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

IN THE MATTER OF:

SEC Admin. Case No. 06-10-119
For: Revocation of Certificate of Corporate Registration

UNIWORK INC.

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DECISION

For consideration is the Petition for revocation of corporate registration (*"the Petition"*, for brevity) dated 24 June 2010 filed on 25 June 2010 by the Commission's Enforcement and Prosecution Department ("petitioner"), against Uniwork Inc. ("Uniwork"), for fraud in the procurement of its certificate of registration.

Uniwork is a domestic stock corporation registered with the Commission on 23 August 2007 under SEC Reg. CS200713206[1] *"to engage in Information and Communications Technology enabled services such as but not limited to Business Process Outsourcing, website content and web development."*[2] As stated in its Articles of Incorporation ("AI"), Uniwork's principal office address is at 24/F Pacific Star Building, Makati Avenue, Makati City.[3] Two (2) of Uniwork's incorporators, Yuriy Mizyuk and Kevin Dockery, are listed in the AI as having residence in the said principal office address of the corporation.[4]

On 7 July 2009, a letter from a concerned citizen was received by the Office of the Chairperson of the Commission requesting an investigation on the operations of Uniwork. The letter alleges that Uniwork falsely indicated in its AI that its principal office is at 24/F Pacific Star Building, Makati Avenue, Makati City. According to the letter, Uniwork, which had a registered website, www.writers.ph, started its operations at 168 Internet Café in Makati City, then moved to 17/F Burgundy Corporate Tower, Senator Gil Puyat Avenue, Makati City, but has never occupied and operated in 24/F Pacific Star Building, Makati Avenue, Makati City.[5]

After investigation, petitioner filed the instant *Petition* on 25 June 2010.

On 3 September 2010, *Summons* was issued by the Commission through its Office of the General Counsel ("OGC") to Uniwork's addresses at 24/F Pacific Star Building, Makati Avenue, Makati City and at 17/F Burgundy Corporate Tower,

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[1]Petition, Annex "A".
[2]Petition, Annex "B".
[3]Ibid.
[4]Ibid.
[5]Petition, Annex "H".

Senator Gil Puyat Avenue, Makati City. The same was received at the latter address. *Summons* was also issued to Uniwork's corporate officers (i.e., president, treasurer and secretary).[6]

On 7 October 2010, petitioner filed its *Reply* (dated 6 October 2010) to an alleged *Answer* of Uniwork.

However, verification of the records reveals that no such *Answer* was filed with the Commission *En Banc* through the OGC. It appears that such *Answer* was served to the petitioner but was not filed with the OGC.

Hence, Uniwork is now considered as in default.[7] Consequently, the Commission shall render judgment on the basis of the *Petition* and available records at hand.

The issue to be resolved in the case at bar is whether there is sufficient ground to revoke the certificate of registration of Uniwork.

We answer in the affirmative.

Section 6, paragraph l(1) of Presidential Decree No. 902-A, as amended, provides:

> "Sec. 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:
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> (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:
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> 1. Fraud in procuring its certificate of registration;
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> xxx xxx xxx."

The AI is the basic corporate contract that is accorded with reverence by the law and the courts, as manifested by the stringent rules for its registration and the manner by which any part thereof may be amended.[8] It is the contract between the

[6]See Affidavits of Service of Anthony Glenn C. Paggao.
[7]Section 3-12, the Commission's 2006 Rules of Procedure.
[8]Cesar L. Villanueva, Philippine Corporate Law 155 (2001).

corporation and the State, the stockholders and the state, and the corporation and its stockholders. Thus, the law enumerates mandatory contents of the AI.[9]

Hence, a cancellation suit in the name of the State will lie to annul an incorporation for fraud, based on the theory that it is a contract with the State.[10] Fraud in procuring a certificate of incorporation, practiced on State officers, makes the corporation a nullity, and in determining whether a corporation was actually created, it is **immaterial** that it was a fraudulent scheme for the purpose of cheating the public.[11]

Section 14 of the Corporation Code ("the Code")[12] mandates that the AI state the "*place where the principal office of the corporation is to be established or located, which place must be within the Philippines.*"[13] The place where the principal office is located determines the corporation's residence and the venue in an action by or against it.[14] The purpose of this requirement is to fix the residence of the corporation in a definite place, instead of allowing it to be ambulatory, for effective supervision and regulation of the corporation.[15]

Section 14 likewise requires that "*the names, nationalities and residences of the incorporators*" be stated in the AI.[16] The statement of the residences is required to show that majority of the incorporators are residents of the Philippines, as mandated by Section 10 of the Code.[17] The requirement gains more significance in light of the fact that the incorporators, who, as in this case, usually act as the first set of directors, may be held personally liable for certain acts or omissions under Section 31 of the Code.[18]

In the case at bar, there is substantial evidence that PCPSAI falsified its AI by making use of a false address of its principal office. To verify the allegation that Uniwork has never occupied and operated in the principal office address stated in its AI (i.e., 24/F Pacific Star Building, Makati Avenue, Makati City), petitioner requested a certification from the Office of the Building Administrator of the said Pacific Star

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[9]Supra, Note 8, citing Section 14 of the Corporation Code.
[10]1 Fletcher Cyclopedia Corporations 604 (Permanent Edition).
[11]Ibid., p. 543.
[12]Batas Pambansa Bilang 68 (1980).
[13]Item 3, par. 1, Section 14, the Code.
[14]Hector S. De Leon, The Corporation Code of the Philippines Annotated 161 (2002).
[15]Ibid, p. 160-161, citing *Young Auto Supply Co. vs. CA*, 223 SCRA 670 (1993).
[16]Item 5, par. 1, Section 14, the Code.
[17]"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. xxx."
[18]"Sec. 31. Liability of directors, trustees, or officers. – Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees **shall be liable jointly and severally for all damages resulting therefrom** suffered by the corporation, its stockholders or members and other persons.xxx."

Building that Uniwork is a unit owner or lessee in the building. Dolores R. Da Costa, Senior Vice President for Marketing and General Manager of Pacific Star Building, certified that "*based on (their) records on file, (they) do not have any trace of any tenant by the name of UNIWORK, INC. in Pacific Star Building.*"[19] Instead, Uniwork is a lessee of Unit 16-L and 17-C, Burgundy Corporate Tower, 252 Sen. Gil Puyat Avenue, Makati City.[20]

Even if we were to consider Uniwork's *Answer*, a copy of which we obtained from the petitioner, the above finding stands.

Uniwork primarily anchors its defense on the In-House Subscription Agreement ("the Agreement")[21] it entered into with Executive Power Center, Inc. ("EPCI"), the occupant of 24/F Pacific Star Building, Makati Avenue, Makati City, for the renting by Uniwork of EPCI's facilities. This is why, Uniwork points out, its name would not appear in the list of owners or tenants of the said building, considering that the said Agreement with EPCI was in the nature of a sublease.[22] Thus, Uniwork claims that it did conduct its operations in the said address and utilized the said office space on or about the time its AI was presented for approval and registration with the Commission.[23]

We are not persuaded.

In the first place, it was writers.ph, an informal organization or association of individuals[24], that entered into the Agreement, not Uniwork itself, which is a separate and distinct personality.

Second, and more importantly, the Agreement expressly states that it "***shall commence on 06th September 2007*** *and* ***shall expire on 05th December 2007*** *unless renewed as stated therein.*"[25] Uniwork, to stress, was registered with the Commission on **23 August 2007**. Hence, Uniwork's claim that it conducted its operations at the Pacific Star Building on or about its AI was presented for approval with the Commission is unsubstantiated and a lie.

As between Uniwork's dubious, self-serving evidence and the above-mentioned positive certification of the administrators of Pacific Star Building, the latter must prevail.

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[19]Petition, Annex "Q".
[20]Petition, Annex "R".
[21]Answer, Annex "1".
[22]Answer, p. 6.
[23]Ibid.
[24]Supra, Note 22, p. 5.
[25]Supra, Note 21.

Accordingly, during incorporation, Uniwork fraudulently stated in its AI that its principal office is at 24/F Pacific Star Building, Makati Avenue, Makati City.

Another indication of such fraud is the fact that Uniwork encouraged and maintained the same. Uniwork applied for the amendment of its AI and was issued its Amended AI on 5 December 2008.[26] Yet, it did not amend its principal office address[27], despite the fact that the Agreement was only good until 5 December 2007 and the fact that it has been a lessee of Burgundy Corporate Tower, 252 Sen. Gil Puyat Avenue, Makati City. Further, throughout the years of its life, Uniwork submitted many filings with the Commission (namely: (1) 2008 General Information Sheet ("GIS) filed on 13 October 2008[28]; (2) 2009 GIS submitted on 8 May 2009[29]; (3) 2010 GIS filed on 8 February 2010[30]; (4) Amended Audited Financial Statements ("AFS") for the period 2007 submitted on 13 October 2008[31]; (5) Amended AFS for the same period 2007 filed on 21 October 2008[32]; and (6) SEC Form 10.1-E filed on 14 October 2008)[33], not one of which reflected that the company actually holds principal office address at Unit 16-L and 17-C, Burgundy Corporate Tower, 252 Sen. Gil Puyat Avenue, Makati City. In short, Uniwork never corrected the misrepresentation that the company's principal office address is at 24/F Pacific Star Building, Makati Avenue, Makati City, despite several opportunities to do so.

Indeed, had there been no complaint or report, the Commission would not have known that Uniwork was already holding address in Unit 16-L and 17-C, Burgundy Corporate Tower, 252 Sen. Gil Puyat Avenue, Makati City, and not in 24/F Pacific Star Building, Makati Avenue, Makati City.

It is clear from the falsification of the address of its principal office and of its incorporators that Uniwork intended to undermine and defeat, not only the exercise by the Commission of its powers of supervision and regulation over it, but also the enforcement of whatever claims the Commission, the corporate stakeholders and the general public may have against corporation.

WHEREFORE, premises considered, the instant *Petition* is hereby **GRANTED**. The Certificate of Registration of Uniwork Inc. is hereby **REVOKED**. Further, let the names of the incorporators of the corporation be included in the watch list of the Commission, namely: Yuriy Mizyuk, Kevin Dean Dockery, Albert Kim Ludwig N. Sumaculub, Rodolf Armand B. Initorio, and Ricky F. Manolong.

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[26]Petition, Annex "C".
[27]Petition, Annex "D".
[28]Petition, Annex "E".
[29]Petition, Annex "F".
[30]Petition, Annex "G".
[31]Petition, Annex "I".
[32]Petition, Annex "J".
[33]Petition, Annex "L".

Let copies of this *Decision* be furnished the Company Registration and Monitoring Department and the Economic Research and Information Department of this Commission for their appropriate action.

SO ORDERED.

Mandaluyong City, 31 March 2011.

FE B. BARIN
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner