

**LORNA FRANCES FILIPINO, PETITIONER, VS. F. WALTER R. MACABUHAY, REPRESENTING DRUGMAKERS' LABORATORIES, INC., RESPONDENT.**

*G.R. NO. 158960. November 24, 2006*

Ponente: YNARES-SANTIAGO, J.

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**YNARES-SANTIAGO, J.:**

This petition for review[1] assails the August 22, 2002 Decision[2] of the Court of Appeals in CA-G.R. SP No. 54974 which affirmed the June 11, 1999 Decision[3] of the Office of the Ombudsman in OMB-ADM-0-97-0481 dismissing petitioner Atty. Lorna Frances Filipino from government service pursuant to Sections 7(d)[4] and 11(b)[5] of Republic Act (R.A.) No. 6713 (1989);[6] and its July 3, 2003 Resolution[7] denying petitioner's motion for reconsideration.

On October 5, 1995, respondent F. Walter R. Macabuhay, representing Drugmakers' Laboratories, Inc., filed before the Ombudsman a Complaint-Affidavit[8] charging petitioner Lorna Frances Filipino, former Chief of the Legal Information and Compliance Division of the Bureau of Food and Drugs Administration (BFAD), with soliciting a loan from the company, in violation of R.A. No. 6713, R.A. No. 3019 (1960),[9] and Presidential Decree (P.D.) No. 807 (1975).[10]

Respondent alleged that sometime in January 1993, petitioner demanded a loan from the company in the amount of P110,000.00. Because of petitioner's disciplinary power and supervisory authority, the company succumbed to her demands and issued United Coconut Planters Bank (UCPB) Check No. 331512 in the amount of P110,000.00, supported by Cash Voucher No. 36203[11] in petitioner's name. The check, however, was issued to a certain Marites L. Vilchez upon petitioner's request.

In her Counter-Affidavit, petitioner denied respondent's allegations and claimed that the transaction was purely between Drugmakers and Vilchez; that she did not receive any demand letter from respondent; and that Vilchez had fully paid the loan as evidenced by an Acknowledgment Receipt dated May 2, 1997.[12] In support of her contentions, petitioner submitted the February 7, 1997 Affidavit[13] of Vilchez where the latter attested that she was the debtor of the subject loan; that she came to know of respondent through a friend, Arlene Piago; and that respondent loaned her P110,000.00 in exchange for jewelry obtained by Evangeline C. Del Mundo, a principal officer of the company.[14]

In an Affidavit dated September 1, 1997, Del Mundo denied Vilchez' allegations and claimed that respondent company is not engaged in the business of financing or lending. She denied knowing Piago and alleged that the amount of P110,000.00 was loaned to petitioner. She denied buying any jewelry from Vilchez and claimed that it would be absurd for her to issue a company check for her personal transactions, more so for goods she has not received.[15]

During the preliminary conference on November 25, 1997, petitioner made a reservation that a formal hearing be held to give her the opportunity to cross-examine the witnesses and evaluate the documentary evidence against

her.[16]

In the scheduled hearing on May 19, 1998, however, petitioner filed a Motion to Dismiss[17] on the ground that respondent's cause of action has prescribed considering that more than one year has passed from the alleged commission of the act on January 26, 1993 to the filing of the Complaint-Affidavit on October 5, 1995. The Ombudsman denied the motion in an Order[18] dated June 10, 1998, stating that its rules are merely directory and that public policy and interest dictate inquiry into the case. In the same Order, the formal investigation was set on July 1, 1998.

The hearing scheduled on July 1, 1998 did not push through as petitioner moved for reconsideration of the June 10, 1998 Order which was denied and the parties were required to submit the case for adjudication in an Order dated November 19, 1998.[19] Petitioner thereafter filed a Memorandum[20] on February 22, 1999.

On April 20, 1999, petitioner filed an Urgent Motion[21] to set the case for formal investigation and/or hearing but the Ombudsman denied the same holding that petitioner's submission of a Memorandum was a waiver of her right to a formal investigation.

On June 11, 1999, the Ombudsman rendered a Decision dismissing petitioner from government service, the dispositive portion of which states:

WHEREFORE, in view of all the foregoing, respondent Lorna Frances Filipino, also known as Lorna Frances Cabanlas, is hereby found guilty as charged of the offense of "contracting loans of money or other property from persons with whom her office has business relations" and "soliciting or accepting directly or indirectly any loan or anything of monetary value." Pursuant to Section 22 (j) and (k), Rule XIV, Omnibus Rules Implementing Book V of Executive Order No. 292 prescribing the penalties for administrative offenses and Section 7 (d) in relation to Section 11 (b), Republic Act No. 6713, otherwise known as the "Code of Conduct and Ethical Standards for Public Officials Employees," she is hereby ordered DISMISSED from the service upon her receipt of a copy of this Decision.

SO RESOLVED.[22]

Petitioner filed a petition for review before the Court of Appeals alleging that she was deprived of due process and that the findings of the Ombudsman were not supported by substantial evidence. On August 22, 2002, the Court of Appeals rendered the assailed Decision, the dispositive portion of which states:

WHEREFORE, the instant petition is hereby DENIED. Accordingly, the assailed Decision dated June 11, 1999 of the Office of the Ombudsman is hereby AFFIRMED.

SO ORDERED.[23]

Petitioner moved for reconsideration but was denied, hence this petition for review raising the following issues:

I

THE HONORABLE COURT OF APPEALS ERRED WHEN IT FOUND THAT THE FINDINGS OF THE OFFICE OF THE OMBUDSMAN IS (SIC) SUPPORTED BY SUBSTANTIAL EVIDENCE.

II

THE HONORABLE COURT OF APPEALS ERRONEOUSLY HELD THAT PETITIONER NEVER PURSUED THE REMEDY OF FORMAL INVESTIGATION BEFORE THE OFFICE OF THE OMBUDSMAN.

III

THE HONORABLE COURT OF APPEALS ERRONEOUSLY HELD THAT PETITIONER WAS NOT DENIED DUE PROCESS SINCE SHE FILED HER MEMORANDUM.

IV

THE HONORABLE COURT OF APPEALS ERRONEOUSLY HELD THAT THE PRESUMPTION OF REGULARITY IN SENDING A COPY OF THE ORDER RESOLVING THE MOTION FOR DISQUALIFICATION WAS NOT REBUTTED BY PETITIONER.

V

THE PETITIONER BELIEVES THAT THE COMPLAINT SHO(U)LD BE DISMISSED PURSUANT TO SEC. 20[5] OF RA 6770.[24]

Petitioner contends that the complaint should be dismissed on the grounds of prescription; denial of due process; and lack of substantial evidence showing that she was guilty of contracting loans from respondent with whom her office has business relations.

Meanwhile, respondent failed to comment on the instant petition despite several notices sent by the Court. Thus, we dispensed with the filing of the same.

The issues for resolution are: 1) whether the complaint is barred by prescription; 2) whether petitioner was denied due process; and 3) whether there is substantial evidence showing petitioner's participation in the loan transaction.

The petition lacks merit.

Section 20 of R.A. No. 6770, otherwise known as The Ombudsman Act of 1989, states:

Sec. 20. Exceptions. - The Office of the Ombudsman may not conduct the necessary investigation of any administrative act or omission complained of if it believes that:

x x x x

(5) The complaint was filed after one (1) year from the occurrence of the act or omission complained of.

Petitioner argues that based on the abovementioned provision, respondent's complaint is barred by prescription considering that it was filed more than one year after the alleged commission of the acts complained of.

Petitioner's argument is without merit.

The use of the word "may" clearly shows that it is directory in nature and not mandatory as petitioner contends.[25] When used in a statute, it is permissive only and operates to confer discretion; while the word "shall" is imperative, operating to impose a duty which may be enforced.[26] Applying Section 20 (5), therefore, it is discretionary upon the Ombudsman whether or not to conduct an investigation on a complaint even if it was filed after one year from the occurrence of the act or omission complained of. In fine, the complaint is not barred by prescription.

As regards the second issue, we find that petitioner was not deprived of due process. It is well-settled that the essence of due process in administrative proceedings is that a party be afforded a reasonable opportunity to be heard and to submit any evidence he may have in support of his defense.[27] Deprivation of due process cannot be successfully invoked where a party was given the chance to be heard and given the opportunity to present his side.[28] In *Samalio v. Court of Appeals*,[29] we held:

Due process in an administrative context does not require trial-type proceedings similar to those in courts of justice. Where opportunity to be heard either through oral arguments or through pleadings is accorded, there is

no denial of procedural due process. A formal or trial-type hearing is not at all times and in all instances essential. The requirements are satisfied where the parties are afforded fair and reasonable opportunity to explain their side of the controversy at hand. The standard of due process that must be met in administrative tribunals allows a certain degree of latitude as long as fairness is not ignored. In other words, it is not legally objectionable for being violative of due process for an administrative agency to resolve a case based solely on position papers, affidavits or documentary evidence submitted by the parties as affidavits of witnesses may take the place of their direct testimony.[30]

In the instant case, petitioner had the opportunity to present her side as well as submit countervailing evidence to refute respondent's claims. She participated in all levels of the proceedings, from the Ombudsman to this Court. The records show that petitioner submitted before the Ombudsman the following: a) Counter-Affidavit refuting all the charges against her; b) Motion to Dismiss the complaint; c) Motion for Reconsideration of the order of denial of the Motion to Dismiss; d) Memorandum; e) Urgent Motion to set case for a formal investigation and/or hearing; and f) Motion for Disqualification and/or Inhibition. The Ombudsman also considered petitioner's motion for reconsideration of the June 11, 1999 Decision while the Court of Appeals heard her appeal.

From the foregoing, it is clear that the requirements of due process were satisfied in the instant case. Petitioner was never deprived of an opportunity to a formal investigation as in fact hearings were scheduled, but petitioner opted to file several pleadings instead of proceeding with the formal investigation.

Further, pursuant to the November 19, 1998 Order of the Ombudsman, petitioner filed a Memorandum on February 22, 1999 without reservation. She did not move for reconsideration of the said Order which categorically stated that after the parties' submission of memoranda, the case would be considered ripe for resolution.[31] The Urgent Motion to set case for formal investigation and/or hearing was filed only on April 20, 1999, long after the case had been deemed submitted for resolution. Thus, petitioner impliedly waived her right to a formal hearing.

Finally, the Ombudsman and the Court of Appeals correctly held that there is substantial evidence proving petitioner's liability under R.A. No. 6713. Substantial evidence is such relevant evidence as a reasonable mind may accept as adequate to support a conclusion.[32] The requirement is satisfied where there is reasonable ground to believe that the petitioner is guilty of misconduct, even if the evidence might not be overwhelming.[33]

The evidence on record sufficiently established petitioner's participation in the loan transaction with respondent company. Cash Voucher No. 36230 shows that the amount of P110,000.00 was disbursed by respondent in favor of petitioner. Respondent also submitted a signed handwritten note[34] showing petitioner's personal details as well as the terms of payment for the subject loan. Moreover, the testimonies of Evangeline Del Mundo and F. Walter R. Macabuhay were straightforward and consistent.

On the other hand, petitioner relied on bare denials. And while it appears that petitioner initially denied acquaintance with Vilchez, she eventually admitted knowing her during the Senate proceedings on April 11, 1996.[35] Likewise, we agree with the findings of the Ombudsman that Vilchez' account of the loan transaction is "incredible" and "highly suspect." [36] That respondent would allow its officers to use company funds for their personal purchases is implausible.

In view of all the foregoing, the Ombudsman correctly gave credence to the evidence presented by respondent. Needless to say, findings of fact by the Office of the Ombudsman when supported by substantial evidence, as in the instant case, are conclusive.[37] Further, when the administrative bodies' factual findings have been affirmed by the Court of Appeals, as in this case, said findings are generally conclusive and binding upon this Court. It is not the function of this Court to analyze and weigh the parties' evidence all over again except when there is serious ground to believe that a possible miscarriage of justice would thereby result. Our task in an appeal by

petition for review on certiorari is limited, as a jurisdictional matter, to reviewing errors of law that might have been committed by the Court of Appeals.[38]

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals in CA-G.R. SP No. 54974 affirming the June 11, 1999 Decision of the Office of the Ombudsman in OMB-ADM-0-97-0481 dismissing petitioner Atty. Lorna Frances Filipino from government service, and its July 3, 2003 Resolution denying petitioner's motion for reconsideration, are AFFIRMED.

**SO ORDERED.**

Panganiban, C.J. (Chairperson), Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.

[1] Rollo, pp. 11-66.

[2] Id. at 236-244. Penned by Associate Justice Edgardo F. Sundiam and concurred in by Associate Justices Portia Aliño-Hormachuelos and Elvi John S. Asuncion.

[3] Id. at 98-107. Penned by Graft Investigation Officer I Atty. Ulysis S. Calumpad.

[4] SECTION 7. Prohibited Acts and Transactions. – In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

x x x x

(d) Solicitation or acceptance of gifts. – Public officials and employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value from any person in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office.

[5] Section 11. Penalties. – (a) Any public official or employee, regardless of whether or not he holds office or employment in a casual, temporary, holdover, permanent or regular capacity, committing any violation of this Act shall be punished with a fine not exceeding the equivalent of six (6) months' salary or suspension not exceeding one (1) year, or removal depending on the gravity of the offense after due notice and hearing by the appropriate body or agency. If the violation is punishable by a heavier penalty under another law, he shall be prosecuted under the latter statute. Violations of Sections 7, 8 or 9 of this Act shall be punishable with imprisonment not exceeding five (5) years, or a fine not exceeding five thousand pesos (P5,000), or both, and, in the discretion of the court of competent jurisdiction, disqualification to hold public office.

(b) Any violation hereof proven in a proper administrative proceeding shall be sufficient cause for removal or dismissal of a public official or employee, even if no criminal prosecution is instituted against him.

[6] CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES.

[7] Rollo, p. 272.

[8] Id. at 401-410.

**[9] THE ANTI-GRAFT AND CORRUPT PRACTICES ACT.****[10] THE CIVIL SERVICE DECREE.**

[11] Rollo, p. 230.

[12] Id. at 216.

[13] Id. at 219-222.

[14] Id. at 220.

[15] Id. at 102-103.

[16] Id. at 238.

[17] Id. at 273-280.

[18] Id. at 299-304.

[19] Id. at 339-344.

[20] Id. at 183-215.

[21] Id. at 366-368.

[22] Id. at 106.

[23] Id. at 244.

[24] Id. at 30-32.

[25] Barnes v. Reyes, G.R. No. 144533, September 23, 2003, 411 SCRA 538, 544.

[26] PCL Shipping Philippines, Inc. v. National Labor Relations Commission, G.R. No. 148418, July 28, 2005, 464 SCRA 314, 320.

[27] Larin v. Executive Secretary, 345 Phil. 962, 977 (1997).

[28] Paat v. Court of Appeals, 334 Phil. 146, 155 (1997).

[29] G.R. No. 140079, March 31, 2005, 454 SCRA 462.

[30] Id. at 472-473.

[31] Rollo, p. 343.

[32] Velasquez v. Hernandez, G.R. Nos. 150732 & 151095, August 31, 2004, 437 SCRA 357, 369.

[33] Advincula v. Dicen, G.R. No. 162403, May 16, 2005, 458 SCRA 696, 712.

[34] Rollo, p. 387.

[35] CA Rollo, pp. 330-332.

[36] Rollo, p. 105.

[37] Republic Act No. 6770, Sec. 27.

[38] Sesbreño v. Court of Appeals, G.R. No. 101487, April 22, 2005, 456 SCRA 522, 532.

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