

**NPM No. 26-2008**

17 September 2008

**MS. AIDA F. IGNACIO**

*Deputy Administrator*

*Chairperson, Bids and Awards Committee*

**SUGAR REGULATORY ADMINISTRATION**

North Avenue, Diliman, Quezon City

P.O. Box 70, U.P. Diliman, Quezon City

**Re : GPPB Circular No. 01-2008**

Dear Ms. Ignacio:

We respond to your letter dated 09 September 2008 seeking clarification on the scope and application of GPPB Circular No.01-2008.

Based on your representation, we gathered the following:

1. The Sugar Regulatory Administration's (SRA) Bids and Awards Committee (BAC) will conduct a public bidding for the supply of janitorial and security services on September 18 and 19, respectively.
2. Pursuant to your interpretation of GPPB Circular No.01-2008, the BAC dispensed with the following eligibility requirements:
  - 2.1 Department of Labor and Employment (DOLE) and Social Security System (SSS) clearance/s on no pending complaints for violation of labor standard laws and other social legislation and no pending complaints for non-remittance of SSS contributions; and
  - 2.2 Securities and Exchange Commission (SEC) clearance on no pending cases involving matters prejudicial to its corporate existence.
3. The SRA's BAC originally included the SEC clearance in the eligibility requirements since it was informed that a prospective bidder, namely Care Best

International, Inc. (Care Best), has a pending case with the SEC for revocation of its certificate of registration.

4. Last 22 May 2008, the SEC issued an Order revoking the SEC Certificate of Registration of Care Best on the ground of fraud. However, Care Best appealed said decision to the Court of Appeals by way of Petition for Review.

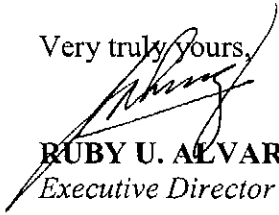
In light of the foregoing, your office seeks confirmation on whether it was correct in dispensing with the SEC clearance from the list of eligibility requirements.

Section 3.2 of GPPB Circular No. 01-2008 prohibits procuring entities from requiring, as a condition to eligibility, that a bidder has no pending administrative or labor case filed against it. Such requirement has been determined by the GPPB as violative of due process and runs counter to the constitutional presumption of innocence. Thus, said prohibition rightfully applies to all such clearances issued by any government agency certifying that the bidder has no pending administrative case filed against it.

It bears stressing, however, that while said SEC clearance cannot be part of the eligibility requirements, the BAC is not precluded from validating the existence of the SEC Order dated 22 May 2008 and determining its legal effect on the corporate existence of Care Best during post-qualification. If, for instance, SEC confirms that its decisions are final and executory pending appeal, then the BAC should post-disqualify Care Best on the ground that it has failed to submit a valid and existing SEC Certificate of Registration.

We hope to have provided sufficient guidance on the matter. Should you have additional questions, please do not hesitate to contact us.

Very truly yours,

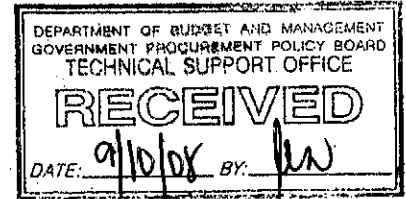
  
**RUBY U. ALVAREZ**  
*Executive Director III*

2008 1-1-



REPUBLIC OF THE PHILIPPINES  
**SUGAR REGULATORY ADMINISTRATION**  
North Avenue, Diliman, Quezon City  
P. O. Box 70, U.P. Diliman, Quezon City  
TIN 000-784-336-000

09 September 2008



**ATTY. RUBY ALVAREZ**  
Executive Director  
**Government Procurement Policy Board**  
Technical Support Office  
Unit 2506 Raffles Corp. Center I  
F. Ortigas Jr. Road  
Ortigas Center, Pasig City

*Ems.*  
As discussed, pls. take care  
of this. Previous complaints  
received from bidders are  
attached. Pls. note urgency  
of request. Thanks.  
Rf 9/10/08

**THRU : The Legal Officer, GPPB**

**Subject : Query On Coverage Or Applicability Of GPPB  
Circular No. 01-2008 Dated 07 March 2008 On  
Eligibility Requirements Relative To Public  
Bidding For The Supply Of Janitorial Services**

Dear Atty. Alvarez:

The **Sugar Regulatory Administration (SRA)** is a government agency created and established pursuant to Executive Order No. 18, Series of 1986, as amended.

On 18 September 2008 and 19 September 2008, the Bids and Awards Committee (**BAC**) of **SRA** will conduct a **public bidding** for the supply of **janitorial** and **security services**, respectively.

Pursuant to and in accordance with **Government Procurement & Policy Board (GPPB) Circular No. 01-2008** dated **07 March 2008 (Annex A)**, the **BAC** dispensed with the **Eligibility Requirements** of Department of Labor & Employment (**DOLE**) and Social Security System (**SSS**) clearance/s on no pending complaints for violation of labor standard laws and other social legislation and no pending complaints for non-remittance of **SSS** contributions.

Likewise, pursuant to said **GPPB Circular no-01-2008**, aforesaid, the **BAC** dispensed with Eligibility Requirements on clearance from the Security & Exchange Commission (**SEC**) on no pending cases with said government agency involving matters prejudicial to its corporate existence.

The **BAC** included this **SEC clearance** as an eligibility requirements in the light of our recent experience wherein a prospective bidder (**Care Best International, Inc.**) for the supply of janitorial services has a pending case with **SEC** for the revocation of its certificate of registration. In fact, the **SEC** in its **Order** dated **22 May 2008 (Annex B)** in a case entitled "In The Matter Of . . . Care Best International, Inc.; SEC Case No.09-05-83, For Revocation Of Certificate Of Registration" had already **revoke** the **Certificate of Registration** of Care Best International, Inc.

Said SEC Order, however, was appealed by the said prospective bidder with the Court Of Appeals by way of Petition For Review. To date, however, we have not yet been informed by said prospective bidder on the status of said appeal, except for its filing with the said Court of Appeals.

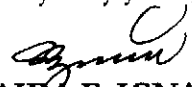
Our **query** is: Whether or not our Eligibility Requirement on SEC clearance on no pending case with said government agency involving matter prejudicial to its corporate existence is covered by the prohibition as stated in said GPPB Circular No. 01-2008 dated 07 March 2008. Moreso considering that the **SEC** had already promulgated a **decision revoking** the **Certificate of Registration** of said prospective bidder, though said **SEC** decision is pending appeal before the Court of Appeals.

Though said GPPB Circular No.01-2008 appears to apply only to DOLE and SSS pending cases the BAC, in good faith, relax its rules on Eligibility Requirement and applied the said circular also to other administrative cases. In this case, the SEC case.

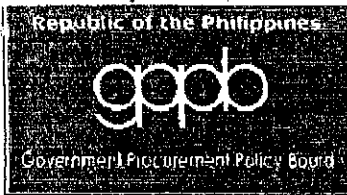
Considering that the **public bidding** for the supply of janitorial services will be held on **18 September 2008**, we request that our query be resolved by your office as soon as possible, preferably on or before 17 September 2008.

Thank you.

Very truly yours,

  
**AIDA F. IGNACIO**  
Deputy Administrator &  
Chairperson, BAC

**Cc: BAC Secretariat**



Unit 2506 Raffles Corporate Center,  
F. Ortigas Jr. Road, Ortigas Center,  
Pasig City, Philippines 1605

**CIRCULAR NO. 01-2008**

March 7, 2008

**TO: Heads of Departments, Bureaus, Offices and Agencies of the National Government, Government Owned and/or Controlled Corporations, Government Financial Institutions, State Universities and Colleges, and Local Government Units**

**SUBJECT: Clarification on the Adoption of Additional Eligibility and Technical Documents to Ensure Compliance with Labor Laws and Other Social Legislation**

**1.0 Purpose**

This circular is issued to advise government agencies of the following:

- 1.1 Implied repeal of Memorandum Circular No. 80, *Requiring the Submission of Certain Documents and the Incorporation of Certain Provisions in Security and Janitorial Contract Awards*, dated February 10, 1994;
- 1.2 Guiding principles on the adoption of additional eligibility or technical documents, such as clearances from Social Security System (SSS), Department of Labor and Employment (DOLE), Philippine Health Insurance Corporation (PhilHealth), and Home Development Mutual Fund/Pag-IBIG, or a certificate from a relevant government authority that the bidder has no pending administrative or labor case filed against it for violation of labor laws and other social legislation.

**2.0 Republic Act (R.A.) No. 9184 and its Implementing Rules and Regulations Part A (IRR-A) impliedly repealed Memorandum Circular No. 80.**

- 2.1 To ensure compliance with labor laws and other social legislation, Section 25.3 of the IRR-A simply requires the submission of a certificate under oath that the bidder complies with existing labor laws and standards.
- 2.2 On the other hand, Memorandum Circular No. 80 issued by former Executive Secretary Teofisto T. Guingona, Jr. last February 10, 1994

mandates the submission of the following additional documents: (i) an undertaking to pay their workers at least the minimum wage; (ii) an undertaking to comply with the SSS law on compulsory remittance of SSS premiums; and (iii) a clearance from DOLE and the SSS, as the case may be, that the contractor or bidder has no pending administrative case for violation of the SSS and minimum wage laws, rules and regulations.

- 2.3 To address the inconsistency between these two provisions, and invoking the repealing clause under Section 76 of R.A. 9184 and Section 75 of its IRR-A,<sup>1</sup> it is opined that Section 25.3 of the IRR-A impliedly repealed Memorandum Circular No. 80.

**3.0 Guidelines on the Adoption of Additional Eligibility or Technical Documents to Ensure Compliance with Existing Labor Laws and Other Social Legislation**

- 3.1 As a general policy, imposition of additional eligibility or technical documents is discouraged because it increases transaction cost and reduces competition. Thus, the additional requirement for bidders to submit clearances from DOLE, SSS, PhilHealth, or Pag-IBIG as part of their eligibility or technical documents should be restrained.
- 3.2 In addition, the requirement that a clearance or certificate be sought from an appropriate government authority that the bidder has no *pending* administrative or labor case filed against it is violative of *due process* and thereby prohibited. Every person is presumed innocent until found guilty. Further, this requirement allows any person to disqualify a potential bidder by simply filing a nuisance suit before an administrative or labor court.
- 3.3 In lieu of the above requirements, however, and in keeping with the policy of ensuring compliance with labor laws and other social legislation, the procuring entity may, during post-qualification, verify, validate and ascertain the statements made by a bidder in its certificate under oath that it complies with existing labor laws and standards. Specifically, the procuring entity may verify whether the bidder –
- 3.3.1 Complies with the minimum wage mandated by law;
  - 3.3.2 Regularly remits mandated premiums to SSS, PhilHealth, and PAG-IBIG; or
  - 3.3.3 Has been finally adjudged by a court of competent jurisdiction to have violated any labor law or social legislation.


<sup>1</sup> The last sentence of Section 76 of R.A. 9184 and Section 75 of its IRR-A states: "Any other law, presidential decree or issuance, executive order, letter of instruction, administrative order, proclamation, charter, rule or regulation and/or parts thereof which are contrary to or inconsistent with the provisions of the Act is hereby repealed, modified or amended accordingly."

Non-compliance with any one of the above shall be a ground to declare the bidder as "post-disqualified".

3.4 Further, to ensure continuing compliance with labor laws and other social legislation, the procuring entity may require submission of said clearances at specified periods during contract implementation.

4.0 This circular shall take effect immediately.

5.0 For guidance.

  
ROLANDO G. ANDAYA, JR.  
Chairperson



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



IN THE MATTER OF:

SEC Case No. 09-05-83  
For: Revocation of Certificate  
of Registration

CARE BEST INTERNATIONAL, INC.

x-----x

ORDER

For consideration is the Petition for Revocation of Corporate Registration (*"the Petition"*, for brevity) filed by the Compliance and Enforcement Department (*"petitioner"*) of this Commission against Care Best International, Inc. (*"respondent"*) on the ground that there was fraud in the procurement of respondent's certificate of registration, pursuant to *Section 6, paragraph 1(1) of Presidential Decree No. 902-A ("PD 902-A")*.

Respondent is a stock corporation with SEC Registration No. A1999913047 engaged in the business of rendering janitorial, messengerial, repair and maintenance, and other related services.

The fraud in this case, petitioner contends, consists in the alleged use of aliases in respondent's articles of incorporation by two (2) of its six (6) incorporators, to wit: Ricardo S. Solivio and Jessica P. Ibita made it appear that they were Ricardo S. Enriquez and Jessica P. Evangelista, respectively. Petitioner likewise argues that as a consequence of this allegedly fraudulent act, respondent's articles of incorporation is left with just four (4) signatory directors, in violation of the mandatory requirement under the *Corporation Code ("the Code")* that there must be at least five (5).

Incidentally, for the same reason, Solivio and Ibita were earlier accused before the Metropolitan Trial Court of Makati City, Branch 65 (*"the MeTC"*), in *People of the Philippines vs. Jessica P. Ibita and Ricardo E. Solivio* docketed as *Criminal Case Nos. 317397-98* for Violation of Commonwealth Act 142 or the Anti-Alias Law, as amended by Republic Act No. 6085.

Petitioner proffers as evidence the 5 August 2002 *Resolution ("the Resolution")* of the City Prosecution Office of Makati City and the corresponding *Informations* therefor both dated 6 August 2002, as well as the admission by Solivio and Ibita that they used

Section 14, paragraph 6, of the Corporation Code,  
Annexes "E", "F" and "G" of the *Petition*, respectively.

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of the Original  
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By [Signature]



different names in respondent's articles of incorporation.<sup>3</sup> Specifically, petitioner adopts the prosecutor's pronouncement in the *Resolution*, which reads:

"Respondents Solivio and Ibita cannot escape liability for using an alias without any judicial authority. Their argument that the use of a different name in a single instance is not prohibited, citing the case of *Ursua vs. CA, 256 SCRA 147*, is of no moment. When Solivio used the name Ricardo Enriquez and Ibita [used the name] Jessica Evangelista in the Articles of Incorporation of Care Best Int'l Inc., it was their intention to be known as such in the business community and with all persons whom their company [has] dealings with. xxx."

In its *Answer to the instant Petition*, respondent, reiterating *Ursua vs. CA*, alleges that the controversial acts of Solivio and Ibita, while admitted, were devoid of fraudulent intent and were done in good faith. It argues that the above-quoted *Resolution* does not carry any evidentiary weight since the guilt of the accused is yet to be proved by the prosecution.

Respondent likewise alleges that up to the present time, it has neither been accused before any tribunal of defrauding anybody in the performance of its primary purpose nor been remiss in complying with tax, labor and other laws, rules or regulations, including the Commission's reportorial requirements, as evidenced by various clearances from the concerned government agencies<sup>4</sup>. Its clientele is, in the main, composed of numerous government agencies<sup>5</sup>, which means that it has hurdled the corresponding rigid and rigorous public bidding processes. Respondent thus argues that it would not have been successful in the conduct of its business if fraudulent intentions had tainted the very purpose of the incorporators, specifically Solivio and Ibita who, at the time of the incorporation, had no pending cases whatsoever.<sup>6</sup> Parenthetically, individual respondents exhibited their community tax certificates, indicating their true names to the notary public who notarized the subject incorporation papers.

Lastly, respondent contends that the Commission could not have been misled into approving its registration as the Code's requirements on incorporators were satisfied, to wit: there are six (6), all of whom are natural persons of legal age and are citizens and residents of the Philippines.

<sup>3</sup> Respondent's Answers during CED's investigation attached to the instant petition as Annexes "II" and "I"; counter-affidavits of respondents Solivio and Ibita submitted during preliminary investigation of the criminal charges.

<sup>4</sup> Annexes "I" to "I-www" of respondent's *Answer*.

<sup>5</sup> At present, such clientele includes: Light Rail Transit Authority, Department of Labor and Employment, Department of Finance, Bangko Sentral ng Pilipinas, Department of Science and Technology, Philippine Export Zone Authority, Bataan, Bureau of Plant Industry, Technology and Livelihood Resource Center, National Children's Hospital, and Commission on Higher Education.

<sup>6</sup> Respondent's Memorandum dated 13 January 2006, p. 2.

On 2 August 2007, respondent filed its *Manifestation and Motion* dated 1 August 2007 stating that the MeTC had already acquitted Solito and Ibita of the criminal charges through its *Decision* dated 25 July 2007.

The only issue to be resolved herein is whether respondent's certificate of registration should be revoked on the ground that there was fraud in the procurement thereof.

We rule in the affirmative.

Already settled is the rule that the quantum of evidence required in administrative or quasi-judicial bodies, of which the Commission is one, is mere substantial evidence. Section 5, Rule 133 of the Rules of Court provides:

"Sec. 5. **Substantial evidence.** - In cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."

Substantial evidence does not necessarily mean preponderant proof as required in ordinary civil cases but such kind of relevant evidence as a reasonable mind might accept as adequate to support a conclusion or evidence commonly accepted by reasonably prudent men in the conduct of their affairs. Needless to state, it is way less onerous than that required in criminal cases, that is, proof beyond reasonable doubt.

Accordingly, the purpose of this proceeding is not to determine, beyond a reasonable doubt, whether Solito and Ibita are criminally liable under the Anti-Alias Law, but merely whether there exists substantial evidence to warrant the ultimate administrative sanction against respondent, i.e. revocation of its certificate of registration, on the ground of fraud in the procurement thereof.

It must not pass unstressed that the articles of incorporation is the basic corporate contract which is accorded with reverence by the law and the courts, as manifested by the stringent rules for its registration and the manner by which any part thereof may be amended. One such registration requirement is embodied in Section 10 of the Code, to wit:

"Sec. 10. *Number and qualification of incorporators.* - Any number of natural persons not less than five (5) but not more than fifteen (15), all of legal age and a majority of whom are residents of

<sup>1</sup>Regalado, Remedial Law Compendium, Volume II, Ninth Revised Edition, page 738, citing *Biak-na-Bato Mining Co. vs. Turco, et al.*, et al., L-34267-68 (January 25, 1991) and Sec. 12(1), Chapter 3, Book VII, E.O. No. 292.

the Philippines, may form a private corporation for any lawful purpose or purposes. xxx."

The incorporators must have the capacity to enter into a valid contract, the act of forming a corporation as between the parties being contractual. Furthermore, the articles of incorporation, under Section 15 of the Code, must be acknowledged by the incorporators before a notary public. There is thereby the requirement that the incorporators must be qualified to enter into a contract. The purpose of requiring the acknowledgement is to secure the State and all concerned against the possibility of any fictitious name being subscribed to the articles and to furnish proof of the genuineness of the signatures.<sup>8</sup>

Vigilance against fictitious names gains more significance if we are to consider that incorporators, who, as in this case, usually act as the first set of directors/trustees, may be subject to personal liabilities, pursuant to Section 31<sup>9</sup> of the Code.

By using different names, Solito and Ibita effectively rendered difficult, if not impossible, for the Commission to detect or determine whether Ricardo S. Enriquez and Jessica P. Evangelista complied with the requirements of Section 10 as afore-quoted. Simply put, the Commission would have been on the look-out for Ricardo S. Enriquez and Jessica P. Evangelista and not for Ricardo Solito and Jessica Ibita. Above all, their act(s) tended to confuse and defeat whatever claims the other corporate stakeholders, including the general public, may have against them.

Viewed against the foregoing considerations, Solito and Ibita's admission that they used names other than their registered names in respondent's articles of incorporation is, to our belief, more than enough evidence to grant the instant petition, especially since they did not even bother to explain why they committed such act. The Commission, as a self-respecting tribunal or body, deserve better than the self-serving assertion of Solito and Ibita that their intention was "*not to defraud the public or evade personal accountabilities and liabilities but for reasons known only to them.*"<sup>10</sup>

Moreover, the commission of such fraudulent act raises doubts as to whether respondent corporation mustered the minimum required number of incorporators, which, as above-mentioned, is five (5). Indeed, there are no such persons as Ricardo S. Enriquez and Jessica P. Evangelista; it appears, hence, that there were only four (4) real and valid incorporators, i.e. Mr. Reynaldo M. Cuevas, Mr. Arnold Baricawa, Ms. Nora M. Cuevas and Ms. Maria Luz C. Sustituedo.

<sup>8</sup> Do I.en. The Corporation Code of the Philippines Annotated, 2002 Ed., p. 128, citing 1 Fletcher, p. 414.  
<sup>9</sup> Sec. 31. *Liability of directors, trustees, or officers.* - Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.  
<sup>10</sup> Respondent's Memorandum, page 2.

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By: 



All told, the above-illustrated cavalier attitude toward statutory registration requirements cannot be countenanced. To turn a blind eye on the unaccounted, unexplained or unjustified use by incorporators in registration documents of names different from their official or registered names would not only be a dangerous precedent that may be used by unscrupulous people to defraud the public but would also be a mockery of the Commission's regulatory and supervisory functions, in derogation of its mandate to enforce corporate and allied laws.

WHEREFORE, premises considered, the instant petition is hereby GRANTED. The Certificate of Registration of CARE BEST INTERNATIONAL, INC. is hereby REVOKED on the ground of fraud in the procurement thereof.

Let a copy of this Order be furnished the Company Registration and Monitoring Department of this Commission for its appropriate action.

SO ORDERED.

Mandaluyong City, 22 May 2008.

*F. Barin*  
F. BARIN  
Chairperson

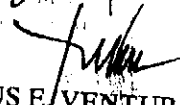
MA. JUANITA E. CUETO  
Commissioner



RAUL J. PALABRICA  
Commissioner

\*on sick leave

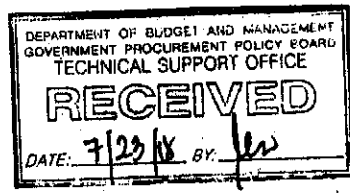
*J. Enrique G. Martinez*  
JESUS ENRIQUE G. MARTINEZ  
Commissioner



THADDEUS E. VENTURANZA  
Commissioner

Am  
Can you discreetly verify  
the facts stated in this  
letter. Afterwards, pls.  
prepare a short memo  
outlining your findings  
and recommendations.

July 13, 2008



Dear Sir/Madam:

Greetings!

All males, file original  
under complaints: JF 8/14/08

May this inform your good office that a janitorial contractor, **CARE BEST INTERNATIONAL, INC.** has already an adverse "**Order**" from the Securities and Exchange Commission in SEC Case No. 0905-83 for revocation of Certificate of Registration on the ground of fraud in the procurement thereof. Attached is a copy of the "**ORDER**" dated May 22, 2008 for your perusal.

Furthermore, Care Best International, Inc. under the leadership of Mr. Cuevas registered **another CARE BEST INTERNATIONAL, INC.** with Reg. No. CS200602870 dated March 16, 2006 "while and during" the pendency of the SEC case for revocation of registration. In fact Mr. Cuevas filed motions in that same case, which shows that they were fully aware that the case was still on going. The act of registering a new corporation bearing the same name is deemed malicious with the intention to again defraud the public and making "mockery of the Securities and Exchange Commission's regulatory and supervisory functions". Imagine that two (2) corporations bearing the name "**CARE BEST INTERNATIONAL, INC.**" were registered with two (2) different registration numbers, in two (2) different time/dates. It only shows that **CARE BEST INTERNATIONAL** under the leadership of Mr. Cuevas is very dangerous for it has a consistent behavior and propensity of making fraudulent documents (*as in the case of SEC Registrations*) in order to defraud the general public, the Government Agencies where they submitted documents for bidding purposes and competitors/other bidders.

Mr. Cuevas and his group indeed has an inclination to employ fraudulent acts, as what they had done to their former employer, who was raided of corporate assets and they were able to channel huge corporate resources to their company "**CARE BEST INTERNATIONAL, INC.**" in 1998-2000. This was the very reason why the Incorporators of Care Best were sued for "illegal use of aliases", and this serves as the basis for the revocation of its **SEC Registration No. A199913047**.

May we call your attention that the first registered **CARE BEST INTERNATIONAL, INC.** (with Registration No. A199913047 dated September 6, 1999), is the one submitted in the bidding for Eligibility purposes. The grandiose display of its resources and client references blinded most of the Bids and Awards Committee ("**BAC**") and had won numbers of clients from the year 2005-2008. It is worthy to take note that this was the period when the Compliance and Enforcement Division of the SEC formally filed a petition for revocation of registration of **CARE BEST INTERNATIONAL INC.** before the Office of the Government Counsel (OGC).

We can not help but believe that the malicious registration of the "second" CARE BEST INTERNATIONAL, INC. with Registration No.CS20060870 dated March 16, 2006 is intended to substitute, channel and transfer the contracts won by the "first registered" CAREBEST to the "second" CARE BEST. We all know that these acts are highly irregular, unjust, unlawful and against moral and public policy but with the character and business dealings as manifested or shown by Mr. Cuevas' group and their consistent propensity to fraudulent acts, we believe that the switching: **substitution/channeling or transferring of documents** may happen or had already been done. CAREBEST made a mockery out of the Securities and Exchange Commission; it is possible that these fraudulent activities were already made with their Government clients in violation of RA 9184 – The Procurement Law; cheated other bidders/competitors to believe that *there was only but one CAREBEST INTERNATIONAL, INC.*; it may had confused the BIR, SSS, Pag-ibig and the DOLE where clearances are taken in compliance with bidding procedures. It may even have already confused the Certified Public Accountant that rendered an opinion on their financial statements. These documents are very vital in bidding transactions with the government and in banks.

As a concerned citizen of the Philippines, we advocate that Government funds should only go to the hands of worthy contractors. Cheating the Government of millions of contracts (as reflected in their documents) while CARE BEST was divested already of their right as a legal ENTITY is a clear violation of "laws".

In view thereof, in behalf of the Janitorial and Manpower Industry, we request your honor and good selves to make an URGENT ACTION in investigating and thereafter ban or blacklist permanently in public bidding these unscrupulous persons ( Reynaldo Cuevas, Wally Cuevas, Maria Luz Sustituedo, Mary Jane Malanum, Myrna Camposano) under the guise of CARE BEST INTERNATIONAL, INC.

We hope for your immediate action. Thank you.

CONCERNED CITIZENS

JOEY MARQUEZ  
1447 Juan Luna Street  
Tondo Manila



Republic of the Philippines  
**SECURITIES AND EXCHANGE COMMISSION**  
SEC Building, EDSA, Mandaluyong City  
Metro Manila

SEC Reg. No. A199913047

**CERTIFICATE OF INCORPORATION**

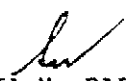
KNOW ALL MEN BY THESE PRESENTS:

This is to certify that the Articles of Incorporation and By-Laws of

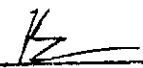
**CARE BEST INTERNATIONAL, INC.**

were duly registered by the Commission on this date upon the issuance of this Certificate of Incorporation in accordance with the Corporation Code of the Philippines (Batas Pambansa Blg. 68), approved on May 1, 1980 and copies of said Articles and By-Laws are hereto attached.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of this Commission to be affixed at Mandaluyong City, Metro Manila, Philippines, this 6<sup>th</sup> day of September, Nineteen Hundred and ninety-nine.

  
SONIA M. BALLO  
Director  
Corporate and Legal Department

  
DSP/cleng

  
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PAGE 1 OF 0 PAGES

VERIFIED BY: C



REPUBLIC OF THE PHILIPPINES  
**SECURITIES AND EXCHANGE COMMISSION**  
 SEC Building, EDSA, Greenhills  
 City of Mandaluyong, Metro Manila

COMPANY REG. NO. CS200603870

**CERTIFICATE OF INCORPORATION**

**KNOW ALL PERSONS BY THESE PRESENTS:**

This is to certify that the Articles of Incorporation and By-Laws of

**CAREBEST INTERNATIONAL, INC.**

were duly approved by the Commission on this date upon the issuance of this Certificate of Incorporation in accordance with the Corporation Code of the Philippines (Batas Pambansa Blg.68), and copies of said Articles and By-Laws are hereto attached.

This Certificate grants juridical personality to the corporation but does not authorize it to undertake business activities requiring a Secondary License from this Commission such as, but not limited to acting as: broker or dealer in securities, government securities eligible dealer (GSED), investment adviser of an investment company, close-end or open-end investment company, investment house, transfer agent, commodity/financial futures exchange/broker/merchant, financing company, pre-need plan issuer, general agent in pre-need plans and time shares/club shares/membership certificates issuers or selling agents thereof. Neither does this Certificate constitute as permit to undertake activities for which other government agencies require a license or permit.

As a registered corporation, it shall submit annually to this Commission the reports indicated at the back of this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of this Commission to be affixed at Mandaluyong City, Metro Manila, Philippines, this 16th day of March, Two Thousand Six.

**BENITO A. CATARAN**

Director

Company Registration and Monitoring Department

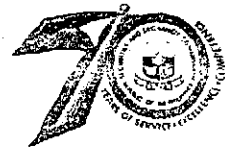
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PAGE 1 OF 10 PAGES  
 VERIFIED BY: C





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



IN THE MATTER OF:

SEC Case No. 09-05-83  
For: Revocation of Certificate  
of Registration

CARE BEST INTERNATIONAL, INC.

X-----X

ORDER

For consideration is the Petition for Revocation of Corporate Registration (*"the Petition"*, for brevity) filed by the Compliance and Enforcement Department (*"petitioner"*) of this Commission against Care Best International, Inc. (*"respondent"*) on the ground that there was fraud in the procurement of respondent's certificate of registration, pursuant to *Section 6, paragraph 1(1) of Presidential Decree No. 902-A ("PD 902-A")*.

Respondent is a stock corporation with SEC Registration No. A1999913047 engaged in the business of rendering janitorial, messengerial, repair and maintenance, and other related services.

The fraud in this case, petitioner contends, consists in the alleged use of aliases in respondent's articles of incorporation by two (2) of its six (6) incorporators, to wit: Ricardo S. Solivio and Jessica P. Ibita made it appear that they were Ricardo S. Enriquez and Jessica P. Evangelista, respectively. Petitioner likewise argues that as a consequence of this allegedly fraudulent act, respondent's articles of incorporation is left with just four (4) signatory directors, in violation of the mandatory requirement under the *Corporation Code ("the Code")*<sup>1</sup> that there must be at least five (5).

Incidentally, for the same reason, Solivio and Ibita were earlier accused before the Metropolitan Trial Court of Makati City, Branch 65 (*"the MeTC"*), in *People of the Philippines vs. Jessica P. Ibita and Ricardo E. Solivio* docketed as *Criminal Case Nos. 317397-98* for Violation of Commonwealth Act 142 or the Anti-Alias Law, as amended by Republic Act No. 6085.

Petitioner proffers as evidence the 5 August 2002 *Resolution ("the Resolution")* of the City Prosecution Office of Makati City and the corresponding *Informations* therefor both dated 6 August 2002<sup>2</sup>, as well as the admission by Solivio and Ibita that they used

<sup>1</sup>Section 14, paragraph 6, of the Corporation Code  
<sup>2</sup>Annexes "B", "F" and "G" of the Petition, respectively

CCP  
Certified True Copy  
of the original  
Res. of the MeTC  
By: *Jes*



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



IN THE MATTER OF:

SEC Case No. 09-05-83  
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Section 5, paragraph 5, of the Corporation Code  
Annexes "B", "F" and "G" of the *Petition*, respectively.

SEC-810  
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Page 1 of 2 pages  
By *Jax*

different names in respondent's articles of incorporation.<sup>3</sup> Specifically, petitioner adopts the prosecutor's pronouncement in the *Resolution*, which reads:

"Respondents Solivio and Ibita cannot escape liability for using an alias without any judicial authority. Their argument that the use of a different name in a single instance is not prohibited, citing the case of *Ursua vs. CA, 256 SCRA 147*, is of no moment. When Solivio used the name Ricardo Enriquez and Ibita [used the name] Jessica Evangelista in the Articles of Incorporation of Care Best Int'l Inc., it was their intention to be known as such in the business community and with all persons whom their company [has] dealings with, xxx."

In its *Answer* to the instant *Petition*, respondent, reiterating *Ursua vs. CA*, alleges that the controversial acts of Solivio and Ibita, while admitted, were devoid of fraudulent intent and were done in good faith. It argues that the above-quoted *Resolution* does not carry any evidentiary weight since the guilt of the accused is yet to be proved by the prosecution.

Respondent likewise alleges that up to the present time, it has neither been accused before any tribunal of defrauding anybody in the performance of its primary purpose nor been remiss in complying with tax, labor and other laws, rules or regulations, including the Commission's reportorial requirements, as evidenced by various clearances from the concerned government agencies<sup>4</sup>. Its clientele is, in the main, composed of numerous government agencies<sup>5</sup>, which means that it has hurdled the corresponding rigid and rigorous public bidding processes. Respondent thus argues that it would not have been successful in the conduct of its business if fraudulent intentions had tainted the very purpose of the incorporators, specifically Solivio and Ibita who, at the time of the incorporation, had no pending cases whatsoever.<sup>6</sup> Parenthetically, individual respondents exhibited their community tax certificates, indicating their true names to the notary public who notarized the subject incorporation papers.

Lastly, respondent contends that the Commission could not have been misled into approving its registration as the Code's requirements on incorporators were satisfied, to wit: there are six (6), all of whom are natural persons of legal age and are citizens and residents of the Philippines.

<sup>3</sup> Respondent's *Answers* during CED's investigation attached to the instant petition as Annexes "H" and "I"; Memoranda-Verba of respondents Solivio and Ibita submitted during preliminary investigation of the criminal charges.

<sup>4</sup> Annexes "J" to "N"-www" of respondent's *Answer*.

<sup>5</sup> At present, such clientele includes Light Rail Transit Authority, Department of Labor and Employment, Department of Finance, Bangko Sentral ng Pilipinas, Department of Science and Technology, Philippine Export Zone Authority, Bureau of Plant Industry, Technology and Livelihood Resource Center, National Children's Hospital, and Commission on Higher Education.

<sup>6</sup> Respondent's Memorandum dated 13 January 2006, p. 2.

On 2 August 2007, respondent filed its *Manifestation and Motion* dated 1 August 2007 stating that the MeTC had already acquitted Solito and Ibita of the criminal charges through its *Decision* dated 25 July 2007.

The only issue to be resolved herein is whether respondent's certificate of registration should be revoked on the ground that there was fraud in the procurement thereof.

We rule in the affirmative.

Already settled is the rule that the quantum of evidence required in administrative or quasi-judicial bodies, of which the Commission is one, is mere substantial evidence. Section 5, Rule 133 of the Rules of Court provides:

"Sec. 5. Substantial evidence. - In cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."

Substantial evidence does not necessarily mean preponderant proof as required in ordinary civil cases but such kind of relevant evidence as a reasonable mind might accept as adequate to support a conclusion or evidence commonly accepted by reasonably prudent men in the conduct of their affairs.<sup>7</sup> Needless to state, it is way less onerous than that required in criminal cases, that is, proof beyond reasonable doubt.

Accordingly, the purpose of this proceeding is not to determine, beyond a reasonable doubt, whether Solito and Ibita are criminally liable under the Anti-Alias Law, but merely whether there exists substantial evidence to warrant the ultimate administrative sanction against respondent, i.e. revocation of its certificate of registration, on the ground of fraud in the procurement thereof.

It must not pass unstressed that the articles of incorporation is the basic corporate contract which is accorded with reverence by the law and the courts, as manifested by the stringent rules for its registration and the manner by which any part thereof may be amended. One such registration requirement is embodied in Section 10 of the Code, to wit:

"Sec. 10. *Number and qualifications of incorporators.* - Any number of natural persons not less than five (5) but not more than fifteen (15), all of legal age and a majority of whom are residents of

<sup>7</sup>Regalado, Remedial Law Compendium, Volume II, Ninth Revised Edition, page 738, citing *Bianca-Bato Mining Co. vs. Tanco, etc., et al.*, L-34267-68 (January 25, 1991) and Sec. 2(1), Chapter 3, Book VII, E.O. No. 292.

the Philippines, may form a private corporation for any lawful purpose or purposes. xxx."

The incorporators must have the capacity to enter into a valid contract, the act of forming a corporation as between the parties being contractual. Furthermore, the articles of incorporation, under Section 15 of the Code, must be acknowledged by the incorporators before a notary public. There is thereby the requirement that the incorporators must be qualified to enter into a contract. The purpose of requiring the acknowledgement is to secure the State and all concerned against the possibility of any fictitious name being subscribed to the articles and to furnish proof of the genuineness of the signatures.<sup>8</sup>

Vigilance against fictitious names gains more significance if we are to consider that incorporators, who, as in this case, usually act as the first set of directors/trustees, may be subject to personal liabilities, pursuant to Section 31<sup>9</sup> of the Code.

By using different names, Solito and Ibita effectively rendered difficult, if not impossible, for the Commission to detect or determine whether Ricardo S. *Enriquez* and Jessica P. *Evangelista* complied with the requirements of Section 10 as afore-quoted. Simply put, the Commission would have been on the look-out for Ricardo S. *Enriquez* and Jessica P. *Evangelista* and not for Ricardo Solivio and Jessica Ibita. Above all, their act(s) tended to confuse and defeat whatever claims the other corporate stakeholders, including the general public, may have against them.

Viewed against the foregoing considerations, Solito and Ibita's admission that they used names other than their registered names in respondent's articles of incorporation is, to our belief, more than enough evidence to grant the instant petition, especially since they did not even bother to explain why they committed such act. The Commission, as a self-respecting tribunal or body, deserve better than the self-serving assertion of Solito and Ibita that their intention was "*not to defraud the public or evade personal accountabilities and liabilities but for reasons known only to them.*"<sup>10</sup>

Moreover, the commission of such fraudulent act raises doubts as to whether respondent corporation mustered the minimum required number of incorporators, which, as above-mentioned, is five (5). Indeed, there are no such persons as Ricardo S. *Enriquez* and Jessica P. *Evangelista*; it appears, hence, that there were only four (4) real and valid incorporators, i.e. Mr. Reynaldo M. Cuevas, Mr. Arnold Baricawa, Ms. Nora M. Cuevas and Ms. Maria Luz C. Sustituedo.

<sup>8</sup> De Leon, *The Corporation Code of the Philippines Annotated*, 2002 Ed., p. 128, citing 1 Fletcher, p. 414.

<sup>9</sup> Sec. 31. *Liability of directors, trustees, or officers.* - Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.

<sup>10</sup> Respondent's Memorandum, page 2.

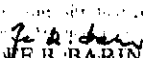
All told, the above-illustrated cavalier attitude toward statutory registration requirements cannot be countenanced. To turn a blind eye on the unaccounted, unexplained or unjustified use by incorporators in registration documents of names different from their official or registered names would not only be a dangerous precedent that may be used by unscrupulous people to defraud the public but would also be a mockery of the Commission's regulatory and supervisory functions, in derogation of its mandate to enforce corporate and allied laws.

WHEREFORE, premises considered, the instant petition is hereby GRANTED. The Certificate of Registration of CARE BEST INTERNATIONAL, INC. is hereby REVOKED on the ground of fraud in the procurement thereof.

Let a copy of this Order be furnished the Company Registration and Monitoring Department of this Commission for its appropriate action.

SO ORDERED.

Mandaluyong City, 22 May 2008.

  
V. B. BARIN  
Chairperson

MA. JUANITA E. CUETO \*  
Commissioner

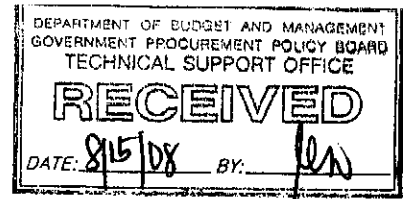
JESUS ENRIQUE G. MARTINEZ  
Commissioner

  
RAUL J. PALABRICA  
Commissioner

  
THADDEUS E. VENTURANZA  
Commissioner

\*on sick leave

Andy,  
Follow-up to your the  
previous complaint: what  
are the results of your  
investigation?



August 7, 2008

To Whom It May Concern:

**RE: Complaint versus Carebest International, Inc.**

Sir / Madam;

May we refer this Honorable Committee to the attached letter complaint lodged with the Securities and Exchange Commission for Cancellation of the **second** Sec registration of **Carebest International, Inc.** with **SEC Reg. No. CS200603870** dated **March 16, 2006**, hereto attached for your perusal.

We also request that Carebest International, Inc. with **Sec Reg. No. A199913047 dated September 6, 1999** be finally blacklisted/ dropped from the list of your accredited janitorial and maintenance contractors for obvious reason: Revocation/cancellation of its Corporate license due to fraud.

Further, while the complaint on the second registered carebest is pending with the SEC, may we therefore request that its registration ~~with~~ the GPPB if there is any be hold until this case is decided upon. This will curve the "unfair competition" which this Carebest International, Inc. has been doing up to the present time.

We hope for your immediate action.

**CONCERNED BIDDERS**  
for Janitorial Services

# THE PHILIPPINE STAR

## TRUTH SHALL PREVAIL

VOL. XXIII NO. 8 MONDAY, AUGUST 4, 2008 • 9 SECTIONS, 74 PAGES

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B-2

### BUSINESS

MONDAY, AUGUST 4, 2008

## SEC warns people using aliases for business purposes

By ZINNIA B. DELA PEÑA

The Securities and Exchange Commission (SEC) has revoked the corporate license of Care Best International Inc., a janitorial services provider whose clientele comprises mostly government offices and agencies, on the ground of fraud.

According to the SEC's Compliance and Enforcement Department, two of Care Best's six incorporators — Ricardo Solivio and Jessica Ibita — used names other than their registered names in registration documents to circumvent a law that requires companies to have at least five incorporator-directors.

In concluding Care Best's articles of incorporation, the SEC relied on the admission by Solivio and Ibita that they used the aliases Ricardo Enriquez and Jessica Evangelista, respectively, in the certificates of registration.

For the same reason, Solivio and Ibita were earlier accused before the Metropolitan Trial Court of Makati, Branch 65 for violation of the Anti-Alias law. The criminal complaints, however, were already dismissed by the trial court.

The SEC said while Solivio and Ibita have not been criminally prosecuted, their use of aliases to secure the incorporation of Care Best warrants the cancellation of the registration certificate.

The Commission en banc cited section 15 of the corporation code which requires that articles of incorporation must be acknowledged by the incorporators before a notary public. The purpose of requiring the acknowledgement is to secure the State and all concerned against the possibility of any fictitious name being subscribed to the articles and furnish proof of the genuineness of the signatures," the SEC en banc said.

The cavalier attitude toward statutory registration requirements can not be countenanced. To turn a blind eye on the unaccounted, unexplained or unjustified use by incorporators in registration documents of names different from their official names would not only be a dangerous precedent that may be used by unscrupulous people to defraud the public but would also be a mockery of the commission's regulatory and supervisory functions, in derogation of its mandate to enforce corporate and applied laws," the SEC en banc pointed out.

Care Best, however, has elevated its case to the Court of Appeals and sought the reversal of the SEC order due to lack of evidence.

Care Best said the CED failed to establish proof that Solivio and Ibita, either individually or collectively, ever utilized fictitious names to defraud or evade any form of liability or obligation to any third party, including the government and its various agencies.

Care Best likewise stressed that its stockholders and officers have religiously complied with the reportorial requirements of the SEC and other applicable laws and rules during its 10 years of existence.

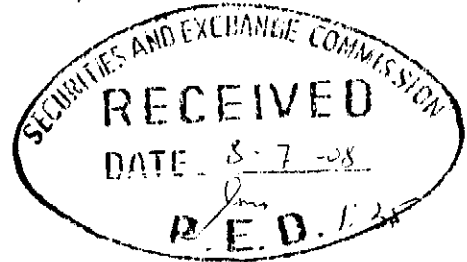
According to Care Best, its sound business practice has allowed it to bag numerous contracts from various government agencies and government-owned entities including the Philippine Amusement & Gaming Corp.-Manila, National Home Mortgage Financing Corp., Bangko Sentral ng Pilipinas-Quezon City, PEZA-Bataan Economic Zone, Department of Energy-Taguig, Quezon City Court of Tax Appeals, UP-Diliman, PNOG Shipping Corp., Senate Presidential Commission on Good Government, Bureau of Internal Revenue, Philippine General Hospital, PhilExim, Philippine Orthopedic Center, Department of Social Welfare and Development, Philippine Reclamation Authority, Cultural Center of the Philippines and Bureau of Plant Industry.



August 7, 2008

**The Chief**

Compliance and Enforcement Division  
Securities and Exchange Commission  
EDSA, Quezon City



RE : Complaint for Revocation of (Second)  
CAREBEST INTERNATIONAL, INC.  
Sec Reg. #: CS200603870  
dated March 16, 2006

Gentlemen:

We belong to the janitorial and maintenance industry, collectively filing this COMPLAINT against Carebest International, Inc.

May we bring to your attention the article published by the Philippine Star last Monday, 04 August 2008 regarding the revocation of the corporate license of Carebest International, Inc. (a janitorial service provider whose clientele comprises mostly of government offices on the ground of FRAUD). A copy of the article is hereto attached as **Annex "A"**.

We checked the records with the Securities and Exchange Commission ("SEC") pertaining to CAREBEST which accordingly has been in the janitorial business for ten (10) years. We were surprised to find out that there are two (2) corporations with the CORPORATE NAME: "**CAREBEST INTERNATIONAL, INC.**" The FIRST is registered with **Sec Reg. No. A199913047** dated September 6, 1999 which registration has been revoked/cancelled (**Annex "B"**) while the SECOND is registered with **Reg. # No CS200603870** dated 16 March 2006 (**Annex "C"**) hereof.

*Mr. Dizon  
Mallin*

Further verification show that the SECOND CAREBEST was registered while and during the pendency of the case for revocation/cancellation (2005-2008). A copy of the petition filed by your Department (CED) is hereto attached (**Annex D**). It is note worthy to state that the registration of the

SECOND was caused by the same stockholders on Record of the FIRST CAREBEST, per GIS submitted in 2006 (**Annex E**).

While it is true that the revocation for the FIRST registration was approved/ effected, (*copy of an ORDER is hereto attached **Annex "F"***), however the SECOND registered CAREBEST is already more than two (2) years old at present. It is very apparent that NOTHING WAS LOST to the stockholders thereof because of the OVERLAPPING REGISTRATIONS.

It is very surprising why the SEC allowed the registration of NOT ONLY SIMILAR but EXACTLY THE SAME Corporate NAME, by those unscrupulous people who had defrauded the system and were considered by the Committee en Banc to have made mocked the Commission's regulatory and supervisory functions and violated the Corporation Law of the Philippines.

We believed that CAREBEST OFFICIALS and those people behind it have manifest intention to transfer "CORPORATE RESOURCES" including their contracts and CLIENTS HISTORY, (*which are vital requirements in public biddings as per Republic Act No. 9184*) to the SECOND registered CAREBEST. It can easily AGAIN defraud the public, the Government clients whom they are dealing with and of course, us, their competitors in the janitorial industry. It can misled the general public through misrepresentations that the SECOND Carebest is that same ten (10) years old company, because it has the same stockholders, the same officers / staff and doing business in the same office address.

In effect therefore, is that NOTHING was EVER REVOKED/CANCELLED because at present, though the FIRST Registration has been cancelled/revoked yet, Carebest continue to participate in government public biddings. The most recent was with the two (2) areas of the Bangko Sentral ng Pilipinas, The Philippines Charity Sweepstakes Office and the Sandiganbayan (there could even be more). It also continued servicing their present clients which has more or less 30 government agencies. While it is true that CAREBEST filed an appeal with the Court of Appeals, we believed that SEC 12 Rule 43 of the Revised Rules of the Court of the Philippines shall be applied hereof. Therefore, CAREBEST should have been INEXISTENT, with NO LEGAL PERSONALITY and should not be in business by now. However, they are clothed by/with the "argument" that they

have a pending appeal with Court of Appeals and/or they are "equipped" with the SECOND registered Carebest. This "new Carebest" is without proper documents and without clients yet but this may be used as a substitute to the first Carebest which registration has been cancelled. This may be not only be glaringly causing unfair competition but also dangerous and UNLAWFUL.

Due to the foregoing, we pray that:

**FIRST**, that the SECOND CAREBEST INTERNATIONAL, INC. with Req. # No CS200603870 dated March 16, 2006, be revoked/cancelled.

**SECOND**, that these unscrupulous people, REYNALDO CUEVAS and his cohorts who continuously manipulated, scorned and mocked the system of the SEC regulatory functions be prosecuted and forever be banned/disqualify by the SEC in registering future Corporations.

**THIRD**, that an investigation be made on how and why was the SECOND CAREBEST INTERNATIONAL, INC. was registered while the FIRST CAREBEST was still valid and under those circumstances mentioned herein.

We hope for your immediate action in this regard.

**CONCERNED BIDDERS**  
for Janitorial Services