Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Building, EDSA, Greenhills, Mandaluyong City

In the matter of:
NATURES GARDEN PARK RESORT AND SPA CORPORATION,

SEC Admin Case No. 03-15-173

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,
Petitioner.

x----------x

DECISION

This resolves the *Petition for Revocation of Certificate of Registration*[1] filed on 27 March 2015 by the Enforcement and Investor Protection Department (*for brevity* "**EIPD**") seeking to revoke the certificate of registration of NATURES GARDEN PARK RESORT AND SPA CORPORATION (*for brevity* "**Natures Garden**"), on the ground of fraud in the procurement of its certificate of registration.

Facts of the Case

Natures Garden is a domestic stock corporation registered with the Commission on 16 December 2013 under SEC Company Registration No. CS201332258[2]. Its principal office is at Gabi, Cordova, Cebu (near Gabi Elementary School). Its incorporators are: 1) Youngran Jang (Korean); 2) Junho Kim (Korean); 3) Sandy Lou A. Cabalida (Filipino); 4) Yvonne F. Sagarino (Filipino); 5) Maria Fe M. Ectubanes (Filipino)[3]. Its primary purposes is:

> Primary purpose:
> "To engage in the business of operating resorts such as beach resorts, hotel resorts with activities such as but not limited to the management, operation of recreational and leisure facilities and maintenance of body and wellness spa."[4]

---

[1] Dated 25 March 2015.
[2] Certificate of Incorporation, Annex "A" of the Petition.
[3] Articles of Incorporation of Natures Garden, Article V, Annex "B" of the Petition.
[4] Ibid., Article II, Annex "B" of the Petition.

Its board of directors and officers, as shown in its 2014 General Information Sheet (GIS), are:

Name	Nationality	Officer/Board Member	Address
Youngran Jang	Korean		Purok 2, Gabi, Cordova, Cebu
Junho Kim	Korean		Purok 2, Gabi, Cordova
Rizalina Amora Gerogalia	Filipino	Treasurer	Masiwa, Marigondon, Lapu-lapu City
Gregorio A. Paquibot, Jr.	Filipino		Baring, Lapu-lapu City
Luzvimida S. Tampus	Filipino	Secretary	Purok, Orchids, Lo-oc, Lapu-lapu City

On 24 October 2014, Youngran Jang (Complainant Jang), one of the incorporators stated in the Articles of Incorporation (AOI), filed a complaint[5] with SEC-Cebu Extension Office. She accused Mr. Junho Kim, and his alleged cohorts, of committing fraud, to wit:

> "4. In the meantime, this paved the way for Mr. JUNHO KIM and his cohorts to feloniously appropriate for themselves, the said nature park/spa resort when they formed a new corporation, where they made it appear that petitioner was part of the group by forging her signature in the Articles of Incorporation;"[6]

In her complaint, she claimed that she was not in the Philippines at the time of the signing and notarization of Natures Garden's AOI and By-laws on 20 November 2013[7].

Complainant Jang presented a copy of her travel records to show that she was not in the Philippines during the time Natures Garden's AOI and By-laws were executed, signed and notarized[8]. She also submitted a Report from the Philippine National Police (PNP) Regional Crime Laboratory Office-VII in Cebu City, to show that her signature in Natures Garden's AOI and By-laws was a forgery[9].

Thereafter, EPID conducted an investigation on the basis of Ms. Jang's complaint. It requested from the Bureau of Immigration (BI) for Complainant Jang's travel information for 2012-2014 and from the Bureau of Internal Revenue (BIR) for the authenticity of Tax Identification Numbers (TIN) of Natures Garden's incorporators[10]. It also requested SEC-Cebu Extension Office for the conduct of

---

[5] Annex "D" of the Petition.
[6] Ibid, paragraph 4, page 4 of the Complainant Jang's petition.
[7] Paragraph 6, 10 of the Petition.
[8] Annex "H" of the Petition.
[9] Annex "F" of the Petition.
[10] Annexes "I", and "J" of the Petition, respectively.

investigation/conference with Natures Garden's officials or incorporators to elicit information on its incorporation.[11]

The BIR confirmed that all the TIN of Natures Garden's incorporators are valid[12]. On the other hand, BI submitted a *Certification*[13] showing that Complainant Jang was not in the Philippines on 20 November 2013 since her travel records revealed that she departed the Philippines on 03 January 2013 and later arrived here on 19 September 2014.

The SEC-Cebu Extension Office submitted a report narrating that it interviewed the three (3) of Natures Garden's incorporators, namely, Sandy Lou Cabalida, Yvonne Sagarino and Maria Fe Ectubanes, who said that "they had not seen Ms. Jang sign the AOI on any date or on 20 November 2013 x x x"[14].

Consequently, a Show Cause Letter[15] was issued to Natures Garden and its board of directors, incorporators and officers directing them to explain why its certificate of registration should not be revoked on the ground that they submitted an AOI and By-laws with Complainant Jang's disputed signature.

Natures Garden submitted its letter-explanation dated 03 March 2015, which alleged the following:

> "a. That the documents acknowledged before the notary public are public documents which are admissible in evidence without necessity of preliminary proof as to their authenticity and due execution; and that a public document not only enjoys the presumption of regularity but it also considered prima facie evidence of the facts stated therein;
> b. That the fate of thirty-five (35) employees of the corporation should not be left to the discretion of one of the incorporators who denied her signature of the corporation registration;
> c. That it is ridiculous for Ms. Jang to deny her signature but in her complaint thru counsel, she filed the complaint for and in behalf of one of the incorporators, and that she incurred no damage to the said assailed signature, monetary or otherwise; and
> d. That the corporation has already been registered with the BIR and paid taxes to the same, and likewise registered with the SSS, and Pag-IBIG, DOLE and the like[16]."

EIPD alleges that Natures Garden made it appear and falsely represented that Complainant Jang signed the corporation's AOI and By-laws that were submitted to the Commission. As such, its certificate of registration should be revoked on the

---

[11] Annex "K" of the Petition.
[12] Paragraph 14 of the Petition.
[13] Annex "L" of the Petition, dated 29 January 2015.
[14] Annex "M" of the Petition, Show Cause Letter of EIPD dated 30 January 2015.
[15] Ibid.
[16] Paragraph 18 of the Petition.

ground provided under Section 6 paragraph (l) subparagraph 1 of P.D. No. 902-A, as amended, in relation to Section 5(m) of the Securities and Registration Code (SRC)[17].

Summonses, dated 30 March 2015, were issued by the Commission on 10 April 2015 directing Natures Garden to file its *Answer* to EIPD's *Petition*. On 21 April 2015, Natures Garden filed an *Entry of Appearance with Motion for Extension*[18] which stated that it received the Commission's *Summons* on 10 April 2015[19] and requested that it be given a fifteen (15) day period from receipt, or until 09 May 2015, within which to file its *Answer*.

On 08 May 2015, Natures Garden filed its *Answer*, alleging, among others, that:

1. Complainant Jang and her late husband Kim Tae Young were pioneers of a corporation known as "KIM'S QUICKIE LAND INC. (*for brevity* "Kim's Land"). Kim's Land was eventually changed to its present name "NATURES GARDEN PARK RESORT AND SPA CORPORATION". Natures Garden operates the same resort, occupying the same lot and employing the same staff of Kim's Land. Natures Garden has been operating for more than a year and there was no objection from Complainant Jang[20];
2. The signature of Complainant Jang was obtained by her husband, Mr. Kim Tae Young, when the latter went to Korea. Upon Mr. Kim's return to the Philippines, he turned over the signed documents to start the paperwork procedure. This allegation is attested by a Joint-Affidavit executed by employees of Natures Garden.[21]
3. Natures Garden is the successor of Kim's Land and Complainant Jang was timely advised of the affairs of the former. Hence, there is no reason or deceit for Natures Garden to forge Complainant Jang's signature in the AOI and By-laws[22];
4. There is no fraud committed in procuring the certificate of registration that would warrant revocation since there is no forged signature. The purported forgery of Complainant Jang's signature was never proven by substantial evidence. There is no fraud, whether actual or constructive, since the element of deceit is absent or since there is no detrimental effect on public interest[23]; and
5. There is no slice of evidence to demonstrate fraud in securing Natures Garden's certificate of registration[24].

---

[17] Paragraphs 19-22 of the Petition.
[18] Dated 21 April 2015.
[19] Paragraph 2 of the Motion for Extension.
[20] Pages 3-4 of the Answer.
[21] Pages 3-4 of the Answer.
[22] Page 4 of the Answer.
[23] Pages 5-7 of the Answer.
[24] Page 6 of the Answer.

Issue/s

Whether or not the certificate of registration of NATURES GARDEN PARK RESORT AND SPA CORPORATION should be revoked due to fraud in procuring its certificate of registration, as provided in Section 6, paragraph (l), sub-paragraph 1 of PD 902-A, as amended.

Ruling

Before we resolve the case on the merits, we first resolve an issue as to the timely filing of Natures Garden's *Answer.*

As previously mentioned, *Summonses* were duly served to Natures Garden on 10 April 2015, thereby giving it fifteen (15) days from receipt thereof, or until 25 April 2015, within which to file an *Answer*. However, on 21 April 2015, or eleven (11) days after its receipt of the *Summonses*, Natures Garden filed an *Entry of Appearance with Motion for Extension* which is clearly a prohibited pleading under the 2006 SEC Rules of Procedure (2006 Rules)[25]. Thus, such motion is automatically expunged from the records of the case.[26]

On 08 May 2015, or twenty-eight (28) days from receipt of *Summonses*, Natures Garden filed its *Answer,* which is way beyond the fifteen (15) day-period given to it. Thus, Natures Garden is hereby considered as in default.[27]

The foregoing considered, we now resolve the case on the merits based on the allegations contained in the petition and supported by substantial evidence.

We find merit in the *Petition.*

A corporation as a creature of the State is presumed to be incorporated for the benefit of the public. It receives certain special privileges and franchises and hold them subject to the laws of the State and the limitations of its charter. There is a reserved right in the State to inquire how these privileges had been employed and whether they had been abused.[28] Hence, a corporation's juridical existence, being a mere privilege granted by the sovereign, may, at any time, be withdrawn on grounds provided for by law[29].

The Securities Regulation Code (SRC) expressly provides that the Commission has the power or authority to suspend or revoke after proper notice and

---

[25] 2006 Rules, Section 3-6.
[26] Ibid.
[27] Ibid. Section 3-12.
[28] Bataan Shipyard & Engineering Co., Inc. vs. PCGG, et. al. G.R. No. 75885, May 27, 1987.
[29] In the Matter of: Maasin Traders Lending Corporation, SEC Case No. 02-07-169.

hearing the franchise or certificate of registration of corporations, partnership or associations upon any of the grounds provided by law[30].

Relative thereto, Section 6 (l), sub-paragraph 1 of P.D. No. 902-A, provides that the Commission has exclusive jurisdiction over actions for revocation/cancellation of the primary franchise or certificate of registration of a corporation, on the following grounds: "1.) *Fraud in procuring its certificate of registration; x x x*".

The fraud mentioned in Section 6, (l), sub-paragraph 1 of P.D. No. 902-A as one of the grounds for revocation of a certificate of registration of a corporation, partnership or association refers to fraud attendant in the registration of the corporation, partnership or association and the same must be contained or connected with the documents and/or papers presented to the Commission for the registration of the said corporation, partnership or association[31].

There are two kinds of fraud, actual or constructive fraud. Actual fraud is intentional fraud; it consists of deception, intentionally practiced to induce another to part with property or to surrender some legal right, and which accomplishes the end designed. Constructive fraud, on the other hand, is a breach of legal or equitable duty which, irrespective of the moral guilt of the fraud feasor, the law declares fraudulent because of its tendency to deceive others, to violate public or public confidence, or to injure public interest[32].

Constructive fraud may result from reckless and heedless representations although they are not made with a deliberate intent to deceive. "Fraud" as used in Section 6, paragraph L (1) of P.D. No. 902-A includes constructive or legal fraud, and not just actual or moral fraud. The subject provision is not concerned with a crime or felony. And thus, criminal intent or intent to deceive is not essential. Therefore, any material statement made by an incorporator in the Articles of Incorporation that turns out to be a falsehood as determined by the Commission is thereby considered as fraudulent regardless of the incorporator's intent or knowledge of such falsehood[33].

The AOI is the basic corporate contract which is accorded with reverence by the law and the courts, as manifested by the stringent rules for its registration and the manner by which any part thereof may be amended[34].

The Corporation Code imposes registration requirements concerning incorporators: 1) one of the matters that must be stated in a corporation's AOI is that provided in Section 14, i.e. *"[t]he names, nationalities and residences of the incorporators"*; 2) Section 10 provides for mandatory number and qualifications of

---

[30] Section 5(m) of R.A. No. 8799.
[31] In the matter of Silvermoon Security & Investigation Agency, Inc., et. al., SEC Case No. 12-05-99 citing In the matter of Charlyn Marketing Enterprise, SEC Case No. 03-05-49.
[32] In the matter of Knight Capital Phils., Inc., SEC Admin. Case No. 07-10-121.
[33] Ibid.
[34] Ibid, supra 28.

incorporators, to wit: "*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*"; and 3) to secure the State and all concerned against the possibility of any fictitious name being subscribed to the AOI, Section 15 mandates that the same be acknowledged before a notary public.[35]

In order to become a corporation *de jure*, the provisions requiring the incorporation papers to be acknowledged as well as signed must be complied with. Each of the signatories must acknowledge his signature to the articles (AOI) and there is no corporation *de jure* unless acknowledged by the minimum number required by law. The purpose of the law in requiring acknowledgement under oath is to secure the State and all concerned against the possibility of any fictitious names being subscribed to the articles (AOI), and to furnish proof of the genuineness of the signatures[36].

The crux of this controversy is whether Complainant Jang's signature in Natures Garden's AOI and By-laws that were submitted to the Commission was forged, which if proven true, results in non-compliance with the foregoing requirements.

In instant *Petition*, EIPD presented overwhelming evidence supporting the allegation that Complainant Jang's signature was forged to wit:

First, the PNP Regional Crime Laboratory Office – VII Report[37] which states that:

> "FINDINGS:
> **Comparative examination and analysis of the question signatures marked "Q-1" to "Q-2"[38] and the standard signatures marked "S-1" to "S-32"[39] inclusive reveal <u>significant fundamental differences in formation, construction and other individual handwriting characteristics</u>.**
>
> CONCLUSION:
> **The questioned signatures of Youngran Jang (Korean character) appearing in the Articles of Incorporation, By-Laws of Natures Garden Park Resort and SPA Corporation dated 20 November 2013 marked "Q-1" to "Q-2" and the standard signatures submitted for**

---

[35] Ibid, supra 28.

[36] De Leon, Hector, The Corporation Code of the Philippines Annotated 128 (2002 Edition) pages 165-166 citing 1 Fletcher, p. 506; 18 C.J.S. 440.

[37] Annex "H" of the Petition, examined by Romeo Oliva Varona, *Forensic Document Examiner*, and noted by Nestor Aparecio Sator, MD, *Police Senior Superintendent, Regional Chief.*

[38] 1) One (1) Articles of Incorporation of Natures Garden Park Resort and SPA Corporation dated 20 November 2013 marked "Q-1"; 2) One (1) By-Laws of Natures Garden Park Resort and SPA Corporation (Article IX) dated 20 November 2013 marked "Q-2".

[39] 1) Two (2) pages of Special Power of Attorney dated 22 September 2014 marked "S-1" to "S-2"; 2) Three (3) sheets of short size bondpaper dated 27 September 2014 marked "S-3" to "S-32" inclusive.

comparison (above mentioned documents) marked "S-1" to S-32" inclusive were written by two different persons."

Second, the BI *Certification*[40] showing that Complainant Jang departed the Philippines on 03 January 2013 and returned only on 19 September 2014. Evidently, Complainant Jang was not in the Philippines from 03 January 2013 to 19 September 2014. Hence, during the time (20 November 2013) that Natures Garden's AOI and By-laws was signed and notarized, she was not in the country.

Even if we take into consideration Natures Garden's *Answer*, the defenses raised and evidence presented therein could not prevail over the overwhelming evidence in the *Petition.* Natures Garden claims that there was no forgery of Complainant Jang's signature in the corporate documents since it was her late husband, Mr. Kim Tae Young, who obtained her signature in Korea, and that upon Mr. Young's return to the Philippines, he turned over the signed corporate documents for paperwork procedure.

The 2004 Rules on Notarial Practice provides that a notary public is prohibited to perform a notarial act outside his regular place of work or business or if the signatory is not personally present before the notary public and not personally known to the latter[41]. In one case, the Supreme Court ruled that:

> "The Court is aware of the practice of not a few lawyers commissioned as notary public to authenticate documents without requiring the physical presence of affiants. However, the adverse consequences of this practice far outweigh whatever convenience is afforded to the absent affiants. **Doing away with the essential requirement of physical presence of the affiant does not take into account the likelihood that the documents may be spurious or that the affiants may not be who they purport to be. A notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated therein. The purpose of this requirement is to enable the notary public to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act and deed**.[42]"

The Supreme Court ruled that "such rules are important because an improperly notarized document cannot be considered a public document and will not enjoy the presumption of its due execution and authenticity[43]."

Thus, it can be evidently seen that there was forgery of Complainant Jang's signature in Natures Garden's AOI and By-Laws since it was affixed under highly irregular circumstances. The Notary Public did not witness Complainant Jang affix

---

[40] Annex "L" of the Petition, certified by Simeon L. Sanchez, *Acting Chief, Certification & Clearance Section.*
[41] Section 2, Rule IV , A.M. No. 02-8-13-SC,
[42] Grace Dela Cruz-Sillano vs. Atty. Wilfredo Paul D. Pangan, A.C. No. 5851, November 25, 2008.
[43] Juan Dela Rama and Eugenia Dela Rama vs. Oscar Papa and Ameuerfina Papa, G.R. No. 142309, January 30, 2009.

her signature in the said corporate documents as the latter was not physically present. More importantly, there are clear findings from the PNP Crime Laboratory that the signatures are made by two different persons upon evaluation and comparison. Based on the evidence presented, one can substantially determine that there was forgery in the Complainant Jang's signature in Natures Garden AOI and By-Laws.

The only evidence offered is a *Joint-affidavit* executed by Natures Garden's employees and incorporators, wherein Sandy Lou A. Cabalida and Yvonne F. Sagarino, two (2) of its incorporators, claimed that when they signed the documents, Complainant Jang's signature was already present. However, they did not elaborate further, i.e. that they saw Complainant Jang sign the said documents.

Therefore, the totality of the evidence presented substantially establishes the conclusion that Natures Garden and its incorporators committed fraud in submitting its Articles of Incorporation and By-laws with a forged signature of Youngran Jang, which is in violation of Section 6, (l) sub-paragraph 1 of P.D. No. 902-A.

Moreover, Section 10 of the Corporation Code expressly states that:

> "Section 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 s stock corporation must own or be a subscriber to at least one (1) share of the capital stock of the corporation."

In the instant case, Natures Garden violated the above-quoted provision since Ms. Youngran Jang did not participate in its incorporation. Thus, the subject entity was incorporated with only four (4) incorporators.

WHEREFORE, premises considered, the instant petition is hereby **GRANTED**. The *Certificate of Incorporation* of **NATURES GARDEN PARK RESORT AND SPA CORPORATION** is hereby **REVOKED**, based on Section 6 (l) sub-paragraph 1 of Presidential Decree No. 902-A and violation of Section 10, BP No. 68, otherwise known as the Corporation Code of the Philippines, without prejudice to any criminal offense/s that may be filed.

Let a copy of this *Decision* be furnished to the Company Registration & Monitoring Department and the Economic Research &Training Department for their information and appropriate action.

SO ORDERED.

Mandaluyong City, Philippines; 09 June 2015.

* **TERESITA J. HERBOSA**
Chairperson

ANTONIETA F. IBE
Commissioner

MANUEL HUBERTO B. GAITE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

* **BLAS JAMES G. VITERBO**
Commissioner

* absent on official businessduring the deliberation of this matter.