

ALBERTO V. REYES, WILFREDO B. DOMO-ONG AND HERMINIO C. PRINCIPIO, PETITIONERS, VS. RURAL BANK OF SAN MIGUEL (BULACAN), INC., REPRESENTED BY HILARIO P. SORIANO, PRESIDENT AND PRI...

G.R. No. 154499. February 27, 2004

Ponente: TINGA, J.

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TINGA, J.:

This deals with the Motion for Reconsideration of petitioners Alberto V. Reyes and Wilfredo B. Domo-ong, both Bangko Sentral ng Pilipinas (BSP) officials,[1] and the Motion for Partial Reconsideration of respondent Rural Bank of San Miguel (Bulacan), Inc.

In the Decision[2] of March 14, 2003, this Court found Deputy Governor Reyes and Director Domo-ong liable for violation of the “standards of professionalism” prescribed by the Code of Conduct and Ethical Standards for Public Officials and Employees (Republic Act No. 6713) in that they used the distressed financial condition of respondent Rural Bank of San Miguel (Bulacan), Inc. (RBSMI) as the subject of a case study in one of the BSP seminars and did the “brokering” of the sale of RBSMI. The Court modified the Decision of the Court of Appeals in CA-GR SP No. 60184[3] by reducing the penalty imposed by the appellate court from a fine equivalent to six months’ salary to a fine of two months’ salary for Reyes and one month salary for Domo-ong.

In the Decision, the Court exonerated petitioner Herminio C. Principio[4] of the administrative charges. The exoneration is the subject of RBSMI’s Motion For Partial Reconsideration.

The Motion for Reconsideration of Reyes and Domo-ong is anchored on the following grounds: (1) it was not under their auspices that the seminar which used training materials containing two case studies on RBSMI’s financial distress was conducted but under that of another department and other officials of BSP; and, (2) they did not do any act which constituted “brokering” of the sale of RBSMI or deviated from the standards of professionalism.

A brief revisit of the operative milieu is warranted to gain the needed perspective.

In a letter dated May 19, 1999, addressed to then BSP Governor Singson, RBSMI charged the petitioners with violation of Republic Act No. 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees). The Monetary Board (MB) of the BSP created an Ad Hoc Committee to investigate the matter.

The ensuing investigation disclosed that sometime in September 1996, RBSMI, which had a history of major violations/exceptions dating back to 1995, underwent periodic examination by the BSP. The examination team headed by Principio noted 20 serious exceptions/violations and deficiencies of RBSMI.[5]

Through Resolution No. 96, the MB required RBSMI to submit within 15 days a written explanation with respect to the findings of the examiner. It also directed the Department of Rural Banks (DRB), to verify, monitor and

report to the Deputy Governor, Supervision and Examination Sector (SES) on the findings/exceptions noted, until the same shall have been corrected.

As directed by the MB, another examination team conducted a special examination on RBSMI. RBSMI President Hilario Soriano claimed that he was pressured into issuing a memorandum to the bank employees authorizing the team to review the bank's accounting and internal control system.

Soriano also alleged that sometime in March 1997, Reyes started urging him to consider selling the bank. He specified that on May 28, 1997, Reyes introduced him through telephone to Mr. Exequiel Villacorta, President and Chief Executive Officer of the TA Bank. They agreed to meet on the following day. In his Affidavit,[6] Villacorta confirmed that he and Soriano indeed met but the meeting never got past the exploratory stage since he (Villacorta) immediately expressed disinterest because Soriano wanted to sell all his equity shares while he was merely contemplating a possible buy-in.

Soriano further alleged that when the talks with Villacorta failed, Reyes asked him whether he wanted to meet another buyer, to which he answered in the affirmative. Thereafter, Reyes introduced him by telephone to Benjamin P. Castillo of the Export and Industry Bank (EIB), whom he met on June 26, 1997. No negotiation took place because Soriano desired a total sale while EIB merely desired a joint venture arrangement or a buy-in to allow EIB to gain control of RBSMI.

Meanwhile, on June 13, 1997, the MB approved Resolution No. 724[7] ordering RBSMI to correct the major exceptions noted within 30 days from receipt of the advice, and to remit to the BSP the amount of P2,538,483.00 as fines and penalties for incurring deficiencies in reserves against deposit liabilities.

On July 21, 1997, Soriano submitted RBSMI's answers to the BSP exceptions/findings mentioned. He stated that "the actions taken or to be taken by the bank (RBSMI) were deliberated and ratified by the Board of Directors in its regular meeting held on July 9, 1997." Among the board approved actions was the bank's request addressed to Domo-ong for BSP "to debit the demand deposit of the bank in the amount of P2,538,483.00" representing the payment of fines and penalties.

More than a year after, however, the RBSMI asked for a reconsideration of MB Resolution No. 724 insofar as the imposition of fine amounting to P2,538,483.00. On January 21, 1999, the MB adopted Resolution No. 71,[8] authorizing the conditional reversal of sixty percent (60%) of the penalty pending resolution of the dispute on the findings on reserve deficiency. Subsequently, on April 7, 1999, the MB approved the interim reversal of the entire amount of the penalty "pending the outcome of the study on the legal and factual basis for the imposition of the penalty."

The above incidents, particularly the alleged "brokering" by Reyes and the petitioners' "unsupported" recommendation to impose a penalty of P2,538,483.00 for legal reserve deficiency, prompted the respondent to file the letter-complaint charging the petitioners with "unprofessionalism."

The Motion for Reconsideration bid of Reyes and Domo-ong is meritorious.

In pinning liability on Reyes and Domo-ong for the seminar which used the rural bank as a case study, the court made this ratiocination, viz:

"(W)hile there was indeed no evidence showing that either petitioner Reyes or petitioner Domo-ong distributed or used the materials, the very fact that the seminar was conducted under their auspices is enough to make them liable to a certain extent. Petitioner Reyes, as Head of the BSP Supervision and Examination Sector, and petitioner Domo-ong, as Director of the BSP Department of Rural Banks, should have exercised their power of control and supervision so that the incident could have been prevented or at the very least remedied."

(Emphasis supplied)

Plainly, conclusion on petitioners' culpability is grounded, not on an established fact but on a mere inference that the seminar was conducted under their auspices. Indeed, the pronouncement on the petitioners' role is evidently conjectural and evaluation of the extent of their responsibility admittedly uncertain.

It is conceded that there was no evidence that the seminar was conducted under petitioners' patronage. And it was assumed, as indeed there was absolutely paucity of proof, that they exercised supervision and control over the persons responsible in organizing the seminar. On the contrary, as shown in the Motion For Reconsideration, it was the Bangko Sentral ng Pilipinas Institute (BSPI), an office separate and independent from the SES which is directly under the control and supervision of another Deputy Governor, that for the Resource Management Sector (RMS)[9] which is charged with conducting seminars and lectures for the BSP, including the seminar involved in this case.

In its Comment,[10] RBSMI argues that since information on the state of its finances found its way as a training material of RMS, the event could have transpired only because the SES permitted it. Even if the subordinates of petitioners were the source of information, RBSMI further claims in ostensible reference to the principle of command responsibility, petitioners could be held liable for negligence.

It is noteworthy again that petitioners' alleged role in the disclosure of information is not anchored on any concrete piece of evidence. That explains the RBSMI's effort to cast liability vicariously on the petitioners by a superficial resort to the principle of command responsibility which this Court did not reject. But neither the principle itself which is an accepted notion in military or police structural dynamics or its counterpart of respondent superior in the law on quasi-delicts[11] would be relevant in this case, involving as it does the actual performance in office of the petitioners and given the fact that petitioners are high ranking officers of the country's central monetary authority. Indeed, as such officers, petitioners cannot be expected to monitor the activities of their subalterns. In *Arias v. Sandiganbayan*,[12] this Court held that all heads of offices have to rely to a reasonable extent on the good faith of their subordinates. The case specifically involved the liability of the head of office in the preparation of bids, purchase of supplies and contract negotiations done by his subordinates. In the same fashion, petitioners in this case owing to their high ranks cannot be expected to acquaint themselves with such minutiae as the flow of files and documents which leave their desks. Myriad details such as those are, by office practice, left to subalterns and minor employees. Delegation of function is part of sound management.

From another perspective, the negligence of the subordinate cannot be ascribed to his superior in the absence of evidence of the latter's own negligence. Indeed, the negligence of the subordinate is not tantamount to negligence of the superior official so the Court ruled in a case[13] where the mandated responsibilities of the superior do not include actual monitoring of projects. In another case,[14] this Court rejected the principle of command responsibility although the case involved a provincial constabulary commander, aptly noting that there was neither allegation nor proof that he had been in any way guilty of fault or negligence in connection with the unlawful raid and arrest effected by his subordinates.

The immunity of public officers from liability for the non-feasances, negligence or omissions of duty of their official subordinates and even for the latter's misfeasances or positive wrongs rests, according to Mechem, "upon obvious considerations of public policy, the necessities of the public service and the perplexities and embarrassments of a contrary doctrine." [15] These official subordinates, he notes further, are themselves public officers though of an inferior grade, and therefore directly liable in the cases in which any public officer is liable, for their own misdeeds or defaults.[16]

Significantly, Mechem's disquisition provides the mooring of the Administrative Code of 1987 which provides

that a head of a department or a superior officer shall not be civilly liable for the wrongful acts, omissions of duty, negligence, or misfeasance of his subordinates, unless he has actually authorized by written order the specific act or misconduct complained of.[17]

Now, the label of unprofessionalism bestowed by the Court on the petitioners at the instance of RBSMI.

In the assailed Decision, the Court categorized Reyes' telephone introduction of officials of other banks to RBSMI's President in connection with the latter's expressed desire to sell the bank as "brokering" which in turn constitutes, according to the Court, violation of the standards of professionalism. The standards are set forth in Section 4 (A) (b) of Republic Act 6713, as follows:

Sec. 4. Norms of Conduct of Public Officials and Employees. — (A) Every public official and employee shall observe the following as standards of personal conduct in the discharge and execution of official duties:

...

(b) Professionalism. — Public officials and employees shall perform and discharge their duties with the highest degree of excellence, professionalism, intelligence and skill. They shall enter public service with utmost devotion and dedication to duty. They shall endeavor to discourage wrong perceptions of their roles as dispensers or peddlers of undue patronage.

The Court equates "brokering" with unprofessionalism. According to Webster's Third New International Dictionary, "professionalism" means "the conduct, aims, or qualities that characterize or mark a profession." Any standard thesaurus defines a "professional" as a person who engages in an activity with great competence. Indeed, to call a person a professional is to describe him as competent, efficient, experienced, proficient or polished.

The crucial question, therefore, is whether Reyes conducted himself in an unprofessional manner in doing the acts imputed to him.

The Court rules in the negative.

In the first place, the acts of Reyes do not constitute "brokering." Case law[18] defines a "broker" as "one who is engaged, for others, on a commission, negotiating contracts relative to property with the custody of which he has no concern; the negotiator between other parties, never acting in his own name but in the name of those who employed him. . . . a broker is one whose occupation is to bring the parties together, in matters of trade, commerce or navigation." According to Bouvier's Law Dictionary, "brokerage" refers to "the trade or occupation of a broker; the commissions paid to a broker for his services," while "brokers" are "those who are engaged for others on the negotiation of contracts relative to property, with the custody of which they have no concern." [19]

Thus, the word "brokering" clearly indicates the performance of certain acts for monetary consideration or compensation. To give it another definition such as that imputed by RBSMI to the acts of Reyes is to distort the accepted jurisprudential meaning of the term.

From the evidence, all that Reyes did was to introduce RBSMI's President to the President of TA Bank and EIB. Nothing more. There was not even a hint that he was motivated by monetary consideration or swayed by any personal interest in doing what he did.

On his part, Soriano who is RBSMI's President himself admitted that the talks with Villacorta and Castillo never got past the exploratory stage because the two wanted a buy-in while he was for a total sell-out. This is an indelible indication that Reyes was not personally involved in the transaction. If he were, he would at least have an inkling of the plans of Villacorta and Castillo; otherwise, he would not have wasted his time introducing them to Soriano.

Indeed, RBSMI miserably failed to establish that Reyes had breached the standard of professional conduct required of a public servant. It appears to the Court that in keeping with the standards of professionalism and heeding the mandate of his position, he made the telephone introductions for no other purpose but to pave the way for a possible consolidation or merger of RBSMI with interested banks. As this Court found in its Decision, it is indeed the policy of the BSP to promote mergers and consolidations by providing incentives to banks that would undergo such corporate combinations.[20] To effectively implement the policy, it was necessary that the banks be advised and assisted by a person knowledgeable about the transactions like Reyes. The benefits which may ultimately arise out of any preliminary facilitation step such as what Reyes undertook will not accrue to the facilitator but to the parties to the transaction themselves and, of course, the institution whose policy initiative is being carried out.

All told, there is neither legal nor factual support for holding Reyes and Domo-ong liable.

As to the motion for partial reconsideration filed by RBSMI, it is argued that Principio should be administratively penalized for his undue haste in submitting his report to the MB, in making an unsupported recommendation for imposition of penalties for legal reserve deficiencies, and for taking charge of the examinations of RBSMI three consecutive times. RBSMI's arguments are not new, they having been previously presented to and squarely ruled upon by the Court.

In closing, it cannot be overemphasized that the BSP is an independent body corporate bestowed under its charter[21] with fiscal and administrative autonomy. As such, its officials should be granted a certain degree of flexibility in the performance of their duties and provided insulation from interference and vexatious suits, especially when moves of the kind are resorted to as counterfoil to the exercise of their regulatory mandate. Elsewise, the institutional independence and autonomy of the BSP as the central mandatory authority would be rendered illusory.

IN VIEW OF THE FOREGOING, the Court RESOLVES to GRANT the Motion for Reconsideration of the petitioners Deputy Governor Alberto V. Reyes and Director Wilfredo B. Domo-ong. The Decision dated March 14, 2003 is SET ASIDE and another entered, DISMISSING the administrative complaint and EXONERATING all the petitioners. The Motion for Partial Reconsideration of the respondent Rural Bank of San Miguel (Bulacan), Inc. is DENIED.

SO ORDERED.

Quisumbing, (Acting Chairman), Austria-Martinez, and Callejo, Sr., JJ., concur.

Puno, (Chairman), J., on leave.

[1] Reyes is Deputy Governor and Head of Supervision and Examination Sector while Domo-ong is Director of the Department of Rural Banks.

[2] Rollo, pp. 100-117.

[3] Penned by Justice Cancio C. Garcia with Justices Roberto A. Barrios and Bienvenido L. Reyes concurring.

[4] Principio is an Examiner of the Department of Rural Banks.

[5] See List of Exceptions/ Deficiencies and Recommendation, CA Rollo, p. 408.

[6] CA Rollo, p. 340.

[7] See Ad-Hoc Committee Resolution, CA Rollo, p. 63.

[8] Ibid.

[9] The RMS is one of the three sectors directly under the BSP Governor, the two (2) other sectors being the Supervision and Examination Sector (headed by petitioner Reyes), and the Banking Services Sector. (See BSP Organizational Chart, Annex “A” of the Motion for Reconsideration, Rollo, p. 144).

[10] Rollo, p. 157

[11] See Art. 2180, Civil Code.

[12] G.R. Nos. 81563 and 82512, December 19, 1989, 180 SCRA 309.

[13] Principe v. Fact-Finding and Intelligence Bureau, G.R. No. 145973, January 23, 2002, 374 SCRA 460.

[14] Quimsing v. Lachica, 11 Phil 110 (1961).

[15] Mechem, A Treatise on Public Offices and Officers, pp. 528-529.

[16] Ibid, at 529.

[17] Book I, Chapter 9, Section 38(3), Executive Order No. 292.

[18] Schmid and Oberly v. RJL Martinez Fishing Corporation, G.R. No. 75198, October 18, 1998, 166 SCRA 493.

[19] At p. 399.

[20] Circular No. 1312, Series of 1991; Circular No. 172, Series of 1998; Circular No. 193, Series of 1999; Circular No. 207, Series of 1999; Circular No. 225, Series of 2000; Circular No. 237, Series of 2000; and Circular No. 256, Series of 2000.

[21] Republic Act No. 7653. Sec. 1 on Declaration of Policy.

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