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

IN THE MATTER OF SALVACION ACOPIO, SEVERINO BAROZA, JR., ARTEMIO CAPALARAN, AND NINA VASQUEZ,

Petitioners-Appellees,

SEC En Banc Case No. 10-09-180

-versus-

J.R. ESTRADA & SONS, INC.,
Respondent-Appellant.

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DECISION

For consideration is the Notice of Appeal with Memorandum on Appeal dated 21 October 2009 filed by J.R. Estrada & Sons, Inc. ("J.R. Estrada") assailing the Order of Revocation dated 06 October 2009 issued by the Director of the Company Registration and Monitoring Department ("CRMD").

FACTS OF THE CASE

J.R. Estrada is a stock corporation registered[1] with the Commission on 26 June 1964, with business and principal office address at Rm. 204 Medical Arts Building, T.M. Kalaw Avenue, Ermita, Manila.[2]

On 08 July 2008, a certain Salvacion Acopio filed a "Formal Letter of Complaint" addressed to CRMD, requesting the revocation of J.R. Estrada's Certificate of Registration due to non-filing of its General Information Sheet (GIS) since 1996 and for not having a principal office or place of business.

On 05 August 2008, CRMD issued a Notice of Conference addressed to J.R. Estrada, directing it to appear for a conference scheduled on 26 August 2008 and to show cause why it should not be penalized for the non-filing of its GIS from 1996 to 2007 and its Financial Statements for 1996 and 1999. However, no officer or representative of J.R. Estrada appeared during the conference.

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[1] SEC Registration No. 25379
[2] Based on the 2008 General Information Sheet of J.R. Estrada & Sons, Inc.

On 14 October 2008, CRMD issued a Final Notice of Conference, likewise addressed to J.R. Estrada, informing it again of its violations and directing it to submit several required documents and to pay the fines that will be assessed upon submission of the said documents.

This time, a certain Artemio E. Salingay appeared before CRMD in behalf of J.R. Estrada. Thus, he was informed that J.R. Estrada was being assessed with fines in the total amount of Php 118,500.00 to be paid not later than 30 November 2008.

Nonetheless, J.R. Estrada failed to pay the said fines on the due date. In a letter dated 07 January 2009[3], J.R. Estrada, through its president, Remedios E. Alcabao, requested the deferment of payment of the said fines due to unavailability of funds.

On 13 January 2009[4], Salvacion Acopio and the three (3) other Appellees herein filed a Petition for Revocation of J.R. Estrada's Certificate of Registration, thereby supplementing the "Formal Letter of Complaint" earlier filed.

On 27 January 2009, CRMD issued a "Summons/Subpoena" requiring J.R. Estrada to submit its answer to the said Petition as well as the supporting documents and affidavits. The same was sent to J.R. Estrada in the address[5] indicated in its 2008 General Information Sheet. However, after several attempts to serve the same, it was returned to the Commission stamped with "Return to Sender Unclaimed".

Thus, on 06 October 2009, CRMD issued the assailed order revoking J.R. Estrada's Certificate of Incorporation for violation of the Corporation Code and the SEC Rules on reportorial requirements.

To wit, the order of the CRMD reads:

> "Clearly, Respondent's failure to file its GIS from 1996-2007, the late filing of its 2008 GIS, the late registration of its Stock and Transfer Book and the non-settlement of the assessed fines to date, aggravated by the change of principal office without proper amendment of its AI, false office address and disregard of a show cause order, are sufficient grounds to revoke its Certificate of Incorporation."

Hence, the instant appeal.

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[3] Filed with the Commission on 21 January 2008.
[4] Records of the case show that the Petition was filed on this date. The date "29 April 2009" as the date of the Petition appearing in CRMD's Order dated 06 October 2009 is merely a typographical error.
[5] Rm. 204 2/F Medical Arts Bldg., T.M. Kalaw, Ermita, Manila.

ISSUE

The issue to be resolved is whether or not the order revoking J.R. Estrada's Certificate of Incorporation was proper.

RULING

We rule in the negative.

J.R. Estrada is alleged to have violated the provisions of the Corporation Code and rules on reportorial requirements.

J.R. Estrada tries to justify its lapses by claiming lack of awareness of the law and the Commission's reportorial rules and regulations. Under the basic legal principle imbued in the Latin maxim "*ignorantia legis non excusat*", everyone is presumed to know the law, and one's ignorance thereof is not an excuse. Moreover, the corporation was given notice and adequate opportunity to be heard. The CRMD sent no less than two (2) notices[6] to J.R. Estrada at its principal office address as indicated in its 2008 GIS. However, J.R. Estrada, through its representative, Artemio E. Salingay, appeared only on 11 November 2008.

Furthermore, contrary to J.R. Estrada's claim that it was never summoned/ subpoenaed by CRMD regarding the Petition for Revocation filed by the Appellees herein, a "Summons/Subpoena" was issued by the CRMD[7] but was returned unclaimed. Upon perusal, there is a discrepancy in the principal office address indicated in its 2008 GIS and the address stated[8] in its Articles of Incorporation, and without proper amendment of the said Articles, giving rise to a violation of Section 16[9] of the Corporation Code.

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[6] The CRMD issued a *Notice of Conference* dated 05 August 2008 directing it to appear for a conference on 26 August 2008 and the second was the *Final Notice of Conference* dated 14 October 2008.

[7] Summons/Subpoena dated 27 January 2009.

[8] Pasay City.

[9] *Sec. 16. Amendment of Articles of Incorporation.* - Unless otherwise prescribed by this Code or by special law, and for legitimate purposes, any provision or matter stated in the articles of incorporation may be amended by a majority vote of the board of directors or trustees and the vote or written assent of the stockholders representing at least two-thirds (2/3) of the outstanding capital stock, without prejudice to the appraisal right of dissenting stockholders in accordance with the provisions of this Code xx.

The original and amended articles together shall contain all provisions required by law to be set out in the articles of incorporation. Such articles, as amended shall be indicated by underscoring the change or changes made, and a copy thereof duly certified under oath by the corporate secretary and a majority of the directors or trustees stating the fact that said amendment or amendments have been duly approved by the required vote of the stockholders or members, shall be submitted to the Securities and Exchange Commission.

Section 144 of the Corporation Code provides that:

> "**Sec. 144. *Violations of the Code.*** - Violations of any of the provisions of this Code or its amendments not otherwise specifically penalized therein shall be punished by a fine of not less than one thousand (P1,000.00) pesos but not more than ten thousand (P10,000.00) pesos or by imprisonment for not less than thirty (30) days but not more than five (5) years, or both, in the discretion of the court. If the violation is committed by a corporation, the same may, after notice and hearing, be dissolved in appropriate proceedings before the Securities and Exchange Commission: *Provided,* That such dissolution shall not preclude the institution of appropriate action against the director, trustee or officer of the corporation responsible for said violation: *Provided, further,* That nothing in this section shall be construed to repeal the other causes for dissolution of a corporation provided in this Code."

Among the powers of the Commission is to impose the appropriate sanctions for violations of the Corporation Code and Commission rules and regulations.

However, all available remedies should be exhausted before visiting upon the corporation the harsh penalty of revocation. Forfeiture of a corporation's charter will not be decreed unless no other adequate remedy is available.[10]

The Corporation Law (now Corporation Code) must be given a reasonable, not an unduly harsh, interpretation which does not hamper the development of trade relations and which fosters friendly commercial intercourse among countries.[11] Moreover, in the exercise of supervisory and regulatory functions over corporations registered with the SEC, the Corporation Code should be given a reasonable or liberal construction which will best execute its purpose, even though such construction is not within its strict literal interpretation. A strict construction should not be permitted to defeat the policy and purpose of the Code[12], that is, "to establish a new concept of business corporations so that they are not merely entities established for private gain but effective partners of the National Government in spreading the benefits of capitalism for the social and economic development of the nation."[13]

The amendments shall take effect upon their approval by the Securities and Exchange Commission or from the date of filing with the said Commission if not acted upon within six (6) months from the date of filing for a cause not attributable to the corporation.

[10] Fletcher Cyclopedia Corporations, Permanent Edition, Volume 16-A, p. 145.
[11] Home Insurance Company vs. Eastern Shipping Lines, G.R. No. 34382, July 20, 1983.
[12] SEC Opinion No. 04-36, addressed to SGV & Co., 15 June 2004.
[13] Explanatory Note to Cabinet Bill No. 3, which became the basis for the Corporation Code enacted by the then Interim Batasang Pambansa.

Section 5.1(f) of the Securities Regulation Code[14] and Section 6(i) of Presidential Decree No. 902-A, as amended, read as follows:

> ***"Sec. 5. Powers and Functions of the Commission.*** *— 5.1. The Commission shall act with transparency and shall have the powers and functions provided by this Code, Presidential Decree No. 902-A, the Corporation Code, the Investment Houses Law, the Financing Company Act and other existing laws. Pursuant thereto the Commission shall have, among others, the following powers and functions:*
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> *xxx xxx xxx*
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> *(i) Impose sanctions for the violation of laws and the rules, regulations and orders issued pursuant thereto;*
>
> *xxx xxx xxx"*

> ***"Sec. 6.*** *In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:*
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> *xxx xxx xxx*
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> *(i) To impose fines and/or penalties for violation of this Decree or any other laws being implemented by the Commission, the pertinent rules and regulations, its orders, decisions and/or rulings;*
>
> *xxx xxx xxx*

In the present case, J.R. Estrada showed its willingness to rectify its lapses and comply fully with the requirements under the law and regulations. Thus, revocation may be too harsh a penalty when there are available sanctions that may be imposed upon J.R. Estrada that do not diminish nor render trivial the gravity of the offenses it committed for its non-compliance with the Corporation Code and the rules and regulations of the Commission.

WHEREFORE, premises considered, the instant appeal is hereby **PARTIALLY GRANTED**. The Order of Revocation dated 06 October 2009, revoking the Certificate of Incorporation of J.R. Estrada & Sons, Inc., is hereby **SET ASIDE**.

For violations of reportorial requirements and Article 16 of the Corporation Code, J.R. Estrada & Sons, Inc. is hereby ordered to pay a **FINE**, the final amount to be computed by the Company Registration and Monitoring Department, for immediate compliance within ten (10) days from the date of receipt of this decision. J.R. Estrada & Sons, Inc. is hereby **DIRECTED** to submit proof of compliance with this decision.

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

SO ORDERED.

Mandaluyong City, 1 July 2010.

JOSE B. BARIN
Chairperson

MA. JUANITA E. CUETO
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE*
Commissioner

ELADIO M. JALA
Commissioner

**on leave of absence*