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

PSMAQ TRANSPORT ASSOCIATION, INC. represented by MR. ROLANDO BONIFACIO,
Complainant-Appellant,

SEC En Banc Case No. 06-10-202
(SEC CRMD Case No. 09-98)

- versus -

ROMEL H. TAÑALA,
MILO D. LEDESMA
ROLAND ALLAN CORPUZ,
RAMERO P. BEDURAL,
ARCHIE S. AVILES,
MICHAEL A. SANTIAGO,

Respondents-Appellees.

FOR: Cancellation of Fraudulent Amended Articles of Incorporation and By-Laws; Reinstatement of Amended Articles of Incorporation and By-Laws With Prayer for T.R.O. and/or Writ of Preliminary Injunction

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DECISION

Before the Commission is the assailed decision of the Company Registration and Monitoring Department ("CRMD") of the Commission dated 13 May 2010, the dispositive portion of which states as follows:

> "WHEREFORE, premises considered, the instant Complaint is hereby DISMISSED. The parties are advised to bring the intra-corporate controversy before the appropriate Regional Trial Court for resolution."

Complainant-appellant (hereinafter referred to as "**Bonifacio group**," for clarity) filed its Memorandum of Appeal dated 02 June 2010 assailing the decision issued by CRMD on 13 May 2010. The Commission issued an Order dated 25 June 2010 requiring the Respondents-Appellees (hereinafter referred to as "**Tañala group**," for clarity) to file their Reply-Memorandum. On 02 July 2010, the Tañala group filed its Reply-Memorandum.

The facts, as alleged by the parties to the case, are as follows:

The ***Bonifacio group*** is composed of the original incorporators of P-MAQ (PSMAQ)[1] Transport Association, Inc., an association plying the Pasig, Market-

[1] Complainant initiated the amendment of the Articles of Incorporation and By-Laws of the association, which included, among others, a change of name to PSMAQ Transport Association, Inc. which was approved by the Commission on 06 February 2009. However, respondents subsequently filed their application for amendment of the Articles of Incorporation and By-Laws of the association, which included, among others, a reversion from PSMAQ to the original name of the association to P-MAQ. ***The amendment application was approved on 06 March 2009 and P-MAQ remains as the current name of the association.***

Market, Ayala and Quiapo route[2] whose Articles of Incorporation and By-Laws were approved on 16 February 2005.[3]

In their Reply-Memorandum, the **Tañala group**[4] claimed that the Bonifacio group never conducted elections from 2005 to 2008. The group initiated a Petition for Calling of Meeting[5] before the Office of the General Counsel of the Commission. The case was later dismissed[6] as moot in view of the elections[7] conducted by the Tañala group.[8]

The Bonifacio group sought to have the election nullified before the Regional Trial Court ("RTC") of Pasig City and raffled to Branch 158, but their complaint was dismissed for being filed out of time.[9] Meanwhile, the Bonifacio group submitted two sets of GIS dated 23 May 2008[10] and 15 August 2008[11] to the Commission reflecting two dates of special meetings conducted, namely April 01, 2008 and August 12, 2008 respectively.

The Bonifacio group's application[12] for Amendment of Articles of Incorporation[13] and By-Laws [14] was approved on 9 February 2009. One of these amendments include the change of name from P-MAQ to PSMAQ Transport Association. Having learned of the amendments undertaken by the Bonifacio group,[15] the Tañala group filed an application for Amendment of Articles of Incorporation[16] and By-Laws[17].

In view of the anticipated amendments, the Bonifacio group wrote to the CRMD twice, first on 12 February 2009[18] and second on 12 March 2009[19] requesting the department not to entertain or accept any submissions by the Tañala group. The

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[2] The type of vehicle driven is left blank in the Articles of Incorporation dated 15 February 2005.
[3] *Memorandum on Appeal, Certificate of Incorporation dated 16 February 2005*, Annex "B".
[4] Complainants assert that respondents were expelled from the association during their special meeting held on 18 August 2008 (*Memorandum on Appeal,* Par. 14).
[5] SEC Case No. 04-08-200.
[6] Reply-Memorandum (*Order dated 19 June 2008*), Annex "13".
[7] Among others: *Minutes of the Proceedings* (Annex "12"), *Letter to SEC from Respondents dated 19 May 2008 informing the SEC of the election conducted on 18 May 2008* (Annex "9") and *GIS dated 19 May 2008* (Annex "10"). Moreover, both parties admitted that an election was indeed held on the said date.
[8] Respondents claim that as a result, the management of Market! Market! issued a certificate of recognition to the Tañala-led group, as well as I.D. cards (Annexes "14" and "15").
[9] *RTC Order dated 17 November 2008*, Annex "18".
[10] Annex "16,"*Reply-Memorandum to the Complainant-Appellant Memorandum on Appeal.*
[11] Annex "17," *Ibid.*
[12] Complainants raise the issue of having paid large fines for non-submission of reportorial requirements and violations of the code as specified in *Confirmation of Payment of Fines dated 28 January 2009* (Annex "F") which they attribute to Respondents as fraudulent submissions.
[13] *Certificate of Filing of Amended Articles of Incorporation*, Annex "D".
[14] *Certificate of Filing of Amended By-Laws,* Annex "E."
[15] *Memorandum on Appeal,* Par. (d).
[16] *Certificate of Filing of Amended Articles of Incorporation* (Annex "H") of Memorandum on Appeal and Annex "19" of Reply-Memorandum.
[17] *Ibid.*, (Annex "I") of and *Ibid.*, (Annex "20").
[18] *Ibid.,* Annex "G."
[19] *Ibid,* (Annex "J").

application for amendment of the Articles of Incorporation and By-laws was approved on 06 March 2009. The amendment included that of changing the name of the association from PSMAQ to P-MAQ, its original name, which remains the corporate name of the association at present.

The CRMD responded[20] to the second letter informing the Bonifacio group to file a petition for cancellation of amendments to the Articles of Incorporation instead. The Bonifacio group alleged that it even filed a criminal complaint[21] for perjury and falsification against the Tañala group that was allegedly subsequently dismissed.[22]

Meanwhile, the Tañala group conducted its second election on 24 May 2009. The Bonifacio group sought to have the election nullified before the RTC in Pasig City. The Bonifacio group impleaded the CRMD, and prayed for the RTC to order the CRMD to revoke the certificates of Filing of Amended Articles of Incorporation ("AAI") and Amended By-Laws ("ABL") filed by the Tañala group based on the "alleged illegal acts of the SEC in approving the Amended Articles of Incorporation and By-Laws filed by the individual defendands."[23] The CRMD, represented by the Office of the Solicitor General, asserted that the RTC had "no jurisdiction to order the revocation and/or cancellation of the certificate of filing of amended articles and by-laws of plaintiff corporation."[24]

The Bonifacio group was successful in having the election conducted by the Tañala group nullified by the RTC in its Decision dated 22 September 2009. However, with respect to the revocation of the AAI and ABL, the RTC dismissed the complaint for lack of jurisdiction over the cancellation of the certificates of filing of amended articles of incorporation and by-laws dated 06 March 2009.[25] Citing Section 5 of Presidential Decree 902-A, the RTC stated: "Nowhere in this enumeration of adjudicative functions is the revocation of amended Articles of Incorporation or By-Laws found ... xxx In sum, therefore, actions for revocation of Amended Articles of Incorporation or By-laws, like the instant case, **must still be filed before the SEC** and this Court has no jurisdiction over them."[26] (emphasis supplied)

The Tañala group, nonetheless, planned the holding of a special election to be conducted on 05 December 2009 which the Bonifacio group tried to prevent,[27] but without success.[28] The Tañala group alleged that it was able to conduct the

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[20] *Letter dated 25 March 2009* (Annex "K.")
[21] *Docketed as XV-03-INV-09B-01419 For: Perjury/Falsification* (Annex "31").
[22] *Ibid.*
[23] PSMAQ Transport Association., and its members represented by Mr. Ronaldo C. Bonifacio vs. Romeo H. Tañala, Milo D. Ledesma, et al. (SEC Case No. 09-120), Regional Trial Court – Pasig City, Branch 158, 22 September 2009, p. 2.
[24] *Answer in SEC Case No. 09-120 dated 06 July 2009*, Par. 38 (Annex "L").
[25] *Decision dated 22 September 2009*, Annex "M."
[26] *Ibid.*
[27] *Very Urgent Motion for the Issuance of Temporary Restraining Order and Writ of Preliminary Injunction dated 01 December 2009*, Annex "26."
[28] *Order of the RTC Branch 158 of Pasig City dated 03 December 2009*, Annex "27."

election on 05 December 2009[29] and that the members of the group were re-elected.

On 15 March 2009, the Bonifacio group filed a Complaint before the Corporate Filings and Records Division ("CFRD") of the CRMD for the cancellation of the Amended Articles of Incorporation and By-Laws dated 06 March 2009 filed by the Tañala Group. The complaint was dismissed on 13 May 2010 on the ground that the subject case is intra-corporate in nature.

Hence, the instant appeal.

ISSUE

In the main, the issue to be resolved is whether or not the Amended Articles of Incorporation (AAI) and Amended By-Laws (ABL) approved on 06 March 2009 of the P-MAQ[30] association should be revoked.

Among the Commission's enumerated powers under the Securities and Regulation Code[31] is the power 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."[32] In this particular instance, the complainant-appellant alleges that there was fraud in the amendments of the Articles of Incorporation and By-Laws obtained by respondents.

Summary of the Alleged Changes in the Articles of Incorporation and By-Laws of the P-MAQ Association[33]

Affected articles and provisions	**ORIGINAL (Bonifacio group)**	**09 FEBRUARY 2009 (Bonifacio group)**	**06 MARCH 2009 (Tañala Group)**
Name of Association (Article I)	P-MAQ Transport Association, Inc.	PSMAQ Transport Association, Inc.	P-MAQ Transport Association, Inc.
Principal address	787 J. Pueblo St., Bambang, Pasig City	No change	2 F. Manalo St. Brgy. Malinao, Pasig City
Purpose Clause (Article II)	Not stated/left blank	FX, AUV, etc.	FX only
Number of Trustees (Article VI)	5	No change	11
Term of the Board of Directors	1 year	3 years	1 year
Term of Office	1 year	3 years	1 year

[29] *GIS dated 05 December 2009*, Annex "30."
[30] While the case is captioned by the complainant-appellant as "PSMAQ Transport Association, Inc. vs Tañala, et al." the current name of the association as per its latest amendment is still P-MAQ Transportation.
[31] Republic Act No. 8799 (2000).
[32] Section 5.1(m).
[33] Based on the allegations by the parties and the documents submitted respective thereto.

Among others, the complainant-appellant alleges: "this Honorable Commission imposed large fines upon the complainant-appellant due to the fraudulent act of the respondents-appellees of filing several General Information Sheets which stated some false information which are contrary to the Articles of Incorporation and By-Laws which were not properly amended."[34] These fines were imposed by the CRMD for the following violations: change in the number of its Board of Trustees, change in the principal office, change in its Annual Meeting which were done without proper amendment of the Articles of Incorporation.[35] Complainant-Appellant also alleges that the respondents "stated a complete falsehood under oath when they stated that P-MAQ Transport Association, Inc. 'is in the process of registration with the Securities and Exchange Commission' when in truth and in fact the Corporation had been registered as far back as February 2005 or four (4) years after they executed the Joint-Affidavit of Undertaking to Change Name."[36]

Meanwhile, the respondents-appellees allege that complainant-appellant and four other incorporators "misrepresented themselves as incumbent officers of P-MAQ before the SEC and they surreptitiously amended the Articles of Incorporation and by-laws of P-MAQ Transport..."[37]

Notwithstanding the passage of the Securities and Regulation Code, relevant provisions of Presidential Decree No. 902-A[38] remain in force including the power to "suspend, 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"[39] that includes "fraud in procuring its certificate of registration."[40]

The serious allegations of fraud by the parties require a careful and exhaustive review of the factual circumstances surrounding the amendment of Articles of Incorporation and By-Laws of PSMAQ that is well within the competence of the CRMD, in the exercise of its powers lawfully delegated by the Commission, over matters of registration. Thus, before the Commission can rule on the propriety of revoking the Amended Articles of Incorporation and By-Laws of the PSMAQ, the CRMD should determine whether or not these amendments were, indeed, fraudulently procured and warrant the revocation of these amendments.

WHEREFORE, premises considered, the instant case is hereby **REMANDED** to the Company Registration and Monitoring Department to determine the veracity of the allegations in the complaint dated 15 March 2009 filed by the Bonifacio group.

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

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[34] Memorandum on Appeal, par. C.
[35] *Ibid.*, Annex "F."
[36] *Ibid,* par. 19, p. 12.
[37] Reply-Memorandum, par. 19.
[38] Enacted on 11 March 1976.
[39] Section 5.
[40] Section 5(*i*).

SO ORDERED.

Mandaluyong City, 25 March 2011.

FE B. BARIN
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner