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

In the Matter of

CALIRAYA SPRINGS GOLF CLUB, INC.

SEC Administrative Case No. 01-11-127

ENFORCEMENT AND PROSECUTION DEPARTMENT,
Petitioner.

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DECISION

For resolution is the Petition (For Revocation of Certificate of Incorporation) filed by the Enforcement and Prosecution Department *("EPD")* of the Commission on 24 January 2011 against Respondent Caliraya Springs Golf Club, Inc. *("Caliraya")*.

On 25 January 2011, Summons was issued by the Commission requiring Caliraya to enter its appearance and file its Answer to the Petition within fifteen (15) days from service of Summons. Such Summons was served on the Respondent on 31 January 2011.

Instead of filing its Answer, Caliraya filed a Motion for Extension of Time to File Answer on 16 February 2011. This Motion is one of the prohibited pleadings and should be treated as a mere scrap of paper and automatically expunged from the records.[1] Worse, it made subsequent filings, namely Second[2], Third[3], Fourth[4], Fifth[5], Seventh[6] [sic], Seventh[7], and Nineth[8] [sic] Motions for Extension of Time to File Answer, that cannot be countenanced by the Commission. We are thus constrained to rule that Caliraya is in default. The Petition, with its uncontroverted allegations, may thus be evaluated on its own merits.

The relevant facts as alleged by EPD in its Petition are as follows:

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[1] Section 3-6, 2006 Rules of Procedure of the Securities and Exchange Commission.
[2] Filed on 03 March 2011.
[3] Filed on 25 March 2011.
[4] Filed on 14 April 2011.
[5] Filed on 27 April 2011.
[6] Filed on 06 June 2011.
[7] Filed on 27 June 2011.
[8] Filed on 18 July 2011.

Caliraya Springs Golf Club, Inc. is a corporation duly registered with the Commission on 11 February 1997 under SEC Registration No. A1997-02176. Its primary purpose as stated in its Articles of Incorporation is:

> "To promote the social, recreational and athletic activities on a non-profit basis among its members, the main objective and undertaking of which will be the construction and maintenance of a golf course, tennis courts, swimming pools, and other indoor and outdoor related sports and recreational facilities."

On 06 June 1997, the Commission issued to Caliraya a Certificate of Permit to Offer Securities for Sale.[9]

Due to the failure of Caliraya to comply with its committed completion date of the project as stated in its Registration Statement, the Corporation Finance Department *("CFD")* wrote a letter to Caliraya dated 14 November 2003, directing it to amend its Registration Statement to reflect the "updated work program with present percentage of completion of the project and to explain why it should not be required to comply with SRC Rule 14, particularly on the publication of notice of amendment and right to refund by purchasers of their investment."[10]

On 08 January 2004, CFD again sent a letter[11] to Caliraya reiterating its previous directive for it to amend its Registration Statement.

On 04 February 2004, CFD issued an Order[12] revoking Caliraya's Registration of Securities and Permit to Sell to the Public, due to its failure to file its 2001 Annual Report, 3rd Quarter Report and 2002 Annual Report, and to settle the penalties therefor, despite due notice and hearing.

Pursuant to SEC-RES. No. 274, Series of 2007, CFD wrote to Caliraya on 20 September 2007[13], informing it that in spite of the revocation of its Permit to Sell Securities, Caliraya continues to be regulated and subject to the periodic reportorial requirements of the Securities Regulation Code *("SRC")* and its Implementing Rules and Regulations, thus, Caliraya was directed to file the required periodic reports starting from the period ending on 30 September 2007.

CFD endorsed the matter of Caliraya's non-submission of reportorial requirements to EPD, prompting EPD to commence investigation.

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[9] Petition dated 24 January 2011, Annex "D".
[10] *Id.*, Annex "E".
[11] *Id.*, Annex "F".
[12] *Id.*, Annex "G".
[13] *Id.*, Annex "H".

EPD found that Caliraya used at least three (3) different addresses which are not the same as the office address stated in its Articles of Incorporation, which is Municipality of Cavinti, Province of Laguna.[14] In its General Information Sheet for the year 2001, Caliraya's address is stated as 6th Floor, Renaissance Towers, Meralco Ave., Pasig City.[15] In SEC Form 11-Q, Caliraya's listed address is 5th Floor, Renaissance Towers, Meralco Ave., Pasig City.[16] In its SEC Form 17-A, Caliraya's address appears as Suite 1903, Atlanta Centre, No. 31 Annapolis St., Greenhills, San Juan, Metro Manila. In its Treasurer's Affidavit, Caliraya's address is 5th Floor, Renaissance Towers, Meralco Ave., Pasig City.[17]

On 24 March 2010, EPD issued a notice of conference[18] addressed to Mr. Exequiel E. Robles, President of Caliraya, directing him to appear before the EPD on 15 April 2010 with the following documents:

1. Amended Registration Statement
2. 1st Quarter Report from 2005 to present
3. 2nd Quarter Report from 2005 to present
4. 3rd Quarter Report from 2005 to present
5. Information Statement from 2005 to present
6. Annual Report from 2005 to present
7. Certificate of the Attendance of Directors to Board Meetings from 2005 to present
8. Certificate on the Extent of Compliance with its Manual on Corporate Governance
9. Other records pertinent to the investigation of the EPD.

The Notice of Conference was not served to Mr. Robles as the corporation had transferred to another address.

Another Notice of Conference dated 31 March 2010[19] reiterating the previous Notice of Conference was issued and then served to Mr. Robles's residential address. Before the conference, Atty. Miriam G. Daway, counsel for Mr. Robles, appeared before the EPD and informed the EPD that Mr. Robles will be out of the country on the scheduled date of the conference, and that the person in charge of the submission of the reportorial requirements is Ms. Susan Chan, corporate secretary of Caliraya.

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[14] *Id.*, Annex "C".
[15] *Id.*, Annex "B".
[16] *Id.*, Annex "J".
[17] *Id.*, Annex "K".
[18] *Id.*, Annex "L".
[19] *Id.*, Annex "M".

On 15 April 2010, Atty. Daway wrote to the EPD, stating that she informed Caliraya, thru Atty. Emilio Baligod, of the obligations to submit the required reports to the Commission.

Also on 15 April 2010, Atty. Baligod, counsel of Atlanta Land Corporation, one of the stockholders of Caliraya, appeared in the scheduled conference and undertook to submit on or before 22 April 2010 the documents stated in the Notice of Conference. However, on 22 April 2010, Atty. Baligod and Atty. Jonathan Uy, as counsels for the stockholders of Caliraya, asked for an extension of time to file the Amended Registration Statement and the Certificate on the Extent of Compliance with its Manual on Corporate Governance. This request was granted, and the period was extended to 04 June 2010.

On 29 April 2010, notices of conference[20] scheduled on 06 May 2010 were sent out to the stockholders of Caliraya, however, Mr. Robert Chan, Ms. Susan Chan and Ms. Sofia S. Sy were not served with the notices because they were not connected and/or not holding office at the address indicated on Caliraya's General Information Sheet.

Notices of Conference dated May 04 2010[21] and 05 May 2010[22] to be held on 11 May 2010 were sent to the officers/directors of Caliraya. None of the officers/directors appeared on the scheduled date.

On 06 May 2010, Attys. Daway and Baligod appeared on behalf of the stockholders of Caliraya, stating that Caliraya is a joint venture involving Sta. Lucia Realty and Development Corporation *("Sta. Lucia")*, Atlanta Land Corporation *("Atlanta")* and Fil-Estate Properties, Inc. *("Fil-Estate").* Atty. Daway represented Sta. Lucia, and Atty. Baligod represented Atlanta.

Attys. Daway and Baligod were told to inform the stockholders of the Order of Revocation and to comply with the reportorial requirements enumerated in the 31 March 2010 Notice of Conference.[23]

On 13 May 2010, second Notices of Conference scheduled on 20 May 2010 were sent to Atty. Ferdinand T. Santos, Mr. Robert John L. Sobrepeña, Mr. Noel M. Cariño, Mr. Vicente Santos, Mr. Igmidio Robles and Atty. Roy V. Movido.

On 20 May 2010, only Atty. Roy V. Movido appeared, in representation of Fil-Estate, Atty. Ferdinand Santos, Mr. Robert John Sobrepeña and Mr. Noel Cariño. Atty. Movido promised to submit the Amended Registration Statement

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[20] *Id.*, Annex "R".
[21] *Id.*, Annex "T".
[22] *Id.*, Annex "U".
[23] *Id.*, Annex "S".

and the Certificate on the Extent of Compliance with its Manual on Corporate Governance on 15 June 2010. He was told of the possible liabilities of his clients if they fail to comply with the required submissions.

On 17 June 2010, EPD wrote to Caliraya through Mr. Robles giving it the final opportunity to comply with its previous undertakings to submit the documents required by the Commission. However, the letter was not served to Mr. Robles due to the refusal of the persons in the address on the letter to receive such letter, as they claim that Mr. Robles no longer holds office thereat. This letter was amended, and there was a subsequent attempt to serve such, but the same was likewise refused.

On 20 October 2010, EPD requested CFD to compute the applicable penalty against Caliraya from 30 September 2007.

In a Memorandum dated 03 January 2011, CFD stated that Caliraya still has not complied with the directives to submit the reportorial documents, and submitted that the appropriate proceedings for the revocation of its primary license be undertaken.[24] Thus, this Petition.

The Petition is impressed with merit.

Section 17 of the Securities Regulation Code[25] provides:

> "SEC. 17. *Periodic and Other Reports of Issuers.* -17.1. Every issuer satisfying the requirements in Subsection 17.2 hereof shall file with the Commission:
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> (a) Within one hundred thirty-five (135) days, after the end of the issuer's fiscal year, or such other time as the Commission may prescribe, an annual report which shall include, among others, a balance sheet, profit and loss statement and statement of cash flows, for such last fiscal year, certified by an independent certified public accountant, and a management discussion and analysis of results of operations; and
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> (b) Such other periodical reports for interim fiscal periods and current reports on significant developments of the issuer as the Commission may prescribe as necessary to keep current information on the operation of the business and financial condition of the issuer.
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> 17.2. The reportorial requirements of Subsection 17.1 shall apply to the following:
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> (a) An issuer which has sold a class of its securities pursuant to a

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[24] *Id.*, Annex "AA".
[25] Republic Act No. 8799 (2000).

> registration under Section 12 hereof: *Provided, however,* That the obligation of such issuer to file reports shall be suspended for any fiscal year after the year such registration became effective if such issuer, as of the first day of any such fiscal year, has less than one hundred (100) holders of such class of securities or such other number as the Commission shall prescribe and it notifies the Commission of such; xxx
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> xxx
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> 17.4. All reports (including financial statements) required to be filed with the Commission pursuant to Subsection 17.1 hereof shall be in such form, contain such information and be filed at such times as the Commission shall prescribe, and shall be in lieu of any periodical or current reports or financial statements otherwise required to be filed under the Corporation Code.
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> 17.5. Every issuer which has a class of equity securities satisfying any of the requirements in Subsection 17.2 shall furnish to each holder of such equity security an annual report in such form and containing such information as the Commission shall prescribe. xxx"

Caliraya, being a registered issuer of securities, is required by law to file with the Commission such periodic and annual reports prescribed by the aforequoted provision.

Based on the uncontroverted allegations of the EPD, Caliraya has repeatedly failed to submit such required reports, in spite of the numerous opportunities given by the CFD and EPD for Caliraya to rectify such failures.

Despite the revocation of its permit to sell securities, Caliraya is still required under SRC Rule 13 of the Amended Implementing Rules and Regulations of the Securities Regulation Code, to comply with the reportorial requirements. The provision states:

> "SRC Rule 13 – Suspension or Revocation of Registration of Securities
> *(formerly, SRC Rule 13 - Obligation of Issuers Where Registration of Securities Has Been Suspended or Revoked During a Public Offering)*
>
> *xxx*
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> 5. The Order of Revocation shall not exempt the company from its reporting obligations under Section 17.2 of the Securities Regulation Code."

In addition, SEC Res. No. 274, Series of 2007, adopted by the Commission on 19 July 2007 provides that:

> "RESOLVED, To ADOPT the policy that corporations whose registration of securities and permit to sell securities to the public have been revoked for violation of the SRC and its Implementing Rules shall continue to be covered by the applicable regulations and reportorial requirements of the SEC for listed, registered or public companies."

However, as sufficiently proven by EPD, the repeated demands by the Commission on Caliraya to submit its reportorial requirements have been ignored.

Presidential Decree 902-A[26] vests in the Commission the power to revoke, after proper notice and hearing, the certificate of registration of a corporation on the ground of failure to file reportorial requirements. Specifically, Sec. 6 (i) (3) and (6) of P.D. 902-A states:

> "Sec. 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:
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> xxx
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> 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:
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> xxx
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> 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;
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> xxx
>
> 6. Failure to file required reports in appropriate forms as determined by the Commission within the prescribed period;"

It cannot be denied that Caliraya has been given several opportunities to be heard to face the allegations against it, however, Caliraya has wasted these opportunities, and in fact, its filing of even a Ninth Motion for Extension of Time to File Answer, even if the Rules of Procedure clearly states that such motions are prohibited, reeks of its blatant disrespect for the Commission.

Additionally, the fact that Caliraya used several addresses different from that stated in its Articles of Incorporation without making the

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[26] SEC Reorganization Act (1976).

appropriate amendment buttresses the decision of this Commission to finally revoke Caliraya's certificate of registration.

WHEREFORE, premises considered, the Petition (For Revocation of Certificate of Incorporation) is hereby **GRANTED.** The Certificate of Registration of Respondent **CALIRAYA SPRINGS GOLF CLUB, INC.** with SEC Registration No. A1997-02176 is hereby **REVOKED**.

Let a copy of this Decision be furnished to the Company Registration and Monitoring Department for appropriate action. And, let this Revocation Order be posted at the Commission's website for purposes of giving notice to the public.

SO ORDERED.

Mandaluyong City, 21 July 2011.

TERESITA J. HERBOSA *
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner

*on official leave