PHILIPPINE AQUATIC SPORTS ASSOCIATION INC.,

Appellant,

-versus-

SEC En Banc Case No. 09-10-213

AQUATICSPORTS ASSOCIATION OF THE PHILIPPINES INC.,

Appellee.

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DECISION

This refers to Philippine Aquatic Sports Association Inc.'s (hereinafter referred to as 'PASA' for brevity) appeal to the Commission *En Banc* praying for a review of the General Counsel's 31 May 2010 Order issued in the case for change of corporate name entitled, "Aquaticsports Association of the Philippines Inc. v. Philippine Aquatic Sports Association Inc."[1] The dispositive portion of the assailed Order provides:

> "**WHEREFORE**, premises considered, the instant *Petition* is hereby **GRANTED.** Respondent Philippine Aquatic Sports Association Inc. is hereby **DIRECTED TO CHANGE OR MODIFY** its corporate name within thirty (30) days from receipt hereof. Failure to comply with this directive may be a ground for the revocation of the corporation's certificate of registration, the proceeding(s) for which be accordingly initiated."

To recall, apellee Aquaticsports Association of the Philippines Inc. ('ASAP') reserved its corporate name for a period of thirty (30) days from 04 June 2009 to 04 July 2009, upon its payment of the reservation fee in the amount of Forty pesos (Php 40.00). Within the covered period, or on 10 June 2009, it was issued its

[1] SEC Case No. 07-09-274.

Certificate of Registration with the said corporate name under SEC Registration No. CN200908760.

On the other hand, PASA was registered in 1985 under the name PHILIPPINE AMATEUR SWIMMING ASSOCIATION OF THE PHILIPPINES. However, it applied for amendment of its Articles of Incorporation to change its corporate name to PHILIPPINE AQUATIC SPORTS ASSOCIATION INC. The Commission approved the change of name on 26 June 2009.

Hence, ASAP initiated administrative proceedings for the change of name of PASA with the Office of the General Counsel. The General Counsel issued the assailed Order directing the change of name and thus, this Petition for Review.

PASA alleges that the General Counsel erred in ordering the change of its corporate name. In support of this assignment of error, PASA argues that: first, it has validly acquired a right to its corporate name superior to that of ASAP, contrary to the General Counsel's ruling; and second, it cannot change its corporate name since doing so will violate its own by-laws.

In support of its first argument, PASA imputes errors of fact upon the General Counsel. PASA declares that: "contrary to the findings of the General Counsel, therefore, PASA actually paid SEC a total of Php 120.00 (and NOT PHP40.00 ONLY) to have its corporate name xxx reserved for the duration of 90 days, from April 13, 2009 – May 13, 2009, and from May 13, 2009 – June 12, 2009 and from June 12, 2009 – July 12, 2009."[2] In support of this statement, PASA submits photocopies of the following purported documents: 1) Reservation Notice indicating that "the name PHILIPPINE AQUATIC SPORTS ASSOCIATION INC. has been reserved from April 13, 2009 to May 13, 2009 by VALENTINO PADUA" under Reference Reservation Number RRN20090413131559930;[3] 2) Reservation Payment Confirmation with Service Fee Stamp Number 688762 indicating that the name PHILIPPINE AQUATIC SPORTS ASSOCIATION INC. has been reserved from April 13, 2009 to May 13, 2009, and that the reservation fee amounts to Php 40.00;[4] 3) Reservation Payment Confirmation with Service Fee Stamp Number 698631 indicating that the name PHILIPPINE AQUATIC SPORTS ASSOCIATION INC. has been reserved from April 13, 2009 to June 12, 2009, and that the reservation fee amounts to Php 40.00;[5] and 4) Reservation Payment Confirmation with Service Fee Stamp Number 708252 indicating that the name PHILIPPINE AQUATIC SPORTS ASSOCIATION INC. has been reserved from April 13, 2009 to July 12, 2009, and that the reservation fee amounts to Php 40.00.[6]

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[2] Appeal dated 07 September 2010, page 6.
[3] Id., Annex E.
[4] Id., Annex F.
[5] Id., Annex G.
[6] Id., Annex H.

We note that in the original proceedings, PASA filed an Answer[7] to the Petition[8] of ASAP. Annex "2" of the said Answer was a Reservation Payment Confirmation of PASA's corporate name for the period April 13, 2009 to July 12, 2009 for the amount of Php 40.00. ASAP then filed a Reply[9] questioning why PASA was able to reserve the name for a period of 90 days for the amount of Php 40.00 only, based on the said Annex "2". The fee for reserving a corporate name is Php 40.00 for 30 days. And thus, if the name is reserved for 90 days then PASA should have paid Php 120.00, and this should have been reflected accordingly in Annex "2". Hence, ASAP concludes that the alleged reservation is highly suspicious, especially considering that the said Annex "2" contained a printed notation stating:

"For SEC use only:
Override By: mvlimuco
Reason: Other Override Remark(s) – w/ approval of Atty. Del Rosario dtd. 4.13.09"

Incidentally, we note that the purported Reservation Payment Confirmations[10] submitted by PASA together with their Appeal also contained the said notation.

ASAP went on to speculate whether this override of the Commission's registration facility is actually a special accommodation extended to PASA's president Mark Joseph.

In response, PASA subsequently filed a Rejoinder.[11] However, PASA did not specifically address the issues raised relating to the insufficient amount paid for the reservation as reflected by Annex "2" of the Answer. PASA also failed to offer any explanation regarding the printed notation contained therein.

In accordance with the totality of credible evidence on hand, the General Counsel, in the assailed 31 May 2010 Order, found, among others, that PASA's reservation was valid only for 30 days or until 13 May 2009 only.

We rule that the General Counsel did not commit any reversible error in doing so.

Crucially, it is only now, on appeal, that PASA is submitting its documents purportedly showing that it paid Php 120.00 for the reservation of its corporate name. There is no valid excuse for such deliberate delay, especially considering that the amount paid for the reservation was precisely questioned early on during the original proceedings. And in fact, this issue came about because of irregularities contained in the PASA's Reservation Payment Confirmation that was actually submitted by PASA itself as Annex "2" of its Answer. Thus, the capability and burden to explain such irregularities fell upon the PASA. The fact that PASA remained quiet,

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[7] Dated 12 August 2009.
[8] Dated 08 July 2009.
[9] Reply *Ad Cautelam* dated 01 September 2009.
[10] Annexes F-H of the Appeal.
[11] Dated 15 September 2009.

and avoided the issue would lead any reasonable person to deem that there were indeed irregularities – that PASA did not pay the complete reservation fee prescribed for 90 days.

Further, we approvingly note the General Counsel's findings that based on the Reservation Notice that was obtained from the Company Registration and Monitoring Department, PASA was given an unusually long period of two (2) months from the date of reservation on 13 April 2009, or until 13 June 2009 within which to confirm and pay the reservation fee.[12] This is clearly improper since the rule is that the applicant must pay within four (4) days from the reservation date, otherwise the reservation is deemed as not filed. We emphasize that this rule must be upheld in all cases in order to maintain fairness, and provide equal opportunity to all potential applicants. Extending special accommodations, or arbitrarily favoring certain individuals to the prejudice of others is abhorrent to the Rule of Law that is fundamental to a Republic such as ours. In the words of Elizabeth Cady Stanton: "It is very important in a republic that the people should respect the laws, for if we throw them to the winds, what becomes of civil government?" And, as civil servants tasked with administering the laws, the Commission's officers and staff should be the first one to adhere to such principle. Clearly, the validity of PASA's alleged reservation for 90 days cannot be upheld without betraying and doing violence to this underlying principle of our legal system. And accordingly, we affirm the General Counsel's factual findings, and its ruling that PASA did not have a valid reservation for 90 days or until 13 July 2009. PASA did not have a prior right to the name AQUATIC SPORTS superior to that of the original petitioner ASAP at the time that the latter was registered.

Now, regarding PASA's second argument that it "cannot now change its corporate name without violating the provisions of its by-laws,"[13] we rule that this is utterly devoid of merit. PASA's argument is specious, and has no legal basis whatsoever. Indeed, PASA does not and cannot cite any legal basis for such argument.

We remind PASA that it is a basic tenet in Corporation Law that the by-laws of a corporation must conform with the provisions of its articles of incorporation and the Corporation Code. In other words, the by-laws are subordinate to the articles of incorporation as well as to the Corporation Code and related statutes, and should therefore not be inconsistent with any of these. Otherwise, they would have no binding effect.[14] Accordingly, the Commission's regulations and orders enforcing the Corporation Code also prevail over the corporation's by-laws.

In the present case, the General Counsel's Order for PASA to change its name is an enforcement of Section 18 of the Corporation Code, and the Commission's regulations issued pursuant thereto, such as SEC Memorandum Circular No. 5,

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[12] 31 May 2010 Order, page 4, last paragraph.
[13] Appeal, page 10.
[14] SEC Opinion dated 04 August 1993 citing Campos and Lopez-Campos, Corporation Code citing Fleischer v. Botica Nolasco, G.R. No. 23241, March 14, 1925, 47 Phil. 854 (1925).

among others. Thus, PASA cannot use its by-laws in order to evade compliance with the said Order.

Further, the fact that PASA is a member of the *Federation Internationale de Natation* is irrelevant since the said foreign organization has no personality in, nor jurisdiction over the Commission's implementation of the Corporation Code. Verily, PASA must comply with the Order, no excuses. Any by-law provision that is contrary to compliance with the said Order is void. And, it is not for the Commission to abandon enforcement of the said Order in deference to the PASA's by-laws. Instead, it is for PASA to amend its by-laws in order to make it conform with the Corporation Code, and the Commission's regulations and orders.

In conclusion, as correctly found by the General Counsel, PASA filed its Amended Articles of Incorporation and its Amended By-laws on 17 June 2009, which were approved by the Commission on 26 June 2009. However, ASAP was already registered as of 10 June 2009. Thus, there can be no doubt that ASAP has the prior right to the contested name in this case.

WHEREFORE, premises considered, the subject Appeal is hereby **DISMISSED** for lack of merit. The General Counsel's Order dated 31 May 2010 is hereby **AFFIRMED.** Appellant Philippine Aquatic Sports Association Inc. (Company Reg. No. 130045) is hereby **ORDERED** to comply with the said Order by filing its amended articles of incorporation changing its corporate name within thirty (30) days from receipt of this Decision.

Appellant is hereby warned that failure to comply with this Decision constitutes a ground for revocation of its corporate registration.

Lastly, the Company Registration and Monitoring Department is hereby **DIRECTED** to monitor appellant's compliance with this Decision.

SO ORDERED.

Mandaluyong City, 22 September 2011.

TERESITA J. HERBOSA
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner