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

IN THE MATTER OF

EDGE ECE REVIEW SPECIALISTS, INC.

SEC Admin Case No. 02-09-104
For: Revocation of Corporate Registration

COMPLIANCE AND ENFORCEMENT DEPARTMENT,

Petitioner.

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DECISION

For consideration of the Commission *En Banc* is the Petition for Revocation of Corporate Registration of respondent Edge ECE Review Specialists, Inc. ("Edge ECE" for brevity) dated 13 February 2009, filed by the Compliance and Enforcement Department[1] ("CED" for brevity) on the ground of filing a falsified Articles of Incorporation ("AOI") for purposes of registration, in violation of Section 6(l)(1) of Presidential Decree No. 902-A, as amended.

FACTS OF THE CASE

Petitioner CED is the department of the Commission mandated to file petitions for revocation of certificates of registration for violation of the Securities Regulation Code ("SRC"), the Corporation Code, P.D. 902-A as amended, including their Implementing Rules and Regulations, and such other relevant laws enforced by the Commission.

Edge ECE is a corporation duly registered with the Commission on 30 April 2004 under SEC Registration No. CS200406761 with principal office at Room 502 Doña Amparo Building, Cataluna corner España, Sampaloc Manila.[2]

This petition stemmed from a complaint-affidavit[3] filed by a certain Dominador S. Pagbilao with the CED on 09 July 2008 alleging, among others, that five (5) out of the seven (7) incorporators were minors at the time of Edge ECE's incorporation. Attaching the certificates of live birth as evidence, Pagbilao asserts

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[1] Now known as the Enforcement and Prosecution Department.
[2] Edge ECE's Articles of Incorporation dated 26 April 2004.
[3] Annex "C" of the Petition.

that Edge ECE employed misrepresentations to obtain its certificate of registration by declaring that incorporators Arcey Cayronne S. Yu, Charmy Camille S. Yu, Shiny Cathlynne S. Yu, Martin Roncarlo S. Yu, and Smart Nikole S. Yu are all of legal age at the time of its incorporation.

On 11 August 2008, a conference was conducted by the CED wherein Pagbilao averred that as Dean of the University of the East ("UE")-College of Engineering, he received numerous complaints from students against Ronnie M. Yu, who was also a professor at the said college aside from being an incorporator of Edge ECE. He further stressed that students under Ronnie M. Yu were being forced to enroll at Edge ECE under pain of getting a failing mark.

In a succeeding conference held on 02 October 2008, Bienvenido N. Quiñones, counsel for respondent Edge ECE submitted a copy of the marriage contract[4] of spouses-incorporators Ronnie M. Yu and Carlota S. Yu, parents of the alleged minor incorporators. During the hearing, spouses-incorporators Yu admitted that the five (5) incorporators were "indeed minors and were legally incapacitated to enter into such articles of incorporation."[5]

In a Memorandum[6] dated 22 November 2008, respondent Edge ECE averred that it was in "honest belief and good faith" that Ronnie M. Yu included his minor children as incorporators. It was further stated that Yu was never assisted by counsel at the time of Edge ECE's application for registration and it was only before the Commission through the CED that he learned that his minor children were not qualified to be Edge ECE's incorporators. To cure the defect, it was also stated in the same memorandum that on 22 November 2008, the Board of Directors, in a meeting called for the purpose, removed from the list of stockholders and Board of Directors the minor children of Ronnie M. Yu.[7]

On 18 February 2009, the CED, on the basis of its own findings, filed the instant petition for the revocation of corporate registration of Edge ECE.

ISSUE

The sole issue to be resolved in this case is whether or not there is a sufficient ground to revoke Edge ECE's certificate of registration.

We rule in the affirmative.

Upon the Order of the Commission for Edge ECE to file its answer to the

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[4] Annex "D" of the Petition.
[5] Summary of Proceedings/Conference dated 02 October 2008, attached as Annex "H" of the Petition.
[6] Annex "I" of the Petition.
[7] Board Resolution No. 01-08 dated 22 November 2008.

Petition, respondent corporation has yet to file the same. Thus, pursuant to Section 3-12[8] of the 2006 Rules of Procedure of the Commission, Edge ECE shall be considered as in default. As a consequence, the Commission shall render judgment on the basis of the petition and records at hand.

We now resolve the case on its merits.

Section 10 of the Corporation Code ("Code")[9] provides for the number and qualifications of incorporators, to wit:

> "SEC. 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 a stock corporation must own or be a subscriber to at least one (1) share of the capital stock of the corporation." (emphasis supplied)

As stated in its Articles of Incorporation, the names of the incorporators and first directors of Edge ECE with their respective addresses, nationalities and number of shares subscribed are as follows:

NAME	ADDRESS	NATIONALITY	NO. OF SHARES
Arcey Cayronne S. Yu	B-3 Lt. II Saint John Villas, Ugong Valenzuela City, Metro Manila	Filipino	8
Charmy Camille S. Yu	B-3 Lt. II Saint John Villas, Ugong Valenzuela City, Metro Manila	Filipino	8
Shiny Cathlynne S. Yu	B-3 Lt. II Saint John Villas, Ugong Valenzuela City, Metro Manila	Filipino	8
Martin Roncarlo S. Yu	B-3 Lt. II Saint John Villas, Ugong Valenzuela City, Metro Manila	Filipino	8
Smart Nikole S. Yu	B-3 Lt. II Saint John Villas, Ugong Valenzuela City, Metro Manila	Filipino	8

[8] SEC. 3-12. *Effect of Failure to Answer.* If the respondent fails to answer the complaint within the abovestated period, he shall be considered as in default. The Hearing Panel or Officer shall, *motu proprio*, proceed to render judgment granting the complainant such relief as the complaint may warrant, unless the Hearing Panel or Officer determines that the complainant should be required to submit *ex parte* additional evidence.

[9] Batas Pambansa Blg. 68 (1980).

Carlota S. Yu	B-3 Lt. II Saint John Villas, Ugong Valenzuela City, Metro Manila	Filipino	8
Ronnie M. Yu	B-3 Lt. II Saint John Villas, Ugong Valenzuela City, Metro Manila	Filipino	352

From the records, it appears that the minority of incorporators Arcey Cayronne S. Yu, Charmy Camille S. Yu, Shiny Cathlynne S. Yu, Martin Roncarlo S. Yu and Smart Nikole S. Yu at the time of Edge ECE's incorporation were conclusively established by the certificates of live birth of the concerned incorporators and also by the admission of spouses-incorporators Ronnie M. Yu and Carlota S. Yu confirming such fact of minority. Based on their Certificates of Live Birth authenticated by the National Statistics Office, the respective birthdates and ages of the said incorporators at the time of incorporation are summarized as follows:

NAME	DATE OF BIRTH	AGE
Arcey Cayronne S. Yu	November 13, 1988[10]	15
Charmy Camille S. Yu	August 14, 1990[11]	13
Shiny Cathlynne S. Yu	August 22, 1991[12]	12
Martin Roncarlo S. Yu	November 03, 1994[13]	9
Smart Nikole S. Yu	July 04, 2003[14]	Less than 1

From the foregoing, there was a clear violation of Section 10 of the Code, which requires that all incorporators should be of legal age.

The act of knowingly employing an incapacitated person as incorporator constitutes fraud, which may be a ground for the revocation of a corporation's certificate of registration. Section 6(l)(1) of Presidential Decree No. 902-A, as amended, provides for the power of the Commission to revoke a corporation's certificate of registration, to wit:

> "SEC. 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:
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> x x x

[10] Annex "E" of the Petition.
[11] Annex "F" of the Petition.
[12] Annex "G" of the Petition.
[13] Annex "J" of the Petition.
[14] Annex "K" of the Petition.

> (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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> 1. **Fraud in procuring its certificate of registration**;
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> x x x"(emphasis supplied)

In its Memorandum filed with the CED, respondent Edge ECE, contends that it was in honest belief and good faith that Ronnie M. Yu included his minor children as incorporators of Edge ECE. Yu further reiterated that he was never assisted by counsel at the time he applied for the Edge ECE's corporate registration.

However, we find respondent Edge ECE's contention as rather weak and self-serving. For one, it is clearly indicated in respondent's AOI that the undersigned incorporators are all of legal age and voluntarily agreed to form respondent corporation under the laws of the Republic of the Philippines. Taking into account Ronnie M. Yu's level of education as a licensed engineer and a professor at the UE-College of Engineering, he is presumed to have been fully aware of the requirement that all incorporators should be of legal age. Furthermore, how can incorporator Smart Nikole S. Yu sign the AOI when in fact she was barely one (1) year old at the time she purportedly signed the same on 28 April 2004? Verily, it may be concluded that the signature appearing in the AOI above the name Smart Nikole S. Yu was written by another person.

Incorporators must have the capacity to contract, hence, it necessarily follows that unless sanctioned by statute, a minor cannot become one of the incorporators in forming a corporation for he is not capable of making a binding contract.[15] In Philippine jurisdiction, minority restricts the capacity to act.[16] Similarly, under Article 1380 of the same Civil Code of the Philippines, minors cannot give consent to a contract and any contract entered into by them are voidable or annullable even though there may have been no damage to the contracting parties. Corollary thereto, the Corporation Code requires the incorporators to be of legal age.[17]

More so, respondent's acts of removing the minor incorporators from the list of stockholders and of replacing them from the Board of Directors do not cure the defect in its incorporation for the reason that at the time of its incorporation, five (5) of its incorporators were minors, clearly in violation of Section 10 of the Corporation Code.

At the outset, it may be deduced that there was an apparent intention to

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[15] 2 Fletcher Cyc. Corp. 1983 Revised Volume, Sec. 83.
[16] Article 38 of the Civil Code of the Philippines.
[17] Corporation Code, Sec. 10.

commit fraud. There is sufficient evidence that incorporator Ronnie M. Yu deliberately concealed the minority of his children to ensure the approval of Edge ECE's application for registration. Consequently, the sworn articles of incorporation submitted by respondent Edge ECE as part of its registration requirement, shall be regarded as spurious and fraudulent. Had it been known to the Commission that such AOI was fraudulent, the CRMD would not have approved Edge ECE's application for registration.

From the foregoing, and after having established that respondent's act of concealing the minority of several of its incorporators constitutes fraud thereby facilitating the approval of respondent's application for registration, there was a clear violation of Section 6(l)(1) of P.D. 902-A, as amended. Thus, the revocation of the certificate of registration of Edge ECE is warranted.

WHEREFORE, premises considered, the Petition is hereby **GRANTED**. The corporate registration of Edge ECE Review Specialists, Inc. is hereby **REVOKED**.

Let a copy of this Decision be furnished to the Company Registration and Monitoring Department for its appropriate action, as well as to the Economic Research and Information Department and the Commission's extension offices for dissemination to the general public.

SO ORDERED.

Mandaluyong City, 24 June 2010.

FE B. BARIN
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner