

**ADVANCE FORCES SECURITY AND INVESTIGATION SERVICES, INC.,
REPRESENTED BY JAMES SANTIAGO, PETITIONER, VS. PIOLITO C.
SANTOS, CATALINA D. JAYLO AND PURA BARTOLAY-ADVINCULA,
RESPON...**

Ponente: LAMPAS PERALTA, J.

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LAMPAS PERALTA, J.:

Before the Court is a petition for review under Rule 43, 1997 Rules of Civil Procedure, as amended, assailing the following Joint Resolution and Order of the Office of the Ombudsman (OMB) in OMB-L-A-11-0662-J:

(1) Joint Resolution dated April 25, 2014[1] which dismissed, among others, the complaint for violation of Section 7(d),[2] Republic Act (RA) No. 6713[3] filed by petitioner Advance Forces Security and Investigation Services, Inc. against respondents Piolito C. Santos, Catalina D. Jaylo and Pura Bartolay-Advincula, all employees of the National Food Authority, Region V (NFA Region V), and

(2) Order dated July 30, 2014[4] which denied petitioner's motion for reconsideration of the Joint Resolution dated April 25, 2014.

THE ANTECEDENTS

On February 12, 2010, after winning the bidding held on January 11, 2010, petitioner, through its then Vice-President and General Manager Captain Ruben L. Follosco, entered into a "Contract of Security Services"[5] with NFA Region V, whereby the former would provide security services at the latter's installations/warehouses in the provinces of Albay, Sorsogon and Masbate from February 16, 2010 to December 31, 2012 for a total contract price of P26,863,459.92. Under the contract, (i) petitioner was required to submit, a week before the beginning of each month, a Monthly Deployment Updates (MDU) to be approved by NFA Administrator or his duly authorized representative; (ii) all payments to petitioner were to be made every 15[th] and end of the month at the regional/provincial/district office where the security services were rendered; and, (iii) before release of each payment, petitioner must submit first to the regional/provincial/district office proof of remittances to concerned government agencies.

According to petitioner, it was not able to collect from NFA Region V the amount of P12,920,967.42,[6] representing various billings for security services rendered at the latter's installations/warehouses in the provinces of Albay,[7] Sorsogon[8] and Masbate.[9] Allegedly, (i) "respondents have, separately and jointly, connived and worked together to deprive Complainant [petitioner herein] of payment of its billings for services rendered as a Security provider for NFA Region V, and in so doing so, have also asked for and solicited a bribe in order to facilitate such payment;"[10] (ii) "respondent Catalina Jaylo, to whom Complainant's billings would be forwarded to, and who was assisted by Respondent Advincula, x x x would give repeated, conflicting and piecemeal instructions regarding the processing of Complainant's billings, such that the payment of such billings would be hindered for months on end;"[11] and, (iii) on June 30, 2011, respondent Piolito C. Santos blatantly

solicited bribe from Joseph Q. Sobredilla, petitioner's Area Commander for Region V, for facilitating the processing of the unpaid billings.[12]

However, respondents claimed that (i) the complaint was “baseless, unfounded and without probable cause considering the fact that the amount of P12,920,967.42 being claimed by Attys. Aurora Salvana and James Santiago was fully paid as of September 28, 2011;”[13] (ii) the complaint “was filed by Atty. James Santiago purposely to cow, harass and coerce”[14] respondents “to disregard the NFA and COA Accounting and Auditing requirements by paying their vouchers/billings”[15] thereby exposing them “to criminal and administrative prosecution by NFA and COA;”[16] and, (iii) the complaint was filed “in order to restrain, prevent and intimidate”[17] respondent Piolito C. Santos “from filing a complaint against x x x [petitioner's board of directors and officers] pursuant to the Revised Implementing Rules and Regulations (IRR) of Republic Act No. 9184, otherwise known as the Government Procurement Reform Act.”[18]

Details of the respective submissions of the parties were summarized by the OMB in its Joint Resolution dated April 25, 2014 as follows:

“ COMPLAINANT'S ALLEGATIONS

Complainant states that in February 2010, AFSISI entered into a Contract of Security Service with NFA-Region V. He claims that when AFSISI billed NFA Region V for the services rendered, respondents, in an attempt to solicit bribes, conspired with each other to deliberately withhold payment due to AFSISI in the amount of Php12,920,967.42.

Complainant alleges that, for their part of the conspiracy, respondent Jaylo, assisted by respondent Advincula, withheld payment to AFSISI and made repeated, conflicting and piecemeal instructions before the billings would be processed for payment. Every time AFSISI representatives comply with an instruction or requirement, respondent Jaylo would find another supposed deficiency or irregularity in their billings and would require them to submit other documents or comply with certain requirements, so much, that it had become a cycle.

Complainant further claims that on 30 June 2011 AFSISI representatives met with respondent Santos regarding their unpaid billings and the latter made some proposals to solve the problem. Shortly after the meeting, however, respondent Santos approached AFSISI representative, Joseph Sobredilla (Sobredilla), and solicited bribes from him for supposedly facilitating the payment. According to Sobredilla, at around lunch time after the meeting, while he was near the main entrance of NFA-Albay Provincial Office, he saw respondent Santos who gestured him over and said to him, "O, inayos ko na yung biling (sic) niyo para mabayaran na kayo ha. Malaki laki din naman makukuha niyo, dapat naman meron para sa akin dyan." To which, Sobredilla replied, "Sir, paabot ko na lang yan sa Head Office."

Complainant claims that despite repeated requests, NFA Region V still failed to pay AFSISI of the services they had already rendered.

RESPONDENTS' ASSERTIONS

Respondent Santos

In his COUNTER-AFFIDAVIT and SUPPLEMENTAL COUNTER-AFFIDAVIT, respondent Santos admitted having a meeting with Sobredilla and respondent Jaylo regarding the billing problem of AFSISI. He, however, claims that he had not seen or talked to Sobredilla after the meeting; that he had only seen him again on 12 July 2010 in a meeting at NFA Central Office, but had not talked to or gestured or called him in that meeting.

Respondent Santos likewise denies Sobredilla's claims of bribe solicitation. He deplores Sobredilla's claims as unthinkable, irrational and inconceivable as he could not have uttered those words right at the NFA office

lobby where so many employees and stakeholders were converging during that time of the day.

Respondent Santos narrates that when he was designated OIC of NFA Region V on 01 December 2010, he promptly requested AFSISI to submit the necessary documents to facilitate the processing and payment of their claims. Instead of complying, AFSISI allegedly demanded payment based on their General Billing or Statement of Account without supporting documents. He further recounts that, on 12 July 2011, a high level meeting between NFA and AFSISI representatives took place at the NFA Central Office to resolve the impasse. In the said meeting, the AFSISI representatives purportedly acknowledged their inadequacies and had signified their conformity to the solutions agreed upon by both parties. Respondent Santos, however, claims that despite the agreement, AFSISI had unilaterally pulled out their security guards and their security and communication equipment ten (10) days after the meeting. He adds that even with the pull out, NFA Region V had still paid all its obligations to AFSISI.

Respondent Jaylo

In her COUNTER-AFFIDAVIT and SUPPLEMENTAL COUNTER-AFFIDAVIT, respondent Jaylo denies the charges against her. She avers that AFSISI was duly informed in writing of all instructions and requirements necessary for the payment of its claims. She asserts that the AFSISI billings were returned as the Commission on Audit (COA) and the NFA Accounting Section found deficiencies and discrepancies in the supporting documents. Respondent Jaylo adds that despite repeated instructions, AFSISI did not comply with the COA requirements and the NFA accounting and auditing rules, hence, the delay in processing the payments.

Respondent Advincula

In her COUNTER-AFFIDAVIT and SUPPLEMENTAL COUNTER-AFFIDAVIT, respondent Advincula denies Complainant's allegation that she and respondent Jaylo delayed the payment of security service to AFSISI. She similarly attributes the delay to AFSISI's failure or delay in submitting supporting documents required by COA and NFA.”[19]

On October 7, 2011, petitioner, through its then Internal Legal Counsel James Santiago, filed with the OMB a Complaint-Affidavit[20] charging respondents (i) Piolito C. Santos, Officer-in-Charge (OIC), NFA Region V; (ii) Catalina D. Jaylo, Supervising Enforcement and Investigation Officer; and, (iii) Pura Bartolay-Advincula, Processing Officer (now Accounts Analyst²¹), Accounting Department with the following:

(i) Violation of Section 3 (b), (e) and (f),[22] RA No. 3019,[23] docketed as OMB-L-C-11-0660-J, and

(ii) Violation of Section 7(d), RA No. 6713, docketed as OMB-L-A-11-0662-J.

On January 11, 2012, the OMB issued an Order[24] denying, for lack of merit, petitioner's urgent prayer for immediate preventive suspension[25] incorporated in its Complaint-Affidavit.

Respondents filed their respective counter-affidavits and supplemental counter-affidavits[26] in the criminal complaint for violation of Section 3 (b), (e) and (f), RA No. 3019, while petitioner filed its Consolidated Reply-Affidavit.[27] Respondent Piolito C. Santos filed his Rejoinder-Affidavit.[28]

On July 25, 2013, the OMB issued an Order requiring respondents to submit their counter-affidavits in the administrative complaint[29] for violation of Section 7(d), RA No. 6713.

On August 23, 2013, respondents filed their respective counter-affidavits,[30] praying for the outright dismissal of the complaint for violation of Section 7(d), RA No. 6713.

In a Joint Resolution dated April 25, 2014, the OMB dismissed OMB-L-C-11-0660-J and OMB-L-A-11-0662-J for failure of petitioner to prove that respondents delayed the processing of its billings. The dispositive portion of the Joint Resolution dated April 25, 2014 reads:

“WHEREFORE, PREMISES CONSIDERED, it is respectfully recommended that the criminal and administrative complaints against respondents PIOLITO C. SANTOS, CATALINA D. JAYLO, and PURA BARTOLAY-ADVINCULA be DISMISSED.

SO RESOLVED.”[31]

In a Motion for Reconsideration (Re Joint Resolution dated 25 April 2014),[32] petitioner questioned the dismissal of OMB-L-C-11-0660-J and OMB-L-A-11-0662-J. In an Order dated July 30, 2014, the OMB denied petitioner's motion for reconsideration for being filed out of time. Thus:

“WHEREFORE, complainant's Motion for Reconsideration is DENIED for reasons discussed above.

SO ORDERED.”[33]

Thereupon, petitioner filed the present petition which is premised on the following arguments:

“THE OMBUDSMAN GRAVELY ERRED IN FINDING THAT THERE IS NO CONSPIRACY BETWEEN RESPONDENTS SANTOS, JAYLO AND ADVINCULA FOR VIOLATION OF SEC. 7(D) OF R.A. 6713

X X X X X X X X

THE OMBUDSMAN GRAVELY ERRED IN NOT CONSIDERING THE POSITIVE TESTIMONIES OF BOMBITA AND SOBREDILLA AS NARRATED IN THEIR RESPECTIVE AFFIDAVITS

X X X X X X X X

THE OMBUDSMAN GRAVELY ERRED IN RULING THAT THERE IS NO PROBABLE CAUSE TO CHARGE RESPONDENTS SANTOS, JAYLO AND ADVINCULA FOR VIOLATION OF SEC. 7(D) OF R.A. 6713

X X X X X X X X

THE OMBUDSMAN GRAVELY ERRED IN DENYING PETITIONER AFSISI'S MOTION FOR RECONSIDERATION SOLELY BASED ON THE PERIOD FIXED BY THE OMBUDSMAN RULES OF PROCEDURE FOR FILING THE SAME”[34]

THE ISSUE

Whether the OMB erred in dismissing the administrative complaint against respondents for violation of Section 7(d), RA No. 6713 and in finding that petitioner failed to prove that said respondents delayed the processing of its billings.

THE COURT'S RULING

Parenthetically, it may be mentioned at the outset that petitioner had elevated to the Supreme Court, in a petition for certiorari under Rule 65, 1997 Rules of Civil Procedure, as amended, the dismissal of the criminal aspect of the complaint for violation of Section 3 (b), (e) and (f), RA No. 3019 (OMB-L-C-11-0660-J). The petition, entitled Advance Forces Security and Investigation Services, Inc. represented by: James Santiago vs. Piolito C. Santos, Catalina D. Jaylo & Pura Bartolay-Advincula, is docketed as G.R. No. 214922.[35] In a Resolution dated January 14, 2015, the Third (3rd) Division of the Supreme Court dismissed the petition “for failure to show any grave abuse of discretion in rendering the challenged joint resolution and order which, on the contrary, appear to be in accord with the facts and the applicable law and jurisprudence.”[36]

In the present case, petitioner assails the OMB's exoneration of respondents for violation of Section 7(d), RA No.

6713. Allegedly, (i) “a conspiracy may be inferred between Respondents Santos, Jaylo and Advincula though no actual meeting among them to concert means is proved [as] Respondents Santos, Jaylo and Advincula were one in depriving Petitioner AFSISI of the payment that Petitioner AFSISI is entitled;”[37] (ii) “the mere denials of Respondents Santos, Jaylo and Advincula cannot be allowed to prevail over the positive testimony of Bombita and Sobredilla [since] the denials of Respondents Santos, Jaylo and Advincula is a self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of Bombita and Sobredilla who testify on affirmative matters;”[38] (iii) “a finding of probable cause x x x can be had”[39] as “there is more than enough evidence to point to the fact that the collective acts of the Respondents, most especially Respondent Santos, is guilty of soliciting money in violation of Sec. 7(d) of R.A. 6713”[40] and “the denials and defenses made by Respondents Santos, Jaylo and Advincula should be taken as their defenses more appropriately threshed out in a trial on the merits;”[41] (iv) the late filing of petitioner's motion for reconsideration was “due to mere inadvertence”[42] and “it was not the intention of Petitioner AFSISI and/or their former counsel to unduly delay the disposition of the instant case;”[43] and, (v) “the fact that the case at bar before the Ombudsman is both a criminal and administrative charge for violation of substantive laws, the Ombudsman should not have immediately dismissed the same without considering the merits of the Petitioner AFSISI's Motion for Reconsideration.”[44]

Petitioner filed the present petition under Rule 43, 1997 Rules of Civil Procedure, as amended, in relation to Section 7, Rule III,[45] Rules of Procedure of the Office of the Ombudsman,[46] as amended,[47] which provides:

“Section 7. Finality and execution of decision. - Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration.

An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.

A decision of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be a ground for disciplinary action against such officer.” (Emphasis supplied)

The present petition for review under Rule 43, 1997 Rules of Civil Procedure, as amended, is not the proper remedy to challenge the OMB Joint Resolution dated April 25, 2014. Petitioner should have filed a petition for certiorari under Rule 65.

Petitioner, the complainant in the administrative complaint below for violation of Section 7(d), RA No. 6713, does not have the right to appeal under Rule 43, 1997 Rules of Civil Procedure, as amended, because the OMB had exonerated respondents of the administrative charge. While it is true that exoneration is not mentioned in Section 27,[48] RA No. 6770,[49] its inclusion is implicit because “if a sentence of censure, reprimand and a one-month suspension is considered final and unappealable, so should exoneration.”[50] As held:

“Section 27 of Republic Act No. 6770 or otherwise known as “The Ombudsman Act of 1989,” provides:

x x x x x x x x

The above-quoted provision logically implies that where the respondent is absolved of the charge, the decision shall be final and unappealable. Although the provision does not mention absolution, it can be inferred that since decisions imposing light penalties are final and unappealable, with greater reason should decisions absolving the respondent of the charge be final and unappealable.

This inference is validated by Section 7, Rule III of Administrative Order No. 07, series of 1990 (otherwise known as the Rules of Procedure of the Office of the Ombudsman), x x x:

x x x x x x x x

It was thus clarified that there are two instances where a decision, resolution or order of the Ombudsman arising from an administrative case becomes final and unappealable: (1) where the respondent is absolved of the charge; and (2) in case of conviction, where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary.”[51]

Thus, where the respondent is absolved of the charge, or in case of conviction, where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the Ombudsman’s decision shall be final, executory, and unappealable.[52] It is only the respondent who is granted the right to appeal, but only in case he is found liable and the penalty imposed is higher than public censure, reprimand, one-month suspension or fine a equivalent to one month salary.[53]

Petitioner, however, is not left without remedy. Under prevailing jurisprudence, the complainant in an administrative complaint may seek the reversal of the exoneration by the OMB by filing with the Court of Appeals a petition for certiorari under Rule 65.

Verily, petitioner should have filed with the Court of Appeals a petition for certiorari under Rule 65, 1997 Rules of Civil Procedure, as amended. As explained in *Dagan vs. Office of the Ombudsman*:[54]

“However, petitioner is not left without any remedy. In *Republic v. Francisco* [510 SCRA 377, December 6, 2006], we ruled that decisions of administrative or quasi-administrative agencies which are declared by law final and unappealable are subject to judicial review if they fail the test of arbitrariness, or upon proof of gross abuse of discretion, fraud or error of law. When such administrative or quasi-judicial bodies grossly misappreciate evidence of such nature as to compel a contrary conclusion, the Court will not hesitate to reverse the factual findings. Thus, the decision of the Ombudsman may be reviewed, modified or reversed via petition for certiorari under Rule 65 of the Rules of Court, on a finding that it had no jurisdiction over the complaint, or of grave abuse of discretion amounting to excess or lack of jurisdiction.”

Ineluctably, as petitioner resorted to the wrong mode of review, the present petition is dismissible on this ground. It is basic that the right to appeal is not a constitutional, natural or inherent right -- it is a statutory privilege and of statutory origin and, therefore, available only if granted or as provided by statutes. It may be exercised only in the manner prescribed by the provisions of the law.[55]

Moreover, under Section 8, Rule III, Rules of Procedure of the Office of the Ombudsman, as amended, a party aggrieved by a Decision of the OMB in an administrative case is required to file a motion requesting the reconsideration of the same within ten (10) days from receipt thereof. Thus:

“Section 8. Motion for reconsideration or reinvestigation: Grounds – Whenever allowable, a motion for reconsideration or reinvestigation may only be entertained if filed within ten (10) days from receipt of the decision or order by the party x x x:

x x x x x x x x” (Emphasis supplied)

Petitioner, in its Motion for Reconsideration (Re Joint Resolution dated 25 April 2014),[56] admitted that on June 29, 2014, it received a copy of the OMB’s Joint Resolution dated April 25, 2014.[57] Hence, pursuant to the

above-quoted provision, petitioner had only until July 9, 2014 within which to file with the OMB a motion for reconsideration. However, petitioner's Motion for Reconsideration (Re Joint Resolution dated 25 April 2014) was received by the OMB only on July 14, 2014,[58] or after five (5) days since July 9, 2014.

The tardiness of petitioner's former counsel in complying with the reglementary period for filing with the OMB the motion for reconsideration cannot be excused on the grounds that the late filing was "due to mere inadvertence"[59] and "it was not the intention of Petitioner AFSISI and/or their former counsel to unduly delay the disposition of the instant case." [60] It bears stressing that it is the duty of counsel to adopt and strictly maintain a system that insures that all pleadings should be filed and duly served within the period therefor.[61] Moreover, litigants, represented by counsel, should not expect that all they need to do is sit back, relax and await the outcome of their case. They should give the necessary assistance to their counsel for what is at stake is their interest in the case.[62]

Petitioner's failure to file on time the motion for reconsideration is not excusable. The rule is that when a party is represented by counsel in an action in court, notices of all kinds including motions, pleadings and orders must be served on the counsel, and notice to such counsel is notice to the client.[63] Also, a client is bound by the acts, even mistakes, of his counsel in the realm of procedural technique,[64] except when the negligence of his counsel is so gross, reckless and inexcusable that the client is deprived of his day in court.[65] Besides, while it is true that excusable negligence is one of the recognized grounds for a motion for new trial or reconsideration, there can be no excusable negligence when ordinary prudence could have guarded against it.[66]

Ineluctably, the OMB's Joint Resolution dated April 25, 2014 had become final and executory, and the Court has no more jurisdiction to amend, modify or alter the same. The perfection of an appeal in the manner and within the period prescribed by law is, not only mandatory, but jurisdictional, and failure to conform to the rules will render the judgment sought to be reviewed final and unappealable.[67] Rules of procedure, especially those prescribing the time within which certain acts must be done, have often been held as absolutely indispensable to the prevention of needless delays and to the orderly and speedy discharge of business.[68]

While the Supreme Court, in highly exceptional instances, "allowed the relaxing of the rules on the application of the reglementary periods of appeal." [69] But "emphasized in these cases is that the policy of liberal interpretation is qualified by the requirement that there must be exceptional circumstances to allow the relaxation of the rules." [70] Thus, absent exceptional circumstances, the Court adheres to the rule that "there are certain procedural rules that must remain inviolable, like those setting the periods for perfecting an appeal or filing a petition for review, for it is doctrinally entrenched that the right to appeal is a statutory right and one who seeks to avail of that right must comply with the statute or rules. The rules, particularly the requirements for perfecting an appeal within the reglementary period specified in the law, must be strictly followed as they are considered indispensable interdictions against needless delays and for orderly discharge of judicial business." [71]

Hence, the OMB did not err in denying petitioner's motion for reconsideration for having been belatedly filed. As aptly held by the OMB:

"The Ombudsman Rules of Procedure explicitly prescribes the period within which a Motion for Reconsideration should be filed. x x x

x x x x x x x x

For administrative cases, Section 8 of Rule III of the said Rules provides, to wit:

x x x x x x x x

Meanwhile, Office Order No. 053, Series of 2013 of the Office of the Deputy Ombudsman for Luzon directs all Directors and Graft Investigation and Prosecution Officers of Ombudsman-Luzon to observe the

reglementary period in filing of a motion for reconsideration in the interest of expeditious settlement of issues and declogging of dockets.

In this case, complainant-movant categorically acknowledged that he received the assailed Joint Resolution on 29 June 2014. In other words, he had until 4 July 2014 for the criminal case, and 9 July 2014 for the administrative case to file a motion for reconsideration. Since complainant-movant filed his motion only on 14 July 2014, or beyond the reglementary period prescribed by the Rules of Procedure, this Office has no recourse but to dismiss the same.

While the period to file a motion for reconsideration is a mere rule of procedure, procedural rules should not be belittled or dismissed. Like all rules, they are required to be followed except only for the most persuasive of reasons when they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed. x x x"[72]

In any event, even if the petition is rendered on its merits, the same must fail just the same. The charges against respondents, including the present administrative complaint for violation of Section 7(d), RA No. 6713, were dismissed after the OMB conducted preliminary and administrative investigations pursuant to the Rules of Procedure of the Office of the Ombudsman. In dismissing the complaint for violation of Section 7(d), RA No. 6713 against respondents, the OMB noted that (i) there was no evidence showing that (a) petitioner submitted the required documents and followed respondents' instructions; (b) respondents' requirements and instructions were unnecessary and beyond what was required of petitioner under the contract; and, (c) respondents acted with manifest partiality, evident bad faith or gross excusable negligence in performing their duties and responsibilities relative to the processing of petitioner's billings; (ii) respondents had evidence showing that they repeatedly advised petitioner to comply with the requirements of the NFA and the COA; and, (iii) the claim that respondent Piolito C. Santos solicited bribe to facilitate the processing of petitioner's billings deserved scant consideration taking into account, among others, the lack of corroborating evidence.[73]

There is no cogent reason to reverse the finding of the OMB that petitioner failed to prove that respondents delayed the processing of its billings, as the OMB Joint Resolution dated April 25, 2014 is supported by substantial evidence and consistent with law and jurisprudence. Even before respondent Piolito C. Santos assumed the position of OIC, NFA Region V on December 1, 2010,[74] petitioner was already encountering problems in the processing of its billings as shown by the exchanges of letters between the previous Regional Directors of NFA Region V and petitioner's representatives.[75] In fact, petitioner was provided by the then Regional Director Danilo Bonabon[76] and Masbate Provincial Manager Wenceslao M. Sison[77] with checklist of requirements. As observed by the OMB, the claim that respondent Piolito C. Santos solicited a bribe[78] was uncorroborated. Mere allegation is not evidence and it is not equivalent to proof.[79]

It cannot be said that respondents Catalina D. Jaylo and Pura Bartolay-Advincula "give repeated, conflicting and piecemeal instructions regarding the processing"[80] of petitioner's billings. Aside from being uncorroborated, the Contract provides that the same is subject to the usual government accounting and auditing rules and regulations.[81] Neither was the list of documents required by respondents Catalina D. Jaylo and Pura Bartolay-Advincula arbitrary. In their transmittal letters dated October 29, 2010[82] and November 24, 2010,[83] the COA Pre-Audit Team returned petitioner's billings for various deficiencies and inconsistencies that were substantially the same documents required by respondents Catalina D. Jaylo and Pura Bartolay-Advincula.

It is basic that the OMB's determination of substantial evidence in administrative complaints filed against public officials or employees of the Government, or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations, are generally not reviewable by courts for the following reasons:

Firstly, the Supreme Court has consistently adopted a policy of non-interference in the exercise of the OMB's

investigatory powers,[84] and respects the initiative and independence inherent to it.[85] This policy is based on constitutional, statutory and practical considerations.[86] The Constitution[87] and RA No. 6770[88] grants the OMB with a wide latitude of investigatory and prosecutorial powers that is virtually free from executive, legislative or judicial intervention, in order to insulate it from outside pressure and improper influence.[89] Moreover, innumerable petitions seeking dismissal of investigatory proceedings conducted by the OMB will grievously hamper the functions of the office and the courts, in much the same way that courts will be swamped if they had to review the exercise of discretion on the part of public prosecutors each time they decided to file an information or dismiss a complaint by a private complainant.[90]

Secondly, findings of fact of the OMB are conclusive when supported by substantial evidence.[91] Section 27,[92] RA No. 6770 explicitly provides that findings of fact by the OMB when supported by substantial evidence are conclusive.[93] 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.[94]

Verily, petitioner failed to show grave abuse of discretion committed by the OMB. The term grave abuse of discretion, in its juridical sense, connotes capricious, despotic, oppressive or whimsical exercise of judgment as equivalent to lack of jurisdiction. The word capricious, usually used in tandem with the term arbitrary, conveys the notion of willful and unreasoning action.[95]

WHEREFORE, the present petition is DENIED for lack of merit and accordingly, the Joint Resolution dated April 25, 2014 and Order dated July 30, 2014 of the Office of the Ombudsman are AFFIRMED.

SO ORDERED.

Cruz, S. C., and Hernando, R. P. L., JJ., concur.

[1] pp. 37-51 and 455-469, Rollo

[2] Solicitation or acceptance of gifts.

[3] An Act establishing a Code of Conduct and Ethical Standards for public officials and employees; otherwise known as the “Code of Conduct and Ethical Standards for Public Officials and Employees;” approved on February 20, 1989

[4] pp. 52-56 and 213-216, Rollo

[5] pp. 98-107, 114-123, 129-138, 222-231, 238-247 and 596-606, Id.

[6] pp. 139-141, Id.

[7] July 1, 2010 – April 30, 2011, p. 142, Id.

[8] August 1, 2010 – April 30, 2011, p. 143, Id.

[9] April 16, 2010 – May 31, 2011, p. 144, Id.

[10] p. 78, Id.

[11] pp. 78-79, Id.

[12] p. 85, Id.

[13] pp. 594, 681 and 707, Id.

[14] pp. 594-595, 682 and 707, Id.

[15] Id.

[16] Id.

[17] p. 595, Id.

[18] Id.

[19] pp. 38-43 and 456-461, Id.

[20] pp. 77-92, Id.

[21] See: p. 14, Id.

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

x x x x x x x x

(b) Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other party, wherein the public officer in his official capacity has to intervene under the law.

x x x x x x x x

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

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

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[23] Anti-Graft and Corrupt Practices Act; approved on August 17, 1960

[24] pp. 470-477 and 658-665, Rollo

[25] p. 92, Id.

[26] See: p. 515, Id.; Respondent Piolito C. Santos' Supplemental Counter-Affidavit, pp. 634-651, Id.

[27] pp. 159-169, Id.

[28] See: p. 515, Id.

[29] See: p. 569, Id.

[30] Respondent Piolito C. Santos' Counter-Affidavit, pp. 569-595, Id.; Respondent Catalina D. Jaylo's Counter-Affidavit, pp. 666-682, Id.; Respondent Pura Bartolay-Advincula's Counter-Affidavit, pp. 695-708, Id.

[31] pp. 49 and 467, Id.

[32] pp. 172-176, Id.

[33] pp. 55 and 216, Id.

[34] pp. 19-29, Id.

[35] pp. 183-185, Id.

[36] p. 717, Id.

[37] p. 22, Id.

[38] p. 23, Id.

[39] p. 29, Id.

[40] p. 26, Id.

[41] p. 29, Id.

[42] p. 30, Id.

[43] Id.

[44] Id.

[45] Procedure in Administrative Cases

[46] Administrative Order No. 7, s. of 1990; April 10, 1990

[47] Administrative Order No. 17, s. of 2003, entitled "Amendment of Rule III, Administrative. Order No. 7"; September 15, 2003

[48] SEC. 27. Effectivity and Finality of Decisions. - (1) All provisional orders of the Office of the Ombudsman are immediately effective and executory.

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Findings of fact by the Office of the Ombudsman, when supported by substantial evidence, are conclusive. Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one (1) month's salary shall be final and unappealable.

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The above rules may be amended or modified by the Office of the Ombudsman as the interest of justice may require.

[49] Entitled "An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for other purposes," otherwise known as "The Ombudsman Act of 1989;" November 17, 1989

[50] Reyes, Jr. vs. Belisario, 596 SCRA 31, August 14, 2009

[51] Dagan vs. Office of the Ombudsman, 709 SCRA 681, November 19, 2013

[52] Orais vs. Almirante, 698 SCRA 88, June 10, 2013

[53] See: Reyes, Jr. vs. Belisario, 596 SCRA 31, August 14, 2009

- [54] 709 SCRA 681, November 19, 2013
- [55] Yu vs. Tatad, 642 SCRA 421, February 9, 2011
- [56] pp. 172-176, Rollo
- [57] p. 172, Id.
- [58] Id.
- [59] p. 30, Id.
- [60] Id.
- [61] Asian Spirit Airlines (Airline Employees Cooperative) vs. Bautista, 451 SCRA 294, February 14, 2005
- [62] Delos Santos vs. Elizalde, 514 SCRA 14, February 2, 2007, citing Bernando vs. Court of Appeals, 275 SCRA 413, July 14, 1997
- [63] GCP-Manny Transport Service, Inc. vs. Principe, 474 SCRA 555, November 11, 2005
- [64] Labao vs. Flores, G.R. No. 187984, November 15, 2010
- [65] Tolentino vs. Leviste, 443 SCRA 274, November 19, 2004
- [66] Ponciano, Jr. vs. Laguna Lake Development Authority, 570 SCRA 207, October 29, 2008
- [67] Republic Cement Corporation vs. Guinmapang, G.R. No. 168910, 596 SCRA 688, August 24, 2009
- [68] Kilosbayan Foundation vs. Janolo, G.R. No. 180543, July 27, 2010
- [69] Artista Ceramica, Inc. vs. Ciudad del Carmen Homeowner's Association, Inc., 621 SCRA 22, June 16, 2010
- [70] Manaya vs. Alabang Country Club, Incorporated, 525 SCRA 140, June 19, 2007
- [71] AAG Trucking vs. Yuag, 659 SCRA 91, October 12, 2011
- [72] pp. 53-54 and 214-215, Rollo
- [73] pp. 44-49 and 462-467, Id.
- [74] p. 569, Id.
- [75] pp. 153-155, 248-253, 256-257, 262, 607-610 and 683, Id.
- [76] pp. 259-260, Id.
- [77] p. 709, Id.
- [78] pp. 128 and 221, Id.
- [79] Algodon vs. Zaldivar, 497 SCRA 446, August 3, 2006
- [80] p. 78, Rollo. The foregoing allegation in the Complaint-Affidavit was based on the affidavit of Hector B. Bombita, petitioner's Detachment Commander for NFA, Province of Legazpi, pp. 109-112 and 233-236, Rollo and Joseph Q. Sobredilla, petitioner's Region V Area Commander, pp. 125-127 and 218-220, Rollo
- [81] pp. 99, 115, 130, 223, 239 and 597, Id.
- [82] pp. 254-255, 684-685 and 710-711, Id.

[83] p. 261, Id.

[84] Artillero vs. Casimiro, 671 SCRA 357, April 25, 2012

[85] Casing vs. Ombudsman, 672 SCRA 500, June 13, 2012

[86] Perez vs. Office of the Ombudsman, 429 SCRA 357, May 27, 2004

[87] Article XI

Accountability of Public Officers

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Sec. 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

Sec. 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

(1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.

(2) Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentality thereof, as well as of any government-owned and controlled corporation with original charter, to perform and expedite any act or duty required by law, or to stop, prevent and correct any abuse or impropriety in the performance of duties.

(3) Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.

(4) Direct the officer concerned, in any appropriate case, and subject to such limitations as may be provided by law, to furnish it with copies of documents relating to contracts or transactions entered into by his office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action.

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[88] Section 15. Powers, Functions and Duties. — The Office of the Ombudsman shall have the following powers, functions and duties:

(1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases;

(2) Direct, upon complaint or at its own instance, any officer or employee of the Government, or of any

subdivision, agency or instrumentality thereof, as well as any government-owned or controlled corporations with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties;

(3) Direct the officer concerned to take appropriate action against a public officer or employee at fault or who neglect to perform an act or discharge a duty required by law, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith; or enforce its disciplinary authority as provided in Section 21 of this Act: provided, that the refusal by any officer without just cause to comply with an order of the Ombudsman to remove, suspend, demote, fine, censure, or prosecute an officer or employee who is at fault or who neglects to perform an act or discharge a duty required by law shall be a ground for disciplinary action against said officer;

(4) Direct the officer concerned, in any appropriate case, and subject to such limitations as it may provide in its rules of procedure, to furnish it with copies of documents relating to contracts or transactions entered into by his office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action;

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(11) Investigate and initiate the proper action for the recovery of ill-gotten and/or unexplained wealth amassed after February 25, 1986 and the prosecution of the parties involved therein.

[89] *Pontejos vs. Office of the Ombudsman*, 483 SCRA 83, February 22, 2006

[90] *Esquivel vs. Ombudsman*, 389 SCRA 143, September 17, 2002, cited in *Angeles vs. Gutierrez*, 668 SCRA 803, March 21, 2012

[91] *Bagong Kapisanan sa Punta Tenement vs. Dolot*, G.R. No. 179054, September 5, 2012

[92] Section 27. Effectivity and Finality of Decisions. — x x x

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Findings of fact by the Officer of the Ombudsman when supported by substantial evidence are conclusive. x x x

x x x x x x x x

[93] *Office of the Ombudsman vs. Court of Appeals*, 554 SCRA 75, May 07, 2008; see also *Montallana vs. Office of the Ombudsman*, G.R. No. 179677, August 15, 2012

[94] *Office of the Ombudsman vs. Reyes*, 658 SCRA 626, October 5, 2011

[95] *Philippine Health Insurance Corporation vs. Court of Appeals*, 572 SCRA 720, November 28, 2008

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