Republic of the Philippines
Department of Finance
Securities and Exchange Commission

POH TOH BUDDHIST ASSOCIATION OF THE PHILIPPINES, INC.,

Appellant,

- versus -

SEC *En Banc* Case No. 08-15-381
For: Cancellation of Membership Book

CHRISTINA SY and TERESITA S. HERNANDEZ,

Appellees.

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DECISION

For the consideration of the Commission *En Banc* is the *Memorandum on Appeal*[1] filed on 12 August 2015 by appellant Poh Toh Buddist Association of the Philippines (appellant association) against Christina Sy and Teresita S. Hernandez (appellees) assailing the Order (Assailed Order) of the Company Registration and Monitoring Department (CRMD) of the Commission.[2] The dispositive portion of the Assailed Order reads as follows:

> "**WHEREFORE,** premises considered, the instant Complaint is hereby **DISMISSED,** for **LACK OF JURISDICTION** on the part of the Commission."

Appellant association is a corporation duly registered with the Commission on 31 March 1955 with SEC Registration No. 9678. The primary purpose of appellant association is "cultivate and promote social and intellectual welfare among its members, and to study the truth and teachings of Buddhism with the hope of its spiritual help to our profession and vocation."[3]

Factual Antecedents

On 11 June 2014, appellant association allegedly submitted its application for the registration of its Membership Book with the CRMD, which was duly approved and registered by the latter on even date.[4]

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[1] Memorandum on Appeal dated 12 August 2015.
[2] *Id.*, Annex "A" (Order of the CRMD dated 24 July 2015).
[3] *Id.*, par. 10; and Annex "D" (Certificate of Filing of Amended Articles of Incorporation issued on 26 June 2007) and Annex "D-1" (Second Article of the Amended Articles of Incorporation).
[4] *Id.*, Annexes "N" (Membership Book Registration Form) and "N-1" (Payment Assessment Form dated 11 June 2014).

In a Letter dated 19 May 2015, appellee Christina Sy demanded from the Board of Directors of appellant association to hold an annual meeting of the members on 25 May 2015 for the election of a new set of officers/directors. She further claims that no election was held by appellant association in the past few years. As proof of conformity of the supposed members of appellant association, she attached a copy of the above-mentioned Membership Book containing a list of the members of the said appellant association.[5]

On 27 May 2015, appellant association inquired with the Commission about the existence of the Membership Book, and it alleges that the same was registered by an unknown individual and without the authority of the former. Further, appellant association alleges that the Registration Form of the Membership Book lacks the name, signature and TIN of its corporate secretary.[6]

On 22 June 2015, appellant association filed a *Petition for Cancellation of Registration of Membership Book* (Petition) before the CRMD praying that the Membership Book be declared cancelled since it was irregularly registered, and all the corresponding entries found therein be nullified and invalidated.[7]

On 29 July 2015, the CRMD issued the Assailed Order dismissing the Petition for lack of jurisdiction on the ground that the matter is an intra-corporate controversy. The CRMD further ruled that it cannot invalidate the entries in the Membership since it "is tantamount to adjudicating on the legitimacy or illegitimacy of the signatories as members of the association".[8]

Hence, this instant appeal.

In the Memorandum on Appeal, appellant association argues the following: (i) the CRMD erred in dismissing its Petition due to the finding of an intra-corporate dispute, and failed to consider the fact that the crux of the said Petition involves the registration of the Membership Book which is in violation of the Commission's rules and regulations; (ii) the CRMD erred in stating that the Commission is performing a ministerial function, and failed to consider that the registration application of the Membership Book does not contain the signature of the corporate secretary of appellant association; and (iii) the CRMD erred in refusing to take cognizance of the case since it would adjudicate on the legitimacy of the members of appellant association. Thus, appellant association prays that the Commission set aside the Assailed Order and cancel the Membership Book.[9]

The appellees, on the other hand, stated in their Reply Memorandum that the appeal must be dismissed since Dorian Chua is not authorized to file the case on behalf of appellant

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[5] *Id*, pars. 12 and 13; and Annex "H" (Letter of Christina Sy dated 19 May 2015) and Annex "I" (Membership Book of appellant association).
[6] *Id.*, pars. 14 and 15.
[7] *Id.*, par. 17 and Annex "K" (Petition for Cancellation of Registration of Membership Book dated 19 June 2015).
[8] *Id.*, Annex "A" (Order of the CRMD dated 24 July 2015).
[9] *Id.*, pp. 6-7.

association. The Secretary's Certificate authorizing Mr. Chua to prosecute the case was signed by Maria Sy Kian Giap who is not an officer of appellant association. The General Information Sheet (GIS) dated 15 June 2015 does not indicate that Maria Sy Kian Giap is an officer of appellant association.[10]

Further, appellees argue that the CRMD correctly ruled that the Commission has no jurisdiction over the case since it is an intra-corporate controversy. They also state that the Membership Book is validly registered with the Commission for the following reasons, among others: (i) the Membership Book was duly paid for, received by and registered with the Commission; (ii) there is a need to register the Membership Book since no such record was previously registered with the Commission; (iii) the Commission has no authority to determine whether such officer of appellant association is authorized to register the Membership Book; and (iv) the Commission cannot cancel the registration of the Membership Book since its own rules and regulations will be violated considering that they provide that there must one Membership Book registered therein.[11]

In response, appellant association argues, in its *Comment (to Respondent-Appellees' Reply-Memorandum*) (Comment), the following, among others: (i) Dorian Chua is authorized to pursue the case; (ii) the crux of the controversy in this case is the cancellation of the Membership Book on the grounds of irregularities attending the registration thereof with the Commission; (iii) appellees failed to provide the identity and authority of the alleged representative who filed the Membership Book, and failed to prove that such representative is a member of appellant association; (iv) the corporate secretary of appellant association is duly authorized to keep and maintain the corporate records and, as such, is the officer who is duly authorized to make entries in the stock and transfer book or membership book; (v) appellant association already stated in its Petition filed before the CRMD that the registration form for the Membership Book is unsigned; and (vi) the Commission has the regulatory power to cancel the registration of a Membership Book that is void on its face.[12]

Issues

The issues to be resolved are the following: (i) whether the Commission should take cognizance of the appeal if Dorian Chua does not have the authority from appellant association to pursue the case; (ii) whether the case involves an intra-corporate controversy; (iii) whether there is an irregularity in the registration of the Membership Book; and (iv) whether the CRMD is correct in refusing to invalidate and cancel the entries in the Membership Book.

Ruling

As to the *first issue*, appellees argue that the Dorian Chua has no authority to pursue the case since appellant association has not given such authority. However, regardless of

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[10] Reply Memorandum dated 4 September 2015 and filed on 7 September 2015, pp. 3.
[11] *Id.*, pp. 4 and 7.
[12] Comment dated 6 October and filed on even date, pars. 10, 14, 16, 18, 20, 22, 23 and 30.

whether Mr. Chua has such authority, the Commission can still take cognizance of the case based on its regulatory power. The Supreme Court, in the case entitled *Provident International Resources Corporation v. Venus*, et al.,[13] stated the following:

> "**From the above, it can be said that the SEC's regulatory authority over private corporations encompasses a wide margin of areas, touching nearly all of a corporation's concerns.** This authority more vividly springs from the fact that a corporation owes its existence to the concession of its corporate franchise from the state. Under its regulatory responsibilities, the SEC may pass upon applications for, or may suspend or revoke (after due notice and hearing), certificates of registration of corporations, partnerships and associations (excluding cooperatives, homeowners' association, and labor unions); compel legal and regulatory compliances; conduct inspections; and impose fines or other penalties for violations of the Revised Securities Act, as well as implementing rules and directives of the SEC, such as may be warranted.[14]
>
> Considering that the SEC, after due notice and hearing, has the regulatory power to revoke the corporate franchise -- from which a corporation owes its legal existence -- **the SEC must likewise have the lesser power of merely recalling and canceling a [stock and transfer book] that was *erroneously registered*.**" (Emphasis ours)

As can be seen, the Commission has the power to take cognizance of the matter to determine whether the Membership Book may be cancelled considering its regulatory power over private corporations. In other words, even if Dorian Chua does not have the authority to pursue case, the Commission can still exert its regulatory authority over the matter and determine if Membership Book is erroneously registered therewith.

As to the *second issue*, the CRMD ruled that if it proceeds with the cancellation of the registration of the Membership Book, it may encroach on the authority of the courts since the matter involves an intra-corporate controversy. In order to determine whether a case involves an intra-corporate controversy, which is to be heard and decided by Regional Trial Court (RTC), the Supreme Court, in the case entitled *Speed Distribution, Inc. v. Court of Appeals*,[14] stated that the case: (a) must arise out of intra-corporate relations, and (b) the nature of the question subject of the controversy must be such that it is intrinsically connected with the regulation of the corporation or the enforcement of the parties' rights and obligations under the Corporation Code and the internal regulatory rules of the corporation. So long as these two criteria are satisfied, the dispute is intra-corporate and the RTC, acting as a special commercial court, has jurisdiction over it.

In this case, we partially agree with appellant association that the second element is wanting since the issue on the cancellation of the registration of membership book is not intrinsically connected with the regulation of the corporation, or the enforcement of the parties' rights and obligations under the Corporation Code and the internal regulatory rules

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[13] G.R. No. 167041, 17 June 2008.
[14] G.R. No. 149351, 17 March 2004.

of the corporation. Instead, the cancellation of the registration of the Membership Book is within the primary competence of the Commission as the regulatory authority following the Supreme Court's ruling in *Provident,* to wit:

> "Going to the particular facts of the instant case, we find that the SEC has the primary competence and means to determine and verify whether the subject 1979 STB presented by the incumbent assistant corporate secretary was indeed authentic, and duly registered by the SEC as early as September 1979. As the administrative agency responsible for the registration and monitoring of STBs, it is the body cognizant of the STB registration procedures, and in possession of the pertinent files, records and specimen signatures of authorized officers relating to the registration of STBs. The evaluation of whether a STB was authorized by the SEC primarily requires an examination of the STB itself and the SEC files. This function necessarily belongs to the SEC as part of its regulatory jurisdiction. Contrary to the allegations of respondents, the issues involved in **this case can be resolved without going into the intra-corporate controversies brought up by respondents**." (Emphasis ours)

As can be seen, the issue of whether an intra-corporate controversy is not connected with the approval of the Membership Book. Clearly, the second element is wanting in this case.

However, it must be pointed out that the CRMD in the Assailed Order correctly refused to invalidate the entries in the Membership Book since the matter would be an intra-corporate controversy. As correctly stated, the matter will involve, on the part of the CRMD, the determination of the status on the membership of the members of appellant association. Hence, the matter of invalidating the entries in the Membership Book lies within the jurisdiction of the trial court, and not the CRMD nor the Commission.

As to the *third issue*, appellant association claims that there is an irregularity in the registration of the Membership Book with the Commission. The Supreme Court, in the case entitled *De Lima, et al. v. Reyes, et al.*, stated that an act is considered ministerial if an officer performs in the context of a given set of facts, in a prescribed manner and without regard for the exercise of his or its own judgment, upon the propriety or impropriety of the act done.[15]

In this case, while it is it ministerial function of the official of the CRMD to register the Membership Book, the documents and requirements for such registration must be complete. Here, the Registration Form required, among others, that the name, signature and TIN of the corporate secretary of appellant association be indicated therein. However, it is apparent that the Registration Form[16] of appellant association is not complete since the said name, signature and TIN of the corporate secretary of appellant association was not indicated therein. In fact, the person who filed the Membership Book is anonymous, and such fact is not denied by the appellees. Thus, the application for registration should have been denied outright by the official of the CRMD.

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[15] G.R. No. 209330, 11 January 2016.
[16] Registration Form dated 11 June 2014, Annex "N" of the Memorandum on Appeal.

The name, signature and TIN of the corporate secretary is required to be indicated in the Registration Form since such officer is the custodian of records of corporations. In the case entitled *People of the Philippines v. Hermenegildo Dumlao y Castiliano, et al.*, the Supreme Court stated that the proper custodian of the books, minutes and official records of a corporation is usually the corporate secretary.[17] In another case entitled *Torres v. Court of Appeals*, the Supreme Court stated that, corollarily, the corporate secretary keeps the stock and transfer book or membership book, and makes the proper and necessary entries therein.[18] Hence, the requirement of the name, signature and TIN of the corporate secretary in the Registration Form of the Membership Book must be complied with for the CRMD to act on the application.

WHEREFORE, premises considered, the Memorandum of Appeal filed by Poh Toh Buddhist Association of the Philippines is **GRANTED,** and the Order of the Company Registration and Monitoring Department (CRMD) dated 24 July 2015 is **REVERSED** and **SET ASIDE.** The CRMD is directed to **CANCEL** the registration of the Membership Book of Poh Toh Buddhist Association of the Philippines.

SO ORDERED.

Pasay City, 8 December 2016.

TERESITA J. HERBOSA
Chairperson

ANTONIETA F. IBE
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

BLAS JAMES G. VITERBO
Commissioner

EMILIO B. AQUINO
Commissioner

[17] G.R. No. 168918, 2 March 2009.
[18] G.R. No. 120138, 5 September 1997.