Republic of the Philippines
Department of Finance
Securities and Exchange Commission
Commission En Banc

RODERICO T. SANTOS,
Appellant,

-versus-

PHILIPPINE BRITISH ASSURANCE COMPANY, INC. and COMPANY REGISTRATION AND MONITORING DEPARTMENT,
Appellees.
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SEC En Banc Case No. 11-13-307

DECISION

This resolves the Memorandum of Appeal dated 7 November 2013 filed by Appellant Roderico T. Santos (Appellant Santos) on the same date before this Commission assailing the Order of the Company Registration and Monitoring Department (CRMD) dated 1 October 2013[1] (the "Order") dismissing Appellant Santos' Complaint against Appellee PBACI for lack of merit.

THE PARTIES

Appellant **RODERICO T. SANTOS**, is a Filipino, of legal age, married and with address at Unit 201 Xavierville Royale Condominium, No. 61 Xavierville Avenue, Loyola Heights, Quezon City.

Appellee **PHILIPPINE BRITISH ASSURANCE COMPANY, INC. ("PBACI")** is a domestic corporation duly organized and incorporated under Philippine laws, with office address at Penthouse, Morning Star Building, 347 Sen. Gil Puyat Ave. Extension, Makati City.

[1] Memorandum of Appeal, Annex "A".

STATEMENT OF RELEVANT FACTS

On 10 March 1960, N.G.I. Insurance & Surety Corporation (NGI) was established and incorporated to do insurance and other related businesses. The Articles of Incorporation of NGI which was approved by the Commission provided for a corporate term of fifty (50) years from 10 March 1960 or until 10 March 2010. On 28 March 1962 NGI filed an application to amend its Articles of Incorporation after its Board of Directors and the required number of shareholders approved to change the corporate name of NGI to Philippine British Assurance Corporation Incorporated (PBACI). The directors of PBACI disclosed in the last General Information Sheet filed with the Commission that its directors were (1) Rosario W. Cuyegkeng, (2) Nelia D. Wongchuking, (3) Jose Z. Clemente, (4) Cesario P. Tiopianco, (5) Marcial O.T. Balgos; and (6) Danilo L. Natividad. Rosario W. Cuyegkeng and Nelia D. Wongchuking were owners of the majority of PBACI shares.

On 10 March 2010, the corporate term of PBACI expired. Records disclose that PBACI did not file an application to amend its Articles of Incorporation for purposes of extending its corporate term.

Prior to the expiration of its corporate term, PBACI was able to secure from the Insurance Commission a Certificate of Authority with No. 2009/6-R dated 1 July 2009 granting it authority to do insurance business from July 2009 to July 2010.

After the expiration of its corporate term, Rosario W. Cuyegkeng, Nelia D. Wongchuking, Jose Z. Clemente, Cesario P. Tiopianco, and Danilo L. Natividad applied for the registration of a new corporation, proposing for this purpose the name Philippine British Assurance Company, Inc. (the "New PBACI").[2] This was called "re-registration" by the CRMD. The proposed name was identical with PBACI, the corporation which term has expired. The incorporators of the New PBACI applied for and was able to secure from the Insurance Commission (IC) a "1st Endorsement" dated 4 November 2010 to the effect that the IC did not interpose any objection "*to the company's registration with the Securities and Exchange Commission*".

On 26 November 2010, this Commission, after finding that the New PBACI complied with all the requirements prescribed by law, issued a Certificate of Incorporation in favor of the New PBACI, with SEC Registration Number CS-201019311 and Tax Identification Number 000-803-300-000. The incorporators and directors of the New PBACI are (1)

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[2] This was called "Re-registration" by the Company Registration and Monitoring Department

Rosario W. Cuyegkeng, (2) Nelia D. Wongchuking, (3) Jose Z. Clemente, (4) Cesario P. Tiopianco; and (5) Danilo L. Natividad.

On 24 June 2013, Appellant Roderico filed a Complaint[3] before the CRMD praying that the Certificate of Incorporation issued to the New PBACI be cancelled on the ground that the use by the New PBACI of a name which is identical to that of a corporation whose corporate term has expired constitutes a violation of Sec. 18 of Corporation Code (now Sec. 17 of the Revised Corporation Code) and existing jurisprudence.

In its Verified Answer[4] dated 09 August 2013, the New PBACI argued that its use of PBACI is valid and sanctioned by law, rules and regulations, specifically SEC Memorandum Circular No. 14, Series of 2000. The New PBACI thus prayed for the dismissal of the Complaint.

In his Reply[5], Appellant Santos countered and argued on the basis of *Alhambra Cigar & Cigarette Manufacturing Company, Inc., vs Securities and Exchange Commission, G.R. No. L-23606, July 29, 1968"*, that an old corporate name cannot be retained in its exact form.

After joining all the issues, the CRMD issued the assailed Order where it was ruled that the Commission's approval of the New PBACI's application and the subsequent issuance of its Certificate of Incorporation was in accordance with law, and with the applicable Memorandum Circulars which have the force and effect of law.

Hence, the instant appeal filed by Appellant Santos.

ISSUE

Whether or not the Certificate of Incorporation of New PBACI should be cancelled?

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[3] Memorandum of Appeal, Annex "B".
[4] *Id.*, Annex "C".
[5] *Id.*, Annex "D".

DECISION

After a careful review and consideration of the facts and the law, as well as the evidence presented by both parties, this Commission finds the instant appeal unmeritorious and resolves to deny the same.

It is undisputed that the corporate term of old PBACI expired on 10 March 2010. After such date, Rosario W. Cuyegkeng, Nelia D. Wongchuking, Jose Z. Clemente, Cesario P. Tiopianco; and Danilo L. Natividad (the "Incorporators"), all of whom were incidentally the incorporators and directors of new PBACI, decided to form a new corporation, and to use the corporate name "Philippine British Assurance Company, Inc.", one which is identical with their previous corporation whose term has expired. Thus, it is also undisputed as borne by the records of the case, that the Incorporators applied for the incorporation of the New PBACI after the corporate term of PBACI expired on 10 March 2010.

Considering that the primary purpose of the New PBACI is to "carry on the business of non-life insurance"[6], the Commission required the incorporators of the New PBACI to submit an endorsement from the IC, in addition to the standard requirements provided under Batas Pambansa 68 (the Corporation Code) and existing rules and regulations. The foregoing is mandated by Section 17 of the Corporation Code, the last paragraph of which provides, thus:

> "No articles of incorporation or amendment to articles of incorporation of banks, banking and quasi-banking institutions, building and loan associations, trust companies and other financial intermediaries, insurance companies, public utilities, educational institutions, and other corporations governed by special laws shall be accepted or approved by the Commission **unless accompanied by a favorable recommendation of the appropriate government agency to the effect that such articles or amendment is in accordance with law**." (Emphasis supplied)

The CRMD approved the application and issued the Certificate of Incorporation of the New PBACI on 26 November 2010 after finding that it has complied with and submitted all the requirements prescribed under the Corporation Code and existing rules and regulations. The foregoing finds support in the case of *Ridon v. AXN Networks Phils., Inc.*[7] where the Supreme

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[6] See Page 1 of the Articles of Incorporation of Philippine British Assurance Company, Inc.
[7] G.R. No. 210885 & 210886, August 26, 2014

Court discussed the nature of the authority of the Commission in relation to the exercise of its power to issue certificates of incorporation, thus:

> "The SEC, in issuing certificates of registration in favor of a corporation, is not called upon to adjudicate the rights of contending parties or to exercise, in any manner, discretion of a judicial nature; nor does it conduct investigations and then draw conclusions from them as basis for its actions. What it does is merely to verify the documents submitted for incorporation in order to determine if there has been substantial compliance with the list of requirements of the Code." (Emphasis supplied)

The approval by CRMD of the application of the New PBACI and the issuance of its Certificate of Incorporation resulted in the creation of the New PBACI which acquired a legal personality separate and distinct not only from its incorporators, but also from PBACI whose corporate term has expired.

The right of the Incorporators to form a new corporation was recognized by Appellant Santos. What Appellant Santos is questioning in the instant case is the use by the Incorporators of the name "Philippine British Assurance Company, Inc." for the New PBACI which was sustained by the CRMD in the assailed Order. Appellant Santos argues that the foregoing constitutes a violation of Section 18 of the Corporation Code and relied heavily on the case of Alhambra Cigar & Cigarette Manufacturing Company, Inc. vs Securities and Exchange Commission[8] to support his position.

Appellant Santos' stance does not induce assent. The Commission agrees with the CRMD that the use by the New PBACI of the name which is identical to PBACI, a corporation which term has expired, is in accordance with law. Section 18 of the Corporation Code aims to protect (a) a registered name of an existing corporation or (b) a name which is already protected by law or those that are registered with the Intellectual Property Office (IPO). CRMD correctly ruled that since PBACI is a dissolved entity and the corporate name is not registered with the IPO, Appellee could validly use PBACI as its corporate name.

The Commission also agrees with the CRMD that Section 15 of Memorandum Circular No. 5, Series of 2008 (MC No. 15) is applicable in the instant case and justified the approval of the application of Appellee, and the issuance of the Certificate of Incorporation of the New PBACI because the Incorporators, two (2) of whom were majority shareholders of old PBACI, consented to the use by the New PBACI of the name "Philippine British Assurance Company, Inc.".

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[8] G.R. No. L-23606, July 29, 1968

The validity of MC No. 15 is anchored on Article 143 of the Corporation Code which provides that the Securities and Exchange Commission "**[s]hall have the power and authority to implement the provisions of this Code, and to promulgate rules and regulations reasonably necessary to enable it to perform its duties hereunder**, particularly in the prevention of fraud and abuses on the part of the controlling stockholders, members, directors, trustees or officers." Moreover, in a long line of cases, the Supreme Court has consistently ruled that administrative agencies, such as this Commission, possess quasi-legislative or rule-making powers because it is impracticable for the law-making body to anticipate and provide for the multifarious and complex situations that may be encountered in enforcing the law. All that is required is that the regulation should be germane to the defects and purposes of the law and that it should conform to the standards that the law prescribes.[9]

Under Section 18 of the Corporation Code in relation to MC No. 15, the rule is simple: a group of persons intending to form a corporation may use the name of a dissolved corporation or one whose registration has been revoked if its use has been allowed at the time of dissolution or revocation by the stockholders who represent a majority of the outstanding capital stock of the dissolved or revoked corporation.

A careful review of the records of case would reveal that the New PBACI was able to secure the consent of the majority stockholders of the dissolved PBACI considering that the granting authority were the very Incorporators of the New PBACI. We take note of the fact that Rosario W. Cuyegkeng and Nelia D. Wongchuking were owners of the majority of PBACI shares. It would be absurd to think that the Incorporators who are seeking approval from the Commission to form and incorporate the New PBACI, would deny to themselves the consent required by law.

Appellant Santos belabors the use by CRMD of the term "re-registration" which he argues is nowhere to be found in the Corporation Code. Appellant Santos is of the theory that the use by CRMD of the term "re-registration" tainted the certificate of incorporation issued by CRMD with invalidity and should thus be cancelled.

The Commission is not convinced. While Appellant Santos might have correctly observed that term "re-registration" is not in the Corporation Code, it cannot be denied that what was approved by the CRMD was the mere ordinary application for the registration of the New PBACI, a new corporation. The term "re-registration" was used by the CRMD to refer to the registration of a new corporation using the name of an old corporation where

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[9] The People of the Philippines vs Hon. Maximo A. Maceren, G.R. No. L-32166, 18 October 1977.

the incorporators of the former was able to secure the consent of the latter in compliance with the requirements of MC No. 15. The fact that CRMD termed or called it "re-registration" did not invalidate the act of the SEC of issuing the Certificate of Incorporation after a finding that the applicant has complied with all the requirements prescribed by law.

In view of the foregoing, this Commission finds no reason to disturb the findings of the CRMD and hereby resolves to affirm the same.

WHEREFORE, premises considered, the Order of the CRMD dated 1 October 2013 is hereby **AFFIRMED.** The Appeal Memorandum is hereby **DENIED** for lack of merit.

SO ORDERED.

Pasay City, Philippines, 16 January 2020.

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner