

DIGITAL PARADISE, INC., AS REPRESENTED BY FEDERICO EUGENIO, PETITIONER, VS. P/CINSP. JOEL MANUEL APELO ANA, PSI RONNIE L. FAILOGA, PO3 DEMETRIO MANGAOANG PRIETO, JR., AND PO1 SA...

Ponente: LIBREA-LEAGOGO, J.

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LIBREA-LEAGOGO, J.:

Before this Court is a Petition for Review[1] dated 27 September 2013 assailing the Joint Resolution[2] dated 19 July 2012 (approved on 06 September 2012) and Joint Order[3] dated 28 January 2013 (approved on 02 August 2013) of the Office of the Ombudsman (“OMB”, for brevity) in OMB-P-C-11-0784-I (incriminating innocent persons, robbery, grave coercion, trespassing, violation of Section 3(e), Republic Act No. 3019) and OMB-P-A-11-0766-I (grave misconduct).

The dispositive portion of the assailed Joint Resolution reads:

“WHEREFORE, premises considered, it is respectfully recommended that the instant criminal and administrative cases against respondents PCI JOEL MANUEL APELO ANA, PSI RONNIE LAWAD FAILOGA, PO3 DEMETRIO MANGAOANG (sic) and PO1 SAMUEL ESCARIO DONES be DISMISSED.

SO ORDERED.”[4] (Emphasis in the original)

The decretal portion of the assailed Joint Order reads:

“WHEREFORE, the instant Motions for Reconsideration are hereby DENIED. Accordingly, the Joint Resolution dated July 19, 2012, dismissing the above-entitled criminal and administrative complaints, is AFFIRMED.

Let a copy of this Decision be furnished the Secretary, Department of the Interior and Local Government (DILG) and the Chief, Philippine National Police (PNP), for appropriate action.

SO ORDERED.”[5] (Emphasis in the original)

Respondent PO1 Samuel Escario Dones (“Dones”, for brevity) filed his Comment[6] dated 24 February 2014. The rest of the respondents filed their Comment[7] dated 17 March 2014. Per JRD verifications,[8] no reply was filed by petitioner, as per CMIS entry. The fifth paragraph of the Resolution[9] dated 11 February 2014 is reiterated, and the Petition is submitted for decision.

FACTUAL ANTECEDENTS

The instant case stemmed from a Complaint-Affidavit[10] dated 16 September 2011 for two (2) counts of robbery with force upon things, incriminating innocent person, two (2) counts of other forms of trespass, grave coercion, all punishable under the Revised Penal Code of the Philippines; violation of the Code of Conduct and Ethical Standard for Public Officers and Employees; and violation of Section 3(e) of R.A. No. 3019, as amended, otherwise known as Anti-Graft and Corrupt Practices Act. It was filed by Digital Paradise, Inc. (“DPI”, for brevity), as represented by Federico Eugenio (“Eugenio”, for brevity), DPI’s Assistant Logistics Officer, against

respondents PCI Joel Manuel A. Ana (“Ana”, for brevity), PSI Ronnie Failoga (“Failoga”, for brevity), PO3 Demetrio Prieto (“Prieto”, for brevity), all of the Highway Patrol Group, PO1 Dones, and several John Does.

Respondents PCI Ana, PSI Failoga and PO3 Prieto, who were assigned at the Highway Patrol Group-SOD/TF-Limbis, filed their Joint Counter-Affidavit[11] dated 22 November 2011. They also filed their Position Paper[12] dated 14 December 2011, and averred, inter alia, that: their entry into the Giant Building Compound and warehouse leased to DPI is justified; they did not violate Article 281 of the Revised Penal Code on other forms of trespass; they have the right to break into the building; warrantless search is justified; they did not violate Article 363 (planting of evidence) and Article 299 (robbery) of the Revised Penal Code, Section 3(e) of R.A. No. 3019, and Section 4 of R.A. No. 6713; and they prayed for the dismissal of the Complaint for lack of merit.

Complainant filed its Position Paper[13] dated 02 January 2012, and contended, in the main, that: the respondents committed grave misconduct in the performance of their public duties; their Position Paper is incredible, fabricated, and contrary to human experience, as well fatally defective as the same was not properly verified; and they should be dismissed from the service with forfeiture of all retirement benefits except accrued leave credits, with prejudice to reemployment in any branch or instrumentality of the government, including government-owned and controlled corporations.

Respondent PO1 Dones filed his Motion to Admit Attached Counter-Affidavit[14] dated 16 January 2012, with his Counter-Affidavit[15] dated 15 January 2012. Respondents PCI Ana, PSI Failoga and PO3 Prieto filed their Comment and Manifestation (to Complainant's Position Paper)[16] dated 24 January 2012. Complainant filed his Motion to Expunge (Respondent's [sic] Comment and Manifestation [to Complainant's Position Paper] dated 24 January 2012) with Attached Reply Ad Cautelam,[17] with their Reply Ad Cautelam[18] dated 06 February 2012.

The antecedent facts and the parties' respective positions were comprehensively summarized by the OMB, viz:

"Complainant Digital Paradise, Inc. (DPI) through its representative Federico Eugenio alleged that DPI is a corporation engaged in the business of computer rentals and likewise offers online services. DPI leased a unit in CH King and Sons Warehouse located at No. 1 Carlos Caparas St., Brgy. Ugong, Pasig City.

On September 13, 2011, vehicles arrived and parked in front of the main gate of the warehouse and thinking that Lyman King, owner of CKS Holdings and Sons, arrived, security guard Michael Manese looked through the gate for confirmation. However, he saw a police mobile patrol car, a Kia L-300 van, a Hi-ace close (sic) van and a Pajero were parked outside. Then somebody knocked at the gate and misrepresented himself as Jonel, driver of one of the tenants in the warehouse. When Manese slightly opened the gate, it was forcibly kicked without any word of advice or permission. Respondents, who were then in civilian clothes and fully armed, together with several other individuals barged in and identified themselves as policemen. After having unlawfully entered the premises, Manese and certain 'Joseph' were ordered to lie face down on the ground. Two of the respondents guarded them while the other respondents proceeded to the guard house to destroy the telephone lines. Respondents likewise took the cell phones of Manese and Joseph thereby ensuring that they (respondents) will not get caught. Thereafter, the closed van and the L-300 van parked in front of the unit being leased by complainant. Then respondents broke the padlock and door of DPI's unit and unloaded boxes from the vans. Likewise, respondents unlawfully took DPI's eight (8) Nokia cell phones, one (1) unit Nokia Landline and a Smart broadband. Afterwards, respondents left. However, after thirty (30) minutes, respondents returned and ordered Manese to open DPI's unit as if they have not forcibly done so. Manese complied against his will. When he pushed the door, Manese saw the boxes previously unloaded by respondents. Then respondents took pictures of the boxes they placed therein. After an hour, Brgy. Councilor Ernesto Cruz II, Chairman of Peace and Order, and his team arrived. However, respondents were not around anymore. Records with the barangay also disclosed that respondents unlawfully conducted the raid since they did not secure a

search warrant. Complainant also claimed that respondents planted 'hijacked items' inside DPI's unit and imputed the commission of the crime on them.

For their defense, respondents PCI Joel Manuel Apelo Ana, PSI Ronnie Lawad Failoga and PO3 Demetrio Mangaoang Prieto narrated that sometime in March 2010 electronic items owned by Amkor Tech Phils., Inc. were hijacked along Balibago Tagaytay Road, Brgy. Pulong, Sta. Cruz, Sta. Rosa City, Laguna.

At around 2:00 p.m. of September 13, 2011, an informant went to respondents' office and reported that the hijacked items owned by Amkor Tech Phils., Inc. will be hauled out by a group of male persons from Giant Building Compound, J. Caparas St., Brgy. Ugong, Pasig City. Allegedly, the electronic items will be loaded on a white Kia commercial van with Plate No. RGP 382. Thus, the Special Operations Division/Limbas immediately formed a team led by respondent Ana to confirm the veracity of the report. The team coordinated with Danilo Rosales, seniority security officer of Amkor. Rosales likewise confirmed the hijacking of Amkor's electronic integrated circuits worth US\$441,518.00.

On or about 6:45 p.m. of September 13, 2011, the team together with Amkor representatives and in coordination (sic) the Pasig police conducted a surveillance operation at the compound of Giant Building. At around 8:10 p.m. of the same day, a white Kia van with Plate No. RGP 382 came out of the main gate with three (3) male persons on board. The vehicle travelled to the direction of C.J. Caparas. SPO2 Bernard Valen, SPO1 Fernando Rey Gapis and PO3 Wilfredo Reyes flagged down the van for violation of RA 8750 (Seatbelt Law). While SPO2 Valen was explaining the violation to the driver, Jimmy T. Francisco, one of his passengers named Roderick Colala alighted and ran towards the compound. SPO1 Gapuz, PO3 Reyes and an Amkor representative approached the van and asked about its contents. The driver readily opened the vehicle's door and found inside it were electronic products hijacked from Amkor. Given the circumstances then obtaining, SPO1 Gapuz restrained Francisco and informed him of his rights. Respondent Ana then instructed PO3 Prieto to coordinate with the barangay officials and the local police. At this juncture, the remaining passenger of the van identified as Joselito Dela Cruz alighted and also ran towards the compound. PSI Failoga and the other team members chased Dela Cruz. Failoga caught him inside the warehouse of complainant Digital Paradise, Inc. Roderick Colala was likewise seen therein. Respondents and their companions likewise saw several boxes inside the warehouse where Amkor commercial invoices and shipment waybill. Said items were identified as part of the goods taken from Amkor. Joselito Dela Cruz and Roderick Colala were both arrested and informed of their rights. Thereafter, a certain Joseph Bistal arrived and interfered with the operation. He also revealed that he supervised the delivery of the goods upon the instruction of his bosses and owners thereof identified as a certain Rebecca and Cris. Thus, Bistal was likewise arrested.

Respondent PO3 Prieto arrived with respondent PO1 Samuel Escario Dones and the barangay officials. Security guard Manese voluntarily opened DPI's unit and thereafter, an inventory of the items found therein was made. The recovered goods which amounted to Php13,900,000.00 and the Kia van were taken to respondents' office for investigation and disposition. An information for violation of the Anti-fencing Law was subsequently filed by the Pasig City Prosecution Office against Jayson Bistal, Roderick Colala, Jimmy Francisco, Jose Dela Cruz, @ Rebecca and @ Chris.

For his part, respondent PO1 Samuel Escario Dones averred that he was not part of the raiding team and that he arrived together with Kagawad Ernesto Cruz.

x x x x

Complainant likewise filed a reply and claimed that the search was made before the actual arrest of Jimmy Francisco. Such is allegedly unlawful since an arrest must precede the search. Moreover, respondents' defense was contrary to human nature and experience. PCI Ana ordered Prieto to coordinate with the barangay only after they flagged down the Kia van. Roderick and Joselito were able to alight and 'bypass' respondents and ran when there was even no allegation that they will be arrested. Likewise, Roderick and Joselito did not even commit any crime. Further, the alleged violation of the Seatbelt Law is not connected to the items found inside

the Kia van. Complainant also averred that Jimmy Franciso, Joselito Dela Cruz, Roderick Colala, Jayson Bistal and Elmer Bistal are not employees of DPI. Moreover, it is allegedly improbable to see the electronic items in plain view inside the DPI's unit because respondents alleged that the same were found inside the Kia van. Respondents also failed to explain their failure to procure a search warrant. Complainant also banked on the counter-affidavit of respondent Dones.

Respondents maintained their defenses in their Comment and Manifestation and in their position paper.”[19]

The OMB rendered the assailed Joint Resolution[20] dated 19 July 2012 (approved on 06 September 2012) recommending the dismissal of the criminal and administrative cases against the respondents, the fallo of which was earlier quoted.[21]

Complainant filed a Motion for Reconsideration (to the Joint Resolution dated 19 July 2012)[22] dated 08 October 2012. The OMB issued the assailed Joint Order[23] dated 28 January 2013 (approved on 02 August 2013) denying the Motions for Reconsideration, the dispositive portion of which was also earlier quoted.[24]

Hence, the instant Petition.

RULING

Petitioner raises a lone ground for allowance of its Petition, viz:

"THE HONORABLE OFFICE OF THE OMBUDSMAN COMMITTED SERIOUS AND REVERSIBLE ERROR IN DISMISSING THE COMPLAINT FOR GRAVE MISCONDUCT AGAINST THE RESPONDENTS DESPITE SUBSTANTIAL PIECES OF EVIDENCE ADDUCED UPON (sic) BY THE COMPLAINANT TO PROVE THE ADMINISTRATIVE CHARGED (sic).”[25]

Petitioner contends, inter alia, that: the unlawful acts of the respondents are not within the ambit of regular performance of duties; the presumption of regularity of performance of duties is not applicable since the respondents deliberately disregarded procedural safeguard which effectively produces an irregularity in the performance of their official duties; respondents breached DPI's constitutional right against unreasonable searches and seizures; respondents forcefully entered and robbed DPI's leased unit; they incriminated or imputed to innocent person like DPI the commission of an unlawful act; after they unlawfully and forcibly entered the premises of DPI, they planted evidence which would be used against DPI; the respondents, in abuse of authority as public officers, incriminated or imputed to DPI, an innocent person, of possessing hijacked computer products from Amkor; respondents gravely coerced Manese to do something against his will when he was compelled, under imminent danger and threat, to open the door of DPI's warehouse unit which he merely pushed because the lock and door were already broken by respondents; they deliberately failed to uphold the law and the rules and procedures which they seek to implement to the prejudice of DPI and the unit or sector where they belong; DPI has abundantly showed in its Complaint-Affidavit the facts and evidentiary pieces of evidence attached thereto which a reasonable mind might accept as adequate to support the acts indicating the grave misconduct; the fact that the criminal complaint against them was dismissed, albeit, the dismissal is not yet final and executory, is immaterial and could not serve as a valid basis to dismiss as well the complaint for grave misconduct against the respondents; and there is substantial evidence that the respondents committed grave misconduct warranting their dismissal from the public service.

Respondent Dones ripostes, inter alia, that: he is a member of the Pasig City Police Station; on 13 September 2011, he was assigned at the Police Community Precinct 1 POP-15, Brgy. Ugong, Pasig City; for the period 09 to 15 September 2011, he was on night duty and was designated as Team Leader of Mobile Car - 15 with standby point at C-5 Road in front of Caltex Gas Station North Bound, Brgy. Ugong, Pasig City; while on duty at the said

standby point on board Mobile Car 1-5 on 13 September 2011 at about 9:58 p.m., he received a radio message from the Tactical Operation Center (TOC) of the Pasig City Police Station to proceed to Carlo J. Caparas St., to render assistance; thus, he proceeded to the barangay hall due to the call from TOC for assistance; at about 1:30 p.m., he and Kagawad Ernesto Cruz proceeded to CH King Warehouse, which is near the barangay hall; when they entered the compound, he confronted PO3 Prieto if the operation was already coordinated with the Pasig City Police Station, and the latter replied in the positive; he also noticed that the padlock of the warehouse was already detached by the operatives and the door was slightly opened; on 14 September 2011, the warehouse owner, Lyman King, in the company of security guard Michael Manese, and Relly Gregorio, a warehouse personnel, went to the POP 1-5 and had the incident recorded; in the said incident report, he was not named as one of those who conducted the raid but members of the PNP Highway Patrol Group - PCI Ana, PSI Failoga and PO3 Prieto; an inventory of the evidence was made and recorded in the barangay blotter; in the Complaint, he was included as a respondent together with PCI Ana, PSI Failoga and PO3 Prieto although he was not a member of the raiding team; and the Ombudsman in its Joint Resolution dated 19 July 2012 rightfully dismissed the charges against him.

Respondents PCI Ana,[26] PSI Failoga[27] and PO3 Prieto[28] counter, inter alia, that: the OMB is correct in finding no probable cause to indict them; their entry into the warehouse complex is justified to effect arrest of the two eluding passengers of the vehicle flagged down by the members of the Highway Patrol Group who ran inside the premises after the representative of Amkor identified the goods inside the vehicle to be part of the hijacked items owned by Amkor; petitioner does not refute the fact that two eluding passengers, later identified as Roderick Colala y Baliga and Joselito Dela Cruz, were arrested inside DPI; they were in the regular performance of their duties; the OMB is correct in ruling that, there was no evidence that they were animated by ill-will or sinister motive to implicate or incriminate DPI relative to the hijacked goods owned by Amkor; there was no evidence to show that in conducting the operation, they intended to give unwarranted benefits to Amkor or DHL; they observed the Philippine National Police operation procedures, laws and other rules relative thereto; and the OMB did not commit error in dismissing the complaint for grave misconduct against them for lack of substantial evidence.

The Petition is bereft of merit.

At the outset, it bears emphasis that (this Court) has jurisdiction over orders, directives and decisions of the (OMB) in administrative disciplinary cases only. (This Court) cannot, therefore, review the orders, directives and decision of the (OMB) in criminal or non-administrative cases.[29] Hence, in the instant Petition, this Court's jurisdiction is limited to resolving the appeal with respect to the administrative case docketed as OMB-P-A-0766-I on grave misconduct, and not the criminal case docketed as OMB-P-C-11-0784-I on incriminating innocent persons, robbery, grave coercion, trespassing and violation of Sec. 3(e), R.A. No. 3019. Thus, any reference to the OMB findings in the criminal case, OMB-P-C-11-0784-I, is solely for the purpose of resolving the appeal in the administrative case.

Findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect but finality xxx. For as long as these findings are supported by substantial evidence, they must be upheld.[30] Section 27 of Republic Act No. 6770 mandates that the findings of fact by the Office of the Ombudsman are conclusive when supported by substantial evidence. In administrative and quasi-judicial proceedings, only substantial evidence is necessary to establish the case for or against a party. Substantial evidence is more than a mere scintilla of evidence. It is that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.[31] Section 10, Rule 43 of the Rules of Court provides that "(t)he findings of fact of the court or agency concerned, when supported by substantial

evidence, shall be binding on the Court of Appeals."

Here, the findings of the OMB in OMB-P-A-11-0766-I are supported by substantial evidence which are binding on this Court. Thus, We find no cogent reason to disturb the OMB's finding that the administrative case on grave misconduct against the respondents should be dismissed.

As extensively found by the OMB in the assailed Joint Resolution, viz:

"Complainant's claim of robbery cannot be given merit. Witnesses Michael Manese and Joseph C. Seciban did not corroborate DPI's allegation that respondents took the corporation's personal belongings such as cell phones, a Nokia landline and a Smart Broadband. Let it be noted that DPI's representative Federico Eugenio was not present during the incident. Likewise, complainant's inventory cannot convince this Office that the items subsequently found to be missing were taken by the respondents. Moreover, the allegation that the cell phones of Manese and Seciban were taken by respondents cannot stand. Manese himself admitted that their cell phones were confiscated thereby negating the claim that there was intent to gain on the part of the respondents. In addition thereto, Brgy. Ugong Security Force member Edwin S. Gonzales categorically stated that 'walang naganap na nakawan o pagkuha ng anumang bagay sa warehouse/compound habang isinasagawa ang inventory hanggang sa ito ay natapos.' Likewise, if indeed the claim of Manese and Seciban were true, the most plausible reaction is for them to demand the return of their cell phones. However, none of them claimed to have done such normal and expected course of action thereby raising doubts as to the veracity of their allegations. Lastly, complainant averred that after unloading/planting the boxes inside DPI's unit, respondents left but returned after thirty (30) minutes. Such span of time is enough for complainant's employees to personally seek the assistance of the authorities. However, no one bothered and DPI did not offer any explanation to justify such failure.

In the same vein, the claim of Incriminating Innocent Persons cannot stand. Again, Manese and Seciban did not corroborate DPI's allegation that respondents unloaded/planted Amkor's hijacked items inside complainant's unit. Moreover, We do not find any logical reason which could have impelled respondents to implicate complainant to the robbery/hijacking of Amkor's personal properties. DPI was not even made a party-respondent to the Anti-Fencing case filed by Amkor. Respondents do not also stand to gain or benefit anything by implicating DPI. Likewise, it is all the more perplexing why complainant DPI defends Jimmy Francisco, Joselito Dela Cruz, Roderick Colala, Jayson Bistal and Elmer Bistal when these persons are not even employees of the corporation or so they claimed.

Now, if Francisco, Dela Cruz, Colala, and Jayson Bistal are not DPI's employees, then what were they doing inside the premises of CH King and Sons or inside complainant's unit? We do not wish to surmise. Complainant failed to explain this matter.

The charge of violation of RA 3019 (Anti-Graft and Corrupt Practices Act) cannot be given merit there being no proof to support the same.

The charge of Grave Coercion cannot also lie. Respondents' version of the incident is more in accord with human nature and experience. Likewise, it is important to note that the persons who were directly involved were present during the incident and were more likely to know the truth, namely, Jimmy Francisco, Joselito Dela Cruz, Roderick Colala, Jayson Bistal and Elmer Bistal. However, these persons did not corroborate the allegations of complainant DPI or Eugenio.

x x x x

Unfortunately, complainant failed to meet the quantum of proof required to hold respondents administratively liable. In fine, the presumption of regularity in the performance of duty stands in favor of the respondents."^[32]

It was also considerably found by the OMB in the assailed Joint Order, viz:

“Granting that witnesses Manese and Seciban were not able to corroborate the alleged taking of personal belongings of the DPI by the respondent police officers because they were left at the main gate which is quite far from the unit of the DPI, how about Mr. William Garcia of the Home Care? Complainant-movant claimed that said Mr. Garcia was also inside the premises and was in fact robbed with his Nokia 3310 cellular phone. However, like Manese and Seciban, Mr. Garcia did not execute an affidavit corroborating complainant-movant's claim of robbery or unlawful taking of personal properties. It should be stressed at this point that proof should be more than mere allegations since allegations are not evidence by themselves. They have to be proven.

Moreover, a scrutiny of the record in the Barangay Office, particularly the entry which was narrated by Manese himself, together with the warehouse owner, Lyman King, and one of the tenants, Kelly Gregorio, does not show that Manese was compelled by the group of respondent police officers to open the unit of Netopia or that the padlock was already removed before he was forced to open it. This circumstance become significant on the allegation of planting of evidence and robbery. Unfortunately, the same was not stated in the record. Such omission even bolstered the declaration of Edwin Gonzales, a shift team leader of Brgy. Ugong Security Force, Brgy. Ugong, Pasig City and an independent party in this case, that indeed no robbery or taking of any personal property inside the compound took place at that time. Moreover, a reference from the security logbook of the compound also entered by Manese showed '2340H c/out lahat ng police at Brgy. Walang dala'. Ergo, as contained in the assailed Joint Resolution, the claim of robbery cannot be given merit.

As regards the charge of incriminating innocent person(s), it is difficult to believe that the items stated in the Complaint-Affidavit executed by the representatives from AMKOR Technology Inc., and DHL Express Inc., owner and hauler, respectively, which corresponds to the items seized during the operation, together with the shipment bills and the commercial invoices bearing the name of Amkor with DHL as the forwarding agent, were all planted by the respondents to incriminate herein complainant-movant. In the first place, it appears that before the operation, the respondent police officers had no knowledge whether the stolen items originated from the DPI. Their information only disclosed that the same will be hauled by a group of male persons from Giant Building Compound located at J. Caparas St., Brgy. Ugong, Pasig City. The items will be loaded to a white KIA Van with Plate No. RGP 382. This same van indeed came from inside the compound as evidenced by a copy of the security blotter signed by Manese showing the 'in-and-out' from the compound of the vehicle with plate no. RGP 382. This record has not been refuted by Manese as well as the complainant-movant.

In other words, aside from being uncorroborated as found in the assailed Joint Resolution, we see no logical reason for the respondent police officers to implicate herein complainant-movant in the serious offense of robbery/hijacking of Amkor's personal properties. As a matter of fact, the herein complainant-movant was not even made a party to the Anti-Fencing complaint filed by Amkor.

As to the charge of grave coercion committed against the person of Manese, it will be recalled that the same was dismissed in the assailed Joint Resolution basically because this Office gave more credence on the version presented by the respondent police officers. This finding was reached due to the lack of corroborating statement given by the persons directly involved (Francisco, et al[.]) who have supposed knowledge of what had really transpired during that particular incident. Complainant-movant herein insisted that the version of the respondent police officers is incredible, fabricated and contrary to common experience. The Movant further asserted that the statement of Manese was actually corroborated not by the group of Francisco, et al., but by the proper individuals such as Kagawad Ernesto C. Cruz III and Joseph Seciban.

We are not swayed.

It must be pointed out that the statement given by Kagawad Cruz III pertains to the time after the alleged coercion was already committed. On the other hand, Seciban's statement did not categorically mention how Manese was coerced or intimidated by the group of respondents to open the gate of the DPI. Even a reference to the copy of (the) logbook filled up by Manese negates any record that he was coerced by the respondent

police officers to open the unit of DPI. Given that situation, Manese would expectedly cause the recording of such unusual happening in full text as far as he can narrate to protect the interest of the DPI as well as his own interest. Even in their report to the Barangay Office on the following day (sic) did not mention such coercion committed against his person. On the other hand, the fact that they were ordered to lie and face the ground, if true, was not coercion or intimidation but only a security measure employed by the respondent police officers to momentarily control the situation and avert any untoward incident or injuries. This was adopted apparently after the respondents confirmed that part of the hijacked goods indeed came from the same compound being guarded by Manese. Let it be reminded that per the records, the hijacked goods owned by Amkor worth millions of pesos and the driver of the vehicle carrying such hijacked goods were dumped at the Delpan Bridge, Port Area, Manila.

Verily, if the version of the respondent police officers appeared incredible, fabricated and contrary to common experience, we neither can concede with complainant-movant's version of the incident particularly that the respondents, in conspiracy with Amkor and DHL representatives, brought along the truckload part of hijacked goods to the unit of the DPI and tried to implicate the latter for no apparent motive at all, considering the adverse effect of such act to their respective ranks and careers in the Philippine National Police.

Since we sustained the respondents' version of the incident, we likewise failed to see probable cause to indict respondents with the offense of other forms of trespass.

x x x Respondent members of the PNP Highway Patrol Group are clothed with authority to flag down the vehicle which, according to the information they had received, was hauling part of the hijacked items owned by Amkor. They received the information in the afternoon of the same day that the vehicle was allegedly about to haul the items. Hence, time is of the essence of making it impractical for them to apply for a search warrant.

Thus, after flagging down the subject vehicle and confirming that it was loaded with the stolen items, the subsequent entrance of the respondent police officers insofar as the compound of CH Warehouse Complex is concerned, is a necessary consequence of their authority to pursue and effect the arrest of the eluding two passengers of the vehicle who ran inside the said premises. To recall, complainant-movant denied any knowledge about the arrested persons but equally did not refute the fact that three of them were arrested inside the warehouse premises.

Now, with respect to the alleged unlawful entry to the complainant-movant's unit, we reiterate our earlier findings of lack of sufficient evidence directly corroborating such allegation. Even from the record of Manese and to their report to the Barangay Office, it did not categorically state that the group of respondents entered inside the premises of the DPI.

x x x x

At the outset, there was no iota of evidence that herein respondent police officers were animated by ill-will or sinister motive to implicate much more, to incriminate the complainant-movant relative to the hijacked goods owned by Amkor. Neither is there evidence to show that Amkor has standing business grudge with the company of complainant-movant to at least entertain the idea that the former, in cahoots with the respondent police officers, resorted to such ploy to malign the reputation of DPI. We likewise cannot see the the respondent police officers, in conducting the operation, intended to give unwarranted benefits to Amkor or DHL. In other words, the essential elements of the offense are not clearly manifest.

With respect to the complainant-movant's alleged injury sustained by reason of the acts of the respondent police officers, be it noted that the allegation of robbery has not been duly established in this case. Thus, the value of the alleged properties lost cannot be attributed to the respondents. Likewise, the claim of blemished reputation of the complainant-movant brought about by the acts of the respondents is unavailing. x x x

x x x x

The charge of violation of Sec. 4 of RA 6713 should be treated herein as administrative in nature along with the charge of grave misconduct concomitantly filed by the complainant-movant. Inasmuch as this Office upheld the version of the incident presented by the respondent police officers, it follows therefore that the presumption of regularity in the performance of duties accorded to them has not been sufficiently overturned by the evidence of the complainant-movant. Police officers are presumed to have acted regularly in the performance of their official functions in the absence of clear and convincing proof to the contrary or that they were moved by ill-will.”[33]

Contrary to the petitioner's claim that the respondents committed serious irregularities which cannot be categorized under the doctrine of presumption of regularity in the performance of official duty, We find that the said presumption applies in favor of the respondents police officers. Mere allegations and self-serving statements will not overcome the presumption of regularity in the performance of official duties accorded to police officers. There must be a showing of clear and convincing evidence to successfully rebut this presumption.[34] There is no showing in the Complaint-Affidavit[35] dated 16 September 2011 of Eugenio, Assistant Logistics Officer of the petitioner, that he has personal knowledge of what transpired during the police operations on 13 September 2011. The Affidavit[36] dated 14 September 2011 of security guard Michael Manese also failed to show, by clear and convincing evidence, why the presumption of regularity in the performance of official duties by the respondents should be overturned. Neither was it shown that there was ill-motive or bad faith on the part of the respondents in the performance of their duties.

The OMB did not commit serious and reversible error in dismissing the Complaint for grave misconduct, as posited by the petitioner. Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior as well as gross negligence by a public officer. To warrant dismissal from service, the misconduct must be grave, serious, important, weighty, momentous and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment. The misconduct must also have a direct relation to and be connected with the performance of the public officer's official duties amounting either to maladministration or willful, intentional neglect, or failure to discharge the duties of the office.[37] Misconduct is considered grave if accompanied by corruption, a clear intent to violate the law, or a flagrant disregard of established rules, which must all be supported by substantial evidence.[38]

In the instant case, the respondents cannot be held liable for grave misconduct considering that the elements of corruption, and clear intent to violate the law or flagrant disregard of established rule, were not established by the petitioner by the quantum of evidence required. The respondents' entry into the Giant Building Compound and the warehouse leased by DPI is justified. As shown in Entry 0931 of the Excerpt Dispatched of Personnel[39] of the PNP, Headquarters Highway Patrol Group, Special Operations Division (SOD), on 13 September 2011 at 1400H, a team led by PCI Ana was dispatched to conduct verification/coordination of an intelligence information from a reliable source about a hijacking incident from AMKOR Technology Philippines, Inc. involving its products which would be pulled out by unknown malefactors at a warehouse in Pasig City, along CJ Caparas St., Brgy. Ugong, known as Giant Bldg. Compound. In their Joint Counter-Affidavit[40] dated 22 November 2011, respondents PCI Ana, PSI Failoga, and PO3 Prieto stated, inter alia, that they: performed their functions and duties in accordance with law and procedures; strictly followed the Police Operational Procedure in the conduct of the subject operation; and neither benefited nor acted with partiality in the performance of their police functions and duties. In the Counter-Affidavit[41] dated 15 January 2012 of PO1 Dones, he stated, inter alia, that he was not even one of the members of the team, but only arrived at the compound with Barangay Kagawad Ernesto Cruz II. A Joint Affidavit of Apprehension[42] dated 15 September 2011 was also executed by PSI Failoga, PO3 Adolfo Mendoza, PO3 Fernando Rey Gapuz, SPO2 Bernard Valen, PO3 Wilfredo Reyes and PO1 Victor Eufonio Robles, who are bona fide members of the Highway Patrol Group assigned at the Special Operations

Division/Task Force Limbas. Further, a Complaint Affidavit[43] dated 15 September 2011 was executed by Danilo Morales, Security Senior Officer – AMKOR Tech Phils., Inc., Arman Malgapo, Shipping Supervisor of AMKOR Tech Phils., Inc., and Richard Armoreda, Field Security Officer of DHL Express Inc. A sworn statement[44] dated 14 October 2011 was likewise executed by Kagawad Ernesto C. Cruz II, Chairman-Peace & Order, Ugong, Pasig City.

Considering the foregoing, the OMB did not err in dismissing the administrative case against the respondents in OMB-P-A-11-0766-I, which is anchored on substantial evidence. The respondents cannot be held administratively liable as they observed the standards of personal conduct in the discharge and execution of their official duties, in accordance with Section 4 of Republic Act No. 6713.[45]

WHEREFORE, premises considered, the Petition is DENIED. Costs against petitioner.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Diamante and Sadang, JJ., concur.

[1] Rollo, pp. 3-25

[2] Id. at 26-33

[3] Id. at 34-42

[4] Id. at 32

[5] Id. at 41

[6] Id. at 748-750

[7] Id. at 781-786

[8] Id. at 788 (dorsal side)

[9] Id. at 741

[10] Id. at 43-59

[11] Id. at 72-90

[12] Id. at 295-327

[13] d. at 489-510

[14] Id. at 511-512

[15] Id. at 513-519

[16] Id. at 544-551

[17] Id. at 555-566

- [18] Id. at 567-582
- [19] Id. at 26-29
- [20] Id. at 26-33
- [21] Supra note 4
- [22] Rollo, pp. 589-602
- [23] Id. at 34-42
- [24] Supra note 5
- [25] Rollo, p. 11
- [26] Id. at 552
- [27] Id. at 553
- [28] Id. at 554
- [29] Office of the Ombudsman, etc. v. Heirs of Margarita Vda. De Ventura, etc., et al., G.R. No. 151800, 05 November 2009, citing *Kuizon v. Desierto*, 406 Phil. 611 (2001) and *Golangco v. Fung*, G.R. Nos. 147640 & 147762, 16 October 2006, 540 SCRA 321
- [30] Cf. *Jaime N. Gapayao v. Rosario Fulo, et al.*, G.R. No. 193493, 13 June 2013
- [31] *Office of the Ombudsman v. Antonio T. Reyes*, G.R. No. 170512, 05 October 2011
- [32] Rollo, pp. 30-32
- [33] Id. at 36-40
- [34] *People of the Philippines v. Marcelino Collado y Cunanan, et al.*, G.R. No. 185719, 17 June 2013
- [35] Rollo, pp. 43-59
- [36] Id. at 62-63
- [37] *Rodolfo C. Sabidong v. Nicolasito S. Solas, etc.*, A.M. No. P-01-1448 (Formerly OCA IPI No. 99-664-P), 23 June 2013
- [38] *Franklin Alejandro v. Office of the Ombudsman Fact-Finding and Intelligence Bureau, etc.*, G.R. No. 173121, 03 April 2013
- [39] Rollo, p. 413
- [40] d. at 72-90
- [41] I d. at 515-519
- [42] Id. at 392-393
- [43] Id. at 394-396
- [44] Id. at 529
- [45] Code of Conduct and Ethical Standards for Public Officials and Employees-

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