Republic of the Philippines
Department of Finance
Securities and Exchange Commission
Pasay City, Philippines

In the matter of
EXPRESS MOTORS MKTG & SERVICES INC.

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,

Petitioner.

SEC Admin. Case No. 02-11-128
For: Revocation of Corporate Registration

DECISION

Before us is a Petition (For Revocation of Corporate Registration) dated 8 February 2011 filed by the Enforcement and Prosecution Department (EPD, *for brevity*) against EXPRESS MOTORS MKTG & SERVICES INC. (Express Motors, *for brevity*).

Petitioner EPD is a department of the SEC which is duty bound to file petitions for revocation of Certificate of Registration of corporations found to have violated the Corporation Code, the Securities Regulation Code, Presidential Decree 902-A, as amended, including their implementing rules and regulations, and such other laws enforced by the SEC.[1]

On the other hand, Respondent Express Motors is a stock corporation duly incorporated on 18 October 2006 under SEC Company Registration No. CS200616275.[2] Its primary purpose is "to engage in the business of trading Korean Van, car accessories and other related products on wholesale basis."[3]

In an investigation conducted by the Complaints and Investigation Division of the EDP last 30 August 2007, whereby the team posed as interested buyers of a passenger van, they were entertained by a staff of Express Motors who explained that the company sells passenger vans both on a retail and wholesale basis.[4] The team inquired on the price of a Hyundai Grace, and was informed that it costs about Two Hundred Fifty Thousand Pesos (Php 250,000.00) exclusive of transfer of certificate of registration.[5] Subsequently, on 11 April 2008, the investigating team conducted another field investigation to verify that the company is indeed engaged in selling vans on a retail basis.[6] They inquired from a sales staff, and were informed that most of the buyers are single-unit buyers, and that nobody buys in fleet or big number of units.[7]

Upon request from the Business Permits and License Office (BPLO) of Quezon City, the investigating team received a copy of the Business Permit dated 28 June 2007 issued to Express Motors, which indicated that the kind of business of Express Motors is "Retailer Second Hand Cars Capitalized at P620,000.00" and that its nationality is 65% Filipino, 35% Alien.[8]

In a conference which took place on 30 June 2009, Ms. Lou Jean Villanueva, President of the corporation, explained that aside from Express Motors, she has another business under the trade name Express Motors Marketing which sells second hand motor vehicles on a retail basis. This is in contrast to Express Motors which deals with the sale of imported Korean vans on a wholesale basis.[9] Nonetheless, she admitted that both entities have only one business address and signage in the business establishment.[10]

Hence, on 08 February 2011, EPD filed the instant petition before us, praying that the Certificate of Registration of Express Motors be revoked for committing serious misrepresentation as to what it can do or is doing to the great prejudice of or damage to the general public. EPD alleged that since Express

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1 Paragraph 1 of the Petition.
2 Paragraph 2 and Annex "A" of the Petition.
3 Paragraph 4 and Annex "B" of the Petition.
4 Paragraph 7 and Annex "D" of the Petition.
5 *Id.*
6 Paragraph 8 and Annex "E" of the Petition.
7 *Id.*
8 Paragraph 10 and Annex "F" of the Petition.
9 Paragraph 12 of the Petition.
10 *Id.*

Motors is only authorized to engage in wholesale trading, it would be beyond its corporate power to engage in retail business.[11] Furthermore, the acts of Express Motors also constitute serious misrepresentation as to what it can do to the prejudice of the public,[12] and are violative of the provisions of RA 8762 or the Retail Trade Liberalization Act of 2000.[13]

Summons, dated 09 February 2011, was issued requiring Express Motors to enter its appearance to the above-captioned case and to file its Answer within fifteen (15) days from receipt thereof. In an Order dated 23 April 2012, Petitioner EPD was notified by the Office of the General Counsel that the Summons has not been served to Express Motors. As reported by the process server of the Commission, Respondent no longer holds office at its registered address. The Summons was also not successfully served to Lou Jean A. Villanueva, President of Express Motors, at her residence address on record.[14]

EPD prayed, in a Manifestation dated 27 April 2012, that the service of summons be effected by publication against Respondents Express Motors and Ms. Villanueva, pursuant to Section 4-9, Rule IV of the 2006 Rules of Procedure of the Commission.[15] In an Order, dated 17 May 2012, the Commission allowed the service of summons by publication. The Commission ordered that the Summons, together with the said Order, be posted in the Commission's website (www.sec.gov.ph) for thirty (30) days and published once in a newspaper of general circulation. The Summons, also dated 17 May 2012, required the Respondents to enter their appearance in the above-captioned case and to file their Answer within thirty (30) days from the date of publication thereof.

To be resolved is the sole issue of whether the Certificate of Registration of Express Motors should be revoked for committing serious misrepresentation as to what it can do or is doing to the great prejudice of or damage to the general public.

The petition has merit.

To date, Express Motors did not file any Answer to EPD's petition for revocation.
As to the effect of failure of the Respondent to submit an Answer, Section 3-12 of the 2006 Rules of Procedure of the Commission provides that:

> "Section 3-12. Effect of Failure to Answer. – If the respondent fails to answer the complaint within the abovestated period, he shall be considered as in default. The Hearing Panel or Officer shall, *motu proprio*, proceed to render judgment granting the complainant such relief as the complaint may warrant, unless the Hearing Panel or Officer determines that the complainant should be required to submit *ex parte* additional evidence."

Considering that Express Motors failed to file its Answer, the Commission, *motu proprio*, is constrained to render a judgment based on the evidence and records thereof.

Based on its Articles of Incorporation, the primary purpose of Express Motors is to engage in the business of trading Korean Van, car accessories and other related products on a **wholesale** basis. However, as found by the investigating team of the EPD, Express Motors has been engaged in the sale of passenger vans on a retail basis which is contrary to its primary purpose. This finding is further bolstered by BPLO's issuance of Express Motors' Business Permit indicating that it is a retailer of second hand cars. The Respondent, on its part, was not able to produce any evidence to dispute these findings.

Section 45 of the Corporation Code provides:

> "Section 45. Ultra vires acts of corporations. – No corporation under this Code shall possess or exercise any corporate powers except those conferred by this Code or by its articles of incorporation and except such as are necessary or incidental to the exercise of the powers so conferred."

By offering for sale Korean vans on a retail basis, outside of its corporate powers, Express Motors has therefore committed an ultra vires act. Retail Trade is defined under RA 8762 as "any act, occupation or calling of habitually selling direct to the general public merchandise, commodities or good for

11 Paragraph 21 of the Petition.
12 Paragraph 24 of the Petition.
13 Paragraph 26 of the Petition.
14 Order dated 23 April 2012.
15 Manifestation with Motion for Leave to Effect Service of Summons by Publication dated 27 April 2012.

consumption."[16] Express Motors, being a corporation not wholly-owned by Filipino citizens, is subject to Section 5 of the Retail Trade Liberalization Act. Said provision on foreign equity participation states that enterprises with paid-up capital of the equivalent in Philippine Pesos of less than Two Million Five Hundred Thousand US Dollars (US$2,500,000.00) shall be reserved exclusively for Filipino citizens and corporations wholly-owned by Filipino citizens.[17] Considering that the paid-up capital of Express Motors is only Php500,000.00, the corporation falls within the threshold and must therefore be wholly-owned by Filipino citizens to qualify it to engage in retail business. As indicated in its Articles of Incorporation, Korean nationals own 40% of Express Motors' stock subscription.[18]

By virtue of Section 6, Paragraph (i)(2) of Presidential Decree 902-A, as amended, the Commission has the power to "suspend, or revoke, after proper notice and hearing, the franchise or certificate of registration of corporations, partnerships, or associations" on the ground of "serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public."[19] With the following findings established and undisputed, the revocation of the Certificate of Registration of Express Motors is warranted.

WHEREFORE, premises considered, the Petition for Revocation filed by Enforcement and Prosecution Department of the Commission against Express Motors is **GRANTED**. The Certificate of Registration of EXPRESS MOTORS MKTG & SERVICES INC. is **REVOKED**, pursuant to Section 6, Paragraph (i)(2) of Presidential Decree 902-A, as amended, for its commission of serious misrepresentation as to what it can do or is doing to the great prejudice of or damage to the general public.

SO ORDERED.

Pasay City, Philippines, 22 September 2017.

TERESITA J. HERBOSA*
Chairperson

ANTONIETA F. IBE *
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

BLAS JAMES G. VITERBO
Commissioner

EMILIO B. AQUINO
Commissioner

***On Leave**

16 Section 3 of Republic Act No. 8762, otherwise known as the Retail Trade Liberalization Act of 2000.
17 Section 5, Category A of RA Republic Act No. 8762, otherwise known as the Retail Trade Liberalization Act of 2000.
18 Annex "B" of the Petition.
19 Section 6(i)(2) of PD 902-A, otherwise known as the SEC Reorganization Act.