

HOLDING FORMER CHAIRMAN PEDRO BANDOQUILLO OF THE HOME FINANCING COMMISSION PECUNIARILY LIABLE FOR A PORTION OF INTEREST LOSSES SUFFERED BY THE COMMISSION

ADMINISTRATIVE ORDER NO. 179, August 26, 1969

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This refers to Administrative Order No. 55 issued by this Office on February 15, 1967, creating an investigating Committee “to investigate alleged unaccounted funds and illegal investments of the Home Financing Commission.” The Committee was composed of Messrs. Emilio A. Gancayco of the Department of Justice, as Chairman, and Alipio Dalmacio of the Presidential Economic Staff and Marcelino Yumul of the General Auditing Office, as Members.

Basis of the inquiry was a memorandum of the Auditor of the Home Financing Commission (HFC) to the Officer-in-Charge thereof dated February 3, 1967, alleging that:

- (1) The investments of the HFC in the Overseas Bank of Manila of bank acceptances in the total amount of P659,218.59 were not authorized by Section 15 of Republic Act No. 1557, otherwise known as the Home Financing Act;
- (2) The renewals of said bank acceptances were made without prior approval of the Central Bank in violation of Central Bank Circular No. 220 dated April 22, 1966;
- (3) The aforementioned bank acceptances, including interests, were renewed without pre-audit in contravention of GAO Memorandum Circular No. 510 dated May 27, 1966;
- (4) The renewal bank acceptances were made payable to bearer, thus wiping out the identity of the government fund; and
- (5) The bank acceptance of the Overseas Bank of Manila due February 21, 1967, in the amount of P150,000 was improperly accomplished and was of doubtful validity.

The Committee inquired into all transactions relevant to the alleged “unaccounted funds and illegal investments of the Home Financing Commission” without limiting itself to the matters contained, in the memorandum of the auditor.

The Committee Report dated April 6, 1967, was submitted to this Office with recommendations, but the papers were referred to the Department of Justice, where Mr. Pedro Bandoquillo, former HFC Chairman-General Manager, requested leave to present additional evidence in support of his explanations. Committee Chairman Gancayco accordingly received additional evidence submitted by Mr. Bandoquillo.

The records disclose the following:

1. In December 1964 the auditor of the HFC questioned the purchases of bank acceptances by the HFC Board from the Traders Commercial Bank considering them as violative of Section 15 of the HFC charter, Republic Act No. 1557. Said section recites:

“Moneys in the Fund, not needed for current operations of the Home Financing Commission, shall be deposited with any government or commercial banks as may be approved by the Commission to the credit of the Fund, or invested in bonds or other obligations issued or guaranteed as to principal and interest by the Government. The Commission may purchase in the open market debentures issued under the provisions of this Act. Debenture so purchased shall be cancelled and not reissued.”

On June 25, 1965, the Superintendent of Banks of the Central Bank informed the HFC auditor that the purchases of bank acceptances were not authorized under the Charter of the Commission as they constituted investments which were neither in bonds nor obligations issued or guaranteed as to principal and interest by the Government. This matter was again brought by the auditor to the attention of the Board composed of Messrs. Pedro A. Bandoquillo, as chairman, and Isaac Villegas Ty and Otillo Gorospe, as members. The Board, however, continued to approve the purchases of bank acceptances. Indeed, on August 20, 1964, and August 15, 1965, the Board invested in bank acceptances of the Traders Commercial Bank in the sum of P117,123.16 and P600,000, respectively (Bank Acceptance Certificates Nos. 006 and 007) instead of depositing said amounts as time deposits which would have earned more interests.

On October 19 and November 22, 1965, the Board also purchased bank acceptances from the Overseas Bank of Manila worth P156,750 and P502,468.59 at 4½% and 6% per annum, respectively, instead of depositing then as time deposits at 6½% per annum, thus causing the Commission an interest loss of P7,177.15.

There seems to be no doubt that bank acceptances are investments outside the competence of the Commission to purchase (5 Words & Phrases, 116 citing *Luikart v. Mass. Bonding & Insurance Co.*, 264 N. W. 124, 129; 129 Nebraska 771 in defining bank acceptance; 12 Words & Phrases 238); nor do they constitute debentures issued under the provisions of Republic Act No. 1557 (Chapter II, Sections 7 to 14). More, such investments can not conceivably come within the ambit of the powers of the Commission as enumerated in Section 4 of the same law. Consequently, the Board should have desisted from purchasing bank acceptances, as it was not authorized by its charter.

Mr. Bandoquillo explained that the Board had the right and power to invest in bank acceptances with private commercial banks as an incentive for the latter to participate in the HFC's housing and mortgage insurance program. He adverted to the alleged unique authority conferred by the charter upon the HFC to approve deposits of its funds “with any government or commercial banks” and construed this to mean that the HFC may freely choose its depository banks which may be willing to participate in the HFC mortgage insurance program. This insistence, however, is unavailing in the face of an explicit lack of statutory authority and in the light of the adverse opinions advanced by the HFC Auditor and the Superintendent of Banks. The Board, had it shown circumspection, should have elicited the opinion of the Secretary of Justice before persisting in the matter.

It should be noted, however, that none of the money invested in said bank acceptances was lost; indeed, it earned the corresponding interest, albeit in lesser amount than if it were deposited in the time deposits form.

On the whole, it is believed that these purchases were made in good faith and in an honest but erroneous interpretation of the law as to the extent of the powers of the HFC Board.

2. On September 6, 1965, this Office, through then Assistant Executive Secretary Armand Fabella, directed the HFC Commission to withdraw its matured time deposits and its current and savings accounts with private commercial banks and to immediately transfer the same to the Philippine National Bank. On September 10, 1965, the HFC Board mustered a resolution seeking a reconsideration of this directive. However, its request was ignored by this Office. Meanwhile, the Commission failed to transfer its funds to the PNB as directed and continued authorizing time deposits and investments in private banks as follows:

- (a) Time deposit of P303,000 in December 1965 with the Traders Commercial Bank (Exhibits FF-5 and FF-19);
- (b) Two bank acceptances purchased from the Overseas Bank of Manila in the total amount of P659,218.15 in October and November 1965 (Exhibits C-1 and C-3); and
- (c) Bank acceptances in the amount of P502,468.59 purchased from the Traders Commercial Bank on November 22, 1965 (Exhibit GG-8).

On April 22, 1966, the Central Bank issued Circular No.220 directing the withdrawal of all government deposits from private commercial banks and their transfer to the Philippine National Bank or the Development Bank of the Philippines which were the only authorized government depositories. The General Auditing Office in an office memorandum dated September 30, 1966, invited the attention of the Board to this circular. On December 16 and 21, 1966, the Board nevertheless adopted a resolution for the withdrawal of P600,000 of its current accounts from the PNB for deposit in the Overseas Bank of Manila (Exhibit PP). This amount was sought to “be withdrawn in three separate checks of P200,000 each, all dated December 20, 1966, signed by Mr. Bandoquillo (Exhibits E, E-1 and E-2), but the checks were dishonored by the PNB for lack of corporate title and the counter-signatures of the auditor and the treasurer (Exhibit F). The Board, composed of Messrs. Bandoquillo, Villegas-Ty and, Piquero, however, confirmed the authority of Mr. Bandoquillo to sign those checks alone (Exhibit G-5). So, on December 22, 1966, the three checks were again presented for payment to the PNB by the Overseas Bank of Manila and again they were dishonored for the same reason and because of the existence of Central Bank Circular No. 220 (Exhibit G-2). Two more tries were made to encash two checks on December 28 and 29, 1966, but both attempts failed (Exhibits G-3, G-4 and G-6).

The Chairman and Members averred that they sought reconsideration of the directive of this Office and they believed that pending such reconsideration, they were empowered to continue making deposits in private banks. They also entertained doubts on the extent of the authority of the Office of the President over the operations of the Commission. They believed, moreover, that the transfer of the Commission’s deposits from the commercial banks to the Philippine National Bank would trigger the immediate withdrawal of said banks from the HFC’s mortgage insurance program and would retard the low-cost housing program of the Government. Finally, the Board doubted the power of the Central Bank over the Commission especially as to the deposits made in private banks the purpose of which was to support the mortgage insurance program of the Commission.

After a careful appraisal of all the facts, and in light of the circumstance that not a single centavo of government funds was lost, except the anticipated higher interests that would have been earned had these funds been time-deposited with the Philippine National Bank, this Office finds that the acts of the Board did not constitute a defiance of a presidential directive, much less an outright infringement of the law. Their acts may be considered, at worst, errors of judgment done in good faith, there being no evidence of malice or bad faith.

3. In August 1964 Mr. Bandoquillo, as Chairman-General Manager, took personal custody of the bonds and certificates of time deposits of the Commission from the HPC treasurer. He claimed he had no confidence in said official. He then negotiated bank acceptances and certificates of time deposits by himself without the counter-signatures of the treasurer and the auditor. He justified this actuation by the authority granted him by the Board and the charter. Explaining the actuations of his son, the late Conrado Bandoquillo, of endorsing two bank acceptances without proper authority (Exhibits AA, GG-2, GG-3, AA-2, AA-3, Z-5, FF-22 and GG-4-), Mr. Bandoquillo stated that this was not a case of disbursement that necessitated the counter-signatures of the treasurer and the auditor.

4. Mr. Bandoquillo purchased bank acceptances payable to bearer from the Overseas Bank of Manila in the amounts of P163,803.84 and P532,616.71 on October 13 and November 21, 1966, respectively. From the date of

said purchases until January 25, 1967, these bank acceptances remained payable to bearer instead of to the Commission, thus exposing government funds to possible loss. Mr. Bandoquillo explained that he neither requested nor authorized the bank to issue these bank acceptances to bearer; that he received the certificates in good faith; and that the Overseas Bank must have issued them to bearer to circumvent the prohibition against such deposits in private banks as required by Central Bank Circular No. 220.

The fact remains, however, that these funds remained intact; none of the moneys involved got lost. The Board's actions, though ostensibly imprudent, are not culpable and may again be ascribed to error of judgment.

5. Mr. Bandoquillo obtained a personal loan of P3,198.83 from the Katipunan Rural Bank which was a depository of time deposits of the Commission since 1962. Said bank was not a participant in the Commission's mortgage insurance program, but it was so patronized because it granted salary loans to HFC personnel. When Mr. Bandoquillo failed to pay his loan at maturity and when on February 7, 1966, a certificate of time deposit of the Commission in the amount of P10,000 was redeemed by said Bank, the unpaid accounts of Mr. Bandoquillo and of one Pedro Royales of the HFC already amounting to P3,355.94 were deducted. Mr. Bandoquillo seems to have acquiesced in this deduction but he refunded his personal loan plus all the interests due directly to the Commission on January 24, 1967. Again, in this instance, no material loss was sustained by the Commission or by the Government.

6. On February 21, 1966, Mr. Conrado Bandoquillo, son of Chairman Pedro Bandoquillo, deposited in the Traders Commercial Bank check T-04346 dated February 18, 1966, in the amount of P200,000 belonging to the Commission to the account of FEATMAC, a private corporation under Account No. 2017-2. On the same day, FEATMAC withdrew P50,000 and deposited the same to the account of the Commission. Also on the same day, Overseas Bank of Manila bank acceptance in the amount of P150,000 was issued. Meanwhile, FEATMAC used and disposed of the amount of P150,000 deposited to its account.

Mr. Pedro Bandoquillo explained that he did not authorize his son in this instance. He drew attention to the indorsement of his son on the check which is typewritten while the note of the account number to which it was to be deposited appeared to be written by a different hand. Since Mr. Bandoquillo's son is now dead, pursuing the investigation further was out of the question.

An official of the Overseas Bank, a Mr. Abanilla, testified that this bank acceptance issued to cover the diverted funds to FEATMAC was forged and signed by unauthorized persons. The fact stands that the Overseas Bank of Manila redeemed the same, as it had erroneously guaranteed payment by endorsing it (Exhibits C-4 and FF-2). Hence, no actual damage was sustained by the Commission.

This Office believes, after a careful review of the record, that the aforementioned Chairman and Members of the Board of the Home Financing Commission purchased bank acceptances and maintained deposits of the accounts of the Commission with private commercial banks in spite of lack of explicit authority to do so. Their explanations are, however, not wholly unfounded. They explained that it was their desire to encourage private commercial banks to invest in the mortgage insurance program of the Commission; that they were aware of the reluctance of private commercial capital in entering into low-cost housing ventures where investment yields were unattractive; and that they feared that the sudden withdrawal of the HFC deposits from the private banks may adversely affect its mortgage insurance program.

Hence, this Office finds that the acts which the Investigating Committee discovered to have been committed may reasonably be ascribed to errors of judgment.

The repetition of the aforementioned acts by the then Chairman and incumbent Members of the Board concerned,

however, even in the face of contrary advice of superior authority, and against the cautionary warnings of independent agencies, and the Board's failure to seek the legal opinion of the Secretary of Justice to settle doubts raised as to its official actuations show marked imprudence and faulty exercise of administrative leadership and discretion.

Wherefore, this Office finds that the HFC Board, by its act of authorizing: the investment in bank acceptances of the Traders Commercial Bank in the sum of P117,123.16 on August 30, 1964, and P600,000 on August 15, 1965 (Bank Certificates Nos. 006 & 007), instead of depositing the same as time deposits, caused the Commission to sustain an interest loss of P3,242.67 for the period from August 24, 1964, to July 29, 1966, as computed by the HFC auditor. Mr. Bandoquillo is hereby held accountable and liable for P2,000 of said amount which he must immediately reimburse to the Commission.

Mr. Bandoquillo is likewise hereby declared liable to, and must accordingly reimburse, the Commission for P3,000 out of an interest loss of P7,177.15 caused by the Board's act of purchasing bank acceptances of P156,750 on October 19 and P502,468.59 on November 22, 1965, at 4½% and 6%, respectively, instead of depositing the same as time deposits at 6½% per annum.

This Office withholds its decision as regards directors Gorospe, Villegas Ty and Piquero, pending further study of their respective cases.

Done in Manila, this 26th day of August, in the year of Our Lord, nineteen hundred and sixty-nine.

(Sgd.) FERDINAND E. MARCOS

President of the Philippines

By the President:

(Sgd.) ERNESTO M. MACEDA

Executive Secretary

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