Republic of the Philippines
SECURITIES AND EXCHANGE COMMISSION
SEC Bldg. EDSA, Greenhills, Mandaluyong City

IN THE MATTER OF

MHERRYNOLL COLLEGE OF ASIA, INC.

SEC Admin Case No. 11-09-110
For: Revocation of Corporate Registration

ENFORCEMENT AND PROSECUTION DEPARTMENT,

Petitioner.

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DECISION

For consideration of the Commission *En Banc* is the Petition for Revocation of Corporate Registration of Mherrynoll College of Asia, Inc. ("Mherrynoll" for brevity) dated 08 July 2008, filed by the Enforcement and Prosecution Department ("EPD" for brevity) on the ground of filing a falsified Articles of Incorporation ("AOI") for purposes of registration, in violation of Section 6(l)(i) of Presidential Decree No. 902-A, as amended.

FACTS OF THE CASE

Mherrynoll is a corporation duly registered with the Commission on 20 December 2007 under SEC Registration No. CN200719630 with principal office at Quarry Road, Barangay Pantok, Binangonan, Rizal.[1]

On 08 May 2008, a Petition for Revocation of Corporate Registration was filed by Pederson A. Villamayor, Rosalinda A. Villamayor, Marlon A. Villamayor and Jackson A. Villamayor against Mherrynoll and another corporation by the name of Mherrynoll Educational Development and Technological Center, Inc.

In the said Petition, petitioners alleged that Noel "Nikki" A. Hernandez ("Nikki"), one of the incorporators of Mherrynoll, has no contractual capacity at the time of Mherrynoll's incorporation by reason of minority.

In a conference conducted by the EPD on 26 May 2008, Nikki admitted that he was only seventeen (17) years of age when he signed the Articles of Incorporation of Mherrynoll. In his defense, he maintained that he signed the AOI

[1] Mherrynoll's Amended Articles of Incorporation dated 22 February 2008.

upon the advice of a certain Atty. Efren Bautista, Mherrynoll's in house legal counsel. Also, Nikki presented during the same conference a copy of an Affidavit of Guardianship dated 24 October 2007 executed by Maria "Mherry" Hernandez. Under the said affidavit, it was stated that "Nikki "was barely seventeen (17) years old, and as such, is under guardianship and custody of his parents, Noel Hernandez and Maria "Mherry" Hernandez.

On 09 November 2009, the EPD, on the basis of its own findings, filed with the Commission's Office of the General Counsel ("OGC") a petition for the revocation of corporate registration of the said corporation.

ISSUE

The sole issue to be resolved in this case is whether or not there is a sufficient ground to revoke Mherrynoll's certificate of registration.

We rule in the affirmative.

Section 10 of the Corporation Code ("Code")[2] provides for the number and qualifications of incorporators, to wit:

> "SEC. 10. *Number and Qualifications of Incorporators.* – Any number of natural persons 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. Each of the incorporators of a stock corporation must own or be a subscriber to at least one (1) share of the capital stock of the corporation." (emphasis supplied)

From the records, it appears that Nikki's minority was conclusively established. Based on Nikki's certificate of live birth,[3] the authenticity of which was not denied by Mherrynoll, he was born only on 02 July 1990. Meanwhile, Maria "Mherry" Hernandez and Noel Hernandez applied for the registration of Mherrynoll on 22 October 2007 and its Certificate of Incorporation[4] was approved on 20 December 2007. In its Articles of Incorporation[5] filed with the Commission, particularly the fifth article, the name Noel "Nikki" Hernandez was listed as one of the incorporators. Thus, at the time of Mherrynoll's application for registration and at the time its registration was approved, Nikki, as an incorporator, was only seventeen (17) years of age, clearly in violation of Section 10 of the Code, which requires that all incorporators should be of legal age.

The act of knowingly employing an incapacitated person as incorporator constitutes fraud, which may be a ground for the revocation of a corporation's

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[2] Batas Pambansa Blg. 68 (1980).
[3] Annex 'A-1' of respondent's Answer.
[4] Under SEC Registration No. CN200719630.
[5] Signed by the incorporators on 13 December 2007.

certificate of registration.

Section 6(l)(i) of Presidential Decree No. 902-A, as amended, provides for the power of the Commission to revoke a corporation's certificate of registration, to wit:

> "SEC. 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:
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> x x x
>
> (i) 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**;
>
> x x x"(emphasis supplied)

In its answer to the petition, respondent Mherrynoll, represented by its President Maria "Mherry" Hernandez, contends that Nikki was made an incorporator because of their honest belief that despite his minority, he is qualified to be an incorporator if the parents execute an affidavit of guardianship. Respondent Mherrynoll further contends that it has made known Nikki's minority before the approval of its registration, thus, no fraud is committed because respondent acted in good faith.

However, we find respondent Mherrynoll's contention as rather lame and flimsy. For one, the records will show that the affidavit of guardianship was not presented to the Commission at the time of its application for registration. It must be emphasized that respondent Mherrynoll applied for registration on 22 October 2007 while the affidavit of guardianship was executed only on 24 October 2007. Also, contrary to respondent Mherrynoll's assertion, the said affidavit of guardianship was not presented to the Commission before the approval of its certificate of registration on 20 December 2007. A memorandum[6] addressed to the EPD from the Commission's Company Registration and Monitoring Department ("CRMD") confirmed that the said affidavit of guardianship was not attached to the official records of the respondent corporation.

Assuming *arguendo* that such affidavit of guardianship was attached in the application for registration, the Commission will still refuse to accept or approve respondent's application for registration on the basis of such affidavit for it runs counter to the requirement of Section 10 of the Code.

Incorporators must have the capacity to contract, hence, it necessarily follows

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[6] Dated 08 October 2009 attached as Annex "A" of the Reply.

that unless sanctioned by statute, a minor cannot become one of the incorporators in forming a corporation for he is not capable of making a binding contract.[7] In Philippine jurisdiction, minority restricts the capacity to act.[8] Similarly, under Article 1380 of the same Civil Code of the Philippines, minors cannot give consent to a contract and any contract entered into by them are voidable or annullable even though there may have been no damage to the contracting parties. Corollary thereto, the Corporation Code requires the incorporators to be of legal age.[9]

At the outset, it may be deduced that there was an apparent intention to commit fraud. The execution of the subject affidavit of guardianship appears to be dubious and may be deemed as merely an afterthought for the purpose of concealing the fraud, thereby giving the patently illegal act a semblance of legality. Consequently, the sworn articles of incorporation submitted by respondent Mherrynoll as part of its registration requirements indicating that Nikki is of legal age, is regarded as spurious and fraudulent. Had it been known to the Commission that such AOI was fraudulent, the CRMD would not have approved Mherrynoll's application for registration.

From the foregoing, and after having established that respondent's act of concealing the minority of one of its incorporators constitutes fraud thereby facilitating the approval of respondent's application for registration, there was a clear violation of Section 6(l)(i) of P.D. 902-A. Thus, the revocation of the certificate of registration of Mherrynoll is warranted.

WHEREFORE, premises considered, the Petition is hereby **GRANTED**. The corporate registration of Mherrynoll College of Asia, Inc. is hereby **REVOKED**.

Let a copy of this Decision be furnished to the Company Monitoring Department for its appropriate action, as well as to the Economic Research and Information Department and the Commission's extension offices for dissemination to the general public.

SO ORDERED.

Mandaluyong City, 10 June 2010.

FE B. BARIN
Chairperson

[7] 2 Fletcher Cyc. Corp. 1983 Revised Volume, Sec. 83.
[8] Article 38 of the Civil Code of the Philippines.
[9] SEC Opinion dated 10 August 1987 addressed to Bengzon Zarraga Narciso Cudala Pecson & Bengson.

MA. JUANITA E. CUETO*
Commissioner

RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

ELADIO M. JALA
Commissioner

*on leave of absence