



1st Republic of the Philippines
SECURITIES AND EXCHANGE COMMISSION
SEC Bldg. EDSA, Greenhills, Mandaluyong City

IN THE MATTER OF

ICS EXPORTS, INC.

SEC Admin Case No. 10-03-73
(CED Case No. 02-2726)
For: Revocation of Certificate of
Registration

**COMPLIANCE AND ENFORCEMENT
DEPARTMENT,**

Petitioner.

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DECISION

For consideration of the Commission *En Banc* is the Petition for Revocation of Corporate Registration of ICS Exports, Inc. ("ICS" for brevity) dated 14 October 2003, filed by the Compliance and Prosecution Department¹ ("CED" for brevity) on the ground of offering, selling and distributing to the public securities, which were not covered by a registration statement duly filed with and approved by the Commission, in violation of Section 8.1 of the Securities Regulation Code ("SRC").²

FACTS OF THE CASE

Petitioner CED is the department of the SEC mandated to file petitions for revocation of certificates of registration for violation of the Securities Regulation Code, the Corporation Code³, P.D. 902-A, as amended, including their Implementing Rules and Regulations, and such other relevant laws enforced by the Commission.

ICS is a domestic stock corporation duly registered with the Commission on 27 July 2000 under SEC Registration No. A200011592⁴ with principal place of business at 2nd Floor, Valdez-Rufon Condominium, Building 11, 469 Boni Serrano Road corner 15th Avenue, Quezon City.⁵

ICS's Articles of Incorporation ("AOI")⁶ provide that its primary purpose is "to engage in the business of trading and exporting of goods such as garden decor, agricultural products, leather fashion accessories, and food supplements on

¹ Now known as the Enforcement and Prosecution Department.

² Republic Act No. 8799 (2000).

³ Batas Pambansa Blg. 68 (1980).

⁴ ICS's Certificate of Incorporation, Annex A of CED's Petition.

⁵ ICS' Articles of Incorporation, Annex B of CED's Petition.

⁶ *Id.*, Second Article.

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wholesale and retail basis."

Petitioner averred that on 11 July 2002, a certain Francisco R. Morrondo and Eglicerio C. Navarro came to its Office to report a company named ICS Exports, Inc., and its suspicious activities and transactions. According to them, ICS borrows money from the public as investments for its several "income-generating activities." To induce possible creditors/investors, ICS offers high interest rates of return, ranging from 2.5% to 15% per month.

Starting April 2002, however, ICS failed to meet its obligations to its creditors. The checks which ICS issued to its creditors/investors bounced due to insufficiency of funds. As proof of ICS's alleged investment scheme, Morrondo and Navarro submitted to petitioner various documents such as: 1) copies of Contracts of Loan/Promissory notes,⁷ 2) complaint-affidavits of several investors, and 3) acknowledgement receipts by ICS of the amount placed by each investor.

Upon verification by the CED, it was found out that the office corresponding to the principal address of ICS was already closed. A certain Zenaida V. Rufon, owner and administrator of the building, confirmed that ICS has since vacated the office on 01 July 2002.⁸

On 21 August 2002, petitioner received from a certain Atty. Edgardo O. Era copies of complaints for Estafa filed by several creditors/investors against Emilia Sison, President and General Manager of ICS. Attached to the complaints are several copies of similar contracts of loan/promissory notes⁹ entered into by complainant-investors with ICS. On 11 December 2002, the CED received a copy of a Resolution dated 26 November 2002, by the Prosecution Office of the Department of Justice, approving the filing of criminal cases for violations of: 1) Section 8.1, in relation to Sections 3 and 73 of the SRC, and 2) Article 315 of the Revised Penal Code in relation to P.D. 1689, against the Board of Directors and officers of ICS.¹⁰

On 16 October 2003, the CED, on the basis of its own findings, filed the instant petition.

On 21 October 2003, the Commission issued a Summons directing ICS to file its answer to the petition and to show cause, why its certificate of registration should not be revoked, within fifteen (15) days from receipt of the Summons. However, the Summons was not served due to the fact that ICS no longer holds office at its last known business address. Thus, petitioner prayed that Summons by Publication be effected to acquire jurisdiction over the parties.

⁷ CED's Petition, Annexes G to G-24.

⁸ *Id.*, Annex H, Affidavit dated 14 August 2002, executed by Romulo V. Arugay.

⁹ *Id.*, Annexes I to I-25.

¹⁰ *Id.*, Annex J.

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On 14 July 2005, an Order was issued directing the CED to cause the publication of the said Order together with the Summons and a copy of the Petition, once in a newspaper of general circulation.

On 15 May 2006, the CED filed a Motion praying that a judgment be rendered declaring respondent ICS in default and accordingly revoking its Certificate of Registration, on the ground that ICS has yet to file its Answer to the Petition despite the lapse of more than thirty (30) days from the date of publication. Attached to the said Motion is an Affidavit of Publication¹¹ executed by Lourdes C. Diaz, Classified Ads Manager of the Philippine Daily Inquirer ("PDI"), stating that the Summons by Publication and the Order both dated 14 July 2005 were published in the 15 March 2006 issue of the PDI.

ISSUE

The sole issue to be resolved in this case is whether or not there is a sufficient ground to revoke ICS's certificate of registration.

DISCUSSION

Upon the publication of the Order of the Commission for ICS to file its Answer to the Petition, ICS has yet to file the same. Thus, pursuant to Section 3-12¹² of the 2006 Rules of Procedure of the Commission, ICS shall be considered as in default. As a consequence, the Commission shall render judgment on the basis of the petition.

We now resolve the case on its merits.

Section 8.1 of the SRC provides:

"SEC. 8.1. Securities shall not be sold or offered for sale or distribution within the Philippines, without a registration statement duly filed with and approved by the Commission. Prior to such sale, information on the securities, in such form and with such substance as the Commission may prescribe, shall be made available to each prospective purchaser."

¹¹ Dated 27 March 2006.

¹² SEC. 3-12. *Effect of Failure to Answer.* If the respondent fails to answer the complaint within the abovestated period, he shall be considered as in default. The Hearing Panel or Officer shall, *motu proprio*, proceed to render judgment granting the complainant such relief as the complaint may warrant, unless the Hearing Panel or Officer determines that the complainant should be required to submit *ex parte* additional evidence.

To determine whether the "contract" entered into between ICS and its creditors/investors can be classified as securities, it is imperative to consider the definition of "securities" under Section 3.1 of the SRC, which reads:

"Sec. 3.1 "Securities" are **shares, participation or interests in a corporation or in a commercial enterprise or profit-making venture** and evidenced by a certificate, contract, instrument, whether written or electronic in character. It includes:

- a) Shares of stock, bonds, debentures, notes, **evidence of indebtedness**, asset-backed securities;
- b) **Investment contracts**, certificates of interest or participation in a profit sharing agreement, certificates of deposit for a future subscription;

x x x"(emphasis supplied)

The "Contract" is an evidence of indebtedness.

Except for "shares of stock," all the other securities enumerated in SRC Section 3.1(a) are debt instruments covered by the generic term "evidence of indebtedness." For such evidence of indebtedness to be considered as "securities" meant to be regulated by the SRC, they must conform to the general definition of securities under Section 3.1, which states that securities are **shares, participation or interest in a corporation or in a commercial enterprise or profit-making venture.**

From the foregoing, the questioned "contract" is clearly an evidence of indebtedness, in the form of a promissory note. A promissory note is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money to order or to bearer.¹³ A careful scrutiny of the wordings of the contract reveals that it is in the form of a promissory note, as indicated by the words, "FOR VALUE RECEIVED, ICS Exports, Inc., (Borrower) x x x hereby promise to pay to the order of _____ (Lender) x x x the principal amount of _____ (Philippine Currency) together with interest payable x x x."

The "Contract" is in the nature of an investment contract.

¹³ SEC. 184, Negotiable Instruments Law.

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In the landmark case of *SEC vs. W.J. Howey Co.*¹⁴, the Court established the tripartite test to determine whether a particular financial instrument constitutes an investment contract, namely: (1) the investment of money, (2) in a common enterprise, and (3) with an expectation of profits to be derived solely from the efforts of the promoter or a third party. In this case, all the elements of an investment contract are present. The said contracts involve the investment of money in a common enterprise, as ICS received monetary considerations from the creditors to use for its "income-generating" activities. In turn, the creditors expect to derive profits from such activities, which ICS promised to yield a significant rate of return. The participation of the creditors/investors is limited only to the placing of their investments. Thus, the expectation of profits is derived solely from the efforts of ICS.

Verily, the foregoing established the fact that the "contracts" are: (1) evidence of indebtedness, and (2) in the nature of investment contracts. Since these investment contracts are deemed participation or interest in a corporation or in a commercial enterprise or profit-making venture, and such constitutes transactions affecting public interest, they shall be considered as securities under Section 3.1 of the SRC. Thus, ICS violated Section 8.1 of the SRC when it offered and distributed securities without the necessary registration statement duly filed with and approved by the Commission.

More so, in engaging in the business of selling and distributing securities to the public when it is not authorized to do so under the purpose clause of its AOI, ICS committed serious misrepresentation as to what the corporation could do or was doing, to the great prejudice of the public. Such serious misrepresentation may be a ground for the revocation of corporate registration under Section 6(1)(2) of P.D. 902-A, as amended, which reads:

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

x x x

(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:

x x x

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

¹⁴ 328 U.S. 293 (1946).

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x x x"(emphasis supplied)

Hence, considering the foregoing evidence, it is undoubtedly established that ICS: (1) sold and offered securities without a registration statement duly filed and approved by the Commission, in violation of Section 8.1 of the SRC, and (2) committed acts amounting to serious misrepresentation to the great prejudice of or damage to the general public, in violation of Section 6(1)(2) of Presidential Decree 902-A, as amended.

WHEREFORE, premises considered, the Petition is hereby **GRANTED**. The corporate registration of ICS Exports, Inc. is hereby **REVOKED**.

Let a copy of this Decision be furnished to the Company Registration and Monitoring Department for its appropriate action, as well as to the Economic Research and Information Department and the Commission's extension offices for dissemination to the general public.

SO ORDERED.

Mandaluyong City, 09 September 2010.


FE B. BARIN
Chairperson


MA. JUANITA E. CURTO
Commissioner


RAUL J. PALABRICA
Commissioner


MANUEL HUBERTO B. GAITE
Commissioner


ELADIO M. JALA
Commissioner