Republic of the Philippines
Department of Finance
Securities and Exchange Commission

IN THE MATTER OF
RED WHITE & BLUE ARMS, INC.

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT, **SEC Admin Case No. 06-10-118**
Petitioner.
x----------x

DECISION

This resolves the Petition for Revocation of Certificate of Incorporation dated May 28, 2010 filed by petitioner Enforcement and Investor Protection Department (**"EIPD"**) on June 1, 2010 against Red White & Blue Arms, Inc.(**"RWB"**) on the ground of fraud under Sec. 6(i), subparagraph 1 of Presidential Decree 902-A, otherwise known as the *"SEC Reorganization Act"*.

THE PARTIES

Petitioner EIPD is one of the operating departments of the Securities and Exchange Commission ("Commission") tasked to ensure compliance by all market participants, issuers and individuals, and take appropriate enforcement action against them for infractions of the laws, rules and regulations implemented by the Commission. The same is vested with the primary authority to conduct investigations and administrative actions involving, among others, the selling, offering or transacting unregistered securities by entities without a secondary license, as well as to initiate petitions for revocation of corporate registration except those under the original authority of the Company Registration and Monitoring Department ("CRMD"). Finally, the EIPD is tasked to investigate, *motu proprio* or upon a verified complaint or referral, violations of laws, rules and regulations implemented by the Commission, as well as to initiate the issuance of a Cease and Desist Orders ("CDO") by the latter.

Respondent RWB is a domestic corporation with Company Registration Number CS200709733 engaged in the business of purchasing, importation, procurement, distribution or sale and export of firearms, ammunitions and accessories with declared office address at Suite 461 Island Plaza Salcedo Building, 105 L.P. Leviste Street Salcedo Village, Makati City in its Articles of Incorporation.

ANTECEDENT FACTS

The EIPD narrates that sometime on 2009, it received an information that respondent RWBA misrepresented its principal address and the addresses of its incorporators in the Articles of Incorporation. Thus on November 27, 2009, the EIPD launched a full investigation on the matter and proceeded to inquire[1] with the Business Permits and Licensing Office **("BPLO")** on whether RWB secured a business permit. In response to said inquiry, the BPLO issued a Certification[2] that RWBA has secured business permits and that its address is at 2303 Don Chino Roces Extension, G/F G&A Building, Magallanes, Makati City, which is a different address than what is stated in its Articles of Incorporation.

The investigating team of the EIPD then proceeded to the G&A Building to determine whether RWB held office thereat. Thus, the administration of G&A Realty corporation issued a Certification[3] that respondent RWB is a lessee of G&A Building with a lease of five (5) years from October 6, 2007 to October 5, 2012. Subsequently, the EIPD went to the Administration Office of Island Plaza Salcedo and inquired on whether respondent RWB is doing business in their building.[4] One Maria Fe Belardo, the Building Administrator of Island Plaza Salcedo building, confirmed through various Certifications[5] that they have no knowledge or transaction with respondent RWB and that their building has no "Suite 461".

Afterwards, petitioner EIPD went to Smart Mail, Inc., the lessor of mailboxes for the tenants leasing Island Plaza Salcedo to inquire about respondent RWB. Thus, Smart Mail, Inc., through their Center Manager, issued a Certification[6] that respondent RWBA never subscribed for Suite "461" or rented their mailboxes.

After conducting their investigation, the EIPD sent several Notices of Conferences[7], via registered mail to respective addresses of RWB's incorporators as appearing the Articles of Incorporation. However, all of them failed to appear at the scheduled time and date of the conference. The notices were returned to sender with notations of either "party unknown" or "no such street". New Notices of Conference[8] were sent to said incorporators at 2303 Don Chino Roces Extension, G/F G & A Building, Magallanes, Makati City

---

[1] Petition, Annex "E".
[2] *Id.*, Annex "F".
[3] *Id.*, Annex "G".
[4] *Id.*, Annexes "H" and "I".
[5] *Id.*, Annexes "J", "K" and "K-1".
[6] *Id.*, Annex "L".
[7] *Id.*, Annex "M-series".
[8] *Id.*, Annex "N".

on April 7, 2010. Again, respondents failed to appear on the scheduled conference on April 12, 2010.

On April 13, 2010, the EIPD personally served a subpoena[9] to the incorporators of RWB at their business address in G & A Building, which was received by one Raymund Pascua. Despite the same, no one appeared on the April 19, 2010, scheduled conference. Again, the EIPD, through process servers Rodrigo Gamboa and Edgardo Gruespo personally served said Subpoenas[10] to the respective addresses of RWB's incorporators. Unfortunately, the same were not served on the reasons that the address was fictitious, a different person resides therein or the address cannot be located.

As a last ditch of effort, the EIPD sent a letter[11] to the administrator of the G & A Building inquiring if the lease contract of respondent RWB was still effective, in which the former affirmed. Lastly, the EIPD avers that respondent RWB failed to file its latest General Information Sheet and Audited Financial Statements for the years 2008 to 2010.

ISSUES

Upon perusal of the EIPD's Petition, the latter raises the sole issue on whether or not respondent RWB employed fraud in the registration of its corporation to warrant its revocation.

DISCUSSION

After careful consideration of the facts and evidence presented in the Petition, this Commission resolves to grant the prayer for revocation of respondent RWBA's Certificate of Registration.

Section 6(i), subparagraph 1 of Presidential Decree 902-A empowers the Securities and Exchange Commission to suspend, or revoke, after proper notice and hearing, the franchise or certificate of registration of corporations, partnerships or associations **on the ground of fraud in procuring its certificate of registration**.

In "***In the matter of Philbio Renewable Energy Resources, Corp., SEC Admin Case No. 11-10-124, April 27, 2016***", this Commission ruled that a corporation, as a creature of the State is presumed to exist for the common good. Hence, the special privileges and franchises it receives are subject to the laws of the State and the limitation of its charter. There is

---

[9] Petition, Annex "O".
[10] *Id.*, Annex "P-series".
[11] *Id.*, Annex "Q-series".

therefore a reserved right of the State to inquire how these privileges ad been employed, and whether they have been abused. **Hence, a corporation's juridical existence, being a mere privilege granted by the sovereign, may, at any time, be withdrawn on grounds provided by law**.

Finally, in the case of ***Carebest International, Inc. vs SEC, G.R. No. 215510, October 5, 2015***, the Supreme Court ruled that:

> "Fraud can be classified as either *actual or constructive. Actual or positive fraud* proceeds from an intentional deception practiced by means of the misrepresentation or concealment of a material fact. *Constructive fraud* is construed as a fraud because of its detrimental effect upon public interests and public or private confidence, even though the act is not done with an actual design to commit positive fraud or injury upon other persons. Since **Section 6(i)(l) of PD 902-A simply speaks of fraud without limiting its use of the term, then the section must include not only actual fraud but constructive fraud as well.** Since the provision is not concerned with a crime or a felony, criminal intent or intent to deceive is not essential." (Emphasis supplied)

Applying said rules and jurisprudence in this case, respondent RWB employed fraud when it declared a fictitious address as its principal place of business in the Articles of Incorporation in order to induce this Commission to issue a Certificate of Registration in its favor. Moreover, the addresses of its incorporators, as declared in the Articles of Incorporation were either non-existent, cannot be located or is not resided by said incorporator. This is evinced by the fact that the there is no "Suite 461" in Island Plaza Salcedo as investigated by the EIPD and that the Notices, as well as the Subpoenas it issued to the respective addresses of RWB's incorporators, as stated in the Articles of Incorporation, were not served successfully due to stated reasons. The Articles of Incorporation, being a notarized document, is executed to lend truth to the statements to the statements therein. Since the contents of RWB's Articles contain untruthful statements, specifically its own address, as well as that of its incorporators, the authenticity of the same came under a cloud of doubt[12].

Assuming that there was no deceit employed on the part of respondent RWB, the latter could have processed immediately the amendment of its Articles of Incorporation or submitted its latest General Information Sheet in order to apprise this Commission of its principal place of business, as well as the correct addresses of its incorporators when it received several notices from this Commission to explain itself. Unfortunately, and despite having the opportunity to do so, respondent RWB still failed to do the same as of date.

---

[12] *Carebest International, Inc. vs SEC*, G.R. No. 215510, October 5, 2015.

Taking into consideration the above-stated circumstances, as well as continuous failure of respondent RWB to attend its scheduled conferences before this Commission to explain themselves, there is bad faith and fraud on the part of respondent RWB when it applied for its Certificate of Registration which constitutes a valid ground for this Commission to revoke the same.

This Commission, being the regulatory body of all corporate entities registered in the Philippines, is duty bound to exercise its powers of suspension and revocation of franchises under the law when a valid ground exists in order to protect the public from being deceived by unscrupulous individuals hiding under the veil of corporation to escape liability. Thus, this Commission will not hesitate to revoke the franchise of respondent RWB as their continued existence may cause grave damage and prejudice to innocent individuals or entities who intend to transact with them.

WHEREFORE, premises considered, this Petition is hereby **GRANTED.** The Certificate of Corporate Registration of **RED WHITE & BLUE ARMS, INC.** is hereby **REVOKED** pursuant to Section 6(l), sub-paragraph 1 of Presidential Decree No. 902-A without prejudice to other criminal offense/s that may be filed against it.

SO ORDERED.

Pasay City, Philippines, 9 July 2019.

EMILIO B. AQUINO
Chairperson

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG*
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

*Commissioner on leave.