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

IN THE MATTER OF:

BARLOW AND RAMSEY, INC. and GRAND SHAW HOLDINGS, INC.

SEC ADMIN. CASE NO. 01-09-102

COMPLIANCE AND ENFORCEMENT DEPARTMENT, now ENFORCEMENT AND PROSECUTION DEPARTMENT
Petitioner

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DECISION

For consideration is the Petition for Revocation of Corporate Registration of BARLOW AND RAMSEY, INC. (BRI) and GRAND SHAW HOLDINGS, INC. (GSHI) dated 09 January 2009, on the ground of fraud in procuring their certificates of registration under Section 6 letter (l) subparagraph (1) of Presidential Decree 902-A as amended, filed by the Compliance and Enforcement Department (CED) of the Commission, now the Enforcement and Prosecution Department (EPD), on 13 January 2009.

FACTS OF THE CASE

BRI is a corporation registered with the Commission on 21 June 2006 under SEC Reg. No.CS200609861. Its primary purpose is:

> "To engage in, conduct & carry on the business of buying, distributing, marketing and manufacturing of all kinds of goods and commodities, wares and merchandise of every kind and description; to enter into all kinds of goods contracts for export, import, purchase, acquisition, sale at wholesale or retail and other disposition for its own account as principal or in representative capacity as manufacturer's representative, merchandise broker, indentor commission

merchant, factors or agent, upon consignment of all kinds of goods, wares, merchandise or products whether natural or artificial."

Based on its Articles of Incorporation (AOI), BRI's authorized capital stock is One Million Pesos (Php 1,000,000.00) divided into One Hundred Thousand (100,000) shares with a par value of Ten Pesos (Php 10.00) per share. The AOI lists the following as the incorporators and first set of directors of BRI with their respective addresses, nationalities, and shares:

Name	Address	Nationality	Shares
1. Rosemarie S. Villamor	18 Zeus St., Cupang, Antipolo	Filipino	15,000
2. Salve A. Mercado	34 Balite St., Oro Vista, Cainta	Filipino	3,750
3. Analyn C. Diamante	2 St. Mary, Provident, MKNA	Filipino	3,750
4. Robert Mendoza	1857 Rosario, Pasig City	Filipino	1,250
5. Michael Mejia	1857 Rosario, Pasig City	Filipino	1,250

GSHI was originally registered as "Grand Shaw Holdings Philippines, Inc." on 31 May 2006, under SEC Reg. No. CS 200608450. The first article of its AOI was amended to its present name on 07 June 2006. Its primary purpose is:

" xxx to acquire, hold, sell, exchange, deal, and invest in the stocks, bonds, or securities of any government or any subdivision thereof or any public corporation and in real property of all kinds in the same manner and to the same extent as natural [sic] person, might could or would do, to exercise all the rights, powers and privileges or ownership, including the right to vote therein, or consent in respect thereof, for any and all purposes without however managing securities portfolio or similar securities or to act as broker of securities."

GSHI's authorized capital stock is One Million Pesos (Php 1,000,000.00) divided into One Hundred Thousand (100,000) shares with a par value of Ten Pesos (Php 10.00) per share. The AOI lists the following as the incorporators and first set of directors of GSHI with their respective addresses, nationalities, and shares:

Name	Address	Nationality	Shares
1. Melody T. Lim	758 S. Padilla St. Manila	Filipino	500
2. Melanie B. Guinto	1841 Blumentritt St. Manila	Filipino	500
3. Menchu G. Gregorio	328 Carvajal St. Manila	Filipino	500
4. Isabella C. Mendoza	3104 Redemptorist Road	Filipino	500
5. Jennifer San Martin	38 CRM Dulce Las Pinas City	Filipino	500

On 12 September 2006, EPD received a 21 August 2006 letter [1] from Lim Kok Meng (Lim), Head, Maritime and Investment Fraud Branch Commercial Affairs Department of the Singapore Police Force, Ministry of Home Affairs. According to Lim, their office received complaints against a certain "Barlow and Ramsey" purportedly having its office address on the 15th Floor Sanno Park Tower, 2-11-1, Nagatacho, Chiyoda-ku, Tokyo 100-613, Japan.

Lim wrote that according to two complainants, a certain company in the name of *Barlow and Ramsey* made cold calls[2] in April to June 2006, inducing them to purchase fast moving stock of Bayer from Germany. Only one of them responded by buying 150 units of Bayer shares valued at Sing $ 2226, who remitted the money on 08 May 2006 to account no. 002-113-9-334-4 with Export & Industry Bank located at the Rufino Pacific Tower Branch in Ayala Avenue, Makati Metro-Manila, Philippines. The name of the beneficiary was *Grand Shaw Holding Group Pte. Ltd.* Thereafter, complainant was asked to sell off the Bayer shares and to buy 4,000 shares of China Creswell shares valued at US$ 21,210 and, after offsetting the sale proceeds of Bayer shares at US$ 7,401.54, the complainant was asked to send, via telegraphic transfer, US$ 13,808.46 to the same account with Export & Industry Bank.

At this point, complainant became uncomfortable with the transaction inasmuch as he was not given any documentation of share purchase for the Bayer shares. He suggested that he pay the US$13,808.46 by installment. *Barlow and Ramsey* agreed to this proposal and on 17 June 2006, the complainant sent another telegraphic transfer in the amount of Sing$ 1,800. After this, complainant stopped sending payments and decided to file a police report on the cold call scam.

In response, EPD formed an investigating team to look into the matter. Upon the request of EPD, the Company Registration and Monitoring Unit (CRMD) of the Commission issued a *Certification of Non-Registration of Corporation* [3] dated 17 January 2007 stating that available records of the Commission do not show the registration of "Barlow and Ramsey Co." and "Grand Shaw Holding Group Pte. Ltd." However, CRMD listed the nearest similar names, as Grand Shaw Holdings Philippines Inc. with SEC Reg. No. CS200608450 and Barlow and Ramsey Inc. with SEC Reg. No.CS200609861.

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[1] Petition dated 09 January 2006, Annex "F", Record p.41.
[2] A method used by brokers to obtain new business by making unsolicited calls to potential clients. Source:http://www.investopedia.com/terms/c/coldcalling.asp accessed 23 March 2012.
[3] Petition dated 09 January 2006, Annex "G", Record p.39.

The Market Regulation Department (MRD) also issued a *Certification* dated 19 April 2007 [4] that per records filed with MRD, Grand Shaw Holdings Philippines Inc. with SEC Reg. No. CS200608450 and Barlow and Ramsey Inc. with SEC Reg. No.CS200609861 have not been issued any secondary licenses to act as broker/dealer in securities, dealer in securities, dealer in government securities, investment adviser of an investment company, investment house and transfer agent.

Notices Requiring Appearance at an Examination (Notices) dated 17 April 2007 were sent to each of the incorporators at their respective addresses indicated in the AOI of respondent GSHI through EPD's process server, Edgardo R. Grueso (Grueso), to obtain testimonies of the incorporators. [5] But Grueso was unable to serve all the Notices because either the incorporators listed in the AOI were not known at the given addresses (Isabella C. Mendoza and Melanie B. Guinto) or the addresses listed in the AOI were misleading (Jennifer San Martin), or the individuals could not be located (Melody T. Lim and Menchu G. Gregorio).[6]

The Summary Report [7] of the field investigation conducted on 24 May 2007 by the EPD investigating team (the Team), which made an ocular inspection of the address of the principal office reflected in the AOI, showed that the given address was false. The Team went to the Star Centrum Building located at Sen. Gil Puyat Ave., Makati and met with the building administrator, Edward J. Bundal (Bundal), who informed the Team that there was no such company holding office, nor that used to hold office in Star Centrum Building. When showed the list of names of the incorporators and directors of GSHI, Bundal assured the Team that he did not know any of them.

The Team likewise conducted its own surveillance by serving another *Notice Requiring Appearance at an Examination* dated 15 February 2008 to each of the incorporators of GSHI at their respective addresses, but they were not served, for the same reasons (misleading addresses, individuals cannot be located, not known at the given address).[8] The Team then proceeded to each of the barangays having jurisdiction over the addresses reflected in the AOI, and the respective Barangay Captains issued Certifications.[9] EPD summarized[10] the contents of the Certifications, thus:

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[4] *Id.*, Annex "H" Record p. 38.
[5] *Id.*, par. 18. p.70.
[6] *Id.*, Annex "I" Affidavit executed by Edgardo R. Gruesco, dated 18 September 2007, p. 37.
[7] *Id.*, Annex "J" Record p. 29.
[8] Stated in the Affidavit dated 18 September 2007 of the EPD's process server, Grueso.
[9] *Id.*, Annexes "P", "Q","R", "S", "T".
[10] *Id.*, paragraph 23, Record p. 69.

Name and Address of Incorporator/ Director specified in the Articles of Incorporation of GRAND SHAW	**Date of Delivery of Notice Requiring Appearance at an Examination**	**Reason for Failure to Deliver as stated in the Certifications issued by respective Barangay Chairman**
ISABELLA C. MENDOZA – 3104 Redemptorist Rd., Paranaque City and 65 Bannag St., Pienda, Pasig City	Delivered at Paranaque address on February 21, 2008 and at Pasig address on Feb 20, 2008	Address is valid but addressee does not reside at the given address
JENNIFER L. SAN MARTIN-38 CRM Dulce St., Las Pinas City	February 21, 2008	Addressee has not held office or resided at the given address
MELODY T.LIM-758 S. Padilla St., Sta. Cruz, Manila	February 26, 2008	Address is not valid; non-existent
MENCHU G. GREGORIO -328 Carvajal St., Binondo, Manila	February 26,2008	Address is not valid; address does not exist
MELANIE B. QUINTO- 1841 Blumentritt St., Manila	March 3,2008	Address is valid but addressee is unknown

The same processes of investigation and surveillance were conducted by EPD on BRI, which yielded the same results. The *Notices Requiring Appearance at an Examination* dated 19 April 2007 were sent to each director/incorporator through EPD's process server, Rodrigo G. Gamboa (Gamboa) who, like Grueso, was not able to serve the Notices at the addresses reflected in the AOI because the addresses were either unknown, or could not be located.[11]

On 06 June 2007, the Team made an ocular inspection of the principal office of BRI located at Unit 1802 88 Corporate Center, Salcedo Village, Makati City, to validate the same. The Team was able to speak with the building administrator of the Corporate Center, Garry G. Valenzuela (Valenzuela), who informed them that there was no company holding office nor that used to hold office within the building, by the name of "Barlow and Ramsey, Inc." Valenzuela told them that Dial Magic Inc.(DMI), a call center, has been occupying Units 1802 and 1803 since 15 April 2006. This is significant, since BRI's AOI is dated 21 June 2006. The Team went to look at Unit 1802 and saw that it was, indeed, the outbound office of DMI, a call center office. They also went to the head office of DMI, located at the 14th Floor of Banco de Oro Building in Paseo De Roxas, Makati City and met its Legal Counsel, Ma. Cristina G. Laderas, who informed the Team that she did not have any knowledge of BRI. She was showed a

[11] *Id.*, Annex "U" Record p. 17.

copy of the AOI of BRI, but she told the Team that she did not know any of the incorporators or directors listed therein.[12]

Likewise, the Team personally delivered the *Notices Requiring Appearance at an Examination* to each incorporator, but their efforts merely confirmed the report of the process server, Gamboa. The Team failed to serve the Notices because some of the addresses appeared fictitious, and where some addresses were valid, the incorporator concerned was not known at the given address. The respective Barangay Chairmen of the addresses indicated in the AOI each issued a Certification,[13] which the EPD summarized as follows:

Name and Address of Incorporator/ Director specified in the Articles of Incorporation of BARLOW AND RAMSEY	**Date of Delivery of Notice Requiring Appearance at an Examination**	**Reason for Failure to Deliver as stated in the Certifications issued by respective Barangay Chairman**
Michael Mejia-1857 Rosario, Pasig City	February 20, 2008	Address is not valid, no such street as Rosario
Robert Mendoza-1857 Rosario, Pasig City	February 20, 2008	Address is not valid, no such street as Rosario
Analyn C. Diamante-No. 2 St. Mary St., Provident Village, Marikina City	February 28, 2008	Address is valid but addressee is unknown at the given address
Rosemarie S. Villamor – 18 Zeus St., Bgy. Cupang, Antipolo City	March 28, 2008	Address is incomplete, exact name of the subdivision is not stated
Salve A. Mercado-34 Balite St., Oro Vista, Cainta, Rizal	April 1, 2008	Address does not exist

Acting on the Petition of EPD, the Commission, through the Office of the General Counsel (OGC), issued an *Order* dated 14 January 2009, directing the Board of Directors and any of the responsible officers of BRI and GSHI to file their respective Comments/Oppositions thereto within fifteen (15) days from receipt thereof. On 04 February 2009, OGC issued another *Order* addressed to petitioner EPD, requesting EPD to submit/provide OGC, within five (5) days from receipt, with the correct and complete addresses of the concerned parties for the purpose of serving the 14 January 2009 Order, inasmuch as said Order remained unserved due to inexistent addresses, wrong addresses, and the like.

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[12] *Id.*, Annex"V" Record pp.11 & 12.
[13] *Id.*, Annexes "BB", "CC","DD","EE", "FF".

On 25 February 2009, EPD filed with the OGC a *Motion for Leave to Effect Service of Summons by Publication*, praying that summons by publication be issued at the expense of the Commission pursuant to Section 4-9 Rule IV of the 2006 Rules of Procedure of the Commission, for the reason that the whereabouts of the respondents are unknown and cannot be ascertained. In an Order dated 25 March 2009, OGC granted the Motion, finding merit in the same. On 03 April 2009, OGC issued a Summons addressed to BRI and GSHI requiring them to file their respective Answers/Comments/Oppositions to the Petition within fifteen days (15) days after service of summons, otherwise, a judgment by default will be taken against them for the relief prayed for in the Petition.

On 23 September 2010, EPD filed its Compliance with the Order dated 23 July 2010 OGC, and submitted: 1) Copies of the Affidavit of Publication with attached newspaper showing the publication of the 25 March 2009 Order (Order) and the 03 April 2009 Summons (Summons) published in the Manila Standard Today on 03 June 2009; and 2) Certification dated 21 September 2010 from the Director of the Economic Research and Information Department of the Commission stating that the Order and the Summons issued by the OGC and the Petition for Revocation filed by the EPD dated 09 January 2009 were posted in the SEC website.

ISSUE

Whether or not the certificate of registration of BARLOW AND RAMSEY, INC. (BRI) and GRAND SHAW HOLDINGS, INC. (GSHI) should be revoked based on Section 6 par. l (1) of Presidential Decree No. 902-A.

RULING

The petition is impressed with merit.

Section 6 letter (l) subparagraph (1) of Presidential Decree 902-A provides:

> Section 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, partnerships or associations, upon any of the grounds provided by law, including the following:
> 1. Fraud in procuring its certificate of registration;
>
> xxxxxxx

EPD alleges that BRI and GSHI were incorporated for the purpose of perpetuating fraudulent activities to the damage and prejudice of the dealing public, rather than for the purpose of conducting legitimate business.

In *Heirs of Manuel A. Roxas, et al. vs. Court of Appeals, et al.*,[14] cited in *Spouses Prisco, Jr. and Alice Cal vs. Mariano A. Zosa, et al.*,[15] the Supreme Court held that:

> "Fraud is of two kinds: 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 interests and public or private confidence, even though the act is not done or committed with an actual design to commit positive fraud or injury upon other persons."

In the case of *Charyn Marketing Enterprise Corporation*,[16] the Commission held that fraud mentioned in Section 6 letter (l) subparagraph (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.*

Section 14 of the Corporation Code[17] provides:

> 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: xxxxxx
> 5. The **names**, nationalities and **residences** of the incorporators; xxxxxx
> (Emphasis ours)

The sworn AOI of a corporation is among the documents required by the Commission for the issuance of a certificate of registration. In this case, EPD has presented substantial evidence that both BRI and GSHI's submitted sworn AOIs contain

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[14] G.R. No. 118436 March 21, 1997.
[15] G.R. No. 152518 July 31, 2006.
[16] In the Matter of Charyn Marketing Enterprise Corporation, SEC Case No. 03-05-49.
[17] Batas Pambansa Blg. 68 (May 1, 1980).

false, fictitious, and/or invalid principal office addresses.[18] Moreover the other addresses of the incorporators listed in the AOIs were either false, did not exist, or were incomplete,[19] Hence, the evidence gathered by the EPD and the circumstances surrounding the two corporations indicate that the entries in the AOIs submitted to the Commission in support of the applications for their respective certificates of registration were fraudulent, which is squarely within the contemplation of Section 6 letter (l) subparagraph (1) of Presidential Decree 902-A.

WHEREFORE, premises considered, the instant petition is hereby **GRANTED**. The **Certificates of Registration of BARLOW AND RAMSEY, INC.** with SEC Reg. No. CS200609861 and **GRAND SHAW HOLDINGS, INC.** with SEC Reg. No. CS 200608450 are hereby **REVOKED,** for fraud in the procurement of their certificates of registration as provided in Section 6 letter (l) subparagraph (1) of Presidential Decree 902-A as amended.

Let the Company Registration and Monitoring Department be also furnished with a copy of this Decision for its appropriate action.

SO ORDERED.

Mandaluyong City, 11 October 2012.

TERESITA J. HERBOSA
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner

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[18] *Op. cit.*, note 7 and Annex "V" Records p. 12.
[19] Petition Annex "I" Record p. 37; Annexes "P", "Q","R","S", & "T"; and Annex "U" Record p. 17; and Annexes "BB","CC", "DD", "EE" and "FF".