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

In the Matter of:

KNIGHT CAPITAL PHILS., INC. **SEC Admin. Case No. 07-10-121**

ENFORCEMENT AND PROSECUTION DEPARTMENT
Petitioner
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DECISION

Pending consideration by the Commission is a *Petition for Revocation of Certificate of Incorporation* of KNIGHT CAPITAL PHILS., INC. (KNIGHT CAPITAL) on the ground of fraud as provided under Section 6 (l) 1 of Presidential Decree (PD) 902-A ,as amended.

FACTS OF THE CASE

KNIGHT CAPITAL is a corporation duly registered with the Commission on 26 August 2005 with SEC Registration No. CS200514728. The principal office reflected in the Articles of Incorporation (AI) is Metro Manila. The primary purpose of the corporation is stated in the AI.[1]

The names, **addresses**, nationality of and number of shares subscribed by, the incorporators and first directors of respondent are as follows:

Name	Address	Nationality	Shares
1.Anacleto C. Gemida	M.A. Reyes Street Silverio Compund, Paranaque City	Filipino	800
2.Marilou Fernando	2368-D. L. Guinto Street Paco, Manila	Filipino	800
3. Glenda Ibarra	104 Sanchez Street, Paco, Manila	Filipino	800
4. Andrea Mangsat	2352 Lapu-Lapu Street Paranaque City	Filipino	800
5. Edward Cabling	9854 Faustino Street Paranaque City	Filipino	800

[1]The primary purpose of the corporation is: "To conduct economic, business and market research and consultancy services covering but not limited to product enhancement technologies, market developments and trends, consumer preferences, demographic characteristics and allied services such as web-access services, web publishing, development of software systems and solutions, data banks and computer based advisory services and to do and perform such other acts and things necessary or incidental to corporate business and objects insofar as maybe [*sic*] allowed by applicable laws and regulations." Records, pp. 43-44.

This case stemmed from a strictly confidential letter dated 15 April 2009 from a financial monitoring government agency,[2] addressed to the Chair of the Commission, regarding a complaint from Singapore for investment scams perpetuated by a South Korean based company, Goodwin Capital Management Ltd. (GOODWIN). It was referred to the government agency by the Philippine Center on Transnational Crime (PCTC).

Allegedly, sometime between 06 September and 06 December 2007, the complainant received calls from representatives of GOODWIN inviting him to invest in shares, and promised high returns if he were to sell his shares later. He then bought shares worth about USD ONE HUNDRED TWENTY THOUSAND ($120,000.00) and remitted his payment to GOODWIN's bank account in Cyprus. Later, from December 2007 to January 2008, he received calls from representatives of a New York - based company, Hedges Mergers Acquisition, and Nomura International Group of Tokyo that offered to buy his shares at a higher price, provided he paid an "upfront fee". Following the agreement , complainant remitted his funds to bank accounts in the Philippines.

It was learned that GOODWIN, does not maintain accounts in the Philippines but has significant remittances to domestic corporations, one of which is KNIGHT CAPITAL. Findings show that KNIGHT CAPITAL was the recipient of remittances from 2005 to 2007 amounting to USD ONE MILLION FIVE HUNDRED THIRTY SEVEN THOUSAND TWO HUNDRED TWENTY-ONE AND EIGHTEEN CENTS (USD 1,537,221.18) or PHP SEVENTY-EIGHT MILLION TWO HUNDRED FIFTY-FOUR THOUSAND SEVEN HUNDRED THIRTY-EIGHT PESOS and SIXTEEN CENTAVOS (Php 78,254,738.16).

Acting on the letter, the petitioner formed an investigating team (the TEAM) to investigate KNIGHT CAPITAL. The TEAM issued separate "Notices Requiring Appearance at an Examination" scheduled on 24 June 2009, which were delivered to each of the incorporators at their respective addresses appearing in the AI. The TEAM failed to serve all the Notices. Four (4) of the addresses could not be located despite exerting diligent efforts. One was found, but the addressee-incorporator is unknown in the address even by residents of the place for five years.[3]

The Barangay Captain of Barangay San Isidro, Paranaque City, issued a Certification dated 22 June 2009 that there is no "M.A. Reyes Street" at Silverio Compound, Barangay San Isidro, Paranaque City, the purported address of incorporator Anacleto C. Gemida.[4] Likewise, the Punong Barangay of Barangay San Antonio, Paranaque City, issued a Certification dated 22 June 2009 that "Andrea Mangsat, with postal address at 2352 Lapu Lapu Street, Paranaque City does not exist [*sic*] in

[2] Records, pp. 30-33.
[3] Records, p. 51.
[4] Records, p.19.

Barangay San Antonio." [5] The purported address of Glenda Ibarra, which is 104 Sanchez St. Paco, Manila, could not be located by the TEAM in Paco, Manila. Neither is Sanchez St., in EPD's Road Map.[6] The TEAM also failed to find the purported address of Edward Cabling, 9852 Faustino Street in Paranaque City, despite verification with the two barangays visited by the TEAM and with the traffic enforcers at Sucat Road.[7]

On 02 June 2009, the TEAM proceeded to the address of the principal office of KNIGHT CAPITAL as indicated in its 2007 and 2009 General Information Sheets, located at 9532 Akle corner Kamagong Sts. San Antonio Village, Makati City. However, the guard on duty at the given address informed them that he has never heard of subject corporation, despite having been a guard in said building for the past TEN (10) years.[8]

ISSUE

Whether or not the Certificate of Incorporation of KNIGHT CAPITAL should be revoked due to fraud in procuring its certificate of registration, as provided in Section 6 (l) 1 of P.D. 902-A, as amended.

RULING

The petition is impressed with merit.

Fraud mentioned in Section 6 par. l (1) of P. D. 902-A as one of the grounds for the 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 or papers presented to the Commission for the registration of the same.*[9]

Paragraphs 3 and 5, Section 14, of the Corporation Code[10](the "Code")provide:

> "SECTION 14. Contents of the articles of incorporation. — All corporations organized under this code shall file with the Securities and Exchange Commission articles of incorporation in any of the official languages duly signed and acknowledged by all of the incorporators, containing substantially the following matters, except as otherwise prescribed by this Code or by special law:

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[5] Records, p. 18.
[6] Records, p. 51.
[7] *Ibid.*
[8] Records, p. 1
[9] In the Matter of Charyn Marketing Enterprise Corporation, SEC Case No. 03-05-49.
[10] Batas Pambansa No. 68 (May 1, 1980).

3. The place where the principal office of the corporation is to be located, which must be within the Philippines;

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5. The names, nationalities and residences of the incorporators;"

The AI is the basic corporate contract which is accorded with reverence by the law and the courts, as manifested by the stringent rules for its registration and the manner by which any part therof may be amended.[11] It is the contract between the corporation and the State, and the stockholders and the State, and the corporation and its stockholders. Thus, the law enumerates mandatory contents of the AI.[12]

Hence, an action for revocation in the name of the State will lie to annul an incorporation for fraud, based on the theory that it is a contract with the State.[13] Fraud in procuring a certificate of incorporation, practiced on State officers, makes the corporation a nullity, and in determining whether a corporation was actually created, it is immaterial that it was a fraudulent scheme for the purpose of cheating the public. [14]

Section 14 of the Code aforementioned mandates that the AI state "*the place where the principal office of the corporation is to be located, which must be within the Philippines.*" This requirement determines the corporation's residence and the venue in an action by or against it.[15] The purpose of this requirement is to fix the residence of the corporation in a definite place, instead of allowing it to be ambulatory, for effective supervision and regulation of the corporation.[16]

As reproduced above, Section 14 likewise requires that the "*names, nationalities and residences of the incorporators*" be stated in the AI. This is required to show that majority of the incorporators are residents of the Philippines, as mandated by Section 10 of the Code. [17] The requirement gains more significance in light of the fact that the

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[11] Cesar L. Villanueva, Philippine Corporate Law 155 (2001).
[12] *Ibid.*, citing Section 14 of the Corporation Code.
[13] 1 Fletcher Cyclopedia Corporations 604 (Permanent Edition).

[14] *Id.,* at 543.
[15] Hector S. De Leon, The Corporation Code of the Philippines Annotated 161 (2002).
[16] *Id.*, at 160-161 citing *Young Auto Supply Co. vs. CA*, 223 SCRA 670 (1993)
[17] "SECTION 10.Number and qualifications of incorporators. — Any number of natural persons not less than five (5) but not more than fifteen (15), all of legal age and a majority of whom are residents of the Philippines, may form a private corporation for any lawful purpose or purposes. Each of the incorporators of stock corporation must own or be a subscriber to at least one (1) share of the capital stock of the corporation."

incorporators, who, as in this case, usually act as the first set of directors, may be held personally liable for certain acts or omissions under Section 31 of the Code.[18]

There are two kinds of fraud, actual or constructive fraud. Actual fraud is intentional fraud; it consists in deception, intentionally practiced to induce another to part with property or to surrender some legal right, and which accomplishes the end designed. Constructive fraud, on the other hand, is a breach of legal or equitable duty which, irrespective of the moral guilt of the fraud feasor, the law declares fraudulent because of its tendency to deceive others, to violate public or private confidence, or to injure public interests. The latter usually proceeds from a breach of duty arising out of a fiduciary or confidential relationship.[19]

Constructive fraud may result from reckless and heedless representations although they are not made with a deliberate intent to deceive.[20] "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. Therefore, any material statement made by an incorporator in the Articles of Incorporation that turns out to be a falsehood as determined by the Commission is thereby considered as fraudulent regardless of the incorporator's intent or knowledge of such falsehood.

The petitioner has established that there was fraud attendant in the registration of KNIGHT CAPITAL, contained in the documents presented to the Commission for its registration. EPD has proven that the contents of the AI submitted to the Commission with regard to the addresses of the incorporators, were fictitious, false, and/or misleading.[21]Among the addresses of the five (5) incorporators, only one was found valid, but the incorporator who was represented to be residing therein, was unknown to the residents who have lived in the area for more than five (5) years.[22]

In addition, when the TEAM went to the principal office address of KNIGHT CAPITAL as stated in the AI, the TEAM was informed by the guard on duty, who has

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[18] "SECTION 31.Liability of directors, trustees or officers. — Direct ors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.xxx"

[19] Lorenzo Berico, et al. vs. Court Of Appeals, et al. (G.R. No. 96306 August 20, 1993).

[20] In the Matter of Charyn Marketing Enterprise Corporation, SEC Case No. 03-05-49iting 37 Am Jur 2d, Fraud and Deceit § 4.

[21] Record, p. 19 (Annex "I"), p. 18 (Annex "J") and p. 51.

[22] Record, p. 51.

been a guard of the building for more than ten (10) years, that there was no KNIGHT CAPITAL PHILS., INC. occupying the address, and that he has never heard of said corporation.[23]

Were it not for such misrepresentations in the AI submitted to the Commission, the Commission would not have accepted, and approved KNIGHT CAPITAL's application for corporate registration. It is due to false information that KNIGHT CAPITAL was able to obtain a certificate of registration from the Commission.

Thus, fraud committed by the incorporators of KNIGHT CAPITAL PHILS., INC. is fraud as contemplated in Section 6 par. I (1) of P. D. 902-A, as amended.

WHEREFORE, premises considered, the instant petition is hereby **GRANTED.** The Certificate of Registration of KNIGHT CAPITAL PHILS., INC. under SEC Registration No. CS200514728 is hereby **REVOKED.**

Let the Company Registration and Monitoring Department be furnished a copy of this Decision for its appropriate action. Further, let the Economic Research and Information Department be furnished a copy of this Decision for posting at the Commission's website for purposes of giving notice to the public.

SO ORDERED.

Mandaluyong City, 23 August 2012.

TERESITA J. HERBOSA
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner

[23] Record, p. 1 (Annex "M").