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

JOSE G. BADILLA, et al.
Appellants,

-versus-

SEC EB Case No. 08-07-110

LUZ BALDERAS GONZALES FOUNDATION, INC. represented by its president DR. OTILIA PEREGIL,
Appellee.

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DECISION

Before the Commission *En Banc* is an appeal from the 22 February 2007 Order of the Director of the Securities and Exchange Commission Iloilo Extension Office ("SEC-IEO"), which set aside the order of revocation of the certificate of registration of the Luz Balderas Gonzales Foundation, Inc. ("Foundation").

The antecedents are as follows:

Luz Balderas Gonzales Foundation, Inc. was registered with this Commission on 15 March 1996. It was established primarily to help improve the living conditions of the people of Banate, Iloilo, extend financial assistance through scholarship grants, to provide avenues for the youth to exercise their talents and to develop their potentials, to help Filipino women and to help promote Christian virtues and values.[1] Its principal office is located at 127A St. Elizabeth Center, Valeria Street, Iloilo City.

On 15 March 2004, the Foundation's Certificate of Registration No. EN096000101 was revoked by virtue of SEC Order dated 10 February 2004 for non-compliance with the Commission's reportorial requirements. Said revocation order was published in the 14 February 2004 issue of the Philippine Daily Inquirer quoted as follows:

> "WHEREAS, all corporations are required to submit annual reports such as the General Information Sheet and Financial Statements pursuant to Sec. 141 of the Corporation Code of the Philippines;
>
> WHEREAS, the records of the Securities and Exchange Commission (SEC) show that there are many corporations who failed to submit the abovementioned reports for the last six (6) consecutive years, i.e. for period 1998-2003;

1 Articles of Incorporation of the Foundation, Second Article.

WHEREFORE, NOTICE is hereby given that those **corporation registered from 1996 to 1997** who failed to submit the reports are directed to appear within thirty (30) days from the date of publication of this Order before the Law and Regulation Division, Company Registration and Monitoring Department of this Commission at the 3rd Floor, SEC Building, EDSA, Mandaluyong City during office hours **and show cause why their Certificates of Registration should not be revoked.**

After the lapse of the said thirty (30) day period and the said delinquent corporations have not updated their files, as well as, settled their corresponding fine or penalty, their **Certificate of Registration shall be deemed revoked.**

Let this Order be published once in a newspaper of general circulation.

SO ORDERED. February 10, 2004."

The Foundation then filed a petition praying that the order revoking its certificate of registration be set aside. Finding the petition meritorious, the Director of SEC-IEO issued the *Order* dated 22 February 2007 granting the petition of the Foundation.

Upon learning of the questioned order, appellants moved for the recall of the same. Conference between the parties was held and after that, the records of the case were forwarded to the Commission *En Banc* for proper disposition of the case. Considering that a motion for reconsideration is a prohibited pleading, appellants were advised to file their memorandum on appeal and to pay the docket and legal research fees.[2]

In compliance, appellants filed a *Memorandum on Appeal* dated 26 July 2007 praying for the recall of the Order, which set aside the revocation order.

The Commission issued an *Order* dated 24 August 2007 directing Luz Balderas Gonzales Foundation, Inc. ("Foundation" for brevity) to file its reply memorandum within ten (10) days from receipt of the Order. In the same order, appellants were also given the same number of days to file a rejoinder.

On 03 September 2007, the Foundation filed its *Reply Memorandum.* A copy of the same was furnished appellants and the same was received on 05 September 2007 as evidenced by the Registry Return Receipt.[3] Considering the time that has elapsed, appellants are deemed to have waived their right to file a rejoinder. For that reason, the instant appeal is now ripe for resolution.

Appellants basically anchor their appeal on the following grounds:

2 Letter dated 19 June 2007 addressed to Lerio Law Office, counsel for the appellants.
3 Manifestation dated 27 September 2007 filed by Atty. Maricar Villanueva-Hiballes, counsel for the Foundation, Annex "A".

"1. Director Ildesa committed reversible error and grave abuse of discretion when he accepted the Petition to Lift Order of Revocation of Certificate of Registration of the Foundation filed by appellee notwithstanding that the required Certification on forum-shopping has not been attached, nor Board Resolution was appended thereto and he even consequently issued the assailed Order Lifting the Order of Revocation of the Foundation in violation of Sec. 3-5, Rule III of the 2006 Rules of Procedure of the Securities and Exchange Commission.

2. Director Ildesa committed palpable error and grave abuse of discretion when he issued the assailed Order without conducting the requisite notice and hearing notwithstanding appellants' pending urgent manifestation of non-intention to lift order of revocation of certificate of registration of the Foundation."

Appellants claim that since the petition to set aside the order of revocation filed by the Foundation does not contain a certificate against forum shopping, it should have been dismissed outright. Further, the rule on the required certificate against forum shopping is mandatory and cannot be dispensed with wantonly. In addition, the order in question was issued without further notice and hearing, a violation of due process. It is the position of appellants that the petition should have been dismissed outright. When the Director for SEC-IEO gave due course to the petition, he committed grave abuse of discretion for doing so.

The Foundation counters that technical rules must be liberally interpreted in order not to defeat the ends of justice. Further, there are special circumstances or compelling reasons that would excuse non-compliance with the certification on non-forum shopping. First, the President of the Foundation, Dr. Otilia B. Peregil, received a letter from the SEC-IEO enumerating therein the requirements for filing a petition to set aside an order of revocation.[4] Second, the petition to lift the order revoking the certificate of registration of the Foundation with this Commission was authorized by majority of the Board of Trustees, who at the same time represent the majority of the members. Third, involuntary dissolution is a harsh penalty.

The Foundation likewise argues that appellants violated the 2006 Rules of Procedures of this Commission when the latter filed their Memorandum on Appeal beyond the reglementary period.

As regards the allegation of appellants that they were deprived of their right to due process when Director Ildesa issued the subject order, the Foundation countered that appellants have been afforded due process when they were given opportunity to file pleadings and the instant appeal was given due course.

The first issue to be resolved is whether the lack of certificate of non-forum shopping would merit the outright dismissal of the petition to set aside the revocation order filed by appellants.

4 Reply Memorandum, Annex "G".

In the case of *Alaban, et al. v. Court of Appeals, et al.,*[5] the Supreme Court discussed forum shopping in this wise:

> "Forum shopping consists of filing multiple suits in different courts, either simultaneously or successively, involving the same parties, to ask the courts to rule on the same or related causes and/or to grant the same or substantially same reliefs, on the supposition that one or the other court would make a favorable disposition."

Forum shopping is usually resorted to by parties in the hope of increasing a party's chance to obtain a favorable decision or action.[6] The certification against forum shopping is required by courts to prevent parties from trifling with courts, abusing their processes and degrading the administration of justice.[7] Initially, the certification requirement was only required in pleadings filed with the Supreme Court. Later on, the same was expanded to include cases filed in court and quasi-judicial agencies below the Supreme Court and Court of Appeals.[8]

Applying the foregoing in the case of the Foundation, this Commission does not require the filing of a certification against forum shopping since the setting aside of the revocation order is pursuant to the regulatory power of the Commission. The pendency of a court case has nothing to do with the revival of the corporation since it is this Commission which has the authority to give life to a corporation, and to revoke such privilege to exist as a corporate entity. In fact, it may bolster the cause of the corporation especially if it can be shown that it is indeed continuously prosecuting its business. The certificate of non-forum shopping does not find application in a petition to set aside an order that revoked a certificate of registration of a corporation since no other tribunal has the authority to grant the relief sought for in a petition to lift a revocation order.

The Commission, thus, no longer requires a petition to be accompanied by certification against forum shopping since the evil sought to be deterred by such requirement is not present in case of petitions to set aside a revocation order. This is different from other petitions filed with this Commission since they involve determination of rights or interests of parties in an action. In a later case, the pronouncement of the Supreme Court in the case of *Rudecon Management Corp. v. Singson*[9] finds application, thus:

> "What is pivotal in determining whether forum shopping exists or not is the vexation caused the courts and parties-litigants by a party who asks different courts and/or administrative agencies to rule on the same or related causes and/or grant the same or substantially the same reliefs, in the process

5 *Alaban, et al. v. Court of Appeals, et al.*, G.R. No. , 23 September 2005.
6 Ibid.
7 *Villaluz v. Ligon*, G.R. No. 143721, 31 August 2005.
8 *Land Car, Inc. v. Bachelor Express, Inc., et al.*, G.R. No. 154377, 08 December 2003.
9 G.R. No. 150798, 31 March 2005.

creating possibility of conflicting decisions being rendered by the different courts and/or administrative agencies upon the same issues."

Having disposed of the first issue, we now tackle the issue of whether the appellants were deprived of their right to due process.

We find no merit in appellants' contention.

In the case of *Montemayor v. Bundalian, et al.,*[10] the Supreme Court stated that the essence of due process in administrative proceedings is having the opportunity to explain one's side or seek reconsideration of the action or ruling complained of. The opportunity to be heard need not always be in the form of presentation of evidence as in the case of court hearings. Filing of pleadings and other pertinent documents would suffice to meet the ends of due process. Observance of such removes any badge of procedural deficiency, if there was any, and satisfied the due process requirement.[11]

Appellants cannot argue that they were deprived of due process since they were given the chance to move for the reconsideration of the order in question. Moreover, it cannot be said that there is a violation of due process considering that on 29 March 2007, the Director SEC-IEO set the *Urgent Motion to Recall Order which Set Aside Order of Revocation dated 05 March 2007* for hearing. During the hearing the SEC-IEO Director issued an Order of even date giving the parties fifteen (15) days to file their respective pleadings. Third, appellants were given the opportunity to appeal from the order of the SEC-IEO Director despite the lapse of time to avail of such remedy.

Technical rules shall be liberally construed in order to promote public interest and assist the parties in obtaining a just, prompt, expeditious, and inexpensive resolution, settlement or disposition of any action brought before this Commission and to carry out the objectives of the laws it is mandated to implement.[12]

It is well to remember that in administrative proceedings, technical rules of procedure and evidence are not strictly applied. Administrative due process cannot be fully equated with due process in its strict judicial sense for it is enough that the party is given the chance to be heard before the case against him is decided. This was afforded to the petitioner in the case at bar.

WHEREFORE, the instant appeal is hereby **DENIED**. Consequently, the Order dated 22 February 2007 issued by the Director of the Securities and Exchange Commission, Iloilo Extension Office is **AFFIRMED**.

SO ORDERED.

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10 G.R. No. 149355, 01 July 2003.
11 Ibid.
12 2006 Rules of Procedure of the Securities and Exchange Commission, § 1-3.

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Mandaluyong City, 18 March 2010.

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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