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

In the Matter of

SHERMAN BROTHERS MANAGEMENT LIMITED, INC.

SEC Admin. Case No. 10-01-06
(CED Case No. 01-2593)

COMPLIANCE AND ENFORCEMENT DEPARTMENT,

Petitioner.

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DECISION

For consideration is the Petition for Revocation of Certificate of Incorporation of Sherman Brothers Management Limited, Inc. ("Sherman") dated 06 September 2001 filed by the Compliance and Enforcement Department ("CED")[1].

FACTS OF THE CASE

Sherman was registered with the Commission since 29 December 2000 under SEC Registration No. A200018721 with the following primary purpose:

> *"To engage in marketing consultancy to persons, firms, associations, corporations, partnerships and other entities necessary in meeting the objectives of the enterprise, such as product development, marketing promotions, advertisement, corporate imaging and product launching and designs."*

However, upon investigation by the CED, Sherman was found to have "acted as broker/dealer in securities without the necessary license therefor, and acted beyond the powers granted to it by its primary registration."[2] Moreover, the Market Regulation Department certified that Sherman has not been issued any secondary license to act as broker/dealer in securities, investment house and dealer in government securities.[3]

In view of the same, the Commission, on 28 March 2001, issued a Cease and

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[1] now Enforcement and Prosecution Department.
[2] CED's Petition, Paragraph 1.
[3] *Id.*, Annex A.

Desist Order ("CDO"), enjoining Sherman from soliciting and/or accepting money for investment purposes and also from accepting orders to buy and sell shares of stock or other form of securities or otherwise engage in the business of a broker/dealer in securities. Said CDO was declared permanent in a Resolution dated 04 May 2001.

The same resolution directed Sherman to show cause within thirty (30) days from receipt why its Certificate of Incorporation should not be revoked for culpable violations of Sections 8 and 28 of the Securities Regulation Code[4], and Section 6(l)(2) of Presidential Decree No. 902-A, as amended, specifically on the ground of serious misrepresentation as to what the corporation can do or is doing to the great prejudice of the public.

Notwithstanding the same, Sherman failed to show cause why its Certificate of Incorporation should not be revoked.

Hence, CED filed the present petition.

ISSUE

The sole issue in the present case is whether there is a valid ground for the Commission to revoke Sherman's Certificate of Incorporation based on CED's Petition and submitted evidence.

RULING

The answer is in the AFFIRMATIVE.

Section 6(l)(2) of Presidential Decree No. 902-A, as amended, reads:

> *"Sec. 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:*
>
> *xxx xxx xxx*
>
> *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:*
>
> *xxx xxx xxx*
>
> *2.* ***Serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public;"*** (emphasis supplied)

A corporation is allowed and can legally exercise only such powers granted by

[4] Republic Act No. 8799(2000).

the law for its creation[5] and those enumerated in its charter.[6] As regards the latter, the same can be found in the purpose clause of the Articles of Incorporation which confers and limits the powers that a corporation may exercise.[7]

In the present case, the purpose clause of Sherman's Articles of Incorporation basically states that its primary purpose is "[t]o engage in marketing consultancy to persons, firms, associations, corporations, partnerships and other entities xxx." Its charter does not provide that it can act as a broker in securities. In addition, Sherman's Certificate of Incorporation expressly states:

> *"xxx xxx xxx*
>
> *This Certificate grants juridical personality to the corporation* ***but does not authorize it to undertake business activities requiring a Secondary License or Permit*** *to operate from this Commission or other government agency unless such license or permit is likewise obtained.*
>
> *xxx xxx xxx"* (emphasis supplied)

Nonetheless, based on the evidence attached to CED's Petition, Sherman apparently acted as a broker in securities. Numerous "contract notes"[8], issued by and under the name of Sherman, show that it bought and sold securities in behalf of third persons. The contents of the aforesaid contract notes, which prove that Sherman indeed acted as a broker in securities, read as follows:

"Account Name: xxx *Account Number: xxx*

Address: xxx *Date: xxx*

Contract Note Number: xxx

In accordance with your instructions, ***we have today BOUGHT/SOLD the following for your account:***

SECURITY/FUND DESCRIPTION	SYMBOL	BUY/SELL	TRADE DATE	QUANTITY	UNIT PRICE	AMOUNT	COMMISSION	AMOUNT DUE
XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX	XXX

TOTAL AMOUNT DUE: xxx

Today's Exchange Rate: xxx

(Sgd.) *Amount Due in your currency: xxx*

Authorized Signature" (emphasis supplied)

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[5] CESAR L. VILLANUEVA, PHILIPPINE CORPORATE LAW 20 (2001 ed.).
[6] *Id.*, at 232.
[7] *Id.*, at 197.
[8] CED's Petition, Annex B.

Moreover, several receipts[9] also show that it received various sums of money as payment for the purchase of securities in behalf of its clients. Thus, we find the foregoing to be sufficient in proving CED's claim that Sherman engaged in the business of buying and selling securities without the power to do so under its charter.

Furthermore, it should be noted that engaging in the business of buying and selling securities requires a secondary license from the Commission pursuant to Section 28 of the Securities Regulation Code which reads:

> "***Sec 28. Registration of Brokers, Dealers, Salesmen and Associated Persons.*** *— 28.1. No person shall engage in the business of buying or selling securities in the Philippines as a broker or dealer, or act as a salesman, or an associated person of any broker or dealer unless registered as such with the Commission.*
>
> *xxx xxx xxx"*

Considering that the Market Regulation Department certified that Sherman has not been issued any secondary license to act as broker/dealer in securities, investment house and dealer in government securities,[10] it should likewise be held liable for violating the aforesaid provision.

Thus, by engaging in the business of buying and selling securities without the power to do so under its charter and without a license from the Commission, Sherman's Certificate of Incorporation should be revoked on the ground of serious misrepresentation as to what it can do or is doing to the great prejudice of the general public .

Nonetheless, the records of the Commission show that Sherman's Certificate of Incorporation was revoked on 02 August 2006 pursuant to SEC Order dated 27 June 2006[11] for failure to file its General Information Sheets (GIS) and Audited financial Statements (AFS) from 2001 to 2006. On the other hand, pursuant to SEC Circular No. 15, Series of 2009, the said revocation has not yet become final and executory considering that corporations revoked by virtue of the said order are given until 02 August 2013 to file their Petitions to Set Aside the Order of Revocation.

WHEREFORE, premises considered, the instant Petition is hereby **GRANTED**. The Certificate of Incorporation of Sherman Brothers Management Limited, Inc. is hereby **REVOKED with FINALITY** for violating Section 6(l)(2) of Presidential Decree No. 902-A, as amended, and Section 28 of the Securities

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[9] *Id.*, Official Receipt Nos. 1104428, 1104577, 1104432, 1103980 dated 04 August 2000, 31 August 2000, 04 August 2000, 24 March 2000 respectively, all issued to Mr. Michael Mcavoy.
[10] *Id.*, Annex A.
[11] Published in the July 03, 2006 issue of Philippine Star.

Regulation Code. 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[12]
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner

[12] On official leave.