

DOMINADOR B. ANDRES, PETITIONER, VS. MARJORIE P. ESCORIAL, RESPONDENT.

Ponente: DIMAAMPAO, J.

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DIMAAMPAO, J.:

This Petition for Review[1] impugns the Joint Resolution[2] dated 29 April 2013 and Order[3] dated 31 July 2013 of the Office of the Ombudsman in OMB-C-A-10-0148-C and OMB-C-C-10-0139-C. The former found probable cause to prosecute petitioner Dominador Andres (Andres) for the crime of Estafa under Paragraph 2(a), Article 315 of the Revised Penal Code and adjudged him guilty of Grave Misconduct while the latter denied the Consolidated Motion for Reconsideration thereof.

Given that the repugned judgments delve into the administrative culpability and the finding of probable cause for the crime of Estafa against petitioner, this Petition probes only into the administrative case docketed as OMB-C-A-10-0148-C.

The records disclose that Andres served as Assistant Secretary for Field Operations of the Department of Agrarian Reform (DAR) before his retirement in 2011.[4] He rose from the ranks and was in public service for almost three decades.

Respondent Marjorie Escorial (Escorial) is the Marketing Director of Isla Security Agency (Isla Security), an entity offering security services to its clientele. She was tasked to scout for prospective clients for Isla Security.

The inculpatory averments in Escorial's Affidavit of Complaint[5] narrated that sometime in February 2009, she was in the office of the Department of Public Works and Highways (DPWH), Manila, when she met Milagrina Birosel (Birosel). The latter informed her that the DAR was accepting bidders for security services. Birosel assured Escorial that Andres was her relative and that he would facilitate the grant of the bid in favor of Isla Security inasmuch as then DAR Secretary Nasser Pangandaman could not refuse anything that Andres asked.

Birosel then accompanied Escorial to visit the office of Andres. When Andres learned that Escorial wanted to join the bid, he instructed her to pay for the Bidder's Form. Andres then supposedly asked Escorial: "Ano ba ang capacity ninyo?"[6] As Escorial failed to understand what was meant by this, Andres allegedly retorted: "Alam mo na yon," and made a money sign with his hand. Escorial replied: "No problem, sir."[7]

Eventually, Escorial went back to Andres who informed her that he needed P210,000.00 as initial payment. Andres instructed that the money be given to Birosel. The transaction was evinced by the Payment Order of Isla Security dated 4 March 2009.[8]

Escorial consistently checked the status of the bid filed by Isla Security. To her consternation, she received a Notice of Disqualification on the ground that the bid of Isla Security did not comply with the required salary rate to be given to each security guard.[9] Escorial forthwith confronted Andres who advised her to file a request for reconsideration.[10]

Thereupon, on 18 April 2009, Andres allegedly called Escorial inviting Birosel and her to his office for a meeting.

He guaranteed her that the Contract for Security Services was being drafted: “Wala naman talaga bidding pag security guard Bidding biddingngan lang yan.”[11] Andres then asked for another P500,000.00 claiming that he would be giving the money to then DAR Undersecretary Narciso Nieto who would be the one to award the bid contract to Isla Security.

Escorial once more went to the office of Andres carrying P400,000.00 with her. Before releasing the money, she asked for a guaranty that the Contract would be given to Isla Security. Andres posthaste issued his personal check payable to cash in the same amount as that he received. He assured Escorial that if the Contract would not be awarded to Isla Security, she could deposit the check to recoup her losses.

As it happened, the bid contract for security services was not awarded to Isla Security. Escorial deposited the check which was later dishonored for insufficiency of funds.[12] This prompted Escorial to file an administrative case against Andres for dishonesty and grave misconduct, likewise a criminal case for perjury and estafa.[13]

Andres, for his part, denied the accusations hurled against him. He propounded that he never received the P210,000.00 alleged bribe, as this was received by Birosel. As for the issuance of the check for P400,000.00, he insisted that it was meant to help Birosel who was in financial woes. Birosel happened to be the sister-in-law of DAR Director Wilfredo Leano, his close friend. Andres was surprised as to how the check landed in the hands of Escorial.

When Andres confronted Birosel, she admitted that she was working as a Marketing Representative of Isla Security, and that she owed the agency P550,000.00. She spent for her personal use the said amount entrusted to her by Escorial which was meant to facilitate the award of the bid contract with DAR. To assuage Escorial, Birosel turned over the check issued to her by Andres. In time, Birosel fully paid her obligation but Escorial refused to release the check insisting that she still owed interests. This was how Andres got embroiled in the controversy. Birosel confirmed this version in her Sworn Statement.[14]

Andres further claimed he was in no position to exert influence or control over the bidding process as he was not a member of the Bids and Awards Committee or the concerned Technical Working Group. By the time Escorial and Birosel approached him, Isla Security was already disqualified from participating in the bidding. He then advised Escorial to follow the bidding process. He theorized that it was downright absurd for him to issue his personal check to guarantee a bribe.[15]

Assaying the disparate stances of the parties, the Office of the Ombudsman rendered the assailed Joint Resolution, thusly—

“WHEREFORE, this Office finds probable cause to prosecute (petitioner) DOMINADOR B. ANDRES for the crime of Estafa under paragraph 2(a) of Article 315 of the Revised Penal Code.

Accordingly, let an Information be FILED before the Sandiganbayan for ONE count of the crime of Estafa under paragraph 2(a) of Article 315 of the Revised Penal Code.

FURTHER, there being substantial evidence, respondent is found guilty of Grave Misconduct which is punishable by dismissal. He having retired, he is meted the penalty of FINE equivalent to one year's salary as well as cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification from holding public office.

SO ORDERED.”[16]

Andres moved for reconsideration but failed to attain favorable relief as this was denied through the oppugned Order.

He took issue with the administrative finding of guilt for grave misconduct anchored on the following grounds:

I

THE HONORABLE OMBUDSMAN COMMITTED A GRAVE AND REVERSIBLE ERROR TANTAMOUNT TO GRAVE ABUSE OF DISCRETION IN NOT DISMISSING THE CASE AGAINST THE PETITIONER.

II

THE HONORABLE OMBUDSMAN COMMITTED A GRAVE ERROR IN FAULTING THE PETITIONER FOR NOT FURTHER EXPLAINING WHY THE CHECK HE ISSUED WAS IN THE POSSESSION OF THE RESPONDENT.

III

THE HONORABLE OMBUDSMAN SHOULD NOT HAVE DISMISSED PETITIONER'S VERSION OF THE FACTS AS "ONE FOR THE BOOKS" AND BELIEVED THE RESPONDENT'S STORY HOOK(,) LINE(,) AND SINKER.

IV

PETITIONER IS NOT LIABLE FOR GRAVE MISCONDUCT

The Petition is bereft of merit.

We shall traverse the issues in one fell swoop. The pressing issue before Us is whether or not Andres (now, petitioner) is guilty of grave misconduct.

First off, We echo the settled rule that the findings of fact of administrative bodies will not be interfered with by the courts in the absence of grave abuse of discretion on the part of the former, or unless the aforementioned findings are not supported by substantial evidence. By reason of the special knowledge and expertise of administrative agencies over matters falling under their jurisdiction, they are in a better position to pass judgment on those matters.[17] Findings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive. Conversely, therefore, when the findings of fact by the Ombudsman are not adequately supported by substantial evidence, they shall not be binding upon the courts.[18]

Escorial (now, private respondent) adduced convincing and compelling evidence to prove the charge for grave misconduct. Her Affidavit of Complaint chronicled in excruciating detail how petitioner extracted money from her in exchange for a favorable action on Isla Security's bid for security services. The Payment Order[19] of Isla Security dated 4 March 2009 speaks volumes as it underpins the dirty money demanded and received by petitioner in the amount of P210,000.00. This document conspicuously stated—

“For Asec. Andres DAR (As per instruction By Asec. Andres to be received by Mrs. Mila Birosel) request.”

Apart from his strenuous denials, petitioner offered not a tinge of proof to contradict this gripping evidence which pulled the rug from under his feet.

By the same token, the check[20] in the amount of P410,000.00 and payable to cash and personally issued by petitioner placed him in a bind. It amply supported private respondent's story that when she demanded some form of guaranty for their transaction, petitioner readily gave this check to her.

We refuse to accord weight to petitioner's disputation that he gave the check not to private respondent, but to Birosel to aid her in her financial distress. The elaborate story concocted by Birosel that she owed private

respondent a sum of money so she gave petitioner's check as security for her obligation is too preposterous as to inspire belief. The records are dearth of proof of the so-called loan handed out by private respondent to Birosel. There is not a morsel of documentary evidence to substantiate this allegation.

Along this vein, We reverberate the well-reasoned disquisition of the Office of the Ombudsman—

“Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his position or office to procure some benefit for himself or for another person, contrary to duty and the rights of others.

(Petitioner's) tale about the circumstances surrounding the issuance of the check is one for the books. A sister-in-law of a close friend seeks his help to bail her out of financial distress and (petitioner) readily issues a check for P400,000.00 to be used a(s) “show money in her work as agent-broker of various transactions” hardly convinces.

(Petitioner) could only point to Birosel to bail him out of his predicament. This Office, however, cannot give credence to Birosel's bare assertions. Birosel stated (Escorial) gave her P500,000.00 sometime in June 2009 to ensure that (Isla Security) would win the contract; she gave the check to (Escorial) as a security for the balance of P400,000.00; when it was clear that (Isla Security) did not bag the security contract, she returned the money advanced to her by paying (Escorial) in installments until October 2009, following which she asked for the return of the check but (Escorial) refused unless she paid additional interest.

Birosel did not offer any documentary proof to substantiate such claims.

Moreover, if the check was really intended by (petitioner) to “help” Birosel in her work, he could have easily named her as payee of the check, not Pay to Cash which, under the Negotiable Instruments Law, is payable to bearer.

At all events, (petitioner's) argument that he gave the check as “show money” only does not jibe with the claim of Birosel that (petitioner) lent her the money as she was then “desperate financially.”

Interestingly, (petitioner) and Birosel did not even deny complainant's assertion that Birosel received, for (peti-tioner's) behalf, P210,000.00 from (Escorial) as noted in an acknowledgement receipt.”[21]

Irrefragably, misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules, which must be proved by substantial evidence.[22] With the factual milieu obtaining in this case, We hold and so rule that petitioner is guilty of grave misconduct as he extorted money from private respondent for which he should be held accountable.

WHEREFORE, the Petition for Review is hereby DENIED. The Joint Resolution dated 29 April 2013 and Order dated 31 July 2013 of the Office of the Ombudsman, in OMB-C-A-10-0148-C, are AFFIRMED.

SO ORDERED.

Ybañez, and Paredes*, JJ., concur.

* Vice Justice Carmelita S. Manahan, per Office Order No. 149-14-RSF dated 21 April 2014.

[1] Rollo, pp. 3-29.

[2] Id., pp. 34-45.

- [3] Id., pp. 30-33.
- [4] Rollo, p. 39.
- [5] Id., pp. 46-48.
- [6] Id., p. 46.
- [7] Ibid.
- [8] Id., p. 51.
- [9] Rollo, p. 53.
- [10] Id., pp. 53-54.
- [11] Id., p. 47.
- [12] Id., p. 55.
- [13] Id., pp. 98-104.
- [14] Rollo, pp. 74-76.
- [15] Id., pp. 66-72, 91-97.
- [16] Id., pp. 44-45.
- [17] See Encinas v. Agustin, Jr., 696 SCRA 240, 266-267 (11 April 2013).
- [18] Marcelo vs. Bungubung, 552 SCRA 589, 607-608 (23 April 2008).
- [19] Rollo, p. 51.
- [20] Id., p. 55.
- [21] Rollo, pp. 39-41.
- [22] See Samson v. Restrivera, 646 SCRA 481, 495-496 (28 March 2011).

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