

**PROFESSIONAL ACADEMIC PLANS, INC., FRANCISCO COLAYCO AND
BENJAMIN DINO, PETITIONERS, VS. DINNAH L. CRISOSTOMO,
RESPONDENT.**

G.R. NO. 148599. March 14, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before us is a petition for review of the Decision[1] of the Court of Appeals (CA) affirming the decision of the Regional Trial Court in Civil Case No. 93-197, and its Resolution denying the motion for reconsideration thereof filed by petitioner Professional Academic Plans, Inc. (PAPI).

The Antecedents

Respondent Dinnah L. Crisostomo was the PAPI District Manager for Metro Manila. As such officer, she did not receive any salary but was entitled to a franchise commission equivalent to 10% of the payments on remittances of clients whose contracts or agreements had been negotiated by her, for and in behalf of PAPI. She was later promoted as Regional Manager.

On May 17, 1988, petitioner PAPI wrote Col. Noe S. Andaya, the President of the Armed Forces of the Philippines Savings and Loan Association, Inc. (AFPSLAI) offering an Academic Assistance Program for its members, their children and dependents.

Noel Rueda, a sales consultant of petitioner PAPI, initiated negotiations for the sale of pre-need educational plans under the said program with the AFPSLAI. However, before an agreement was reached, Rueda's services were terminated. Respondent Crisostomo, as the district manager and the immediate supervisor of Rueda, continued the negotiation of the account together with Guillermo R. Macariola, the Assistant Vice-President for Sales.[2] The AFPSLAI agreed to the proposal.

On November 9, 1988, the AFPSLAI and PAPI executed a Memorandum of Agreement (MOA)[3] in connection with scholarship funding agreements to be entered into by PAPI and the AFPSLAI members. These agreements shall then embody the provisions of the Professional Academic Program Agreement. The parties agreed that all support services would be provided by PAPI and that any amendments and/or modifications to the MOA would be effective only upon approval of the parties thereto.

By then, Rueda was no longer connected with the petitioner corporation, hence, was disqualified to receive the franchise commission. Thus, the said commission was offered to Macariola who, however, declined and waived his right thereto in favor of respondent Crisostomo, Rueda's immediate supervisor. The Executive Committee of petitioner PAPI agreed to give the franchise commission to respondent Crisostomo.[4]

Initially, respondent Crisostomo received the 10% franchise commission from December 1988 until April 1989. Later, upon the instance of petitioner Benjamin Dino, then Assistant Vice-President for Marketing, respondent Crisostomo's franchise commission was reduced to 5% to support the operational expenses of PAPI. After a few

months, the said commission was again reduced to 4%. Two months later, petitioner PAPI asked for another .25% reduction; hence, respondent Crisostomo's franchise commission was further reduced to 3.75%. Finally, in January 1991, petitioner PAPI again asked for a final reduction of the commission to 2% to which respondent Crisostomo agreed, on the condition that it be reduced into writing.[5]

Thus, on February 7, 1991, petitioner Dino, and Angelito B. Cruz, Vice-President for Finance and Administration, signed a Memorandum which reads as follows:

This will confirm your company franchise on all AFPSLAI business with Professional Academic Plans, Inc. under the following terms and conditions:

- Your franchise commission shall remain at 2% excluding Entrance and Service Fees of the first year premium for as long as you are connected with the company at whatever capacity.
- This franchise is not transferable.

For your guidance.

(Sgd.)

(Sgd.)

BENJAMIN S. DINO

ANGELITO B. CRUZ[6]

Crisostomo received her 2% commission until October 1991.[7] In the meantime, Col. Victor M. Punzalan succeeded Col. Noe S. Andaya as President of the AFPSLAI.[8] In a Letter dated December 16, 1991, Col. Punzalan informed PAPI of the AFPSLAI's decision to review the 1988 MOA.

As an aftermath of the negotiation, petitioner PAPI and the AFPSLAI executed a MOA in April 1992, amending their prior MOA.[9]

The AFPSLAI resumed its remittances of the installment payments of its members to petitioner PAPI in June 1992.[10] This time, however, Crisostomo was not paid her commission. In an Inter-Office Memorandum[11] dated June 1, 1992, respondent Crisostomo's franchise commission on sales transacted with the AFPSLAI was terminated, for the following reasons: (1) the new AFPSLAI management cancelled the old MOA in October 1991 due to various anomalies and the misrepresentation committed by PAPI's sales force; (2) the new MOA is largely due to management's effort; hence, no franchise would be granted to any sales associates; and (3) the franchise guidelines as per the Memorandum dated November 1988 prescribed that in order to maintain her franchise, 100 new paid plans should be completed on a month to month basis and respondent Crisostomo was not able to meet these parameters for the period of November 1991 to May 1992.

Nonetheless, respondent Crisostomo insisted on the release of her 2% franchise commission.[12] She first approached her immediate supervisor, Mrs. Editha Bayoneta, the Senior Assistant Vice-President, but to no avail. She then went to petitioner Dino, who allegedly threatened her with termination if she persisted with her demand. Unfazed, she sought a dialogue with the President himself, petitioner Francisco Colayco. They, however, failed to arrive at a settlement.[13] On July 6, 1992, respondent Crisostomo sent a demand letter to petitioner PAPI. The latter informed her that it could not accede to her demand for the reasons stated in the Inter-Office Memorandum dated June 1, 1992.

Thereafter, Crisostomo again approached Colayco who advised her to make a formal proposal. She complied and submitted a letter[14] on August 13, 1992 where she made the following proposal:

Option 1: That I am willing to settle for a P5 Million amount settlement and an immediate irrevocable resignation from your good company,

Option 2: That the 2% franchise fee/commission be retained even if and when the undersigned is no longer connected with Professional Group, Inc. for as long as the AFPSLAI is still doing business with the Professional Group. This is considered as the royalty fee.[15]

However, in a Letter[16] dated August 17, 1992, petitioner Colayco informed the respondent that her settlement proposal was totally unacceptable and that she was being placed under preventive suspension in order to abort any untoward reaction resulting from the denial of her request, which may be detrimental to the company's interest. Worse, she was advised not to come back after the suspension. Thus, her services in the company were terminated.

On January 21, 1993, respondent Crisostomo filed a complaint for sum of money and damages against petitioners PAPI, Colayco and Dino. She alleged therein that as of October 2, 1992, petitioner PAPI's sales of pre-need plans to the AFPSLAI amounted to P9,193,367.20; that she was entitled to 2% of such amount or the sum of P183,867.34 as franchise commission; and that notwithstanding the said franchise, petitioner PAPI refused to give her the said commissions. She, likewise, prayed for the grant of moral and exemplary damages, plus attorney's fees.[17]

The petitioners averred in their answer to the complaint that Crisostomo was not entitled to the franchise commission because she did not participate in the execution of the 1988 MOA. They pointed out that under the December 1989 company guidelines, a franchise holder shall be maintained only when 100 new paid plans are completed on a month-to-month basis. They argued that since respondent Crisostomo was unable to meet this requirement for the period of November 1991 to May 1992, her franchise was terminated. The petitioners also claimed that the AFPSLAI did not resume payments in 1992 but entered into a new MOA after it undertook new negotiations. They maintained that under the new MOA, no one is entitled to a franchise, much less respondent Crisostomo.[18]

The petitioners adduced testimonial evidence to show that respondent Crisostomo had no participation whatsoever in the negotiations which culminated in the execution of the two MOAs between petitioner PAPI and the AFPSLAI. Petitioner Dino testified that before respondent Crisostomo became the regional manager, she was not an employee of PAPI. According to him, after the termination of Rueda's employment for cause, the franchise commission should revert back to petitioner PAPI as a rule. While the Executive Committee agreed to award the commission, it agreed to give respondent Crisostomo only a 5% commission, which was reduced to 2% until June 1992 under the 1992 MOA. Moreover, Crisostomo had no participation whatsoever in the negotiations of the two agreements.

After due proceedings, the trial court rendered a Decision on November 20, 1997, the dispositive portion of which reads:

Premises considered, judgment is hereby rendered in favor of the plaintiff and as against defendants. Wherefore, defendants are hereby ordered to release to plaintiff:

- the sum of one hundred eighty-three thousand eight hundred sixty-seven thousand and twenty-five centavos (P183,867.25) which constitutes her commission from the AFPSLAI contract as of October 1992, and the sum equivalent to 2% of all future remittances by AFPSLAI to defendant PAPI;
- moral damages in the amount of P200,000.00;
- exemplary [damages] of P50,000.00;

- attorney's fees of P50,000.00;
- cost of suit.

SO ORDERED.[19]

The petitioners appealed the decision to the CA which rendered judgment[20] on August 31, 2000 affirming in toto the decision of the trial court.

The Ruling of the Court of Appeals

According to the CA, the letter of Col. Punzalan did not indicate any intention to abrogate the first MOA. At most, it merely suspended the acceptance of the application for pre-need plans while a thorough review of the terms and conditions of the first MOA was being made. The CA held that the second MOA did not disclose any incompatibility with the first MOA that would amount to an implied extinguishment of the latter; nor did the new MOA use any word suggesting the cancellation of the first. The CA then ruled that what was executed in 1992 was a mere modification of the first MOA.[21]

The CA further held that the fact that military and political support intervened in facilitating the revival of the AFPSLAI account did not diminish the respondent's right to the franchise commission, considering that it was awarded to her by the executive committee for successfully initiating the deal with the AFPSLAI in 1988.[22]

The CA ruled that the requirement of completing 100 new plans monthly as a condition for a franchisee to be entitled to the commission was superseded by the Memorandum dated February 7, 1991, which reduced the commission to 2% from the earlier 10%. Respondent Crisostomo was entitled to receive such reduced commission as long as she was connected with the petitioner corporation in whatever capacity. Moreover, assuming that such condition was still in effect, its non-fulfillment from November 1991 to May 1992 could not be imputed to the respondent since it was brought about by Col. Punzalan's order to suspend the acceptance of plan applications pending a review of the first MOA.[23]

The CA found that the award of moral and exemplary damages, attorney's fees and the costs of the suit, in favor of the respondent, was fully supported by the evidence on record and was justified, in light of the petitioner corporation's wanton disregard of respondent's claim for her franchise commission.[24]

On June 13, 2001, the CA denied the petitioners' motion for reconsideration for lack of merit. Hence, they filed this petition for review on certiorari.

The Present Petition

The petitioners submit the following issues for our consideration:

- WHETHER OR NOT THE OLD MEMORANDUM OF AGREEMENT HAD BEEN CANCELLED AND RESCINDED BY AFPSLAI;
- WHETHER OR NOT RESPONDENT IS ENTITLED TO THE FRANCHISE FEE OR COMMISSION UNDER THE NEW MEMORANDUM OF AGREEMENT UNDER WHICH SHE HAD NO PARTICIPATION WHATSOEVER IN THE NEGOTIATION AND EXECUTION;
- WHETHER OR NOT PETITIONERS, IN DENYING RESPONDENT'S CLAIM, HAVE COMMITTED ACTS THAT RENDER THEM LEGALLY LIABLE FOR MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES AND COST OF SUIT.[25]

Primarily, the petitioners assert that the respondent is not entitled to a franchise commission. They aver that the respondent did not participate in initiating, conceptualizing, and negotiating the first MOA with the AFPSLAI,

except that she was present during its signing. The franchise commission for the AFPSLAI account under the old MOA should have been granted to Noel Rueda, who initiated and conceptualized the transaction. The petitioners maintain that the franchise commission was only awarded to the respondent because those who were entitled to it were disqualified to be franchise holders – Rueda was disqualified for being no longer connected with the petitioner company, while Macariola was disqualified for being an employee.[26]

Assuming that the respondent was entitled to the franchise commission under the old MOA, the petitioners argue that such privilege was already extinguished, considering that the old MOA was cancelled by the AFPSLAI thru the Letter dated December 16, 1991. They maintain that in writing the said letter, Col. Punzalan intended to abrogate the old MOA and not merely suspend the same, otherwise, the intention to enter into “a new agreement mutually beneficial” to both parties would not have been mentioned therein.[27] They conclude that since there has already been an express cancellation of the old MOA, there is no longer a need to delve into the issue of whether the new MOA declared in unequivocal terms that the old MOA was being cancelled, or whether the new MOA is incompatible with the old one.[28]

The petitioners point out that the respondent had no participation whatsoever in the negotiation or execution of the new MOA. Considering this and the fact that the old MOA had been duly cancelled, the respondent, therefore, had no right to the franchise commission on the AFPSLAI account under the new MOA.[29]

The petitioners assert that the award of moral and exemplary damages and attorney’s fees has no basis since they did not act in bad faith in denying the respondent’s claim.[30]

In her Comment on the petition, the respondent counters that regardless of the execution of the new MOA and her non-participation in its negotiation and execution, her right to the commissions from all sales emanating from the AFPSLAI transactions subsists as long as she remained connected with PAPI. She asserts that the petitioners are now in estoppel to question the grant of her commission since it was granted through the petitioner corporation’s authority and it was reduced into writing.[31]

In their Reply, the petitioners stress that the respondent’s entitlement to the commission was not absolute. It was subject to certain conditions, i.e., the fact that the respondent must be connected with the company in order to be entitled to it, and that the old MOA must remain effective, since it was the basis for the grant of the commission. With its cancellation, the right of respondent to the commission, likewise, ceased to exist. Without the new MOA, there would no longer be any applications for academic plans from the AFPSLAI and, consequently, no commission to be earned.[32]

The Ruling of the Court

Rule 45 of the Rules of Court provides that only legal issues may be raised. Factual issues are beyond the province of the Supreme Court in a petition for review, for it is not the Court’s function to weigh the evidence all over again.[33] While the Court may, in exceptional cases, resolve factual issues, the petitioners herein failed to establish any such exceptional circumstances. Moreover, it is doctrinal that findings of facts of the CA upholding those of the trial court are binding upon the Supreme Court.[34]

Even after a review of the factual issues raised by the petitioners, we find and so rule that the CA was correct in declaring that the first MOA had not been cancelled, but was merely modified by the second MOA.

A reading of the letter of Col. Punzalan to the petitioner corporation indicates that it merely signified the suspension of the acceptance of new applications under the first MOA, until such time that a thorough study was undertaken, and a new agreement mutually beneficial to both parties was entered into. By his letter, Col. Punzalan did not unilaterally cancel or rescind the first MOA. Indeed, the petitioners failed to adduce a morsel of evidence

to prove that AFPSLAI had agreed to such cancellation or rescission of the first MOA. It bears stressing that abandonment of contract rights requires proof of actual intent to abandon. [35]

Once a contract is entered into, no party can renounce it unilaterally or without the consent of the other.[36] This is the essence of the principle of mutuality of contracts entombed in Article 1308[37] of the Civil Code. To effectuate abandonment of a contract, mutual assent is always required.[38] The mere fact that one has made a poor bargain may not be a ground for setting aside the agreement.[39]

As can be gleaned from the second MOA, the parties merely made substantial modifications to the first MOA, and agreed that only those provisions inconsistent with those of the second were considered rescinded, modified and/or superseded.[40]

As graphically shown below, the parties agreed to continue with the implementation of the Academic Assistance Program under the acronym “LOVES” (Loans to Offset Very Expensive Schooling) and to continue implementing the same. The rights and obligations of the parties under the first MOA were maintained albeit with modifications, to wit:

1988 MOA

1992 MOA

IN GENERAL

- Agreement between PAPI and AFPSLAI to implement the terms and conditions of the Academic Assistance Program
- Benefits to accrue directly to the member and the designated heirs

IN GENERAL

- Agreement between AFPSLAI and the PAPI to implement the terms and conditions of the Loans to Offset Very Expensive Schooling (LOVES) Program
- Benefits to accrue directly to the member and the designated heirs

IMPLEMENTATION

- Assistance by PAPI to AFPSLAI in terms of support services
- Creation of a Committee to supervise the initial implementation of the program

IMPLEMENTATION

- Putting up of an extension office near the AFPSLAI building at the expense of PAPI
- Support and services by PAPI in the implementation of the program

PAYMENT and COLLECTION

- Financing of the 1st annual payment by AFPSLAI in the form of educational loan to the member
- AFPSLAI as the authorized collecting agent of monthly installments of the members
- Remittance of collections to the PAPI from the 2nd year until the plan is fully paid
- Direct payment to PAPI of the 1st year assistance granted by AFPSLAI to the member

PAYMENT and COLLECTION

- Financing in the form of a 5-year loan in favor of the member equivalent to the Gross Contract Price (GCP) of the plan
- Schedule of drawing out the loan proceeds within 5 years
- 20% of GCP upon submission of the complete documentation by PAPI and upon approval of the loan
- 80% of the GCP to be drawn out in 48 equal monthly installments to start upon receipt by AFPSLAI of the 13th monthly amortization of the member

BENEFITS TO AFPSLAI

- 47.5% of the net Initial Cash Brought-In of all the 1st year assistance
- 5% of all total collections from the 2nd year up to the 5th year

BENEFITS TO AFPSLAI

- 53.5% out of the 20% of the GCP as service fee and discount
- 5% out of the 80% of the GCP as service fee

IN CASE OF NON-PAYMENT

- AFPSLAI to become the receiver of the contract in case of failure to pay 3 monthly amortizations
- AFPSLAI to acquire all interests from the contract in case the 1st year assistance is not fully paid by the member

IN CASE OF NON-PAYMENT

- AFPSLAI to automatically become the receiver of the contract in case of failure to pay the monthly amortization(s), with dispositive right over the plan

IN CASE OF CANCELLATION

- Due to fraud, forgery or misrepresentation of PAPI personnel
- AFPSLAI to act on it and notify PAPI
- Member's loan to be deducted from the amounts due to PAPI, or to be billed to PAPI, in case the former is insufficient
- no rebate on the service fee and discount
- Due to death of either the member or beneficiary
- the plan shall be deemed fully paid for
- to be acted upon by PAPI
- outstanding accounts to be deducted from AFPSLAI's future releases or to be billed to PAPI subject to certain conditions.

MISCELLANEOUS

- AFPSLAI to be free from any legal implication that may arise as to the agreement between the member and PAPI

- Effectivity of the MOA immediately upon signing
- Amendments and modifications to become effective only upon approval of the parties

MISCELLANEOUS

- AFPSLAI to be free from any liability arising between the member and PAPI
- Effectivity of the MOA immediately upon signing
- Amendments and modifications to become effective only upon approval of the parties
- Prior inconsistent agreements deemed rescinded, modified, or superseded.

The fact that the respondent did not participate in the negotiations of the new MOA is of no moment. As culled from the petitioners' testimonial evidence, the franchise commission was awarded as an incentive to the one who initiated and successfully negotiated the AFPSLAI account within a certain period.[41] The franchise commission was granted subject to two conditions only: (1) that the respondent must remain connected with the company, and (2) that it is not transferable. At the time the new MOA was executed, the respondent was still connected with the petitioner corporation; hence, she was still entitled to her commission. Even with the modification of the first MOA by the second one, the respondent had the right to continue receiving her franchise commission from the petitioner corporation.

We agree with the respondent that the petitioners are now in estoppel to question her entitlement to the franchise commission under the old MOA. It must be noted that from December 1988 until October 1991 the respondent was continuously receiving her franchise commission from the petitioner corporation. It was only when the remittances for AFPSLAI were suspended that the respondent stopped receiving her commission.

On the issue of damages, we rule for the petitioners. Moral damages are recoverable for breach of contract where the breach was wanton, reckless, malicious or in bad faith, oppressive or abusive.[42] However, moral damages are improperly awarded, absent a specific finding and pronouncement from the trial court that petitioners acted in such manner.[43] In the instant case, despite the trial court's award of moral damages, it did not make any pronouncement as to the basis of such award. Therefore, the award of moral damages must be deleted.

As a consequence, the award for exemplary damages is also vacated. Exemplary damages are not recoverable as a matter of right, and although such damages need not be proved, the plaintiff must first show that he is entitled to moral, temperate or compensatory damages before a court can favorably consider an award of exemplary damages.[44] In this case, there was no finding that the respondent is entitled to any such damages; hence, no exemplary damages may be awarded. Finally, we also vacate the award of attorney's fees since the trial court did not make any finding that any of the instances enumerated in Art. 2208 of the Civil Code exists.

WHEREFORE, the decision of the Court of Appeals is **AFFIRMED** with **MODIFICATION**. The awards for moral and exemplary damages and attorney's fees are **DELETED**. No pronouncement as to costs.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Ramon A. Barcelona (retired), with Associate Justices Marina L. Buzon and Edgardo P. Cruz, concurring.

[2] TSN, 22 September 1993, p. 7.

[3] Records, pp. 6-7.

[4] TSN, 6 October 1995, pp. 6-11.

[5] TSN, 28 July 1993, pp. 11-13.

[6] Records, p. 9.

[7] TSN, 28 July 1993, p. 15.

[8] Ibid.

[9] Records, pp. 104-106.

[10] TSN, 28 July 1993, p. 18.

[11] Records, p. 107.

[12] TSN, 28 July 1993, p. 18.

[13] Id. at 19-22.

[14] Records, p. 108.

[15] Id. at 15.

[16] Id. at 16-17.

[17] Id. at 1-3.

[18] Id. at 69-75.

[19] Rollo, pp. 43-44.

[20] Id. at 46-58.

[21] Id. at 54-55.

[22] Id. at 56.

[23] Id. at 56-57.

[24] Id. at 57.

[25] Id. at 26.

[26] Id. at 32-33.

[27] Id. at 27.

[28] Id. at 28-29.

[29] Id. at 30.

[30] Id. at 33-34.

[31] Id. at 66-67.

[32] Reply to Comment, pp. 1-2.

[33] Centeno v. Viray, 392 SCRA 349 (2002).

[34] Bortalba v. Court of Appeals, 374 SCRA 555 (2002).

[35] Mcbee v. Gustaaf Vandecnocke Revocable Trust, 986 S.W. 2d 170 (1999).

[36] Tolentino, Comments and Jurisprudence on the Civil Code of the Philippines, Vol. 4, p. 425.

[37] Art. 1308. The contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them.

[38] County of Morris v. Fauver, 153 N.J. 80, 707 A.2d 958 (1998).

[39] Fernandez v. Manila Electric Railroad, etc., Co., 14 Phil. 274 (1909).

[40] Exhibit "2."

[41] See TSN, 28 July 1993, p. 9; TSN, 6 October 1995, p. 6.

[42] Herbosa v. Court of Appeals, 374 SCRA 578 (2002).

[43] Sarming v. Dy, 383 SCRA 131 (2002).

[44] Philippine Telegraph & Telephone Corporation v. Court of Appeals, 388 SCRA 270 (2002).

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