



**Republic of the Philippines
Securities and Exchange Commission
SEC Bldg., EDSA, Greenhills, Mandaluyong City**

In the Matter of

GOLDBERG & PARTNERS, INC.,

**SEC Admin Case No. 05-05-82
(CED Case No. 01-2621)**

**COMPLIANCE AND ENFORCEMENT
DEPARTMENT,**

Petitioner.

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DECISION

For consideration is the Petition for Revocation of the Certificate of Incorporation of Goldberg & Partners, Inc. ("Goldberg") filed by the Compliance and Enforcement Department¹ ("CED") on 03 May 2005.

FACTS OF THE CASE

Goldberg is a stock corporation registered with the Commission since 15 March 2001 under SEC Registration No. A200018861 with the following primary purpose:

"...[T]o carry out management consultancy; identify and develop investment opportunities; provided the corporation shall not engage as securities and financial advisor or engage in the management of funds, securities, portfolio of managed entities"

However, numerous complaints from its clients alleged that it engaged in solicitation and securities brokering activities and defrauded its clients in connection therewith. Upon investigation conducted by CED and the Philippine National Police-Criminal Investigation and Detection Group ("PNP-CIDG"), Goldberg was found to be

¹ now Enforcement and Prosecution Department.

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involved in boiler room operations² where it bought and sold unregistered securities to foreign nationals without the necessary license from the Commission.³

In view of the same, the Commission, on 02 August 2001, issued a Cease and Desist Order ("CDO")⁴, enjoining Goldberg from soliciting and/or accepting money for investment purposes and also from accepting orders to buy and sell shares of stock or other form of securities or otherwise engage in the business of a broker/dealer in securities. Said CDO was declared permanent in an Order dated 19 September 2001.

The same order directed Goldberg to show cause within thirty (30) days from receipt why its Certificate of Incorporation should not be revoked for culpable violations of Sections 8 and 28 of the Securities Regulation Code⁵, and Section 6(I)(2) of Presidential Decree No. 902-A, as amended.

Notwithstanding the same, Goldberg failed to show cause why its Certificate of Incorporation should not be revoked.

Hence, CED filed the present petition alleging that Goldberg's Certificate of Incorporation should be "revoked for serious misrepresentation as to what it can do or is doing to the great prejudice of or damage to the general public" considering that Goldberg's primary purpose, as stated in its Articles of Incorporation, does not include buying or selling of securities and no secondary license to act as broker in securities was issued by the Commission.

ISSUE

The sole issue in the present case is whether there is a valid ground for the Commission to revoke Goldberg's Certificate of Incorporation based on CED's Petition and submitted evidence.

RULING

The answer is in the AFFIRMATIVE.

Section 6(I)(2) of Presidential Decree No. 902-A, as amended, reads:

"Sec. 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers:

xxx

xxx

xxx

² CED's Petition, Paragraph 8.

³ *Id.*, Paragraph 9.

⁴ *Id.*, Annex F.

⁵ Republic Act No. 8799(2000).

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1) To suspend, or revoke, after proper notice and hearing, the franchise or certificate of registration of corporations, partnerships or associations, upon any of the grounds provided by law, including the following:

xxx xxx xxx

2. Serious misrepresentation as to what the corporation can do or is doing to the great prejudice of or damage to the general public;"(emphasis supplied)

A corporation is allowed and can legally exercise only such powers granted by the law for its creation⁶ and those enumerated in its charter.⁷ As regards the latter, the same can be found in the purpose clause of the Articles of Incorporation which confers and limits the powers that a corporation may exercise.⁸

In the present case, the purpose clause of Goldberg's Articles of Incorporation basically states that its primary purpose is "xxx to carry out management consultancy; identify and develop investment opportunities xxx." Its charter does not provide that it can act as a broker in securities. In addition, Goldberg's Certificate of Incorporation expressly states:

"xxx xxx xxx

*This Certificate grants juridical personality to the corporation **but does not authorize it to undertake business activities requiring a Secondary License or Permit** to operate from this Commission or other government agency unless such license or permit is likewise obtained.*

xxx xxx xxx"(emphasis supplied)

Nonetheless, based on the evidence attached to CED's Petition, Goldberg apparently acted as a broker in securities. A search of Goldberg's premises conducted by the joint CED and PNP-CIDG on 31 July 2001 yielded several documents and equipment used by Goldberg in relation to its buying/selling of securities.⁹ Moreover, numerous "contract notes"¹⁰, issued by and under the name of Goldberg, confirm that it was indeed engaging in securities brokering activities. The contents of the aforesaid contract notes, which prove that Goldberg acted as a broker in securities, read as follows:

⁶ CESAR L. VILLANUEVA, PHILIPPINE CORPORATE LAW 20 (2001 ed.).

⁷ *Id.*, at 232.

⁸ *Id.*, at 197.

⁹ CED's Petition, Annexes H, I and J.

¹⁰ *Id.*, Annexes M, O and P.

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"Last Name, First Name, M.I.: xxx

Account Number: xxx

Address: xxx

Transaction Date: xxx

Transaction Number: xxx

In accordance to your instructions, **Goldberg&Partners Inc. has performed** the following for your account:

SECURITY/FUND DESCRIPTION	SYMBOL	BUY/SELL	TRADE DATE	QUANTITY	UNIT PRICE	AMOUNT	COMMISSION	AMOUNT DUE
xxx	xxx	Buy	xxx	xxx	xxx	xxx	xxx	xxx

Amount in words: xxx

TOTAL AMOUNT: xxx "(emphasis supplied)

In addition, several receipts¹¹ likewise show that it received various sums of money as payment for the purchase of securities in behalf of its clients. Thus, we find the foregoing to be sufficient in proving CED's claim that Goldberg engaged in the business of buying and selling securities without the power to do so under its charter.

Furthermore, it should be noted that engaging in the business of buying and selling securities requires a secondary license from the Commission pursuant to Section 28 of the Securities Regulation Code which reads:

"Sec 28. Registration of Brokers, Dealers, Salesmen and Associated Persons. — 28.1. No person shall engage in the business of buying or selling securities in the Philippines as a broker or dealer, or act as a salesman, or an associated person of any broker or dealer unless registered as such with the Commission.

xxx xxx xxx"

Considering that the Market Regulation Department certified that Goldberg has not been issued any secondary license to act as broker/dealer in securities, investment house and dealer in government securities,¹² it should likewise be held liable for violating the aforesaid provision.

Thus, by engaging in the business of buying and selling securities without the power to do so under its charter and without a license from the Commission, Goldberg's Certificate of Incorporation should be revoked on the ground of serious

¹¹ *Id.*, Official Receipt No. 057802 dated 06 July 2001 issued to Mr. Lee Mciver and Official Receipt Nos. 057779 and 057907 dated 15 June 2001 and 19 July 2001 respectively, both issued to Mr. Sani William Lee.

¹² *Id.*, Annex E.

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misrepresentation as to what it can do or is doing to the great prejudice of the general public .


Nonetheless, the records of the Commission show that Goldberg's Certificate of Incorporation was revoked on 26 May 2009 pursuant to SEC Order dated 15 April 2009¹³ for failure to file its General Information Sheets (GIS) since 2002 and Audited Financial Statements (AFS) since 2001.

WHEREFORE, premises considered, the revocation of the Certificate of Incorporation of Goldberg and Partners, Inc. pursuant to SEC Order dated 15 April 2009 is hereby **UPHELD**. In addition to the ground/s stated in the said order, Goldberg and Partners, Inc. is hereby made liable for violating Section 6(1)(2) of Presidential Decree No. 902-A, as amended, and Section 28 of the Securities Regulation Code. Let the Company Registration and Monitoring Department be furnished with a copy of this Decision for its appropriate action.

SO ORDERED.

Mandaluyong City, 01 July 2010.


FE B. BARIN
Chairperson


MA. JUANITA E. CUETO
Commissioner


RAUL J. PALABRICA
Commissioner

MANUEL HUBERTO B. GAITE *
Commissioner


ELADIO M. JALA
Commissioner *MAJ*

*on leave

¹³ Published in the April 25, 2009 issue of the Philippine Star.