

THIRD DIVISION

[G.R. Nos. 225204-05. March 29, 2023]

F/DIR. ROGELIO F. ASIGNADO (RET.), F/DIR. JOSE E. COLLADO (RET.), AND CINSP. ERNESTO S. PAGDANGANAN, PETITIONERS, VS. OFFICE OF THE OMBUDSMAN REPRESENTED BY CONCHITA CARPIO MORALES AND F/CSUPT. CARLITO S. ROMERO (RET.), RESPONDENTS.

D E C I S I O N

GAERLAN, J.:

Before the Court is an original Petition for *Certiorari*^[1] filed as a direct recourse from the Office of the Ombudsman's (public respondent's) rulings *vis-à-vis* Case Nos. OMB-P-C-13-0269 and OMB-P-A-13-0310. Said rulings, *i.e.*, public respondent's Joint Resolution^[2] dated June 20, 2014 and Joint Order^[3] dated December 21, 2015, effectively dismissed both the criminal and administrative charges against Fire Chief Superintendent (F/CSupt.) Carlito S. Romero (private respondent) as alleged by Director (F/Dir.) Rogelio F. Asignado (Ret.; Asignado), (F/Dir.) Jose E. Collado (Ret.; Collado), and Fire Chief Inspector Ernesto S. Pagdanganan (collectively, petitioners).

Factual Antecedents and Proceedings before Public Respondent

In their Complaint-Affidavit^[4] filed before public respondent, petitioners along with nine other complainants^[5] basically alleged the following:

- 1) At the time of filing, they were officers and members of the Board of Trustees of the Bureau of Fire Protection Mutual Aid & Beneficiary Association, Inc. (BFPMBAI), with the exception of F/Dir. Asignado (BFPMBAI's founder and chairman emeritus).^[6]

- 2) A Memorandum of Agreement^[7] (MOA) was entered into between BFPMBAI and the Bureau of Fire Protection (BFP) on March 6, 2006, whereby the latter undertook to periodically deduct from the respective payroll salaries of all BFP personnel with membership in the former, and to remit said deductions to the former as soon as practicable. Said MOA was signed by F/Dir. Asignado as BFP Chief and by private respondent as BFPMBAI President at the time.^[8]

- Said deductions and remittances by the BFP had proceeded without any problems until the start of February 2013, when the BFPMBAI Board of Directors came to know of the non-remittance of deductions for the month of January 2013.^[9] F/Dir.
- 3) Collado, as BFPMBAI President at the time, sent a Letter^[10] dated February 5, 2013 to private respondent (who was BFP Officer-in-Charge at the time) invoking the MOA for the immediate release of the said remittances.^[11]
- 4) On February 8, 2013, private respondent issued a Memorandum^[12] to the BFP Cash Management Division Chief with the following tenor:

Pending legal resolution as to the legitimate sets of officers that would administer the affairs of the Bureau of Fire Protection Mutual Benefit Association (BFP MBAI), the deduction from the Continuous Form Checks (CFCs) for salaries and allowances of BFP personnel nation-wide is hereby temporarily stopped effective February 2013.

The amounts deducted for BFP MBAI Contribution and BFP MBAI Salary Loan under deduction codes D116 and A117, respectively from the January 2013 CFCs should be refunded immediately.

The MBAI deductions shall resume only when a notice or memorandum for its resumption is served.

For strict compliance.^[13]

- Said legal controversy has its origins in the 6th BFPMBAI General Membership Meeting held on June 30, 2012, which was also the forum for the election of the nine members of the BFPMBAI Board of Trustees.^[14] According to the undated Report^[15] of the BFPMBAI Committee on Elections (BFPBMAI COMELEC), only 167 voters were present, but the votes of 2,840 absent members were cast by the presiding officer (*i.e.*, Fire Chief Superintendent F/CSupt. Danilo R. Cabrera, a supposed ally of private respondent *vis-à-vis* the said elections) in favor of private respondent and other candidates allied with the latter. BFPMBAI COMELEC did not proclaim any winners, and duly ruled that the election was to have a “*status quo ante* order” in light of queries likely to be filed with the Securities & Exchange Commission (SEC).^[16] Petitioners and their fellow complainants still assumed and administered the affairs of BFPMBAI despite the actions coming from the camp of private respondent, since they viewed the additional votes and new tally as without basis.^[17]
- 5)

- F/Dir. Collado sent another Letter^[18] dated February 20, 2013, this time to the BFP Cash Management Division Chief, in order to inquire into the BFP's refusal of remitting the deductions due to BFPMBAI.^[19] With no reply to either of Petitioner Collado's Letters, due efforts were subsequently made to communicate with private respondent in person. Petitioners and their fellow complainants thus
- 6) alleged that "[i]n all the meetings attended by the [private] respondent, he expressly and categorically declared that he will release the remittance due for the association on the condition that he will be the one to sit as its chairman and all the voted-out trustees shall assume, though illegal[ly], as members of the board."^[20]

- Additionally, on March 8, 2013, petitioners and their fellow complainants (acting as BFPMBAI's Board of Trustees) issued BFPMBAI Board of Trustees' Resolution No. 13-04,^[21] which accepted the sudden resignation of F/CSupt. Ruben F. Bearis (Bearis) as Vice Chairman for Administration and Trustee (submitted for personal reasons) and electing private respondent as F/CSupt. Bearis' replacement. Said
- 7) Resolution was allegedly issued to accommodate private respondent, whose "continuing intimidation, compulsion, and insistence" had "compelled" petitioners and their fellow complainants to sign the supposedly unlawful Resolution.^[22] Private respondent also allegedly continued to work towards the reinstatement of his fellow Trustees that were not re-elected during the June 30, 2012 election, but to no avail due to the resistance of petitioners and their fellow complainants.^[23]

- As of March 27, 2013, the accumulated deductions due for remittance to BFPMBAI had amounted to P18,595,384.23, and thus, by reason of private respondent's "malicious and intentional acts, x x x lending operations and payment of insurance premiums for the members were suspended for absence of
- 8) funds. The supposed profits from the withheld remittances remained unrealized as these funds were never distributed in the form of loans to its members. Payment of interests in favor of creditors were likewise suspended, hence, the association incurred additional liabilities or burden in the form of surcharges and penalties."^[24]

- Thus, “[f]or exhibiting malice and evident bad faith in withholding the release, after due demands or requests, of remittance that caused grave damage, prejudice, and injury to the association,”^[25] petitioners and their fellow complainants alleged that private respondent violated Sections 3(e)^[26] and 3(f)^[27] of Republic Act (R.A.) No. 3019, otherwise known as the Anti-Graft & Corrupt Practices Act, as well as Article 286^[28] of Act No. 3815, otherwise known as the Revised Penal Code (RPC) for “maliciously compelling the incumbent trustees against their will, through threats or intimidation of withholding the release of remittance, to execute a resolution authorizing the assumption into office of the respondent and all the voted-out trustees during the General Assembly.”^[29] Petitioners and their fellow complainants also prayed that private respondent be correspondingly disciplined for the administrative offenses of grave misconduct, conduct prejudicial to the best interest of the service, oppression, and grave abuse of authority.^[30]
- 9)

For his part, private respondent stated in his Counter-Affidavit^[31] the following:

- He was indeed designated as BFP’s Officer-in-Charge on January 11, 2013, and upon his assumption of duties, he learned that petitioners and their fellow Complainants had taken over the management of BFPMBAI despite the BFPMBAI COMELEC’s “*status quo ante* order.”^[32] He had also previously received a Letter-Reply^[33] dated October 19, 2012 from the SEC *vis-à-vis* his request for legal
- 1) opinion regarding the BFPMBAI election controversy, wherein the SEC refrained from rendering said legal opinion due to its possible effect on the substantive rights of parties in a potential controversy before a court of competent jurisdiction, but gave guidance by pointing out that a majority of the *bona fide* members of BFPMBAI were not present during the election and general members’ meeting.^[34]

- On March 14, 2013, in his capacity as BFP Officer-in-Charge, he met with representatives from Fortune Life Insurance Co., Inc. Said meeting resulted in an agreement-in-principle between BFP and the said insurance company for the
- 2) former’s release to the latter of the insurance premium payments of BFPMBAI members in anticipation of the case to be filed by private respondent relative to the BFPMBAI election controversy.^[35] Said agreement-in-principle is evidenced by the Minutes of Meeting^[36] attached to private respondent’s Counter-Affidavit.

- On March 21, 2013, private respondent indeed filed a Complaint-in-Interpleader,^[37] which was raffled off to the Regional Trial Court (RTC) of Quezon City (Branch 80) and docketed as Civil Case No. Q-13-72923. Said Complaint-in-Interpleader was directed against the two competing groups both claiming to be
- 3) the legitimate BFPMBAI Board of Trustees, and prayed for the “deposit of the outstanding remittances of the monthly dues collected so far from [BFPMBAI] members, representing remittances [for] the months of January and February and March 2013 to [the] Court, and considering the release thereof to whomever of defendants is entitled to the same.”^[38]

Incidentally, and at the time of private respondent's filing of his Counter-Affidavit, RTC-Quezon City (Branch 80) had issued on July 15, 2013 an Order^[39] issuing a Writ of Preliminary injunction against petitioners and their fellow complainants in order to restrain them from conducting business as BFPMBAI's Board of Trustees during the pendency of the case (unless otherwise authorized, and conditioned upon the posting of a bond of P10,000,000.00 by the group of officers and trustees allied with private respondent).^[40]

Addressing the Complaint-Affidavit's allegation of violating R.A. No. 3019 and of
4) committing the corresponding multiple administrative offenses, Private respondent puts forth the following affirmative defense:

5. In issuing the Memorandum for the temporary stoppage of the remittance of BFPMBAI contributions, I did not employ intimidation nor was the same done without legal basis or justified cause. It bears to stress out [*sic*] that the herein complainants took over the management of the BFPMBAI in blatant disregard of the COMELEC's Status Quo Ante Order. Needless to say, the same is unlawful, unauthorized and without any legal color. Instead of succumbing to complainant's baseless threats and prodding, I opted to exercise **prudent management** in order to protect the rights and interests of the association and its members. A careful perusal of the Memorandum would show that the same was resorted to pending legal resolution as to the legitimate sets of officers that would administer the affairs of the BFPMBAI. I should not be blamed for doing that because the complainants themselves admitted in their complaint that they "assumed and administered the affairs of the association" since July 2012 (paragraph 16 of the Complaint). Corollary to their assumption is the fact that they have been disbursing funds albeit their illegal assumption. It would be an irresponsible act, on the other hand, to just release the funds in the middle of a legal controversy. Suffice it to say, the Memorandum I issued was done without malice but well within the exercise of a lawful right.

6. Moreover, the funds representing the monthly contributions were not squandered as the same were reverted to the Bureau of [the] Treasury and may be withdrawn any time after the issue brought before the RTC has been settled. Copy of the Certification^[41] is hereto attached as Annex "F."^[42]
(Emphasis and underscoring in the original)

5) As to the Complaint-Affidavit's accusation of grave coercion, private respondent denies that he ever committed any actions amounting to the same, viz.:

7. Furthermore, complainants' allegation that I withheld the release of the remittance[s] in order to force the complainants to authorize the assumption into office of the other group is a brazen lie. Such averment is not only a product of their polluted mind but runs counter to the attending circumstances. Clear is the ground that the remittances were held in abeyance pending resolution of the conflicting claims of the two contending parties.

8. Neither is complainants' allegation true with respect to their statement that I insisted, intimidated and compelled the Board of Trustees to sign a resolution declaring me as a trustee vice F/CSupt. Ruben F. Bearis. Firstly, I did not even insinuate, much more [sic] compel, intimidate or insist to be declared trustee together with the complainants. It is highly improbable considering the fact that there is a pending legal question as to who [sic] or which group is the legitimate officers of the BFPMBAI. Secondly, the issuance of the alleged resolution should not be attributed to me because I have no personal knowledge as to what transpires in their circle. The supposed Resolution No. 13-04 was issued without my knowledge and thirdly, the said resolution is self-serving. Worthy to note also is the fact that the alleged Resolution was issued on 08 March 2013, after our 05 March 2013 meeting when we came up with a solution to address the association's problem. Clearly, it was the complainants who had a change of heart and eventually reneged on their commitment to honor the Status Quo Ante Order issued by the COMELEC. For all we know, the issued resolution was resorted to by the herein complainants to implicate me some way or another, as they have done in the instant case.^[43]

- 6) Overall, private respondent sought public respondent's dismissal of all the charges filed against him—both criminal and administrative.^[44]

Rulings of public respondent

After further consideration of the Position Papers of both petitioners (and their fellow complainants)^[45] and private respondent,^[46] public respondent promulgated its Joint Resolution^[47] dated June 20, 2014 with the following dispositive portion:

WHEREFORE, both the criminal and administrative charges against F/CSUPT. CARLITO S. ROMERO are **DISMISSED**.

SO ORDERED.^[48]

Public respondent gave the following reasons:

The Election Rules and Regulations of the BFPMBAI states [sic] that the "winning

candidates, their election being final and immediately executory after due certification by the Committee on Elections, will be announced and will be inducted into office immediately by the Comelec Chairman.” Here, there was no certification and induction of the winning candidates because a *status quo ante* order was issued by the COMELEC taking note that only 167 out of 3,007 members attended the General Assembly coupled with the issue on [sic] whether the Presiding Officer could cast the votes of the 2,840 absent members. Such being the case, it was then apparent that a legal controversy indeed existed as to who should be recognized as the legitimate Board of Trustees of the Association. Corollary thereto, is the issue of who should be entitled to receive the remittances from the BFP. Given this scenario, respondent was justified in withholding the release of remittances and instead filing a case for Interpleader because it is one of the remedies provided under the law. It only shows that he recognized the jurisdiction of the courts in settling the dispute between the contending officers, which issue was beyond his power to decide. As the Officer-in-Charge of the BFP and as a member of BFPMBAI, respondent was duty-bound to protect the interest of the members and ensure that the remittances will go to the proper parties. Taking into account that the complaint in Interpleader, together with the main case filed by the contending sets of Trustees, are now pending trial before Branch 80, Regional Trial Court of Quezon City, any issue arising therefrom especially on the propriety of releasing the remittances is already covered by the *sub judice* rule.

Moreover, complainants failed to satisfactorily show that respondent was motivated by ill will in withholding the remittances since he did not benefit from the money withheld by the BFP. In fact, as certified by the BFP Chief Accountant, Gina H. Gonzales, the cash allocation intended for the monthly remittances of BFPMBAI Contribution and Salary Loan Deductions from January to June 2013 were reverted to the Bureau of [the] Treasury.^[49]

Petitioners and their fellow complainants duly filed their Motion for Reconsideration^[50] relative to the aforementioned dismissal, which had three main arguments:

Private respondent's proper recourse *vis-à-vis* the BFPMBAI election was actually an intra-corporate controversy cognizable before the appropriate RTC. Since no intra-corporate controversy was filed by private respondent or anyone from his camp within 15 days from the election on June 30, 2012 (in accordance with Rule 6, Section 3^[51] of A.M. No. 01-2-04-SC [dated 13 March 2001], otherwise known as

- 1) the Interim Rules of Procedure for Intra-Corporate Controversies), petitioners and their fellow complainants assert that they are the legitimate Board of Trustees of BFPMBAI, and thus, private respondent had no valid ground to withhold the remittances. Moreover, even if there was doubt as to their legitimacy as the rightful Board of Trustees of BFPMBAI, the association itself has a legal personality separate and distinct from its governing board.^[52]

Private respondent had previously secured a loan from BFPMBAI while it was being managed by petitioners and their fellow complainants, as evidenced by private respondent's Loan Application Form^[53] dated August 3, 2012 for the

- 2) amount of P250,000.00 (and approved on behalf of the BFPMBAI Board of Trustees by F/Dir. Collado). Petitioners and their fellow complainants thus, essentially argued, that this was an admission against private respondent's own interest.^[54]

The remittances due BFPMBAI are actually already property of BFPMBAI members, which could no longer be withheld and reverted back to the Bureau of the Treasury by BFP. Private respondent thus, had no legal grounds for his actions in stopping their payment.^[55]

- 3)

In its Joint Order^[56] dated December 21, 2015, public respondent denied the said Motion for Reconsideration, *viz.*:

WHEREFORE, complainants' Motion for Reconsideration is **DENIED**. Accordingly, the *Joint Resolution* dated June 20, 2014 **STANDS**.

SO ORDERED.^[57]

Public respondent reasoned that private respondent's filing of the Complaint-in-Interpleader was appropriate considering the circumstances, and that its ultimate goal was "not intended to challenge a Board member's claim to an elective office, but rather to ascertain which set of BFPMBAI Board of Trustees was legitimately entitled to receive the payroll deductions of its members."^[58] Aggrieved, Petitioners went on direct recourse to this Court *via* the instant original Petition for *Certiorari*.^[59]

Arguments of the Parties

Petitioners (who are only three of the original complainants) put forth the following submissions in support of their theory that public respondent erred in dismissing all charges against private respondent:

In reiteration of their first argument before public respondent in their Motion for Reconsideration below, petitioners assert that private respondent never questioned the election of their camp as the rightful and legitimate Board of Trustees of BFPMBAI with the proper intra-corporate controversy before the appropriate RTC, and thus, their supposed election could no longer be questioned. Hence, private respondent had no legal grounds to order the stoppage of payments *vis-à-vis* the remittances due BFPMBAI. Moreover, any doubt as to their legitimacy as the rightful Board of Trustees of BFPMBAI was irrelevant given the separate and distinct legal personality of BFPMBAI from its Board of Trustees. Petitioners thus mean that the remittances would go to BFPMBAI as an institution, and not just into the hands of its Board of Trustees.^[60]

1) In relation to the aforementioned, private respondent thus, could no longer validly file the Complaint-in-Interpleader now under the jurisdiction of RTC-Quezon City (Branch 80). Said case could not be a substitute for the intra-corporate controversy/election contest that private respondent should have filed. Moreover, petitioners reiterate private respondent's supposed admission and recognition of their authority as the Board of Trustees of BFPMBAI through his loan application from the association in 2012.^[61]

2) Relative to the legal nature of the remittances due BFPMBAI, petitioners again raise their theory that the same is already private property rightfully pertaining to BFPMBAI members once they have been placed at their disposal, *i.e.*, deposited into their automated teller machine accounts with Land Bank of the Philippines. Thus, private respondent had no legal ground to stop their payment as agreed under the MOA between BFP and BFPMBAI.^[62]

3) In his Comment,^[63] private respondent counter-asserts that public respondent committed neither any reversible error nor any grave abuse of discretion when it rendered its rulings dismissing both the criminal and administrative charges against him. Private Respondent also points out the crucial fact that the BFPMBAI COMELEC never proclaimed any winners relative to the elections held on June 30, 2012, and instead of certifying any winner thereto, said committee issued its "*status quo ante* order." Due to this unresolved electoral controversy, and the resulting separate sets of BFPMBAI officers and trustees, private respondent was compelled to act accordingly by ordering the stoppage of remittances and filing the Complaint-in-Interpleader. Due to his recognition of the jurisdiction of the

appropriate court over the legal question of which set of officers and/or trustees would rightly be entitled to administer BFPMBAI's finances and receive the remittances, private respondent insists that he was acting on behalf of the interests of both BFP (as its Officer-in-Charge) and BFPMBAI (as a member). Moreover, there was no showing of any ill will on his part relative to the stoppage of payment of the said remittances. He prays that the instant petition should thus accordingly be dismissed.^[64]

In its Manifestation and Motion^[65] filed by the Office of the Solicitor General, public respondent respectfully submits that it need not participate further in the proceedings of instant Petition pursuant to Rule 65, Section 5^[66] of the 1997 Rules of Court. Since Public Respondent is merely a nominal party, it should be excused from being required to file a comment. The Court noted and granted public respondent's request *via* its Resolution^[67] dated August 1, 2018.

In their Reply,^[68] Petitioners reiterate their stance that public respondent committed grave abuse of discretion when it rendered its rulings dismissing all charges against private respondent—despite the “presence of overwhelming evidence”^[69] against the latter. They add to their submission their recent discovery of the supposed influence, partiality, personal bias, and strong connections of former Deputy Ombudsman for the Military & Other Law Enforcement Offices Cyril E. Ramos (Deputy Ombudsman Ramos) relative to the case,^[70] *viz.:*

9. True to their words and to our surprise, we discovered that the incumbent Deputy Ombudsman for the MOLEO in the person of ATTY. CYRIL E. RAMOS, was a former financial consultant of respondent Romero during the time when the latter was the Officer-in-Charge of the BFP. It may be well to emphasize that the administrative and criminal charges subject of this petition were filed before the Office of the Deputy Ombudsman for the MOLEO. In this case[,] where personal connection and influence exists between private respondent Romero and Deputy Ombudsman Ramos, herein petitioners were not surprised why it favoured respondent Romero despite the presence of overwhelming evidence against him. Copy of the SERVICE AGREEMENT^[71] between respondent Romero and ATTY. CYRIL E. RAMOS dated 02 September 2013 is hereto attached and marked as ANNEX L;^[72]

In effect, petitioners offer no new arguments aside from the alleged bias and supposedly

inappropriate connection between former Deputy Ombudsman Ramos and Private Respondent during the pendency of proceedings before Public Respondent.

Issue before the Court

The sole issue for the Court's consideration here is whether or not public respondent committed grave abuse of discretion in dismissing both the criminal and administrative charges filed against private respondent.

The Ruling of the Court

The Court rules in the negative, and accordingly, the instant petition must be dismissed for lack of merit.

At the outset, the Court first must note that public respondent's dismissal of the administrative charges against private respondent *vis-à-vis* Case No. OMB-P-A-13-0310 has already attained finality. This is because petitioners cannot seek direct recourse from the Court relative to public respondent's said dismissal, which is only applicable to the criminal aspect of public respondent's rulings. The Court had already clarified in *Joson v. Office of the Ombudsman*^[73] that the proper remedy to assail the complete exoneration or absolution of a respondent in an administrative case decided by the Ombudsman is to file an original petition for *certiorari* before the ***Court of Appeals***.^[74] Thus, the Court lacks jurisdiction to touch upon the administrative aspect of public respondent's rulings here.

With regard to the criminal aspect of public respondent's rulings *vis-à-vis* Case No. OMB-P-C-13-0269, the Court is reminded of its fairly recent ruling in *Yatco v. Office of the Deputy Ombudsman for Luzon*,^[75] which reiterated the jurisprudential lineage summed up in *Gatchalian v. Office of the Ombudsman*^[76] relative to the Court's own and proper jurisdiction over original petitions for *certiorari* to assail the Ombudsman's rulings in criminal cases involving findings of probable cause (or lack thereof). The Court also clarified in the remedies available to a party wishing to question a consolidated ruling of the Ombudsman (*i.e.*, which disposed of both criminal and administrative aspects of a case), *viz.*:

As consolidation is a matter for the court to determine post-filing, it does not affect the nature of the procedural recourse taken by the aggrieved party. Here, when the Ombudsman consolidated the criminal and administrative charges against respondents, it deemed it proper to resolve both criminal and

administrative aspects in one Joint Resolution because the charges involved common questions of fact or law. Ordinarily, administrative and criminal charges filed before the Ombudsman would usually pertain to one incident involving the same set of facts and parties, from which both criminal and administrative liabilities may stem. This gives rise to their consolidation. However, after the Ombudsman renders its consolidated ruling, the aggrieved party is then required to take the appropriate procedural remedies to separately assail the administrative and criminal components of the same. Clearly, a Rule 65 *certiorari* petition (which is the proper remedy to assail the criminal aspect of the Ombudsman ruling; or the administrative aspect of an unappealable Ombudsman ruling) is clearly different from a Rule 43 appeal (which is the proper remedy to assail the administrative aspect of an appealable ruling).^[77]

Thus, the Court only has jurisdiction over the instant Petition *vis-à-vis* its criminal aspect. In other words, the Court now presently considers the sole issue proper, *i.e.*, whether or not Public Respondent committed grave abuse of discretion in finding no probable cause to charge private respondent for violation of Sections 3(e) and 3(f) of R.A. No. 3019, as well as Article 286 of the RPC.

The Court's jurisdiction to review and check any grave abuse of discretion relative to the prosecutorial powers of the Ombudsman is circumscribed by jurisprudential precedent that affirms constitutional and legislative fiat. In *Casing v. Ombudsman*,^[78] the Court expounded thus:

The Constitution and R.A. No. 6770 endowed the Office of the Ombudsman with wide latitude, in the exercise of its investigatory and prosecutory powers, to pass upon criminal complaints involving public officials and employees. Specifically, the determination of whether probable cause exists is a function that belongs to the Office of the Ombudsman. Whether a criminal case, given its attendant facts and circumstances, should be filed or not is basically its call.

As a general rule, the Court does not interfere with the Office of the Ombudsman's exercise of its investigative and prosecutorial powers, and respects the initiative and independence inherent in the Office of the Ombudsman which, "beholden to no one, acts as the champion of the people and the preserver of the integrity of the public service." While the Ombudsman's

findings as to whether probable cause exists are generally not reviewable by this Court, where there is an allegation of grave abuse of discretion, the Ombudsman's act cannot escape judicial scrutiny under the Court's own constitutional power and duty "to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."

Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner — which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law — in order to exceptionally warrant judicial intervention.^[79] (Citations omitted)

Verily, the Court must now determine if public respondent rendered its rulings in gross contradiction to established law and jurisprudence.

In *Tupaz v. Office of the Deputy Ombudsman for the Visayas*,^[80] restated the elements of a violation of Section 3(e) of the Anti-Graft & Corrupt Practices Act: "(1) the offender is a public officer; (2) the act was done in the discharge of the public officer's official, administrative or judicial functions; (3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and (4) the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference."^[81] From the facts as established in the proceedings below before public respondent, the Court finds both the third and fourth element severely lacking.

It is an established fact that private respondent indeed ordered the stoppage of payment of remittances due BFPMBAI due to the latter's election controversy and resulting two sets of trustees. And on its face, private respondent's authority to do so seems to be suspect. Even the President's own power with regard to the same under Book VI, Chapter 5, Section 38 of Executive Order No. 292 (s. 1987), otherwise known as the Administrative Code of 1987, is statutorily circumscribed, viz:

SECTION 38. *Suspension of Expenditure of Appropriations.* – Except as otherwise provided in the General Appropriations Act and whenever in his judgment the public interest so requires, the President, upon notice to the head of office

concerned, is authorized to suspend or otherwise stop further expenditure of funds allotted for any agency, or any other expenditure authorized in the General Appropriations Act, except for [personnel] services appropriations used for permanent officials and employees. (Underscoring supplied)

Given that remittances to associations such as BFP-MBAI are authorized deductions under any General Appropriations Act that are chargeable to appropriations for personnel services, private respondent seems to have lacked the proper authority to issue his Memorandum ordering the said stoppage. Moreover, relative to his filing of the Complaint-in-Interpleader, said case would have necessitated the consignment of the amounts corresponding to the remittances that should have been released to BFPMBAI, in accordance with Articles 1256^[82] and 1258^[83] of R.A. No. 386, otherwise known as the Civil Code of the Philippines. But Private Respondent really had no right of disposal over the said funds after they were reverted to the Bureau of the Treasury. This is because Book VI, Chapter 4, Section 28^[84] of the Administrative Code of 1987 requires subsequent legislative enactment for the expenditure of unexpended balances of appropriations that have been reverted to the unappropriated surplus of the General Fund—which is managed by the Bureau of the Treasury.

Despite the foregoing, the Court fails to see any manifest partiality, evident bad faith, or gross inexcusable negligence on the part of private respondent, as well as any undue injury or unwarranted benefits here. Private respondent may have been misguided or in ignorance of the finer points of the law regarding the appropriation and expenditure of public funds, but his actions belie his actual intent to protect the interests of both BFP and BFPMBAI. In ordering the stoppage of payment of the remittances, Private respondent was motivated by his assessment that the remittances would in all likelihood be the subject of mishandling due to the conflicting sets of trustees. This is also the motivation behind his filing of the Complaint-in-Interpleader, despite the seeming impossibility of consigning the remittance amounts. And to ensure that BFPMBAI members would not be unduly burdened, private respondent met with insurance providers such as Fortune Life in order to work out the uninterrupted processing of BFPMBAI members' insurance claims during the pendency of the interpleader case.

It is true and obvious that private respondent belongs to the rival camp *vis-à-vis* Petitioners and their fellow complainants below, and one can easily surmise as to the camps' likely animosity towards each other. Absent any concrete proof of private respondent's manifest

partiality, evident bad faith, or gross inexcusable negligence relative to his actions on the remittances, one cannot adduce anything that points to private respondent's criminal intent. As the Court stated in *Suba v. Sandiganbayan*,^[85] "[s]ince bad faith entails deliberate intent on the part of the accused to do wrong or to cause damage, it must be shown that the accused was spurred by corrupt motive."^[86] Elucidating further,

Jurisprudence instructs that bad faith referred to under Section 3(e) of RA No. 3019 does not simply connote bad judgment or negligence but of having a palpably and patently fraudulent and dishonest purpose to do some moral obliquity or conscious wrongdoing for some perverse motive, or ill will. It connotes a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes. It is a breach of sworn duty through some motive or intent or ill will and partakes of the nature of fraud.

In *People v. Bacaltos*, we explained that bad faith *per se* is not enough for one to be held criminally liable for violation of Section 3(e) of R.A. No. 3019. Bad faith must be evident and must partake the nature of fraud. That is, it is a manifest[ly] deliberate intent on the part of the accused to do wrong or to cause damage.^[87] (Citations omitted)

Moreover, there appears to be nothing in the record that crucially points to how petitioners, their fellow complainants below, BFPMBAI, or any of the latter's members were subjected to any undue injury here. Petitioners' bare allegations that BFPMBAI was put on the verge of financial collapse lack any substantial evidence, and assertion that BFPMBAI's members were already entitled to the deductions to be remitted is belied by the very case they invoke: the Court in *Tiro v. Hontanosas*^[88] specifically ruled that "[t]he salary check of a government officer or employee such as a teacher does not belong to him before it is physically delivered to him. Until that time the check belongs to the government. Accordingly, before there is actual delivery of the check, the payee has no power over it; he cannot assign it without the consent of the Government."^[89] Since BFP withheld the payment of the remittances—which actually never reached the Land Bank accounts of BFPMBAI members, contrary to what petitioners assert—the said amounts were not yet their personal property, and they were thus without any injury as yet.

Neither is there any showing here that private respondents accorded any unwarranted benefit, advantage, or preference^[88] to any party, much less himself. As is clear from the facts,

all the unremitted remittances reverted back to the control and disposition of the Bureau of the Treasury. Petitioners did not even allege that private respondent misappropriated or pilfered the said amounts. No disadvantage or preference is also present here, since there is an extant interpleader case that will determine in the first instance which set of BFPMBAI trustees will be entitled to administer and receive the remittances.

Going now to the second criminal charge, *Lacap v. Sandiganbayan*^[90] restates the elements of a violation of Section 3(f) of R.A. No. 3019, viz: “(1) The offender is a public officer; (2) The said officer has neglected or has refused to act without sufficient justification after due demand or request has been made on him; (3) Reasonable time has elapsed from such demand or request without the public officer having acted on the matter pending before him; and (4) Such failure to so act is for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage in favor of an interested party, or discriminating against another.”^[91] Again, the Court finds that there is no sufficient evidence on record to hold private respondent to account for such a charge.

From the facts, it is clear that the fourth element of the supposed crime is lacking. Petitioners and their fellow complainants below submitted bare allegations before public respondent that private respondent held the remittances “hostage” in return for either of the following: the ousting of the entire set of BFPMBAI trustees composed of petitioners and their fellow complainants, the recognition of Private Respondent as the legitimate chairperson of the BFPMBAI Board of Trustees, or even the issuance of BFPMBAI Board of Trustees’ Resolution No. 13-04 (which effectively gave private respondent and his camp a trustee seat). But these are just that: bare allegations unsubstantiated by any evidence of private respondent’s alleged actions that either compelled, intimidated, or blackmailed Petitioners and their fellow Complainants. Petitioners did not even present a transcript or record of the conversations they and their fellow complainants below had with private respondent immediately after the stoppage of payment. Again, and similar to the charge of violating Section 3(e) of R.A. No. 3019, there is no evidence on record pointing to any pecuniary or material benefit that private respondent received on account of his order to stop the payment of the remittances. Mere inferences and conjectures as to the on-upmanship between the two electoral camps will not suffice for purposes of finding probable cause here.

As to the charge against private respondent for violation of Article 286 of the RPC, *Sy v. Secretary of Justice*,^[92] outlines the elements of the crime of Grave Coercion, viz.: “1) that a

person is prevented by another from doing something not prohibited by law, or compelled to do something against his will, be it right or wrong; 2) that the prevention or compulsion is effected by violence, threats or intimidation; and 3) that the person who restrains the will and liberty of another has no right to do so, or in other words, that the restraint is not made under authority of law or in the exercise of any lawful right.”^[93] Again, there is no evidence on record of any violence, threats, or intimidation on the part of private respondent save for their bare and unsubstantiated allegations. Even BFPMBAI Board of Trustees’ Resolution No. 13-04 has no extrinsic reference to any concrete action on the part of private respondent’s supposed demands for its issuance. Absent this, the criminal charge for grave coercion against private respondent—as outlined in the Complaint-Affidavit by mere imputation—breeds in the mind no probable cause for his indictment.

All in all, the Court finds no grave abuse of discretion on the part of public respondent due to the sheer absence of any evidence on record that would warrant a finding of probable cause to indict private respondent for the aforementioned criminal offenses. Petitioners carried the burden to prove that public respondent’s findings were tainted with capricious, whimsical, or even arbitrary jurisdictional error, but they failed to discharge said burden. As the Court ruled in *Arroyo v. Sandiganbayan*,^[94] “[m]ere disagreement with the Ombudsman’s findings is not enough reason to constitute grave abuse of discretion. Petitioner must show that the preliminary investigation was conducted in such a way that amounted to a virtual refusal to perform the duty enjoined by law.”^[95] With no exceptional showing of such alleged grave abuse of discretion here, the Court reverts to its policy of non-interference and respect *vis-à-vis* public respondent’s executive power to determine the existence of probable cause in preliminary investigations involving public officials. Thus, public respondent’s rulings relative to the dismissal of the criminal charges against private respondent must stand and remain unassailed.

On a penultimate note relative to private respondent’s Complaint-in-Interpleader, the Court refrains from passing any judgment thereon due to the pendency of proceedings before RTC-Quezon City (Branch 80)—the termination or finality of which has not been manifested before the Court. The Court, thus, cannot make a ruling as to whether or not private respondent was already barred from filing the same due to his supposed failure to question the election controversy through an intra-corporate controversy as insisted by petitioners. But said issue is actually irrelevant to the present petition, since the Court merely focuses on the intent behind private respondent’s filing of the said Complaint-in-Interpleader *vis-à-vis* the criminal aspect of the charges against him. As stated above, the Court finds that public respondent did not commit any grave abuse of discretion in dismissing the criminal

aspect of the said charges, since its rulings do not deviate from standing law and jurisprudence.

Lastly, as to the matter of petitioners' belated allegation that former Deputy Ombudsman Ramos had a hand in public respondent's resolution of the Complaint-Affidavit, the Court takes a stern view against such an unsubstantiated charge. While it is of judicial notice that he was appointed to be Deputy Ombudsman on May 6, 2014, *i.e.*, just over a month before public respondent promulgated its Joint Resolution, Deputy Ombudsman Ramos' name appears nowhere in the record—save for in Petitioner's Reply. He is not a signatory to both the Joint Resolution and Joint Order of Public Respondent *vis-à-vis* the case, and even if he was contracted as a financial consultant of BFP during the height of controversy (*i.e.*, on September 2, 2013 as stated in his Service Agreement,^[96] there is again no concrete proof on record of his alleged influence and bias that resulted in the dismissal of the Complaint-Affidavit (such as any official communications or papers signed or authored by former Deputy Ombudsman Ramos in his capacity as a BFP financial consultant). The Court sees fit to warn petitioners and their counsel against putting forth such unverified assertions in pleadings before any tribunal in the future.

WHEREFORE, the instant original Petition for *Certiorari* is hereby **DISMISSED** for lack of merit.

SO ORDERED.

Inting, Dimaampao, and Singh, JJ., concur.

Caguioa (Chairperson), J., see concurring opinion.

^[1] *Rollo*, pp. 3-25.

^[2] *Id.* at 26-39; penned by Graft Investigation and Prosecution Officer II Lyn L. Llamasares, with the recommending approval of Director Dennis L. Garcia and Ombudsman Conchita Carpio Morales.

^[3] *Id.* at 40-43; penned by Graft Investigation and Prosecution Officer Patricia C. Milla, with the recommending approval of Director Dennis L. Garcia and Ombudsman Conchita Carpio Morales.

^[4] *Id.* at 49-59.

^[5] Fire Deputy Director General Rogelio F. Asignado (Ret.), Fire Directors Jose E. Collado (Ret.) and Rolando M. Bandilla, Jr., Fire Superintendent Wilberto Rico Neil A. Kwan Tiu, Fire Senior Inspectors Robert J. Bana-Ag, Ernesto S. Pagdanganan, Jenny F. Oasay and Lucilyn B. Saylon, and Fire Inspector Janet J. Germinal.

^[6] *Rollo*, p. 49.

^[7] *Id.* at 131-135.

^[8] *Id.* at 50-51.

^[9] *Id.* at 52.

^[10] *Id.* at 141.

^[11] *Id.*

^[12] *Id.* at 142.

^[13] *Id.*

^[14] *Id.* at 60-61.

^[15] *Id.* at 71-73.

^[16] *Id.* at 73.

^[17] *Id.* at 52.

^[18] *Id.* at 143.

^[19] *Id.*

^[20] *Id.* at 53-54.

^[21] *Id.* at 144.

^[22] *Id.* at 54.

^[23] *Id.*

^[24] *Id.* at 54-55.

^[25] *Id.* at 55.

^[26] Section 3. *Corrupt practices of public officers.* - In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

^[27] (f) Neglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on any matter pending before him for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage, or for the purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party.

^[28] Article 286. *Grave coercions.* - The penalty of *prisión correccional* and a fine not exceeding Six thousand pesos shall be imposed upon any person who, without any authority of law, shall, by means of violence, threats or intimidation, prevent another from doing something not prohibited by law, or compel him to do something against his will, whether it be right or wrong." (As amended by Section 1 of R.A. No. 7890. Note that the updated fine of P100,000.00 as prescribed under Section 72 of R.A. No. 10951 is inapplicable due to the general principle of non-retroactivity of penal statutes.)

^[29] *Rollo*, p. 56.

^[30] *Id.* at 57.

^[31] *Id.* at 60-68.

^[32] *Id.* at 62.

^[33] *Id.* at 74 and 84.

^[34] *Id.* at 84.

^[35] *Id.* at 62-63.

^[36] *Id.* at 75.

^[37] *Id.* at 76-82.

^[38] *Id.* at 80.

^[39] *Id.* at 85-91; penned by Presiding Judge Charito Gonzales.

^[40] *Id.* at 91.

^[41] *Id.* at 83.

^[42] *Id.* at 64.

^[43] *Id.* at 64-65.

^[44] *Id.* at 68.

^[45] *Id.* at 92-112.

^[46] *Id.* at 113-120.

^[47] *Id.* at 26-39.

^[48] *Id.* at 38.

^[49] *Id.* at 37-38.

^[50] *Id.* at 121-129.

^[51] SEC. 3. *Complaint.* - In addition to the requirements in section 4, Rule 2 of these Rules, the complaint in an election contest must state the following:

1. The case was filed within fifteen (15) days from the date of the election if the by-laws of the corporation do not provide for a procedure for resolution of the controversy, or within fifteen (15) days from the resolution of the controversy by the corporation as provided in its by-laws; and

2. The plaintiff has exhausted all intra-corporate remedies in election cases as provided for in the by-laws of the corporation.

^[52] *Rollo*, p. 123.

^[53] *Id.* at 138.

^[54] *Id.* at 125-126.

^[55] *Id.* at 126-127.

^[56] *Id.* at 40-43.

^[57] *Id.* at 42.

^[58] *Id.* at 41-42.

^[59] *Id.* at 3-25.

^[60] *Id.* at 11-13.

^[61] *Id.* at 13-14.

^[62] *Id.* at 14.

^[63] *Id.* at 162-167.

^[64] *Id.* at 163-165.

^[65] *Id.* at 168-171.

^[66] Section 5. *Respondents and costs in certain cases.* – When the petition filed relates to the acts or omissions of a judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person, the petitioner shall join, as private respondent or respondents with such public respondent or respondents, the person or persons interested in sustaining the proceedings in the court; and it shall be the duty of such private respondents to appear and defend both in his or their own behalf and in behalf of the public respondent or respondents affected by the proceedings, and the costs awarded in such proceedings in favor of the petitioner shall be against the private respondents only, and not against the judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person impleaded as public

respondent or respondents.

Unless otherwise specifically directed by the court where the petition is pending, the public respondent shall not appear in or file an answer or comment to the petition or any pleading therein. If the case is elevated to a higher court by either party, the public respondents shall be included therein as nominal parties. However, unless otherwise specifically directed by the court, they shall not appear or participate in the proceedings therein.”

^[67] *Rollo*, pp. 193-194.

^[68] *Id.* at 184-187.

^[69] *Id.* at 185-186.

^[70] *Id.* at 186.

^[71] *Id.* at 188-189.

^[72] *Id.* at 186.

^[73] 784 Phil. 172 (2016).

^[74] *Id.* at 189.

^[75] **G.R. No. 244775**, July 6, 2020.

^[76] 838 Phil. 140 (2018).

^[77] **Yatco v. Office of the Deputy Ombudsman for Luzon** *supra*.

^[78] 687 Phil. 468 (2012).

^[79] *Id.* at 475-476.

^[80] **G.R. Nos. 212491-92**, March 6, 2019.

^[81] *Id.* citing **Ampil v. Office of the Ombudsman**, 715 Phil. 733, 755 (2013).

^[82] Article 1256. If the creditor to whom tender of payment has been made refuses without just cause to accept it, the debtor shall be released from responsibility by the consignment of the thing or sum due.

Consignation alone shall produce the same effect in the following cases:

- (
1 When the creditor is absent or unknown, or does not appear at the place of
) payment;
- (
2 When he is incapacitated to receive the payment at the time it is due;
)
- (
3 When, without just cause, he refuses to give a receipt;
)
- (
4 When two or more persons claim the same right to collect;
)
- (
5 When the title of the obligation has been lost.
)

^[83] Article 1258. Consignation shall be made by depositing the things due at the disposal of judicial authority, before whom the tender of payment shall be proved, in a proper case, and the announcement of the consignation in other cases.

^[84] Section 28. *Reversion of Unexpended Balances of Appropriations, Continuing Appropriations.* - Unexpended balances of appropriations authorized in the General Appropriation Act shall revert to the unappropriated surplus of the General Fund at the end of the fiscal year and shall not thereafter be available for expenditure except by subsequent legislative enactment: *Provided*, that appropriations for capital outlays shall remain valid until fully spent or reverted: *Provided, further*, that continuing appropriations for current operating expenditures may be specifically recommended and approved as such in support of projects whose effective implementation calls for multi-year expenditure commitments: *Provided, finally*, that the President may authorize the use of savings realized by any agency during a given year to meet non-recurring expenditures in a subsequent year.

The balances of continuing appropriations shall be reviewed as part of the annual budget preparation process and the preparation process [sic] and the President may approve upon recommendation of the Secretary, the reversion of funds no longer needed in connection with the activities funded by said continuing appropriations.

^[85] **G.R. No. 235418**, March 3, 2021.

^[86] *Id.* Citing **Republic of the Philippines v. Hon. Desierto**, 516 Phil. 509, 516 (2006).

^[87] **Suba v. Sandiganbayan**, *supra* note 85.

^[88] 211 Phil. 47 (1983).

^[89] *Id.* at 48.

^[90] 811 Phil. 441 (2017).

^[91] *Id.* at 453.

^[92] 540 Phil. 111 (2006).

^[93] *Id.* at 117; citing **People v. Astorga**, G.R. 347 Phil. 701, 720 (1997).

^[94] **G.R. No. 210488**, January 27, 2020.

^[95] *Id.*

^[96] *Rollo*, pp. 188-189.

CONCURRING OPINION

CAGUIOA, J.:

Before the Court is a Petition for *Certiorari* (Petition), challenging the Joint Resolution dated June 20, 2014 and Joint Order dated December 21, 2015 of the Office of the Ombudsman (OMB), dismissing the complaint against respondent F/CSupt. Carlito S. Romero (Romero) for violation of Section 3(e) and Section 3(f) of Republic Act (R.A.) No. 3019, and for Grave Coercion punishable under Article 286 of the Revised Penal Code.

The complaint against Romero stemmed from his act of temporarily holding in abeyance the remittance of the salary deductions from the Bureau of Fire Protection (BFP) personnel to the BFP-Mutual Aid and Beneficiary Association, Inc. (BFP-MBAI). The *ponencia* dismisses the petition for lack of merit and upholds the OMB's finding that there is no probable cause to hold Romero criminally liable for the offenses stated in the complaint.^[1]

I concur.

Probable cause exists when the facts are sufficient to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof. It is determined on the reasonable likelihood that the elements of the crime charged are present.^[2] As the *ponencia* aptly holds, Romero’s conduct — in temporarily halting the remittance of the employee dues — is not tantamount to a crime. I respectfully submit this Concurring Opinion to expound on my reasons for agreeing with the dismissal of the Petition, as well as to emphasize the Court’s authority to make a definitive determination of lack of probable cause.

I.

*The OMB’s exoneration of Romero
from the administrative charges
against him has attained finality*

Before ruling on the merits of the Petition, the *ponencia* discusses the remedies from the decisions of the OMB concerning administrative disciplinary cases and criminal cases. The *ponencia* holds that the administrative charges against Romero (*i.e.*, Case No. OMB-P-A-13-0310) had already attained finality. It further rules that the Court’s review is limited to the criminal aspect of the OMB’s assailed Joint Resolution.^[3]

While this is correct, the difference between resorting to Rule 43 and Rule 65 of the Rules of Court in administrative disciplinary cases is worth emphasizing. As well, it is significant to highlight the distinction between the remedies for an administrative and criminal case, as resorting to the improper recourse ultimately affects the finality of the decision sought to be reversed or nullified.

I expound.

In *Yatco v. Office of the Deputy Ombudsman for Luzon*^[4] (*Yatco*), the Court clarified the procedural recourse for the criminal and administrative aspects of cases decided by the OMB, to wit:

With respect to administrative charges, there is a delineation between appealable and unappealable Ombudsman rulings. Pursuant to Section 27 of the Ombudsman Act, any order, directive or decision of the Ombudsman “imposing the penalty of public censure or reprimand, [or] suspension of not more than one (1) month’s salary shall be final and unappealable.” Case law has

explained that Ombudsman rulings which exonerate the respondent from administrative liability are, by implication, also considered final and unappealable. In these instances, the Court has ruled that even though such rulings are **final and unappealable**, it is still subject to judicial review on the ground of grave abuse of discretion, and the correct procedure is to file a **petition for certiorari under Rule 65 of the Rules of Court before the CA**.

In contrast, in cases where the respondent is not exonerated and the penalty imposed is not merely public censure or reprimand, or suspension of not more than one (1) month's salary, the Ombudsman's decision is appealable, and the proper remedy is to file an **appeal under Rule 43 of the Rules of Court before the Court of Appeals**. x x x

x x x x

Meanwhile, with respect to **criminal charges**, the Court has settled that the remedy of an aggrieved party from a **resolution of the Ombudsman finding the presence or absence of probable cause** is to file a **petition for certiorari under Rule 65 of the Rules of Court** and the petition should be filed not before the CA, but before the **Supreme Court**.^[5] (Emphasis in the original)

Verily, as to the administrative aspect of the case, the aggrieved party does not have the option of freely resorting to either Rule 43 or Rule 65 of the Rules of Court, in order to challenge the OMB's findings. When the OMB's ruling is final and unappealable — as when the respondent is exonerated, publicly censured or reprimanded, or suspended for not more than one month's salary — the only available recourse is a special civil action for *certiorari* under Rule 65 filed with the Court of Appeals (CA).

Furthermore, these remedies apply even when the OMB renders a consolidated ruling on both the administrative and criminal aspect of the case. The *ponencia* thus aptly quoted the Court's ruling in *Yatco*, to wit:

As consolidation is a matter for the court to determine post-filing, it does not affect the nature of the procedural recourse taken by the aggrieved party. Here, when the Ombudsman consolidated the criminal and administrative charges against respondents, it deemed it proper to resolve both criminal and

administrative aspects in one Joint Resolution because the charges involved common questions of fact or law. Ordinarily, administrative and criminal charges filed before the Ombudsman would usually pertain to one incident involving the same set of facts and parties, from which both criminal and administrative liabilities may stem. This gives rise to their consolidation. **However, after the Ombudsman renders its consolidated ruling, the aggrieved party is then required to take the appropriate procedural remedies to separately assail the administrative and criminal components of the same.** Clearly, a Rule 65 *certiorari* petition (which is the proper remedy to assail the criminal aspect of the Ombudsman ruling; or the administrative aspect of an unappealable Ombudsman ruling) is clearly different from a Rule 43 appeal (which is the proper remedy to assail the administrative aspect of an appealable ruling). As held in *Madrigal Transport, Inc. v. Lapanday Holdings*, the special civil action for *certiorari* and appeal are two different remedies that are mutually exclusive. They are different from one another with respect to purpose, manner of filing, subject matter, period of filing, and the need for a prior motion for reconsideration.^[6] (Emphasis and underscoring supplied)

These distinctions are material because non-conformity with the appropriate remedy precludes the aggrieved party from further assailing the corresponding aspect of the OMB's ruling. Thus, in *Joson v. Office of the Ombudsman*,^[7] the Court ruled that the dismissal of the administrative charge had attained finality because therein petitioner failed to file the appropriate remedy. In explaining the appropriate recourse available from the dismissal of the administrative aspect of the complaint, the Court clarified that "the correct procedure is to file **a petition for certiorari before the CA** to question the Ombudsman's decision of dismissal of the administrative charge."^[8]

Here, petitioners F/Dir. Rogelio F. Asignado (Ret.), F/Dir. Jose E. Collado (Ret.), and Cinsp Ernesto S. Pagdanganan (collectively, petitioners) filed the present Petition directly **before the Court** to nullify the OMB's consolidated ruling, which dismissed the administrative and criminal charges against Romero. In their Petition, they pray, not only to set aside the dismissal of the criminal complaint, but to also find "substantial evidence on all the administrative charges against [Romero] thereby imposing upon him the penalty of dismissal from the service."^[9] Thus, following *Yatco* above, petitioners were required "to take the appropriate procedural remedies to **separately** assail the administrative and criminal components"^[10] of the OMB decision.

In other words, petitioners' relief of having the administrative aspect of the assailed OMB resolution reviewed was for them to have filed a petition for *certiorari* under Rule 65 of the Rules of Court before the CA — not a petition for *certiorari* with the Court. **Due to their failure to resort to the proper procedural remedy, the exoneration of Romero from the charge of grave misconduct, conduct prejudicial to the best interest of the service, oppression and grave abuse of authority, had already become final.**

Accordingly, the Court is without any jurisdiction to touch the administrative resolution of the OMB, and as such, the administrative aspect of the case was correctly dismissed.^[11]

II.

The Court's course of action in reviewing the probable cause finding of the Office of the Ombudsman

The Court adopts the policy of non-interference with the OMB's finding of probable cause, including its decision to dismiss complaints without undergoing preliminary investigation. This policy arises out of respect for the constitutionally mandated powers of the OMB, and upon considerations of practicality owing to the myriad functions of the courts.^[12] This rule, however, admits of an exception. Pursuant to the Court's expanded power of judicial review, the Court may pass upon the probable cause finding of the OMB when there is an allegation of grave abuse of discretion, amounting to lack or excess of jurisdiction.^[13]

The Court expounded on its authority to review the OMB's exercise of its prosecutorial powers in *Casing v. Ombudsman*,^[14] to wit:

As a general rule, the Court does not interfere with the Office of the Ombudsman's exercise of its investigative and prosecutorial powers, and respects the initiative and independence inherent in the Office of the Ombudsman which, "beholden to no one, acts as the champion of the people and the preserver of the integrity of the public service." While the Ombudsman's findings as to whether probable cause exists are generally not reviewable by this Court, where there is an allegation of grave abuse of discretion, the Ombudsman's act cannot escape judicial scrutiny under the Court's own constitutional power *and* duty "to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any

branch or instrumentality of the Government.”

Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. **The Ombudsman’s exercise of power must have been done in an arbitrary or despotic manner – which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law – in order to exceptionally warrant judicial intervention.** The petitioner failed to show the existence of grave abuse of discretion in this case.^[15] (Emphasis supplied)

Thus, the Court is not precluded from reviewing the OMB’s findings as to the exercise of its investigative power.

It bears noting that the subject of the herein Rule 65 Petition is the OMB’s conclusion that there is no probable cause to hold Romero criminally liable for violation of Section 3(e) and Section 3(f) of R.A. No. 3019, and for Grave Coercion under the Revised Penal Code. Thus, the preliminary investigation was already conducted, and the OMB had already made a determination that there is no probable cause to indict Romero for the charges against him. In view of petitioners’ allegation that such findings were attenuated with grave abuse of discretion, the Court may, as it did, review whether the preliminary investigation was conducted by the OMB in a capricious and patently arbitrary manner, tantamount to a “virtual refusal to perform a duty under the law.”^[16]

Should the Court find that there was no grave abuse of discretion on the part of the OMB, the appropriate disposition is to dismiss the Petition, as in this case. This is in line with the ultimate purpose of a preliminary investigation – “to secure the innocent against hasty, malicious and oppressive prosecution, and to protect them from an open and public accusation of a crime, from the trouble, expense and anxiety of a public trial.”^[17]

On the other hand, if the OMB is found to have gravely abused its discretion in dismissing the criminal charges, then the proper course of action for the Court is to grant the Petition, set aside the corresponding findings of the OMB, and already direct the filing of the necessary information before the proper court. This is the course of action outlined in *Tupaz v. Office of the Deputy Ombudsman for the Visayas*:^[18]

When, however, “there is an unmistakable showing of grave abuse of discretion on the part of the prosecutor” in declining to prosecute specific persons for specific offenses, a writ of *certiorari* may be issued to set aside the prosecutor’s initial determination.

In *Chua v. Padillo*, this Court sustained the Court of Appeals in granting the respondents’ Petition for *Certiorari* and in ordering the inclusion of the petitioners-siblings Wilson and Renita Chua as accused, along with Wilson’s wife, Marissa Padillo-Chua, in a case of estafa through falsification of commercial documents.

In *Marasigan v. Fuentes*, this Court reversed the Court of Appeals’ dismissal of the private complainant’s Petition for *Certiorari*. It found that it was “grave abuse of discretion for [Department of Justice] Secretary [Agnes VST] Devanadera to conclude that respondent [Robert] Calilan may only be prosecuted for the crime of less serious physical injuries while his co-respondents, [Reginald] Fuentes and [Alain Delon] Lindo, may not be prosecuted at all.” Accordingly, this Court reinstated the previous Resolution issued by Undersecretary Linda Malenab-Hornilla, which “ordered the provincial prosecutor of Laguna to file informations for attempted murder against Fuentes, Calilan, and Lindo.”

Reynes v. Office of the Ombudsman (Visayas) concerned prosecution for illegal exactions as penalized under Article 213 (2) of the Revised Penal Code. This Court found grave abuse of discretion on the part of a graft investigation and prosecution officer who, in evaluating proof that the private respondents collected sums which had precisely been alleged by the complainant to lack legal basis, faulted the same complainant for failing to present an ordinance as proof that the amounts received were “different x x x than those authorized by law.” This Court set aside the Resolution and Order of the Office of the Ombudsman (Visayas) and directed the filing of an information against one (1) of the private respondents.^[19]

To reiterate, the OMB here has concluded that there is no probable cause to hold Romero liable. Such finding was arrived at after the OMB’s investigation, which includes the respective submissions of the parties’ position papers. The Court thus correctly ruled on the issue of whether there is grave abuse of discretion on the part of the OMB — as opposed to

remanding the same back to the OMB for the conduct of a new preliminary investigation — in order to squarely dispose of the case.

III.

The OMB did not gravely abuse its discretion in dismissing the criminal charges against Romero

On the merits, I concur with the *ponencia* that there is no compelling reason to deviate from the policy of non-interference with the OMB's findings.

To recall, the present case stemmed from petitioners' complaint against Romero, who was then the BFP Chief Superintendent and Officer-in-Charge during the time material to the complaint. According to petitioners, Romero should be charged with violating Section 3(e) and Section 3(f) of R.A. No. 3019, and for Grave Coercion under the Revised Penal Code, when he directed the BFP Directorate for Comptrollership to hold in abeyance the remittance of the salary deductions to the BFP-MBAI.^[20] Romero, on the other hand, argued that there was no wrongdoing on his part, as the directive was brought about by concerns regarding the legitimacy of the election of the BFP-MBAI Board of Trustees, there being two groups claiming to have been validly elected to the Board. He insisted that his act was only intended to prudently manage and protect the rights and interests of the BFP-MBAI and its members during the subsistence of the controversy.^[21]

The OMB made a categorical finding that there was no ill will or malice on the part of Romero.^[22] The *ponencia* states that Romero does not have any right of disposal over the remittances due the BFP-MBAI, more so when these were eventually reverted to the Bureau of Treasury.^[23] This notwithstanding, the *ponencia* correctly holds that there is no evidence of manifest partiality, evident bad faith, or gross inexcusable negligence on the part of Romero in temporarily withholding the remittance of the BFP-MBAI contributions. Neither is there any showing that Romero accorded any unwarranted benefit, advantage, or preference to any party, even himself. Verily, the OMB is correct that there is no probable cause to hold him liable for violating Section 3(e) of R.A. No. 3019.^[24]

The *ponencia* further concludes that there is no probable cause to charge Romero with violating Section 3(f) of R.A. No. 3019, and for Grave Coercion. The bare unsubstantiated allegations of petitioners fail to establish that Romero compelled, intimidated, or threatened petitioners by denying the remittance of the employee contributions.^[25]

I agree.

Probable cause is the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he or she was prosecuted. As a preliminary finding, it is not based on clear and convincing evidence of guilt, or on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt. That being said, probable cause demands more than bare suspicion and can never be left to presupposition, conjecture, or even convincing logic.^[26]

In order to justify prosecution, the elements of the crime charged should, in all reasonable likelihood, be present.^[27] Thus, for violation of Section 3(e) of R.A. No. 3019,^[28] there should be a showing that the act caused undue injury to any party, or gave any private party unwarranted benefits, advantages, or preferences, in the discharge of the public officer's functions. It must likewise be established that these were committed through manifest partiality, evident bad faith, or through gross inexcusable negligence.

Here, it does not appear that the BFP-MBAI or its members suffered any injury as a result of the temporary stoppage in the remittance of the salary contributions to the BFP-MBAI. Petitioners did not even allege or provide any specific details as to how the non-remittance of salary contributions inflicted any damage, how it hampered the functions of the association, or how it adversely affected the members. To the contrary, Romero was able to establish that he exhausted all measures to protect the interests of all stakeholders involved. For instance, since the BFP-MBAI provides its members with insurance benefits, Romero, together with several incumbent members of the BFP-MBAI, met with the representatives from Fortune Life Insurance Company, in order to ensure the uninterrupted processing of insurance claims of the BFP-MBAI members during the pendency of the controversy.^[29]

Aside from failing to establish any undue injury or unwarranted benefits, the records also show that Romero's actions were not tainted with any partiality, bad faith, or gross inexcusable negligence. On behalf of the BFP, and in his capacity as its Officer-in-Charge, he also filed an interpleader case against the two groups claiming to be the legitimate trustees of the BFP-MBAI in order to ascertain which set was entitled to receive the payroll deductions of its members. In his complaint, he even prayed to "[order] the deposit of the outstanding remittances of the monthly dues collected so far from its members x x x and [consider] the release thereof to whomever of defendants is entitled to the same."^[30]

In the same manner, as regards the charge of Section 3(f) of R.A. No. 3019,^[31] it cannot likewise be said that Romero neglected or refused to act within a reasonable time on any matter pending before him. Even assuming that there was such neglect or refusal, it cannot be said that there was insufficient justification, **as he endeavored to only ensure that the funds for the BFP-MBAI are managed and disbursed by the persons duly-elected as trustees.**

Finally, with respect to the charge of Grave Coercion,^[32] there is no evidence that Romero prevented petitioners from performing their functions as supposed trustees of the BFP-MBAI. It was not also established that Romero prevented petitioners from assuming their claimed positions as members of the Board of Trustees, or that he prevented them from doing so through violence, threats, or intimidation.

To be sure, the amounts that were withheld did not even redound to Romero's own personal benefit, but were reverted to the Bureau of Treasury.^[33] This material fact belies any imputation of ill will or bad faith on the part of Romero in stopping the remittance of salary contributions. While it may be true that subsequent legislation is necessary in order for these funds to become available for expenditure, this is only an inconvenience that does not, however, rise to a level of a criminal element. Hence, to my mind, this is insufficient to establish probable cause for the criminal charges against Romero. Again, only a clear showing of grave abuse of discretion should warrant interference with the evaluation of the evidence presented before the OMB.

All things considered, I **CONCUR** that petitioners failed to establish that the OMB gravely abused its discretion in dismissing the criminal charges against Romero. Thus, I vote to **DISMISS** the present petition.

^[1] *Ponencia*, pp. 15-19.

^[2] **Non v. Office of the Ombudsman, G.R. No. 239168**, September 15, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67097>>.

^[3] *Ponencia*, pp. 12-14.

^[4] **G.R. No. 244775**, July 6, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66358>>.

^[5] *Id.*

^[6] *Id.*

^[7] 784 Phil. 172 (2016).

^[8] *Id.* at 190-191. Emphasis supplied.

^[9] *Rollo*, p. 21, Petition.

^[10] **Yatco v. Office of the Deputy Ombudsman for Luzon**, *supra* note 4.

^[11] *Ponencia*, pp. 13-14.

^[12] **Trinidad v. Office of the Ombudsman**, 564 Phil. 382, 388 (2007).

^[13] *Id.*

^[14] 687 Phil. 468 (2012).

^[15] *Id.* at 475-476.

^[16] **Republic v. Ombudsman, G.R. No. 198366**, June 26, 2019, 906 SCRA 32, 52.

^[17] **Non v. Office of the Ombudsman**, *supra* note 2.

^[18] **G.R. No. 212491-92**, March 6, 2019, 895 SCRA 294; See also **Non v. Office of the Ombudsman**, *supra* note 2.

^[19] **Tupaz v. Office of the Deputy Ombudsman for the Visayas**, *id.* at 307-308.

^[20] *Ponencia*, p. 4-5.

^[21] *Id.* at 6.

^[22] *Rollo*, pp. 37-38.

^[23] *Ponencia*, p. 16.

^[24] *Id.* at 16-19.

^[25] *Id.* at 19.

^[26] **Vergara v. Ombudsman**, 600 Phil. 26, 44 (2009).

^[27] **Non v. Office of the Ombudsman**, *supra* note 2.

^[28] The elements of Section 3(e) of R.A. No. 3019 are as follows: (1) The accused must be a public officer discharging administrative, judicial or official functions; (2) He or she must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; (3) That his or her action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions. (See **Camp John Hay Development Corp. v. Office of the Ombudsman**, **G.R. No. 225565**, January 13, 2021, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67724>>.)

^[29] *Rollo*, p. 75, BFP Minutes of the Meeting Held on March 14, 2013.

^[30] *Id.* at 80, Complaint-in-Interpleader dated March 21, 2013.

^[31] The elements for Section 3(f) of R.A. No. 3019 are as follows: (1) The offender is a public officer; (2) The said officer has neglected or has refused to act without sufficient justification after due demand or request has been made on him; (3) Reasonable time has elapsed from such demand or request without the public officer having acted on the matter pending before him; and (4) Such failure to so act is for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage in favor of an interested party, or discriminating against another. (See **Camp John Hay Development Corp. v. Office of the Ombudsman**, *supra* note 28)

^[32] The elements of Grave Coercion under Article 286 of the Revised Penal Code are as follows: (1) that a person is prevented by another from doing something not prohibited by law, or compelled to do something against his will, be it right or wrong; (2) that the prevention or compulsion is effected by violence, threats or intimidation; and (3) that the person who restrains the will and liberty of another has no right to do so, or in other words, that the restraint is not made under authority of law or in the exercise of any lawful right. (See **Sy v. Hon. Secretary of Justice**, 540 Phil. 111, 117 (2006))

^[33] *Rollo*, p. 83, BFP Office of the Chief Accountant Certification dated July 16, 2013.

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