Republic of the Philippines
Department of Trade and Industry
Securities and Exchange Commission
SEC Bldg., EDSA, Greenhills, Mandaluyong City

In the Matter of

ABRA DEVELOPMENT FUND PROGRAM, INC.

SEC Admin Case No. 04-10-113
(CED Case No. 09-2890)

ENFORCEMENT AND PROSECUTION DEPARTMENT,

Petitioner.

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DECISION

For consideration is the Petition for Revocation of Corporate Registration of Abra Development Fund Program, Inc. ("ADFPI") for violation of Section 6, par. I(1) and (2) of P.D. 902-A as amended,filed by the Enforcement and Prosecution Department ("EPD") on 08 April 2010.

FACTS OF THE CASE

ADFPI is a non-stock non-profit association registered with the Commission's Baguio Extension Office ("SEC-BEO") on 08 August 2007 under SEC Reg. No.CN200729282, with principal office address at Rizal corner Zamora Streets, Bangued, Abra. The purposes for which the association is incorporated are:

1. To eradicate hunger and poverty in the province of Abra permanently through education program.

2. To foster closer relationship among members and promote understanding and cooperation with all the undertaking of the association.

3. To serve as channel of all assistance coming from either government or private agencies/sector deemed necessary to promote the welfare of the members.

4. To serve as venue to venture into lawful projects that will enhance/uplift the socio-economic well being of the members.

5. To generate funds through donations, grants, microenterprises and other related fund raising activities.[1]

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[1] ADFPI's Articles of Incorporation, Second Article.

Petitioner EPD's investigation against ADFPI was prompted by the email-letter complaint sent on 18 December 2007 to the email address of the Office of the President ("OP") by a certain Leilani B. Lammawen of Abra, which OP endorsed to the Department of Trade and Industry ("DTI"). DTI in turn, endorsed the matter to the EPD.

After having looked into ADFPI's registration and corporate files, EPD proceeded to form an investigating team. The investigation confirmed the allegations in the letter and the affidavits submitted by the complainants.

In a letter[2] addressed to SEC-BEO filed on 26 December 2007 and signed by twenty-eight complainants, students from different municipalities ("Scholar-Complainants") alleged that they were "duped into paying varied amounts ranging from one hundred pesos (P100.00) to one thousand pesos (P1000.00) to an organization operating under the name of Abra Development Fund Program, Inc." ADFPI was represented by Conchita "Chit" Quintero (Project Director), Eunice Tubaña (Office Coordinator), Raul Salva (Manager), and Dr. Felicidad Andrada (ADFPI Physician) (the "ADFPI Officers").

In their letter, the Scholar-Complainants alleged that sometime in July 2007, ADFPI invited people to join their organization to avail of the scholarships they offered. Every Saturday thereafter, the officers conducted seminars at their office where Quintero informed them that the purpose of the organization is to send almost everybody in Abra to college with a monthly allowance of fifteen thousand pesos (P15,000.00) each, which they would allegedly release in October 2007. She also disclosed that the funds of the program will come from then President Gloria Macapagal Arroyo's three hundred billion peso (P300 Billion) donation to be deposited in a bank, the interest of which will be used by ADFPI. Quintero added that funds would also come from foreign aid.

After each meeting, the ADFPI officers collected one thousand pesos (P1,000.00) from each participant as membership fee, two hundred pesos (P200.00) for certificates, and four hundred pesos (P400.00) for "British tax." The members of the association were also required to pay one hundred pesos (P100.00) for the awarding of certificates[3] and another one hundred pesos (P100.00) for the money transfer.[4] After payment, the receipts issued to the complainants indicated that some were for donation, membership fees, and others were for "counterparts," while others were not issued receipts. Consequently, the Scholar-Complainants asked the ADFPI officers where they would put the money they have collected from them, and they were given answers such as "they gave money to the poor, to those

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[2] Petition, Annex "C".
[3] Id., par.21. Certificates of Scholarship issued by ADFPI were presented before the investigators.
[4] Id., Affidavit Complaint filed on 26 December 2007, Annex "G," par. 4.

who are mourning" but when asked for the names of the beneficiaries the reply was "it is confidential."

The ADFPI officers assured the Scholar-Complainants that the promised amounts would be released on the last day of October 2007, then it was moved to November 2007, and finally, 8 December 2007, but no money was released, plunging the complainants to a series of debts. The parents borrowed money to pay for the fees, relying on ADFPI's promises, and enrolled their children in schools which they could not really afford. Having made oral inquiries on the status of ADFPI's promises, the Scholar-Complainants alleged that they were scolded, insulted and threatened by Quintero saying that those who wanted to get back their one thousand pesos (P1,000.00) would be accompanied to the cemetery.[5]

Thus, some of the Scholar-Complainants filed their Complaint-Affidavits[6] against ADFPI, Quintero, and Salva with the SEC-BEO. Additionally, five of the incorporators of ADFPI, namely: Aleda Bergonia, Cristina Bersalona, Loradel Ballagan, April Joy Domingo, and Khae Ann Baguio ("Incorporator-Complainants") also filed their Complaint-Affidavits[7] against ADFPI.

They alleged that sometime in June 2007, Quintero and Salva invited them to join ADFPI provided they take an entrance examination. They were told that ADFPI was organized to help students and that they would be provided with fifteen thousand pesos (P15,000.00) monthly allowance, a laptop computer, and that members of the association would travel abroad for annual meetings in Hong Kong and New Zealand. The Incorporator-Complainants were convinced and took the entrance exams for which they were asked to pay one thousand pesos (P1,000.00) as membership fee.

A few days later the Incorporator-Complainants were told that they passed the entrance exam and were asked to recruit three (3) classmates to join ADFPI. During meetings with Quintero and Salva, the Incorporator Complainants were given documents to sign and were told that it was part of their membership. In the documents given to them, they read that they were being made incorporators of ADFPI and that they had to contribute ten thousand pesos (P10,000.00); they hesitated, but Quintero assured them that they need not worry because it was a mere formality.

Sometime in December 2007, a concerned parent obtained a copy of the Certificate of Incorporation of ADFPI from the Commission. They were surprised to find that residence certificates were provided therein, despite the fact that they never submitted any of their residence certificates. Because of the promises of

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[5] Letter filed 26 December 2007, page 2.
[6] Id., Annexes "F," "G," "H," and "I".
[7] Id., Annexes "J" and "K".

ADFPI, a lot of other students took entrance exams and all of them paid one thousand pesos (P1,000.00) each. As incorporators, they were promised twenty-five thousand pesos (P25,000.00) monthly allowance but it never happened. When they accomplished the affidavits, they were being pursued by the students they recruited.

The fact that two of the Incorporator-Complainants were minors at the time of incorporation of ADFPI was ascertained during the investigation.[8] Quintero and Salva failed to attend the conference despite notice. Lammawen informed the investigators that the two officers of ADFPI have been hiding from complainants.[9]

Upon receipt of the instant petition, the Commission issued Summons dated 12 April 2010 requiring ADFPI, Conchita Quintero and Raul Salva to enter their appearance and file their Answer to the Petition within fifteen (15) days after service of said Summons. The summons, however, was not served personally since ADFPI no longer holds office in the address stated in its Articles of Incorporation while Quintero is nowhere to be found and Salva was already dead. Thus, pursuant to Section 4-9 of Rule IV of the 2006 Rules of Procedure of the Commission, the Summons and Order for publication both dated 6 July 2010 were published in the August 14, 2010 issue of the *Manila Bulletin*.[10] To this date, no answer or comment has been filed.

ISSUE

Whether there is a valid ground to revoke the Certificate of Registration of Abra Development Fund Program, Inc. based on EPD's petition and evidence submitted.

RULING

The petition is meritorious.

EPD indicated the violations of applicable laws by ADFPI which are bases for the revocation of its Certificate of Registration prescribed by Section 6 (l)1 and 2 of PD 902-A, as amended:

> "SEC. 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:
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> 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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[8] Id., Copies of the birth certificates of April Joy Domingo and Christina Bersolana's are attached as Annexes "L" and "M".
[9] Petition, par.22.
[10] Affidavit of Publication dated 16 August 2010.

1. Fraud in procuring its certificate of registration;

2. Serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public;xxx"

Fraud In Procuring Its Certificate Of Registration

With the presentation of the birth certificates of two of ADFPI's incorporators, petitioner EPD has shown that ADFPI has violated Section 10 of the Corporation Code[11] which provides "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.xxx"[12] Two of its incorporators were minors at the time of incorporation, on 08 August 2007. April Joy Domingo was only sixteen (16) years old,[13] while Cristina Bersalona lacked several months prior to reaching the age of eighteen upon incorporation.[14]

Moreover, the incorporators even expressly certified in the Articles of Incorporation that all of them are of legal age: "The undersigned incorporators, ***all of legal age*** and majority of whom are residents of the Philippines, have this day voluntarily agreed to form a stock corporation under the laws of the Republic of the Philippines."[15]

It appears that there is constructive fraud in this case. Constructive fraud may result from reckless and heedless representations although they are not made with a deliberate intent to deceive.[16] "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.

Further, as the Commission explained in the case of *Charyn Marketing Enterprise Corporation,*[17]

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[11] Batas Pambansa Blg. 68 (2000).
[12] Emphasis supplied.
[13] Petition, Annex "L."
[14] Petition, Annex "M."
[15] Articles of Incorporation, 1st paragraph, page 1; Emphasis supplied.
[16] Id., citing 37 Am Jur 2d, Fraud and Deceit § 4.
[17] In the Matter of Charyn Marketing Enterprise Corporation, SEC Case No. 03-05-49, cited in In The Matter Of Silvermoon Security & Investigation Agency, Inc., Florita S. Dela Cruz, Patricio S. De

> "The fraud mentioned in Section 6, paragraph I, subparagraph 1 of P.D. 902-A as one of the grounds for 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 and/or papers presented to this Commission for the registration of the said corporation, partnership or association."[18]

Indubitably, ADFPI's submission of its Articles of Incorporation wherein they expressly certified that all of its incorporators were all of legal age at the time of incorporation when in fact they were not, constitutes fraud within the meaning of Section 6, paragraph L (1) of P.D. 902-A, as amended.

Serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public

The facts of the case narrated above are replete with acts of ADFPI and its representatives that illustrate their serious misrepresentation as to what ADFPI can do, which prejudiced the general public, particularly the complainants.

These are supported by documentary evidence. ADFPI's flyers[19] which were distributed to the general public, state the following about ADFPI (referred to as the "Fund" in the flyer), among others:

1) The Fund is Php 300 billion; participants will have to pitch Php1,000.00 as their counterpart;[20]

2) The ADFPI has already started circulating the idea to H.E. Pres. Gloria Macapagal- Arroyo, to the Asian Development Bank and other foreign institutions.[21]

In addition, receipts were issued by ADFPI to its scholars, copies of which are attached to the Petition.[22] The promise of scholarships was emphasized by the fact

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Mesa, Arthur P. Palmiano, Nieves M. Padios and Pinky Rose G. Langit SEC Case No. 12-05-99 (CED Case No. 05-2822).

[18] Id., citing URBAN POOR COUNCIL OF PASIG INCORPORATED, REPRESENTED BY NEMESIO A. AGUILAR, JR., petitioner, vs. NONESIO RIVERA, ET AL., respondents. (SEC-SICD * CASE NO. 02-94-4689. December 26, 1995).

[19] Id., Annex "V."

[20] Flyer, par. 1.

[21] Id., par. 12.

[22] Petition, Annexes "S," "T," and "U."

that the certificates of scholarship[23] signed by Quintero as Director and Salva as General Manager were awarded to the scholar-complainants in a ceremony that took place on 7 October 2007 at Oval Era Hotel Veranda, Abra.[24]

WHEREFORE, premises considered, the instant petition is hereby **GRANTED.** The Certificate of Registration of **ABRA DEVELOPMENT FUND PROGRAM, INC.** is hereby **REVOKED.**

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

SO ORDERED

Mandaluyong City, 13 January 2011.

FE B. BARIN
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner

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[23] Id., Annexes "N," "O," "P," "Q," "R."
[24] Id., par. 41.