that " He who asserts, not he who denies, must prove."[20] Citing Supreme Court cases,[21] the Order pointed out that to disqualify a judge on the ground of bias and prejudice, the movant must prove the same by clear and convincing evidence. Bare allegations of partiality and prejudgment will not suffice. Inasmuch as the petitioner-appellant failed to discharge the burden of proof, the Hearing Officer cannot be forced to inhibit himself on mere allegations of partiality.

Fourth, on the allegation that SEC-OGC failed to note respondent-appellee's non-submission of documents and other evidence to support its allegations, the Order concluded that this allegation is bereft of merit. The Order dated 14 December 2004 was arrived at after SEC-OGC carefully considered the facts, the pleadings and evidence submitted by the parties.

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[17] Which provides: "RESOLVED, That henceforth, a company, whose corporate term has expired prior to the date of filing with the Commission, may be allowed to file its amended articles of incorporation, extending the term of the corporation provided justifications for the late filing will undoubtedly show that the stockholders and directors had approved such extension prior to the expiration and have not taken any step to show intention to liquidate. **Said extension can only be availed of within three (3) years conformably with the liquidation period** for the corporations and upon payment of the penalty or fine in the amount of P100.00 per day of delay computed from the date of expiration."

[18] Sec. 11. Corporation Code; Philippine National Bank vs. Court of First Instance of Rizal, Pasig Br. XXI, 209 SCRA 294 (1992) cited in C.L. Villanueva, Philippine Corporate Law 676 (2001).

[19] C.L. Villanueva, Philippine Corporate Law 676 (2001).

[20] F. M. Moreno, Philippine Law Dictionary (2nd edition), 200-201 (1982).

[21] Webb, et al., vs. People of the Philippines G.R. No. 127262, 24 July 1997 and Estrada vs. Disierto *et al.*, G.R. Nos. 146710 and 146738, 2 March 2001.

Regarding the prayer of petitioner-appellant to *revoke the franchise* of respondent-appellee, *no evidence* was presented that would warrant its revocation based on Section 6 of PD 902-A, as amended.[22]

There is a need to clarify the effect of the use of the name of GBUDI-1 by respondent-appellee, GBUDI-2, after GBUDI-1's term of existence has expired, in order to put this matter to rest.

The statements of respondent-appellee GBUDI-2 in its Reply Memorandum reveals its MISTAKEN NOTION that the effect of the denial by SEC-OGC of the Petition and the Omnibus Motion filed by petitioner-appellant GBUDI-1 for change of name or revocation, means an extension of the corporate term of GBUDI-1. In the Order dated 7 November 2007, the statements of respondent-appellee, GBUDI-2 are as follows:

> "The resolution of the Honorable Vernette G. Umali-Paco *speaks of the validity of respondent-appellees move to amend and extend the corporate term of GBUDI* " and " xxx *the fact that the registration of respondent-appellees corporate name with an approved amendment to its term of corporate existence having passed upon by the Securities and Exchange Commission* xxx"[23]

The Supreme Court has ruled that if the amendment is to extend the corporate term, it must be filed and approved prior to the expiration of the original term since the corporation is *ipso facto* dissolved as soon as the term expires.[24] Where the term of the

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[22] P.D. 902-A Section 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers: xxxxxxxxx

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:

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

[23] Reply- Memorandum filed 29 January 2008, p.4-5.

[24] Alhambra Cigar and Cigarette Manufacturing Company vs. SEC No. L-23606 July 29,1968.

corporation had already elapsed, there is nothing to renew for the corporation is already inexistent.[25]

As a result, even if respondent-appellee's registered name is GUADALUPE BLISS URBAN DWELLERS, INC., it *cannot* have access to the funds of GBUDI-1, because they have separate and distinct legal personalities. *The incorporation of GBUDI-2, without the knowledge and consent of the stockholders of GBUDI-1 and with an entirely different set of incorporators, manifests that it has no legal relation to, and it has its own personality distinct and separate from the dissolved GBUDI-1. Therefore, respondent-appellee cannot be treated as one and same entity simply because of their identical corporate names.* The expiration of corporate term of GBUDI-1 opened the door for possible appropriation of its name by any person desiring to register the same. Consequently, the registration of a new corporation bearing the same name is undoubtedly a different entity as regards the dissolved corporation. *Thus, the newly formed corporation cannot be considered as legal successor of the dissolved corporation.* [26]

Therefore, the registration of GUADALUPE BLISS URBAN DWELLERS, INC. on November 17, 2004 with SEC Registration No. CN200418111 cannot be considered as the extension of the corporate term of GUADALUPE BLISS URBAN DWELLERS, INC. which was registered on 26 June 1990 with SEC Registration No. 178536 but whose term of existence expired on 26 June 2000. Thus, there is no valid reason to change the corporate name of respondent-appellee.

WHEREFORE, premises considered, the Order of the SEC-OGC dated 7 November 2007 in SEC Case No. 04-05-57 denying PERPETUAL HELP NEIGHBORHOOD ASSOCIATION OF GUADALUPE BLISS, INC.'s Omnibus Motion is hereby **AFFIRMED**, and the present appeal is hereby **DENIED**.

SO ORDERED.

Mandaluyong City, 12 August 2010.

F. B. Barin
FE B. BARIN
Chairperson

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[25] SEC Opinion dated September 22, 1987 addressed to Angara Abello Concepcion Regala & Cruz.
[26] SEC Opinion 7 June 2002 addressed to Ma. Pelita B. Dotado-Viliran.

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner