

PRESIDENTIAL AD HOC FACT- FINDING COMMITTEE ON BEHEST LOANS AND/OR PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG), PETITIONERS, VS. HON. ANIANO DESIERTO, ALICIA LL. REYES, LO...

G.R. No. 147723. August 22, 2008

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TINGA, J.:

Respondents Lourdes M. Montenegro, Serafin M. Montenegro, Basilio Lirag and Felix Lirag were all officers or stockholders of Midland Cement Corporation (Midland Cement), a corporation which was registered with the Securities and Exchange Commission on 14 June 1963. On 18 January 1968, Midland Cement obtained a foreign guarantee loan from the Development Bank of the Philippines (DBP) in the amount of USD 18.5M, or an equivalent of P110M. The loan was secured to finance the acquisition of a brand new cement plant to be supplied and installed by French contractor Fives Lille-Cail on a turn-key basis. The loan was approved by DBP in Board Resolution No. 539. At the time the loan was secured in 1968, Basilio and Felix Lirag, as well as Serafin Montenegro, were among the directors or officers of Midland Cement.

Between 1971 and 1982, Midland Cement and DBP entered into ten successive agreements for the obtention of additional loans and/or for restructuring of accounts. In 1972, DBP became the majority stockholder of Midland Cement, and by 1981, it was already the owner of 92.89% of the shares in the corporation.[1] In 1986, the properties of Midland Cement were sold by the Assets Privatization Trust (APT) for P171,825,000.00, even though the outstanding balance of the corporation at that point was over a billion pesos.[2]

On 8 October 1992, then President Fidel Ramos created the Ad Hoc Fact-finding Committee on Behest Loans (Ad Hoc Committee), petitioner herein, through Administrative Order No. 13, and broadened the scope of its powers through Memorandum Order No. 61 dated 9 November 1992. Among the functions tasked by the said memorandum order to the Ad Hoc Committee is the investigation, inventory and study of all non-performing loans, including both behest and non-behest loans. It also established an eight (8)-point criterion for possible utilization "as a frame of reference in determining a behest loan," namely: (a) it is undercollateralized; (b) the borrower corporation is under-capitalized; (c) direct or indirect endorsement by high government officials like the presence of marginal notes; (d) stockholders, officers or agents of the borrower corporation are identified as cronies; (e) deviation of use of loan proceeds from the purpose intended; (f) use of corporate layering; (g) non-feasibility of the project for which financing is being sought; and (h) extraordinary speed in which the loan release was made.[3] It also stipulated that behest loans may likewise entail criminal liability in addition to civil liability.[4]

On 25 February 1998, the Ad Hoc Committee referred to then Ombudsman Aniano Desierto (Ombudsman Desierto) the accounts of Midland Cement, along with those of two other corporations, "for preliminary investigation to determine the existence of probable cause of violation of R.A. No. 3019, banking laws/regulations and/or other penal statutes." [5] The referral letter was accompanied by the Complaint-affidavit [6] executed by Atty. Orlando L. Salvador (Atty. Salvador), a Presidential Commission on Good Government (PCGG) consultant

detailed at the Ad Hoc Committee. The complaint was docketed as OMB-0-98-0563.

Atty. Salvador averred that at the time the initial loan of P110M was procured from DBP in 1968, Midland Cement had no sufficient capital to be entitled to that large a loan since its total assets then amounted to only P77M and its paid-up capital amounted to only around P9.15M.[7] Allegedly, the loan itself was without sufficient collateral.[8] Atty. Salvador observed that despite these facts, Midland Cement was able to obtain additional loans from DBP until 1981.[9]

According to Atty. Salvador, as of 30 June 1986, Midland Cement had an outstanding and unpaid balance of P1,027,376,000.00 with a property appraised value of P329,479,000.00. As the properties of Midland Cement were sold by the APT sometime in 1987 for only P171,825,000.00, the Philippine government incurred a loss amounting to P855,551,000.00.[10] He further recounted that the cement plant that was constructed following the loan was leased to the Construction and Development Corporation of the Philippines for a minimal consideration of P2.00/40-kilogram bag of cement produced, and that Midland Cement committed misrepresentation when unknown to DBP, it entered with Fives Lille-Cail into a side agreement whereby Midland Cement bound itself to sub-contract the civil works on the plant with a local contractor even though DBP had already guaranteed the supply/construction of the plant on a turn-key basis.[11]

From these premises, Atty. Salvador asseverated that the loans extended to Midland Cement were behest loans based on the following criteria:

- It is under collateralized. That at the time the P110.00 million loan was granted, total assets including to be acquired amounted to P77,000,000 only;
- The borrower corporation is under capitalized. That as of December 31, 1967 the paid-up capital amounted to P9,158,180.00 only;
- The borrower corporation grossly violated the loan agreement by entering a side agreement unknown to DBP;
- The stockholders and/or officers are known cronies of Ex-Pres. F.E. Marcos.[12]

Atty. Salvador further concluded that the transactions had been entered into in violation of Republic Act (R.A.) No. 3019 (The Anti-graft and Corrupt Practices Act), particularly Section 3(e) and (g) thereof:

Sec. 3. Corrupt Practice 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

e. Causing any undue injury to any party, including the Government or giving any private party any unwarranted benefit, 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.

x x x x

g. Entering on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

Atty. Salvador identified eight (8) persons who could be made liable for violation of the loan terms and conditions. Four of them--G.S. Licaros,[13] J.V. de Ocampo, Leonides Virata and respondent Alicia Ll. Reyes (Reyes)--were members of the DBP Board of Governors. The other four--respondents Lourdes M. Montenegro,

Serafin M. Montenegro, Basilio Lirag and Felix Lirag --were officers and principal stockholders of Midland Cement.[14]

In its 25 August 1998 Resolution,[15] the Evaluation and Preliminary Investigation Bureau (EPIB) of the Office of the Ombudsman concluded that the loans extended to Midland Cement could not be considered behest loans as the proceeds thereof were used for a business purpose--the construction of the cement plant--and that there was no deviation of use of the said proceeds from the intended purpose. The EPIB also observed that based on the allegations in the complaint, the government did not bear the burden of satisfying the loan obligation of Midland Cement; that there was no unwarranted benefit or preference accorded to the respondents since the loan was collateralized; and that the process of loan evaluation and investigation had been rigorously followed before the application was finally approved.[16]

The EPIB Resolution was elevated for review to the Office of the Special Prosecutor of the Office of the Ombudsman. On 5 October 1998, Special Prosecution Officer III Orlando I. Ines issued a Memorandum[17] for Ombudsman Desierto containing his assessment of the complaint. The memorandum recounted the allegations of Atty. Salvador in the latter's sworn statement, and determined:

[T]here is no doubt that the loans of Midland Cement Corporation are behest loan[s] based on the following criteria, as follows:

- It is under collateralized. That at the time the P110.00 million loan was granted, total assets including those to be acquired amounted only to P77M;
- The borrower corporation is [under capitalized]. As of December 31, 1967 the [paid-up] capital amounted only to P9.758M;
- The borrower corporation grossly violated the loan agreement by entering a side agreement unknown to DBP;
- The stockholders and/or officers are known cronies of Ex-Pres. F.E. Marcos.

It appearing from the foregoing facts and circumstances on record, it is beyond doubt that the respondents violated Sec. 3(e) and (g) of [R.A. No.] 3019.

But could the State still prosecute the offense considering the illegal acts were committed way back 1968 up to 1982 or more than fifteen (15) years ago? The complaint was only filed in 1998.

All offenses punishable under the Anti-Graft and Corrupt Practices Act shall prescribe in FIFTEEN (15) years. In the case under review, there is no doubt that the offenses have been committed longer than fifteen (15) years, the earliest began in 1967 and the latest in 1982 x x x By prescription of the crime, it means the forfeiture or loss of the right of the State to prosecute the offender after the lapse of a certain period. Moreover, except for Ms. Alice Reyes, all the other respondent [sic] - DBP officials, namely [sic] Gregorio Licaros, J.V. de Ocampo, and Leonides Virata, are already dead. Reliable reports though not yet confirmed indicate that many of the private respondents are now dead.

In view of the foregoing circumstances, the undersigned recommends the dismissal of the instant case.[18]

The recommendation for the dismissal of the complaint on the basis of prescription was approved by Ombudsman Desierto on 29 January 1999.[19]

On 11 July 2000, the Ad Hoc Committee, represented by Atty. Salvador, filed before the EPIB a Motion to Revive/Reinstate[20] the instant criminal complaint, citing the 25 October 1999 Decision of this Court in Presidential Ad Hoc Fact-finding Committee v. Hon. Desierto[21] where, according to the Ad Hoc Committee, it was held that it should be given the fair chance to prove that prescription has not barred the filing of charges

against the respondents.[22]

It appears that the EPIB issued an order requiring the public and private respondents to file their counter-affidavits on 4 September 2000.[23] Only Reyes among the respondents filed a Counter-affidavit,[24] wherein she stated that she was a member of the DBP Board of Governors only from 1980 until 1986,[25] or thus long after the loan was first extended to Midland Cement in January 1968. She nevertheless asserted that the DBP guarantee was secured by: (a) a first mortgage on all the assets of Midland Cement worth at least P77M; (b) an assignment to the DBP of Midland Cement's mining claims and quarry rights; (c) the pledge to the DBP of common shares of Midland Cement's stockholders worth at least P9M; (d) the assignment of subscription receivables worth P10M; and (e) the joint and several signatures with Midland Cement of its stockholders. Thus, claimed Reyes, DBP was sufficiently protected when it approved the guarantee in favor of Midland Cement.[26]

Reyes likewise averred that DBP had taken over Midland Cement in 1972, that it had become the owner of 92.89% of the corporation's shares in 1981, and that the succeeding loan transactions after the takeover had been in fact approved by DBP as the owner of Midland Cement and consummated in order to protect the interests of both entities.[27] She further stated that nothing in the transactions adverted to in the complaint manifested that she herself had committed any of the acts sanctioned under Section 3(e) and (g) of R.A. No. 3019.[28]

On 25 October 2000, the EPIB promulgated the now-assailed Resolution[29] recommending the dismissal of the complaint for insufficiency of evidence.[30] Ombudsman Desierto approved the recommendation on 24 November 2000.[31] Petitioners filed a motion for reconsideration with the EPIB, but this was denied for lack of merit in a Resolution[32] dated 6 February 2001, which was also subsequently approved by Ombudsman Desierto on 16 February 2001.[33]

Hence, the present petition.

Petitioners point out that in the 1998 Resolution, the Ombudsman categorically asserted that "it is beyond doubt that respondents violated Section 3(e) and (g) of [R.A. No.] 3019,"[34] even as the complaint was dismissed on the ground of prescription, yet in the 2000 Resolution, "completely deviated, ignored and disregarded his previous resolution"[35] when he ruled that the evidence was insufficient to prosecute respondents. Such volta face, petitioners claim, constitutes not only grave but palpable gross and excessive abuse of discretion on the part of the Ombudsman. Petitioners adduce as compelling reason to prosecute respondents the fact that as of 30 June 1986, Midland Cement had an outstanding and unpaid balance of over P1B, with a property appraisal value of only around P329M.[36]

This Court directed respondents to file their respective comments[37] but the resolution containing the said directive could not be served on respondents Basilio Lirag, Felix Lirag, Lourdes Montenegro and Serafin Montenegro despite repeated and diligent efforts on the part of the PCGG to ascertain their present addresses.[38] Thus, only the Office of the Ombudsman and Reyes were able to file their respective comments.

In its Comment, the Office of the Ombudsman adverts to the rule that "it is beyond the ambit of [the] Court to review the exercise of discretion of the Ombudsman in prosecuting or dismissing a complaint before it." [39] It defends its finding that the loans were not "behest" in nature and character, citing its findings in the assailed resolution that the initial loan had been sufficiently collateralized and that the subsequent loans were approved by DBP in its new capacity as the owner of Midland Cement, to protect the interests of the two corporations.[40] It points out that after DBP had taken over Midland Cement, there resulted a merger or confusion of rights whereby the financial institution assumed not only the management but also the obligations of Midland Cement; accordingly, the subsequent loans were not really in the nature or character of loans, much less "behest loans," but transactions necessary to infuse fresh capital into the newly acquired Midland Cement already being managed by

DBP.[41] Reyes, for her part, defends these findings of the Ombudsman and reiterates her claim that she had joined DBP long after the initial loan was procured and also after the bank had taken over Midland Cement. Additionally, she argues that prescription has already barred the prosecution of the imputed offenses.[42]

Our jurisprudence governing the prosecution of behest loan cases reveals two entrenched principles: first, that the prescription of the crime for violation of R.A. No. 3019 is reckoned from not from the time of the commission of the offense but from the time of the discovery of the commission[43] and second, that the Ombudsman has discretion to determine whether a criminal case, given its facts and circumstances, should be filed or not, with the Court adopting a policy of non-interference in the Ombudsman's exercise of his investigating and prosecutory powers absent good and compelling reasons.[44]

That first principle is beyond contention in this case, even as Reyes offers a minimal effort to assert that the offense has already prescribed. She concedes that prescription is reckoned from the time of the discovery of the offense, but argues that there was "clear and indubitable proof that discovery of the alleged behest loans was made, at the latest, on February 27, 1987, when the Republic and the [DBP] entered into a Deed of Transfer whereby DBP ceded to the Government its assets,"[45] including Midland Cement. Thus, she believes that the ten (10)-year prescriptive period should run from the date of execution of the deed of transfer and that accordingly, the period expired more than a year before the filing of the charges on 11 March 1998.

Considering that Midland Cement was merely one of the 283 non-performing accounts transferred by DBP to the Republic through the 1987 Deed of Transfer, it is difficult to elicit that the execution of the said deed ipso facto bears the imputed anomalous history of transactions between the bank and the corporation. Given the facts, the more reasonable conclusion as to when the offense was discovered would be anywhere within the period following the constitution of the Ad Hoc Committee on 8 October 1992 through Administrative Order No. 13. After all, it is this committee that engaged itself in the thorough examination on which the charges are based. Absent any more definitive proof that the alleged anomalous transactions have been uncovered at an earlier date, there is no basis for us to conclude that the discovery was made prior to 8 October 1992.

Nonetheless, the question of prescription is ultimately immaterial to the case at bar. The Ombudsman has concluded that the filing of the criminal charges was not warranted, and following the second principle that governs the behest loan cases, we are wont to uphold the Ombudsman's conclusions.

Respondents are charged with violation of Section 3(e) and (g) of R.A. Act No. 3019. Under Section 3(e), the elements of the offense are: (1) that the accused are public officers or private persons charged in conspiracy with them; (2) that said public officers commit the prohibited acts during the performance of their official duties or in relation to their public positions; (3) that they cause undue injury to any party, whether the Government or a private party; (4) that such injury is caused by giving unwarranted benefits, advantage or preference to such parties; and (5) that the public officers have acted with manifest partiality, evident bad faith or gross inexcusable negligence. To determine the culpability of an accused in relation, in turn, to Section 3(g) of the law, it needs to be established (1) that the accused is a public officer; (2) that he entered into a contract or transaction on behalf of the government; and (3) that such contract or transaction is grossly and manifestly disadvantageous to the government.[46]

There are two clear phases that demarcate the challenged acts, the demarcation line pertaining to the legal relationship that evolved between DBP and Midland Cement. The first phase encompasses the obtention and approval of the loan by respondents, excepting Reyes who joined DBP only twelve (12) years after the loan was extended. This phase covered the period prior to DBP's takeover of Midland Cement, when the two entities possessed clearly segregate identities and interests. The second phase began when DBP assumed ownership over

Midland Cement, thereby incorporating the latter's assets and obligations into its own. At that point, DBP's interest in Midland Cement was no longer confined to seeing to it that the latter repay its loan obligations, but rather, such interest has expanded to making it a profitable venture.

Using the earlier stated criteria for violations of Section 3(e) and (g) of R.A. No. 3019, it is apparent that in theory there can be liability for violating both sections with respect to the pre-takeover transactions, but there can be liability only for violating Section 3(g) insofar as the post-takeover transactions are concerned. A material element of Section 3(e) violation is that the injury is caused by giving unwarranted benefits, advantage or preference to the private parties who conspired with the public officers. Such element could no longer exist after DBP's takeover of Midland Cement. The takeover eliminated the prospect of benefits, advantages or preferences to the stockholders in their private capacity since they had been already shunted aside in the management of the corporation they previously controlled. Nonetheless, under Section 3(g) the supply of benefits, advantages or preferences to private parties is not apposite, the core element being the engagement in a transaction or contract that is grossly and manifestly disadvantageous to the government.

The transactions or contracts entered into by the DBP Board of Governors after the takeover may, in theory, form the basis of liability of the board, yet the standard for initiating criminal prosecutions in this jurisdiction is not confined to the theoretical plausibility that the accused committed the crime alleged. There must exist prima facie evidence that the accused is guilty of the crime with which he is charged. A prima facie case is one which is supported by sufficient evidence and will support a finding of guilt in the absence of controverting evidence.

Our analysis of the level of prima facie evidence with respect to the behest loan cases is strongly guided by the recent wealth of cases^[47] that have charted the necessary standard to pursue prosecution. To repeat, the Ombudsman has discretion to determine whether a criminal case, given its facts and circumstances, should be filed or not, with the Court adopting a policy of non-interference in the Ombudsman's exercise of his investigating and prosecutory powers absent good and compelling reasons. In short, the Court would be ill-advised to institute a finding of prima facie evidence if the Ombudsman concludes that none exists.

The 2000 Resolution provides a detailed explanation behind the Ombudsman's determination that the evidence was wanting to sustain the prosecution of respondents, to wit:

After careful review of the records of the instant case, the undersigned finds the factual allegations in the sworn statement of Orlando Salvador and its supporting documents wanting of sufficient evidence to establish probable cause to indict the respondents for violation of Section 3(e) and (g) of R.A.[No.] 3019, as amended.

Complaint endorsed the loan account of borrower-firm Midland Cement Corporation (MCC) primarily because it is under-collateralized and under-capitalized. As to the issue of collateral, the initial foreign guarantee loan in the amount of \$18.5 million or an equivalent of P110.00 million was sufficiently secured as shown in the Board Resolution approving the said loan. It is stated there in no uncertain terms that the said DBP guarantee loan would be secured by the following: (a) a first mortgage on all the assets of MCC worth at least P77,000,000.00; (b) an assignment to the DBP of MCC's mining claims and quarry rights; (c) by pledge to the DBP of common shares of MCC's stockholders worth at least P9 million; (d) by assignment of subscription receivables worth P10 million; and (e) by the joint and several signatures put up by the borrower corporation, we reached the conclusion that these are more than enough to ensure for the amount of the foreign guarantee loan applied for, hence, it cannot be said that it is under-collateralized.

It can not also be said that the borrower-corporation is under-capitalized at the time the foreign guarantee loan was approved on January 18, 1968. It is true that the paid-up capital of MCC as of December 31, 1968 amounted only to P9,158,180.00. However, the assets of the borrower corporation at the time was already worth P77,000,000.00, hence the gap between the foreign guaranteed loan in the amount of P110,000,000.00

and the amount of the capital of the borrower-corporation at the time is not that substantial so as to qualify said loan to be undercapitalized.

The additional loan obtained by MCC from DBP to restructure its loan accounts for the period covering 1972 up to August 25, 1981 were also alleged to be without sufficient collaterals and adequate capital. It is worth to note that as early as 1972, DBP already took -over MCC. As a result of which DBP became its major stockholder. In fact, by 1981, DBP's ownership over MCC was already 92.89%. Thus, the so called additional loans obtained by MCC in order to restructure its loan accounts were in fact transactions approved by DBP not in its capacity as a lending institution but as owner of MCC to protect both the interest of DBP and MCC. In other words, these additional loans are no longer loans in its strictest sense, so there are no more behest loans to talk about in this case.

From the foregoing, it is established that the MCC project which was financed by the foreign guaranteed loan was established to be a viable project, adequately secured and capitalized in accordance with DBP's lending guidelines thereby negating any violations of Section 3(e) and (g) or R.A. [No.] 3019, as amended.[48]

In a number of cases also involving behest loans as alleged by the very same petitioners, this Court has upheld the Ombudsman's determination that the loans questioned therein were not, in fact, undercollateralized, based upon an examination of the various securities that had been offered to secure the respective loans.[49] To take one example, in *Presidential Commission on Good Government v. Desierto*,[50] the Court accepted the analysis of the Ombudsman that there was no undercollateralization in the instance where the borrowing corporation offered as collateral a mortgage on its existing assets and assets still to be acquired, and its mining claims, lease contracts and/or patents. The Ombudsman in the said case similarly considered the fact that Midland Cement had offered, as collateral for the initial loan, a mortgage on all its assets, an assignment of all its mining rights and claims, the pledge of common shares of its stockholders and the assignment of subscription receivables. There really is no basis for the Court to countermand the Ombudsman's finding of sufficient collateralization when it has accepted similar findings in the past.

These cases reveal that this Court has repeatedly yielded to the determination of the Ombudsman of whether the imputed behest loans were indeed undercollateralized. In order to grant the present petition, the Court will have to deviate from its consistent deferential stance on this issue. In short, there must exist a satisfactory justification that warrants the treatment of this case differently from that accorded to previous similar cases wherein we upheld the Ombudsman. No such justification is offered, and we are not inclined to chart a different course here.

Petitioners' arguments are further weakened by the fact that in 1972, DBP acquired majority ownership over Midland Cement. That development significantly changed the complexion of the previous and succeeding loan transactions. It would be incorrect to invoke the Civil Code provisions on confusion or merger, as the Ombudsman does in his comment, since DBP and Midland Cement retained their separate juridical personality even after the takeover. But what cannot be denied is that DBP, as the new owner of Midland Cement, indirectly assumed responsibility for the outstanding obligations of the company. It could thus not allow Midland Cement to simply flounder without causing prejudice to its own interests. At this point, the infusion of fresh capital by DBP into Midland Cement cannot be deemed as a reckless hand-out designed to favor a private enterprise at the expense of the public coffers. Instead, it can be reasonably seen as an attempt by DBP to salvage its investment, which could not stand a chance to earn a return unless it is sustained as it were by new capital. If petitioners seriously believe that the only lawful thing DBP could have done was to leave Midland Cement to flounder by itself and not avail of a viable opportunity to recoup the extant losses to the government, it would only go to show that their position is divorced from the realities in the business world. It would be arbitrary even.

Indeed, any accountability on the part of the respondents for violation of R.A. No. 3019 will have to stem from

the initial extension of the loan in 1968 (the original sin, as it were), an act which created the legal relationship between DBP and Midland Cement and ultimately, tied DBP to the fortunes of Midland Cement. This conclusion would necessarily exonerate respondent Reyes from liability, as she had no hand at all in binding DBP to Midland Cement and her subsequent participation was limited only to the attempts to salvage DBP's investment in the failing company.

Petitioners make hay over the fact that in the 1998 Resolution of the Office of the Ombudsman, it was asserted that "it is beyond doubt that the respondents violated Sec. 3(e) and (g) of [R.A. No.] 3019,"[51] yet in the 2000 Resolution of the same Office, the contrary conclusion was reached that there was "wanting of sufficient evidence to establish probable cause to indict the respondents for violation of Section 3(e) and (g) of [R.A. No.] 3019, as amended." [52] But there is a manifest difference between the facts in hand leading to the 1998 Resolution and those which informed the 2000 Resolution. As the Ombudsman admits, his "initial evaluation was premised only on petitioner's complaint-affidavit and its supporting annexes. The complexion of OMB-0-98-0563, however, changed when private respondent Reyes submitted her counter-affidavit and controverting evidence." [53]

Under our rules of criminal procedure, respondents to criminal charges are allowed to submit counter-affidavits executed by themselves and by their witnesses, as well as other supporting documents relied upon for defense.[54] Similarly, under the Rules of Procedure of the Office of the Ombudsman,[55] the investigating officer tasked with evaluating a criminal complaint can refer said complaint to the respondent for comment,[56] or subject the same to a preliminary investigation wherein the respondent would be similarly directed to comment.[57] It is hardly beyond the pale that the submission of controverting evidence by a person charged with a criminal offense could cause the prosecutor to reverse an initial finding of probable cause. In fact, a prosecution that is pursued only after the respondent has been allowed to air his side before the prosecuting officer is more assured in footing than one that is pursued without the respondent having had the opportunity yet to air his defenses.

We observe that the 1998 Resolution upon which petitioners heavily rely has taken into account only the allegations submitted by the Ad Hoc Committee, and no other contrary version or theory, when the initial conclusion was reached that "it is beyond doubt that the respondents violated Section 3(e) and (g) of R.A. No. 3019." [58] It is quite easy to reach such a conclusion if only the side of the complainant is heard, as what appears to have happened prior to the rendition of the 1998 Resolution. The fact that Reyes filed a counter-affidavit is by no means determinative of the case, or of such coercive character as to impel the dismissal of the complaint. What it does is provide additional context which should guide the Ombudsman in his determination of whether the criminal complaint should be pursued. The admission in the assailed resolution that Reyes's counter-affidavit did bear influence in its recommendation is hardly basis to impugn the findings therein, respondents being precisely entitled under the rules and as part of due process to explain their side towards securing a favorable factual determination or adjudication.

Finally, it is worth taking into account the legal mandate of DBP in order to supply the fuller context of its loan arrangements with Midland Cement. DBP was constituted in 1946 as the Rehabilitation Finance Corporation, and subsequently reorganized as a bank, with the mandate of "providing credit facilities for the rehabilitation and development and expansion of agriculture and industry," and "the broadening and diversification of the national economy." [59] It is empowered to grant loans "for the rehabilitation, establishment or development of any agricultural and/or industrial enterprise, including public utilities, mining, livestock [and] industry...." [60]

It is evident that among the designated missions of DBP is to finance private enterprises in starting up their businesses, in the expectation that the success of the business will redound to the benefit of national growth. This function inherently bears risks since not all enterprises actually become successful and quite a number of them ultimately flame out. In the same way that there is no guarantee that every business will end up profitable, there is

no certainty that DBP will not sustain losses resulting from its loan transactions with a particular company. It would be foolhardy to impute criminal liability against the DBP officers because of the damage sustained from such unsuccessful loan transactions.

Distressing as may be the ultimate loss to the Government resulting from DBP's loan transactions with Midland Cement, bad business judgment on the part of the DBP officers does not necessarily translate to criminal liability under R.A. No. 3019. To warrant prosecution, there must be evident deliberation on the part of the bank officials to unlawfully dispense favors or relax regulations for the benefit of the those private individuals or enterprises who transact with DBP. Absent evidence to that effect, the Ombudsman cannot be faulted for not finding a prima facie case against respondents.

WHEREFORE, the petition is DISMISSED. No pronouncement as to costs.

SO ORDERED.

Quisumbing, (Chairperson), Carpio Morales, Velasco, Jr., and Brion, JJ., concur.

[1] Rollo, p. 29.

[2] Id. at 27.

[3] Id. at 60-61.

[4] Id. at 61.

[5] Id. at 56.

[6] Id. at 52-57.

[7] Id. at 53.

[8] Id.

[9] Id. at 54.

[10] Id. at 56-57.

[11] Id. at 54.

[12] Id. at 55.

[13] Misspelled as "Licaroz" in Atty. Salvador's sworn statement.

[14] Rollo, p. 56.

[15] Records, pp. 418-423. Penned by GIO II Roline M. Ginez-Jabalde.

[16] Id. at 421.

[17] Rollo, pp. 34-39.

[18] Id. at 37-39.

[19] Rollo, p. 39.

[20] Id. at 40-42.

[21] 375 Phil. 697 (1999).

[22] Rollo, p. 41.

[23] See *id.* at 27.

[24] Records (Vol. II), pp. 12-22.

[25] *Id.* at 12.

[26] *Id.* at 16.

[27] *Id.* at 17.

[28] *Id.*

[29] Rollo, pp. 25-31. Penned by GIO II Roline M. Ginez-Jabalde.

[30] *Id.* at 30.

[31] *Id.*

[32] *Id.* at 32-33. Resolution penned by GIO I Myrna A. Corral.

[33] *Id.* at 33.

[34] *Id.* at 8.

[35] *Id.* at 17.

[36] *Id.* at 18.

[37] *Id.* at 480.

[38] See *id.* at 532-587.

[39] Rollo, p. 486.

[40] *Id.* at 487-488.

[41] *Id.* at 489-490.

[42] *Id.* at 493-502.

[43] See *Presidential Ad Hoc Committee v. Desierto*, 375 Phil. 697, 723-724 (1999).

[44] See e.g., *Presidential Commission on Good Government v. Hon. Desierto*, 400 Phil. 1368, 1378 (2000).

[45] Rollo, p. 501.

[46] *Valencia v. Sandiganbayan*, G.R. No. 141336, 29 June 2004, 433 SCRA 88, 96.

[47] See e.g., *PCGG v. Hon. Desierto*, 400 Phil. 1368, 1378 (2000); *Presidential Commission on Good Government v. Hon. Desierto*, 402 Phil. 621, 831-832 (2001); *PAFFC on Behest Loans v. Hon. Desierto*, 418 Phil. 715, 721 (2001); *Pres. Ad Hoc Fact Finding Com. on Behest Loans v. Ombudsman Desierto*, 415 Phil. 135, 152 (2001); *Atty. Salvador v. Hon. Desierto*, 464 Phil. 988, 996-997 (2004); *Presidential Commission on Good Government v. Desierto*, G.R. No. 139675, 21 July 2006, 496 SCRA 112, 122.

[48] Rollo, pp. 28-30.

[49]See Pres. Ad Hoc Fact Finding Com. on Behest Loans v. Ombudsman Desierto, *supra* ; PAFFC on Behest Loans v. Ombudsman Desierto, 418 Phil. 715, 722 (2001); Presidential Commission on Good Government v. Hon. Desierto, 402 Phil. 821, 830 (2001).

[50]*Supra* note 46.

[51]*Supra* note 33.

[52] Rollo, p. 28.

[53]*Id.* at 488.

[54] See 2000 RULES OF CRIMINAL PROCEDURE, Sec. 3(c).

[55] Office of the Ombudsman, Administrative Order No. 07 (1990).

[56] RULES OF PROCEDURES OF THE OFFICE OF THE OMBUDSMAN, Rule II, Sec. 2(b).

[57] RULES OF PROCEDURES OF THE OFFICE OF THE OMBUDSMAN, Rule II, Sec. 4(b).

[58]*Supra* note 33.

[59] See Republic Act No. 85 (1946), Sec. 1, as amended by Republic Act No. 2081 (1958).

[60]See Republic Act No. 85 (1946), Sec. 2, as amended by Republic Act No. 2081 (1958).

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