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

In the Matter of
MHERRYNOLL MONTESSORI SCHOOL, INC.

SEC Admin Case No. 09-08-98
For: Revocation of Corporate Registration

Compliance and Enforcement Department,

Petitioner.

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DECISION

For consideration is the Petition for Revocation of Corporate Registration of MHERRYNOLL MONTESSORI SCHOOL, INC.("MMSI"), for fraud in procuring its certificate of registration[1] filed by the then Compliance and Enforcement Department ("CED"), now Enforcement and Prosecution Department ("EPD"), on 2 September 2008.

FACTS OF THE CASE

MMSI is a non-stock corporation registered with the Commission since 28 January 1999 under SEC Reg. No. A199901353. Its primary purpose is:

> "To establish and operate an educational institution or learning center which shall provide courses of study in PRE-ELEM/ELEMENTARY/SECONDARY subject to the laws of the Philippines;"

The names, nationalities, and addresses of the incorporators listed in its Articles of Incorporation are as follows:

MARIA "MHERRY" A. HERNANDEZ	Filipino	235 E. Dela Paz St., Angono, Rizal
NOEL M. HERNANDEZ	Filipino	235 E. Dela Paz St., Angono, Rizal
DAMIANA T. AMBAT	Filipino	Circumferential Rd., Antipolo, Rizal

[1] under Section 6, par. I (1) of Presidential Decree 902-A, as amended.

MARIA T. AMBAT	Filipino	Brgy. San Jose Antipolo, Rizal
ANNA MARIA RIZZA HERNANDEZ	Filipino	Brgy. San Pedro Angono, Rizal

The By-Laws of MMSI have been duly signed by the same incorporators, on 26 January 1999.

On 17 January 2008, Rosalinda A. Villamayor, Marlon A. Villamayor, *et al.* filed a verified complaint with the EPD, against NOEL and MARIA "MHERRY" HERNANDEZ, alleging that to constitute the required minimum number of trustees to obtain a Certificate of Registration with the Commission, spouses MARIA "MHERRY" A. HERNANDEZ and NOEL M. HERNANDEZ willfully and fraudulently declared that:

> a) MARIA "MHERRY" A. HERNANDEZ is a separate and distinct person from MARIA T. AMBAT, but in fact, they refer to one and the same person;
>
> b) DAMIANA T. AMBAT, mother of MARIA A. HERNANDEZ/ MARIA T. AMBAT is an incorporator of MMSI, but in fact, DAMIANA T. AMBAT has no knowledge as to her participation in the formation in whatever capacity, of MMSI;
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> c) The person whose name appeared in the Articles of Incorporation under the name ANNA MARIA RIZZA HERNANDEZ is a fictitious person.

Acting on the verified complaint, EPD formed a team and proceeded with its investigation to determine the truthfulness of the allegations of the complainants. Thus, on 2 September 2008, EPD filed the instant petition.

ISSUE

Whether there is valid ground to revoke MMSI's Certificate of Incorporation based on EPD's Petition and submitted evidence.

RULING

Section 14 of the Corporation Code of the Philippines[2] (the "Code") mandates that the number of directors or trustees of all corporations organized under the Code *shall not be less than five* (5). Paragraph six of the Articles of Incorporation of MMSI states: "That the number of trustees of the association *shall be five* and the first trustees are the incorporators named in Article V." Section 10 on *the number and qualifications of incorporators* of the Code provides: "Any number of natural persons

[2] Batas Pambansa Blg.68 Effective May 1, 1980.

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. xxxxxx" (emphasis supplied)

The law leaves no doubt as to the minimum number of incorporators: not less than five natural persons. The articles of incorporation (the "Articles") is the basic contract document in Coporate Law, defining the charter of the corporation.[3] It is the contract between the corporation and the state, the stockholders and the state, and between the corporation and its stockholders. [4] That is why the contents thereof are mandated by law and treated with strictness.[5]

For instance, Section 15 of the Code prescribes the form of the Articles and requires that it be acknowledged under oath before a Notary. *The purpose of this is to secure the State and all concerned against the possibility of any fictitious names being subscribed to the articles, and to furnish proof of the genuineness of the signatures.*[6] It must be noted that Section 31[7] of the Code provides for the liability of the directors/ trustees of the corporation and the incorporators usually act as the first set of directors/ trustees of the corporate entity. Thus, Section 6, par. l (1) of Presidential Decree 902-A as amended, provides:

> SECTION 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:
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> xxxxxxxxxxxxx
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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:
>
> *1.* ***Fraud in procuring its certificate of registration;*** *(Emphasis supplied)*

Fraud mentioned in Section 6 par. l (1) of P. D. 902-A as one of the grounds for the revocation of a certificate of registration of a corporation, partnership or

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[3] C. L. Villaneuva Philippine Corporate Law 155 (2001).
[4] Government of the P. I vs. Manila Railroad 52 Phil. 699.
[5] C. L. Villaneuva Philippine Corporate Law 155 (2001) citing Section 14, Corporation Code.
[6] H.S. De Leon and H. S. De Leon, Jr. The Corporation Code of the Philippines Annotated 165 (2006) citing 1 Fletcher 506; 18 C.J.S. 440.
[7] "SECTION 31. Liability of directors, trustees or officers. — Directors or trustees who wilfully 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"

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 or papers presented to the Commission for the registration of the same.*[8]

The facts established by the investigation of the EPD and the pieces of documentary evidence submitted, lead to the conclusion that the names MARIA "MHERRY" A. HERNANDEZ, MARIA T. AMBAT and ANNA MARIA RIZZA HERNANDEZ which are listed as different persons in the Articles of Incorporation and the By- laws of MMSI, all belong to one person, MARIA "MHERRY" A. HERNANDEZ. Effectively, the incorporators at the time of registration of MMSI were only three: Spouses MARIA AND NOEL HERNANDEZ and DAMIANA T. AMBAT, thus lacking the required number, five.

Interview

On 11 February 2008, the investigating team who went to MMSI did not find MARIA "MHERRY" A. HERNANDEZ, but they were able to interview the Academic Head of MMSI, Mrs. Sinagtala R. Samonte who said she had been with MMSI for seventeen (17) years, since its inception and since then she believed, that MMSI was under the *sole proprietorship* of MARIA "MHERRY" A. HERNANDEZ.[9]

Conferences

On 21 February 2008, out of the five incorporators who were summoned, only NOEL M. HERNANDEZ appeared, and brought with him a medical certificate attesting that MARIA "MHERRY" A. HERNANDEZ was treated for DMII, HPN, Migraine HA vs Tension HA on 20 February 2008.[10] *He said he did not know why the other incorporators were not able to attend the conference.* Under oath, he refused to answer the questions relating to the identity of the other incorporators, specifically, the question on whether he knew MARIA "MHERRY" A. HERNANDEZ, ANNA MARIA RIZZA HERNANDEZ AND MARIA T. AMBAT to be *one and the same person.*[11]

On 12 March 2008 MARIA "MHERRY" A. HERNANDEZ appeared accompanied by two lawyers. She stated under oath that she personally caused the registration of MMSI in 1999 and identified the five incorporators of MMSI, as follows: NOEL M. HERNANDEZ is her husband, DAMIANA T. AMBAT is her mother, MARIA T. AMBAT is an acquaintance, ANNA MARIA RIZZA HERNANDEZ is her husband's relative. [12]

Certification from the Revenue District Office of Rizal (TIN)

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[8] In the Matter of Charyn Marketing Enterprise Corporation, SEC Case No. 03-05-49.
[9] Petition dated 2 September 2008 pp. 3-4.
[10] Medical Certificate dated 20 February 2008, Ma. Teresa B. Torres Attending Physician, Angono Medics Hospital.
[11] Petition dated 2 September 2008 p. 5.
[12] *Id.*, pp. 5-7.

On 7 March 2008, the Bureau of Internal Revenue ("BIR") of Rizal (Revenue District Office No. 046) issued a Certification, stating that the names of the persons listed below were verified with the BIR Integrated Tax Systems Database, with the following remarks:[13]

Name	TIN	Remarks
MARIA "MHERRY" A. HERNANDEZ	208-933-085-000	Local Employee Registered at RDO 046
NOEL M. HERNANDEZ	165-839-579-000	Local Employee Registered at RDO 041
DAMIANA T. AMBAT	387-245-657-000	Invalid TIN
MARIA T. AMBAT	327-118-469-000	Invalid TIN
ANNA MARIA RIZZA HERNANDEZ	386-521-821-000	Invalid TIN

The invalid TINs appearing in the GIS of DAMIANA T. AMBAT, MARIA T. AMBAT and ANNA MARIA RIZZA HERNANDEZ lead to serious doubts as to the authenticity of the data provided by MMSI in its GIS.

Documents Submitted by Complainants

The marriage contract[14] of the subject spouses indicate that NOEL M. HERNANDEZ is married to ANNA MARIA RIZZA T. AMBAT. As a result of the marriage, it follows that the wife now carries the last name, "Hernandez." Thus, "Mherry's" complete name is ANNA MARIA RIZZA A. (for "Ambat," her maiden name) HERNANDEZ, which is the *same name* which she claimed to be that of her husband's relative, ANNA MARIA RIZZA HERNANDEZ.

The marriage contract of the subject spouses and the birth certificate[15] of MARIA T. AMBAT show that FRANCISCO AMBAT is the father of both MARIA T. AMBAT and ANNA MARIA RIZZA AMBAT. Additionally, a certification issued by the Office of the Civil Registrar General[16] dated 14 January 2008 specifies that the name MARIA TOLEDO AMBAT born on April 23, 1967 in Antipolo, Rizal to FRANCISCO L. AMBAT and DAMIANA A. TOLEDO yielded one (1) most likely match in the National Indices of Marriages. The certification contains the following data:

> Date of Marriage: September 28, 1988; Place of Marriage: Cardona Rizal; Name of Bride/Groom: ANNA MARIA RIZZA TOLEDO AMBAT/NOEL MIRANDA HERNANDEZ

[13] *Id.*, Annex "I."
[14] *Id.*, Annex "K."
[15] *Id.*, Annex "L."
[16] *Id.*, Annex "M."

Moreover, Rosalinda Villamor, one of the complainants and the sister of MARIA "MHERRY" A. HERNANDEZ, in her "Sinumpaang Salaysay" (Affidavit),[17] attested that MARIA "MHERRY" told her in 1998 that she made up ("gawa gawa") the Board of Incorporators of MMSI. That aside from herself and her husband NOEL, all the other incorporators are dummies because the Board is only a cause of headaches ("sakit lang daw sa ulo").

The facts discussed above leave no doubt that there was substantial evidence to conclude that there was fraud in procuring MMSI's certificate of registration within the contemplation of Section 6 par. I (1) of P. D. 902-A, as amended.

WHEREFORE, premises considered, the instant petition is hereby **GRANTED.** The Certificate of Incorporation of MHERRYNOLL MONTESSORI SCHOOL, INC. is hereby **REVOKED** on the ground provided under Section 6(I)(1) of Presidential Decree 902-A, as amended. Let the Company Registration and Monitoring Department be furnished with a copy of this Decision for its appropriate action.

SO ORDERED.

Mandaluyong City, 10 June 2010.

FE B. BARIN
Chairperson

MA. JUANITA E. CUETO*
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner

* leave of absence

[17] Dated 19 February 2008, *Id.* Annex "O."