

IMELDA T. DARAUG, PETITIONER, VS. ROGER P. PEREZ (IN HIS CAPACITY AS FORMER EXECUTIVE DIRECTOR OF THE COMMISSION ON HIGHER EDUCATION (CHED), RESPONDENT.

Ponente: BERSAMIN, L.P., J.

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BERSAMIN, L.P., J.:

The petitioner appeals by petition for review the adverse decision dated July 27, 2004 rendered by the Office of the President (OP), approving the recommendation for her dismissal made by the Presidential Anti-Graft Commission (PAGC).[1]

The antecedents follow.

In June and July 2003, the Commission on Higher Education Regional Office No. III (CHEDRO III) conducted several seminars. On September 19, 2003, the Commission on Audit (COA) released a report stating that the seminars did not actually take place; and that the petitioner had approved without proper authority the allowances given to the staff from the budget allocated for the seminars. Thus, on November 12, 2003, the CHED referred the COA report to the PAGC.

On February 16, 2004, respondent Roger P. Perez, as CHED Executive Director, submitted an affidavit-complaint to duly charge the petitioner. The case was docketed as PAGC-ADM-0195-04.[2] He alleged, among others, that the “scholarship funds under the Higher Education Fund were disbursed for other purposes without proper authority, among these, the CHED Regional Offices in Region III, Region IV-A and CHED National Capital Region (NCR).”

On June 8, 2004, the PAGC found as follows:

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During the fact-finding hearing scheduled on March 11, 2004, Ms. Juliana F. Lazo, State Auditor IV of the COA, appeared and testified before the Commission on the case. In the course thereof, she presented her prepared Audit Observation Memorandum (AOM) Report, which noted certain irregularities that attended the liquidation reports of the cash advances made by the respondent.

The Auditor noted the following adverse findings:

1. Anent the seminars allegedly conducted on June 25-29, 2003, July 10-13, 2003, July 16-19, 2003, on said dates, the Daily Time Records of the alleged participants had entries indicating that they had reported for work on said dates, notwithstanding the representation that they were at the seminars. The only exception is July 18, 2003 when the participants indicated in their Daily Time Records, the entry, ‘office business’ (OB).
2. Confirmations made with Fontana Resorts (Venue of the fictitious seminars) yielded a finding that no official receipts were attached to the liquidation reports relative to room and food accommodations. This shows that the latter were either still unused or not yet issued.
3. The resource speakers mentioned in the liquidation report were never invited on the scheduled dates.

4. The disbursements were all charged to the Scholarship Fund, which is unauthorized as provided for under Section 122 of GAAM Vol. 1.

Ms. Rosa Maria Llanes and Ms. Deborah Lozada, both from the University of the Philippines-Manila, testified during the fact finding hearing. According to the verified complaint and the COA findings, both were purportedly invited as resource speakers, in the CHEDRO III Mid-Year Assessment and Strategic Planning Workshop scheduled on June 25-29, 2003. They disclosed, however, before the Commission that they were never invited, nor did they ever participate in the said seminar. They denied that the signatures appearing on the reimbursement expense receipts are theirs.

Similarly, the two (2) other participants of the fictitious seminars, Ms. Teresita de Leon and Mr. Teodoro Paras, both hailing for the CHED San Juan, Pampanga Office (CHED RO III), testified that their signatures appearing on the Attendance Sheet were intended for a Civil Service Seminar, and not for the CHED RO III seminar allegedly held on June 25-29, 2003. According to them the Mid-Year Assessment and Strategic Planning Workshop held on June 25-29, 2003 is a fictitious seminar.

Finding sufficient basis to commence an administrative investigation against respondent Imelda I. Darang, the Commission issued an Order on April 12, 2004 requiring the latter to file before the PAGC her Counter-Affidavit or Verified answer within ten (10) days upon receipt thereof. Accordingly the Preliminary Conference of the instant case was set on April 28, 2004 at ten o'clock in the morning.[3]

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and recommended to the Office of the President (OP) the dismissal of the petitioner from the service and the imposition of the accessory penalties, for having violated Sec. 3 (e), Republic Act 3019, in conjunction with Sec. 46 (b) (9), Chapter 6, Subtitle A, Title I of Book V of Executive Order No. 292.[4]

On July 27, 2004, OP approved the recommendation,[5] viz:

This refers to the letter-complaint filed by Roger P. Perez, formerly with the Commission on Higher Education (CHED), against Dr. Imelda T. Daraug, CHED Regional Director, Region III, arising from her incursion of cash advances in the total amount of P730,000.00 supposedly to finance several seminars of the CHED RO III, which turned out to be fictitious.

The Presidential Anti-Graft Commission (PAGC) found respondent liable under Section 3 (e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, on the strength of the following premises:

The defense of the respondent, that she relied heavily on the assurances of Mrs. Erlinda Butt and Mrs. Genoveva Y. Reyes, who both prepared the liquidation reports, does not enjoy credence. As the approving officer, she should have been more circumspect and diligent in the discharge of her delicate functions. She cannot merely wash her hands and claim that she is not accountable for her actions. In the absence of controverting evidence to support her self-serving and uncorroborated declarations, the Commission is inclined to believe the evidence presented by the complainant, which rings of truth. It is doctrinally entrenched that public officers are accountable for their actuations at all times, and must perform their duties well (*Solid Bank Corporation vs. Capoon, Jr.*, 289 SCRA 9). Interestingly, the respondent never presented the two CHED RO III employees, who allegedly prepared the liquidation reports, to clear her from liability. She made no effort to, at least, obtain their affidavits. All she has is her word, and when this is measured against the adverse findings of the COA and the corroborating testimonies of the CHED RO III employees and the U.P. professors called to the stand, the same must fail.

With reference to the photographs she presented, which purport to show that the alleged fictitious seminars actually took place, the same are not likewise credible. To begin with, the respondent did not produce the

photographer to testify on the circumstances that surrounded the taking of said photographs. The rules on evidence dictate that this is essential to prove their genuineness and authenticity. Secondly, they are insufficient to overcome the evidence against her, which overwhelmingly point to the fact that, indeed, no seminars were held. It must be stressed that several respected U.P. professors and CHED RO III employees have testified and unanimously declared that the subject seminars sponsored by CHED RO III were never actually held as planned. Although their signatures appeared on several documents to show that they had a part in the same, they vehemently denied that the signatures are theirs. Surprisingly, the respondent offered no explanation to justify how their signatures got on the said documents. This matter was completely ignored by her in her defense. Here were resource speakers, who categorically declaimed they were never invited to the said seminars. For this reason, they denied that they were ever paid for the same. Echoing their stance, the two CHED RO III employees, who appeared to be participants in the said seminars, but were actually not, openly testified that the seminars are fictitious. Indubitably, all these credible witnesses are one in saying that there never were seminars conducted. Their statements are all supported by the COA Auditor's findings, which were never refuted by the respondent. This is all on record.

Clearly, based on the evidence on record, the Commission can arrive at no other conclusion, save that the herein respondent is liable under Sec. 3(e), R.A. 3019 as charged. Said provision is quoted hereunder:

(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 function 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.

The candid, straightforward testimonies of the CHED RO III employees constitute substantial evidence to buttress the charge leveled against the respondent. x x x

The respondent had failed clearly to observe due prudence and diligence in the discharge of her functions, thereby causing undue injury to the government when she incurred the cash advances purportedly allocated for payment of the expenses of the CHED RO III Organizational Development Seminars (ODS) in connection with its planned, which, as it turned out, were all fictitious and non-existent. As the head of her office, she must ultimately be made to answer for authorizing these unlawful cash advances. The fact that her signature appears on the liquidation report is readily admitted by her. The same holds true with the fact that she is the approving authority. She cannot thus impute liability to the ones who prepared the liquidation reports since to stress a point, she is the approving authority and the testimonies of the witnesses, as well as the COA findings, all point to the fact that no seminars were held. Since all fingers are directed at her and they all point to her as the accountable officer of this grievous anomaly, the Commission has found the testimonies against her to be candid and straightforward, and very much deserving of weight and credence. No ill motive was found to impel these witnesses to wrongly accuse the respondent and the latter never attempted to impinge their collective or individual credibility.

The Anti-Graft and Corrupt Practices Act (Republic Act No. 3019) was enacted in 1960 to deter public officials and employees from committing acts of dishonesty and improve the tone of morality in the public service. (*Morte vs. Mutuc*, 22 SCRA 424, 428 [1968]).X x x

While Section 9 (a) of R.A. No. 3019 does not provide for either the administrative penalties of suspension and dismissal considering that the same contemplates a criminal conviction, said section must be read in conjunction with Section 46 (b) (9), Chapter 6, Subtitle A, Title I of Book V, Executive Order No. 292, which provides that the commission of acts punishable under the Anti-Graft Law, such as R.A. No. 3019, is a ground for disciplinary action considering the gravity of the offense committed by the respondent and the fact that the charges against her were initiated by no less than the CHED former Chairperson and Executive Director, the penalty of dismissal is appropriate.”

Supported as they are by credible substantive proof, the findings of the PAGC deserve concurrence. Indeed, the case record is rife with evidence adequate enough to overturn respondent's presumptive innocence. And inasmuch as the principal offense charged involves dishonesty resulting in financial loss to the government, the recommended penalty of dismissal appears to be appropriate.

The Resolution of the PAGC dated June 8, 2004 is hereto attached as Annex "A" and made an integral part hereof.

WHEREFORE, premises considered and as recommended by the PAGC, respondent is hereby DISMISSED FROM THE SERVICE, with the accessory penalties of cancellation of eligibility, which shall be executed by the Civil Service Commission; forfeiture of retirement benefits; and perpetual disqualification from re-employment in the government service.

SO ORDERED.

On August 10, 2004, the petitioner sought reconsideration.[6]In the meantime, the COA National Legal and Adjudication Office rendered a decision dated September 22, 2004 in LAO-N-2004-299,[7] ruling on, among others, the following notices: (a) Notice of Disallowance (ND) No. 2004-036, on purchase of office equipment and supplies erroneously charged to HEDF and Scholarship Fund instead of Supplies and Materials, for the amount of P1,066,217.15; (b) ND No. 2004-037, on grant of rice allowance, cultural benefits and medical allowance which was made without legal bases, for the amount of P233,200.00; and (c) ND No. 2004-038, on the seminars on Mid-Year Assessment and Productivity Improvement that were confirmed not held and the documents thereon, such as the DTRs of participants, being falsified, for the amount of P630,000.00.

The COA thereby reiterated ND No. 2004-036, ND No. 2004-037 and ND Nos. 2004-038 pending full settlement of the amounts disallowed; found in ND No. 2004-038 that the disallowed amount pertained to cash advances spent for fictitious seminars, the liquidation of which advances were supported with falsified documents; and that the amount involved was not misappropriated by the petitioner but distributed to CHEDRO officials and employees as financial assistance in addition to the disallowed allowances under ND No. 2004-037.

On September 30, 2004, OP denied the petitioner's motion for reconsideration.[8]

Hence, this appeal, wherein the petitioner contends that:

THERE IS NO BASIS FOR THE PENALTY OF DISMISSAL IMPOSED UPON THE PETITIONER. THE ESSENTIAL ELEMENTS OF THE CRIME PUNISHABLE UNDER SECTION 3 (E) OF REPUBLIC ACT NO. 3019 ARE NOT ALL PRESENT IN THIS CASE.

THE PETITIONER HAS NOT ACTED IN BAD FAITH. THE COA REPORT RECOGNIZES THE GOOD FAITH OF THE PETITIONER. THERE IS NO MISAPPROPRIATION.

UNDUE INJURY DID NOT RESULT FROM THE ACTS OF THE PETITIONER.

THE PETITIONER MERELY SIGNED THE REPORTS PREPARED BY HER SUBORDINATES. THE OFFICE OF THE PRESIDENT FAILED TO CONSIDER THE MACADANGDANG AND THE ARIAS CASES WHICH CLEARLY SHOW THAT THE PETITIONER IS NOT ADMINISTRATIVELY LIABLE.

THE PAGC FAILED TO COMPLY WITH THE PROCEDURAL REQUIREMENTS OF DUE PROCESS WHEN THE PETITIONER WAS NOT GIVEN THE CHANCE TO CONFRONT OR TO PRESENT HER OWN WITNESSES.

THE PENALTY OF DISMISSAL FROM THE SERVICE IS NOT COMMENSURATE TO THE ALLEGED OFFENSE OF THE PETITIONER WHO HAS DEVOTED THIRTY-SIX YEARS OF HER LIFE AS A

CIVIL SERVANT.

We give due course to the petition for review.

The offense charged against the petitioner is defined in Sec. 3 (e), R. A. 3019, and consists of the following elements, to wit:

1. The offender is a public officer discharging administrative or judicial functions;
2. She commits the prohibited acts during the performance of her official duties or in relation to her public position;
3. She acted with manifest impartiality, evident bad faith, or gross inexcusable negligence;
4. Her action caused undue injury or any unwarranted benefit to any party.

Bad faith is the deliberate intent to do wrong or to cause damage to another. It is “not simply bad judgment or negligence, but rather it implies the conscious doing of a wrong because of a dishonest purpose or moral obliquity; it is different from the negative idea of negligence in that it contemplates a state of mind affirmatively operating with furtive design or ill will.”[9]

To commit the violation of Sec. 3 (e), R. A. 3019, therefore, the bad faith of the offender must be evident. Hence, mere bad faith is not enough. According to *Caugma v. People*: [10]

It must be stressed that mere bad faith is not enough for one to be liable under the law, since the act of bad faith must in the first place be evident.[11] Elaborating on the meaning of evident bad faith, this Court held in *Marcelo v. Sandiganbayan*: [12]

Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud. (*Spiegel v. Beacon Participations*, 8 NE 2nd Series, 895, 1007). It contemplates a state of mind affirmatively operating with furtive design or some motive of self interest or ill will for ulterior purposes. (*Air France v. Carrascoso*, 18 SCRA 155, 166-167). Evident bad faith connotes a manifest deliberate intent on the part of the accused to do wrong or cause damage.

Undue injury has been interpreted as synonymous to actual damages which is akin to that in civil law.[13] The prosecution is burdened to prove the factual basis and amount of loss with a reasonable degree of certainty, premised upon competent proof and on the best evidence obtainable by the injured party.[14] Courts cannot simply rely on speculations, conjectures or guesswork in determining the fact and the amount of damages.[15]

Undoubtedly, Sec. 3 (e), R. A. 3019 requires proof of evident bad faith in order to overcome the presumption of good faith to which every public official, acting in the discharge of his official duties, is entitled. Mistake on a doubtful or difficult question of law may be the basis of good faith. Under the law of public officers, acts done in the performance of official duty are protected by the presumption of good faith,[16] and even mistakes committed by such public officers are not actionable as long as it is not shown that they were motivated by malice or gross negligence amounting to bad faith.

That the petitioner relied on her subordinates concerning the correctness or veracity of the report which turned out to be false did not mean that she had acted in bad faith. That she had distributed the balance of the budget for the seminars upon her honest belief that doing so was not prohibited negated the intervention of bad faith in her action. Absolving her of any wrongdoing is inevitable. Precedents exist for doing so. In *Llorente, Jr. v. Sandiganbayan*, [17] for instance, bad faith was not appreciated because the refusal of the municipal mayor to sign the voucher of the complainant was due to the complainant's failure to submit property clearance and an

approved appropriation ordinance to pay claimant's money claims, for without the corresponding appropriation ordinance and certification of availability of funds for such purpose, the municipal mayor had the duty not to sign the voucher. Also, in *Jacinto v. Sandiganbayan*,^[18] evident bad faith was not appreciated because the actions taken by the accused public official were not entirely without rhyme or reason; he had refused to release the complainant's salary because the latter had failed to submit her daily time record; he had refused to approve her sick-leave application because he had found out that she did not suffer any illness; and he had removed her name from the plantilla because she had been moonlighting during office hours. And, finally, in *Alejandro v. People*,^[19] evident bad faith was ruled out because the accused gave his approval to the questioned disbursement after relying on the certification of the bookkeeper on the availability of funds for such disbursements.

Neither may we hold the petitioner liable for the offense under Sec. 3 (e), R. A. 3019 by holding that her acts caused undue injury to any party, including the Government. We find nothing to show that she gave any private party unwarranted benefits, advantage or preference in the discharge of her functions. An injury is a wrong or damage done to another, either in his person, rights, reputation or property; it is the invasion of any legally protected interest of another.^[20] A benefit is undue when it is more than necessary, improper or illegal.^[21] The essential element of "causing an undue injury or benefit" is present when the act or omission of the petitioner has resulted to an actual injury or damage which must be established by evidence.^[22]

The employees of CHEDRO III who had received the financial assistance ultimately derived no benefit therefrom considering that they returned the funds as soon as they learned of the disallowance. Thus, the COA final report held that no misappropriation of funds had occurred, thereby establishing the absence of any factual and legal basis for the dismissal of the petitioner from the service, viz:

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3. ND No. 2004-038, the amount disallowed pertains to cash advances spent for a fictitious seminars and liquidation thereof were supported with falsified documents. However, it was disclosed that the money was not misappropriated by Dr. Daraug but was distributed to CHEDRO officials and employees as financial assistance in addition to the disallowed allowances under ND No. 2004-037; that refund were being made by them since the agency received the Audit Observation Memorandum dated September 19, 2003 of the Audit Team Leader; and that as of this writing, a total of PhP853,200 had been refunded out of the PhP950,000 disallowance. In view of the good faith shown by the herein appellant and the refunds being made by concerned agency officials and employees, ND No. 2004-038 shall remain until the disallowed amount is fully settled. xxx^[23]

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Plainly enough, undue injury to the Government was absent. As interpreted in *Llorente, Jr. v. Sandiganbayan*,^[24] undue injury is actual damage in the context of the civil law, which defines actual or compensatory damages of a person in Art. 2199, Civil Code, as "such pecuniary loss suffered by him as he has duly proved."

To be more precise, the Supreme Court explained in *Llorente, Jr. v. Sandiganbayan* that:

Fundamental in the law on damages is that one injured by a breach of contract, or by a wrongful or negligent act or omission shall have a fair and just compensation commensurate to the loss sustained as a consequence of the defendant's act. Actual pecuniary compensation is awarded as a general rule, except where the circumstances warrant the allowance of other kinds of damages. Actual damages are primarily intended to simply make good or replace the loss caused by the wrong.

Furthermore, damages must not only be capable of proof, but must actually be proven with a reasonable degree of certainty. They cannot be based on flimsy and non-substantial evidence or upon speculation, conjecture or guesswork. They cannot include speculative damages which are too remote to be included in an accurate

estimate of the loss or injury.

We observe, too, that the PAGC and the OP based their finding on the fact that the petitioner's signature appeared in the liquidation report prepared by her subordinates. This finding is contrary to the pertinent jurisprudence on the matter. The fact that a person has approved a document by affixing her signature thereon does not automatically make said person a participant or conspirator in the wrongful act of another who prepared the document.[25]

In fine, there is no evidence presented to establish the complicity of the petitioner in the acts that allegedly caused injury to the Government. She did not even prepare the liquidation report that might have turned out to be false. She did not herself misappropriate the funds subject of the report. All she did was to affix her signature in the liquidation report, but even that was done in good faith. To paraphrase one case,[26] there should be, indeed, other grounds than the mere signature or approval appearing on a report to sustain the liability of the signatory who relied on the good faith of other personnel.

WHEREFORE, the decision dated July 27, 2004 rendered by the Office of the President, approving the recommendation for the dismissal of the petitioner made by the Presidential Anti-Graft Commission, is REVERSED AND SET ASIDE and the charge of violation of Sec. 3 (e), R. A. 3019 against the petitioner is DISMISSED.

SO ORDERED.

Villarama, Jr. and Arevalo-Zenarosa, JJ., concur.

[1] OP Case No. 04-G-285.

[2] Annex A, petition; rollo, pp. 34-42.

[3] Rollo, pp. 61-63.

[4] Rollo, p. 71.

[5] Annex B, petition; rollo, pp. 54-57.

[6] Annex C, petition.

[7] Annex D, petition.

[8] Annex E, petition.

[9] Black's Law Dictionary, Sixth Edition, p. 139.

[10] G.R. No. 167048, April 7, 2006.

[11] Citing *Sistoza v. Desierto*, 437 Phil. 117, 132 (2002).

[12] G.R. No. 69983, May 14, 1990, 185 SCRA 346, *Sidro v. People*, G.R. No. 149685, April 28, 2004, 428 SCRA 182, 194.

[13] Citing *Go v. Office of the Ombudsman*, G.R. No. 131399, October 17, 2003, 413 SCRA 608, 618.

[14] Citing *People v. Francisco*, 416 Phil. 121, 145 (2001); *People v. Oliano*, 350 Phil. 604, 628.

[15] Citing *Fernandez v. Fernandez*, 416 Phil. 323, 343 (2001).

[16] Sec. 3, (m), Rule 131, Rules of Court: “ (m) That official duty has been regularly performed;

[17] G.R. 122166, March 11, 1998; 287 SCRA 382.

[18] 178 SCRA 254.

[19] 170 SCRA 400.

[20] Black’s Law Dictionary, Sixth Edition, p. 785.

[21] Black’s Law Dictionary, Sixth Edition, p. 1528 (defining undue).

[22] Pecho v. Sandiganbayan, 238 SCRA 116, 133-134 (November 14, 1994).

[23] Rollo, p. 118.

[24] G.R. 122166, March 11, 1998; 287 SCRA 382, 399-400.

[25] Macadangdang v. Sandiganbayan, 170 SCRA 308 (1989). (Simply because a person in a chain of processing officers happens to sign or initial a voucher as it is going the rounds, it does not necessarily follow that he becomes part of a conspiracy in an illegal scheme. xxx.); Arias v. Sandiganbayan, 180 SCRA 309 [1989] (xxx All heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations. xxx.)

[26] Arias v. Sandiganbayan, 180 SCRA 309 [1989].

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