Republic of the Philippines
Department of Trade and Industry
SECURITIES AND EXCHANGE COMMISSION
SEC Bldg. EDSA, Greenhills, Mandaluyong City

In the Matter of

CAMINO MONCADO PHILIPPINES FOUNDATION, INC.

SEC Admin. Case No. 01-11-126

ENFORCEMENT AND PROSECUTION DEPARTMENT,
Petitioner.
x----------x

DECISION

For resolution is the Petition (for Revocation of Certificate of Incorporation) filed on 13 January 2011 by the Enforcement and Prosecution Department (hereinafter referred to as "EPD") of this Commission.

The relevant facts as culled from the records are as follows:

Petitioner EPD is a department of the Commission mandated to file petitions for the initiation of revocation proceedings of certificates of registration of corporations for violations of the Securities Regulation Code, the Corporation Code, Presidential Decree 902-A, as amended, including their Implementing Rules and Regulations and such other relevant laws enforced by the Commission.

Respondent **CAMINO MONCADO PHILIPPINES FOUNDATION, INC.** ("Camino Moncado", for brevity) is a non-stock and non-profit association registered with the Commission on 24 July 2008, with SEC Reg. No. CN200811717.

The Petition for Revocation stems from the fact that in representation of the Intestate Estate of the late Hilario Camino Moncado, Clara Moncado vda. De Pabon, together with other persons, allegedly incorporated Camino Moncado without prior knowledge and without the necessary approval of the Regional Trial Court *("RTC")* of Bacolod City, Branch 48, wherein the settlement of the intestate estate was pending.

In the case entitled "In the Matter of the Intestate Estate of the Late Hilario Camino Moncado, Magdalena vda. De Jayme, Petitioner", docketed as Spec. Proc. No. 00-976, the RTC issued an Omnibus Order dated 05 February 2009 that states:

> "**WHEREFORE,** and by way of disposition of these two (2) incidents, it is hereby ordered as follows:
>
> 1. The motion in Incident No. 1 is GRANTED, and accordingly, the CAMINO MONCADO FOUNDATION, under SEC Registration No. CN200811717, dated July 24, 2008, is hereby declared NULLIFIED and INVALIDATED, it having been organized without the knowledge of and authority from this Court.
>
> This nullification/invalidation may serve as basis for the REVOCATION by the Securities and Exchange Commission of the registration of the same foundation, which Commission is hereby REQUESTED to so REVOKE it; xxx"

In a letter dated 18 May 2009, Atty. Mauricio C. Ulep, counsel of the co-administrator Sylvia Moncado Asparen, requested the Commission, through the Office of the General Counsel *("OGC")*, to effect this revocation. On 08 July 2009, the OGC then referred the same to the Commission's Company Registration and Monitoring Department *("CRMD")* for appropriate action.

On 16 July 2009, CRMD endorsed to EPD the request for cancellation of the Certificate of Registration of Camino Moncado.

EPD alleges that incorporator Clara Moncada vda. De Pabon *("Clara")* was the former court-appointed co-administrator of the intestate estate of Hilario Camino Moncado. In July 2008, Clara entered into a Memorandum of Agreement with Akira Hishijima *("Akira")*, a Japanese national and president of Yento Holdings Limited *("Yento")* in Hong Kong. The agreement provides that Akira will help Clara in the management of the goods, chattels and estate of the late Hilario Camino Moncado. Clara was appointed Chairman of Yento with Akira as its President and Chief Executive Officer. The parties also agreed to form Camino Moncado in which 49% of its assets shall belong to Clara and 51% to Akira. The said agreement was executed to bind the legal heirs of Hilario Camino Moncado.

EPD also alleges that after the Memorandum of Agreement was executed, Camino Moncado issued several undated resolutions purportedly signed by incorporators/directors Clara, Criselda Moncada Pabon, Bertito del Mundo Hashimoto, Akira, Hiroaki Hishijima and Sigero Saito, *viz:*

a. Resolution No. 1 was for the opening of an account with any reputable bank or financial institution for the deposit of funds intended for its operations;
b. Resolution No. 2 was for the appointment of the first set of officers of the Foundation in which Akira was the Chairman, while Clara was the President;
c. Resolution No. 3 was to put the financial and investment operations of Camino Moncado under the absolute, complete and exclusive control and supervision of Akira and to appoint Bertito del Mundo Hashimoto as Treasurer;
d. Resolution No. 4 was to appoint Bertito del Mundo Hashimoto as Treasurer-in-Trust with authority to open a bank account for the Foundation in compliance with the requirements of the SEC for registration.

Clara also executed a Special Power of Attorney authorizing Akira to do and perform any and all acts required to be done on all matters pertaining to Camino Moncado while Clara is abroad, among others.

In view of all these acts, Judicial Administratrix Sylvia Moncado Asparen filed a Motion before the Bacolod RTC, Branch 48, to invalidate the acts of Clara in making a foundation and entering into the Memorandum of Agreement with Akira. The Motion also asked the court to order the SEC to cancel the Certificate of Registration of Camino Moncado. The Motion was granted in the aforequoted Omnibus Order of the RTC dated 05 February 2009, and declared final and executory on 13 March 2009.

The essence of the Petition filed by EPD is the allegation that Clara, as co-administrator of the intestate estate of Hilario Camino Moncado, entered into a Memorandum of Agreement with Akira to the prejudice of other legal heirs of Hilario Camino Moncado, **without prior approval of the Court**, and thus ineffectual.

Considering that the estate of Hilario Camino Moncado was already the subject of intestate proceedings at the time the agreement was entered into, and especially because the agreement would in effect divide the assets of the estate between Clara and Akira, Clara was required to seek the prior approval of the Court before entering into any transactions involving the estate. This she did not do.

The RTC cited the case of *Estate of Amadeo Matute Olave vs. Hon. Manases G. Reyes*[1] which stated that:

[1] G.R. No. L-29407, 29 July 1983.

> "xxx The law is clear that where the estate of the deceased person is already the subject of a testate or intestate proceeding, the administrator cannot enter into any transaction involving it without prior approval of the probate court."

The RTC further stated that:

> "Clara has no authority at all, not having sought the prior approval of this Court to organize/form and represent the Estate, in the formation of the said Foundation. Therefore, her acts in this regard were not the acts of the estate."[2]

Thus, since Clara had no authority to incorporate Camino Moncado, her acts cannot affect the estate and the incorporation of Camino Moncado is without lawful basis and has no legal effects.

If the Commission knew that Camino Moncado was created to involve the estate of the late Hilario Camino Moncado and the rights of his heirs without prior knowledge and approval of the RTC, the foundation's application for registration would not have been approved and no Certificate of Registration would have been issued.

The RTC has stated that Clara subsequently expressly repudiated her acts of signing the Articles of Incorporation of Camino Moncado, the four undated Resolutions, and the undated Memorandum of Agreement, in an Affidavit of Revocation dated 25 August 2008, submitted to the RTC in the intestate proceedings.

Likewise, on 18 February 2011, Clara Moncada Vda. De Pabon filed with this Commission an Answer with Conformity to Revocation, admitting all the allegations made in the Petition filed by the EPD.

WHEREFORE, premises considered, the Certificate of Registration of CAMINO MONCADO PHILIPPINES FOUNDATION, INC. is hereby **REVOKED.**

SO ORDERED.

City of Mandaluyong, 20 April 2011.

FE B. BARIN
Chairperson

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[2] Annex "D" of the Petition, p. 2.

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner

cdl 19 apr '11