

SECOND DIVISION

[G.R. No. 164026, December 23, 2008]

SECURITIES AND EXCHANGE COMMISSION, PETITIONER, VS. GMA NETWORK, INC., RESPONDENT.

DECISION

TINGA, J.:

Petitioner Securities and Exchange Commission (SEC) assails the Decision^[1] dated February 20, 2004 of the Court of Appeals in CA-G.R. SP No. 68163, which directed that SEC Memorandum Circular No. 1, Series of 1986 should be the basis for computing the filing fee relative to GMA Network, Inc.'s (GMA's) application for the amendment of its articles of incorporation for purposes of extending its corporate term.

The undisputed facts as narrated by the appellate court are as follows:

On August 19, 1995, the petitioner, GMA NETWORK, INC., (GMA, for brevity), a domestic corporation, filed an application for collective approval of various amendments to its Articles of Incorporation and By-Laws with the respondent Securities and Exchange Commission, (SEC, for brevity). The amendments applied for include, among others, the change in the corporate name of petitioner from "Republic Broadcasting System, Inc." to "GMA Network, Inc." as well as the extension of the corporate term for another fifty (50) years from and after June 16, 2000.

Upon such filing, the petitioner had been assessed by the SEC's Corporate and Legal Department a separate filing fee for the application for extension of corporate term equivalent to 1/10 of 1% of its authorized capital stock plus 20% thereof or an amount of P1,212,200.00.

On September 26, 1995, the petitioner informed the SEC of its intention to contest the legality and propriety of the said assessment. However, the petitioner requested the SEC to approve the other amendments being requested by the petitioner without being deemed to have withdrawn its application for extension of corporate term.

On October 20, 1995, the petitioner formally protested the assessment amounting to P1,212,200.00 for its application for extension of corporate term.

On February 20, 1996, the SEC approved the other amendments to the petitioner's Articles of Incorporation, specifically Article 1 thereof referring to the corporate name of the petitioner as well as Article 2 thereof referring to the principal purpose for which the petitioner was

formed.

On March 19, 1996, the petitioner requested for an official opinion/ruling from the SEC on the validity and propriety of the assessment for application for extension of its corporate term.

Consequently, the respondent SEC, through Associate Commissioner Fe Eloisa C. Gloria, on April 18, 1996, issued its ruling upholding the validity of the questioned assessment, the dispositive portion of which states:

"In light of the foregoing, we believe that the questioned assessment is in accordance with law. Accordingly, you are hereby required to comply with the required filing fee."

An appeal from the aforementioned ruling of the respondent SEC was subsequently taken by the petitioner on the ground that the assessment of filing fees for the petitioner's application for extension of corporate term equivalent to 1/10 of 1% of the authorized capital stock plus 20% thereof is not in accordance with law.

On September 26, 2001, following three (3) motions for early resolution filed by the petitioner, the respondent SEC *En Banc* issued the assailed order dismissing the petitioner's appeal, the dispositive portion of which provides as follows:

WHEREFORE, for lack of merit, the instant Appeal is hereby dismissed.

SO ORDERED.^[2]

In its petition for review^[3] with the Court of Appeals, GMA argued that its application for the extension of its corporate term is akin to an amendment and not to a filing of new articles of incorporation. It further averred that SEC Memorandum Circular No. 2, Series of 1994, which the SEC used as basis for assessing P1,212,200.00 as filing fee for the extension of GMA's corporate term, is not valid.

The appellate court agreed with the SEC's submission that an extension of the corporate term is a grant of a fresh license for a corporation to act as a juridical being endowed with the powers expressly bestowed by the State. As such, it is not an ordinary amendment but is analogous to the filing of new articles of incorporation.

However, the Court of Appeals ruled that Memorandum Circular No. 2, Series of 1994 is legally invalid and ineffective for not having been published in accordance with law. The challenged memorandum circular, according to the appellate court, is not merely an internal or interpretative rule, but affects the public in general. Hence, its publication is required for its effectivity.

The appellate court denied reconsideration in a Resolution^[4] dated June 9, 2004.

In its Memorandum^[5] dated September 6, 2005, the SEC argues that it issued the

questioned memorandum circular in the exercise of its delegated legislative power to fix fees and charges. The filing fees required by it are allegedly uniformly imposed on the transacting public and are essential to its supervisory and regulatory functions. The fees are not a form of penalty or sanction and, therefore, require no publication.

For its part, GMA points out in its Memorandum,^[6] dated September 23, 2005, that SEC Memorandum Circular No. 1, Series of 1986 refers to the filing fees for amended articles of incorporation where the amendment consists of extending the term of corporate existence. The questioned circular, on the other hand, refers only to filing fees for articles of incorporation. Thus, GMA argues that the former circular, being the one that specifically treats of applications for the extension of corporate term, should apply to its case.

Assuming that Memorandum Circular No. 2, Series of 1994 is applicable, GMA avers that the latter did not take effect and cannot be the basis for the imposition of the fees stated therein for the reasons that it was neither filed with the University of the Philippines Law Center nor published either in the Official Gazette or in a newspaper of general circulation as required under existing laws.

It should be mentioned at the outset that the authority of the SEC to collect and receive fees as authorized by law is not in question.^[7] Its power to collect fees for examining and filing articles of incorporation and by-laws and amendments thereto, certificates of increase or decrease of the capital stock, among others, is recognized. Likewise established is its power under Sec. 7 of P.D. No. 902-A to recommend to the President the revision, alteration, amendment or adjustment of the charges which it is authorized to collect.

The subject of the present inquiry is not the authority of the SEC to collect and receive fees and charges, but rather the validity of its imposition on the basis of a memorandum circular which, the Court of Appeals held, is ineffective.

Republic Act No. 3531 (R.A. No. 3531) provides that where the amendment consists in extending the term of corporate existence, the SEC "shall be entitled to collect and receive for the filing of the amended articles of incorporation the same fees collectible under existing law as the filing of articles of incorporation."^[8] As is clearly the import of this law, the SEC shall be entitled to collect and receive the same fees it assesses and collects both for the filing of articles of incorporation and the filing of an amended articles of incorporation for purposes of extending the term of corporate existence.

The SEC, effectuating its mandate under the aforementioned law and other pertinent laws,^[9] issued SEC Memorandum Circular No. 1, Series of 1986, imposing the filing fee of 1/10 of 1% of the authorized capital stock but not less than P300.00 nor more than P100,000.00 for stock corporations, and 1/10 of 1% of the authorized capital stock but not less than P200.00 nor more than P100,000.00 for stock corporations without par value, for the filing of amended articles of incorporation where the amendment consists of extending the term of corporate existence.

Several years after, the SEC issued Memorandum Circular No. 2, Series of 1994, imposing new fees and charges and deleting the maximum filing fee set forth in SEC