

SALVADOR A. PLEYTO, PETITIONER, VS. PHILIPPINE NATIONAL POLICE CRIMINAL INVESTIGATION AND DETECTION GROUP (PNP-CIDG), RESPONDENT.

G.R. No. 169982. November 23, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before this Court is a Petition for Review on Certiorari^[1] under Rule 45 of the Rules of Court, assailing the dismissal from service of petitioner Salvador A. Pleyto after being found guilty of grave misconduct and dishonesty by the Office of the Ombudsman in its Decision,^[2] dated 27 May 2004, in OMB-C-A-03-0347-I, affirmed by the Court of Appeals in its Decision,^[3] dated 20 July 2005, in CA-G.R. SP No. 87086.

The present Petition stems from a Complaint,^[4] dated 28 July 2003, filed by respondent Philippine National Police-Criminal Investigation and Detection Group (PNP-CIDG), through its Director, Eduardo S. Matillano, with the Office of the Ombudsman, which charges petitioner and the rest of his family as follows:

The undersigned Director of the PNP Criminal Investigation and Detection Group is hereby filing complaints for Violation of RA 1379 (An Act Declaring Forfeiture in favor of the State any property found to have been unlawfully acquired by any public officer) in relation to Section 8, RA 3019 (Anti-Graft and Corrupt Practices Act, as amended, Section 8(a) of RA 6713, (Code of Ethical Standard for Public official and employee) and Section 7 of RA 3019 (Statement of Assets and Liabilities) and for violation of Article 171 para 4, RPC (Perjury/Falsification of Public Official Documents) against the following:

- USEC SALVADOR A. PLEYTO- # 1 May Street, Congressional Village, Quezon City;
- MIGUELA PLEYTO (Wife)- # 1 May Street, Congressional Village, Quezon City;
- SALVADOR G. PLEYTO, JR.,- # 1 May Street, Congressional Village, Quezon City;
- MARY GRACE PLEYTO- # 1 May Street, Congressional Village, Quezon City; and
- RUSSEL PLEYTO- 64 P. Santiago Street, Sta. Maria, Bulacan.^[5]

The said Complaint was based on the investigation/inquiry on the alleged lavish lifestyle and nefarious activities of certain personnel of the Department of Public Works and Highways (DPWH) conducted by a team, composed of Atty. Virgilio T. Pablico (Atty. Pablico) and Crime Investigator II Dominador D. Ellazar, Jr. (Investigator Ellazar, Jr.) of the PNP-CIDG, together with investigating officers from other government agencies. Petitioner, then serving as a DPWH Undersecretary, was one of the subjects of the investigating team since he reportedly amassed unexplained wealth. Investigating officers, Atty. Pablico and Investigator Ellazar, Jr., executed a Joint Affidavit,^[6] essentially stating that: (1) petitioner and the rest of his family accumulated numerous real properties in Bulacan, other than their newly renovated residence in Quezon City; (2) petitioner did not honestly fill out his Statements of Assets and Liabilities and Networth (SALNs) for the years 2001 and 2002 for he failed to declare therein all of his and his wife's real and personal properties, the true value thereof, and their business interests;

(3) petitioner and his family also took frequent foreign trips from 1993 to 2002; and (4) the properties and foreign trips of petitioner and his family are grossly disproportionate to petitioner's income.

The Investigating Panel from the Preliminary Investigation and Administrative Adjudication Bureau A (PIAB-A) of the Office of the Ombudsman, tasked to evaluate the Complaint against petitioner and his family, issued a Report on 9 September 2003, recommending that the said Complaint be docketed as separate administrative and criminal cases. Pursuant thereto, the administrative complaint was docketed as OMB-C-A-03-0347-1, while the criminal complaint was docketed as OMB-C-C-03-05130-1. It is the administrative complaint, OMB-C-A-03-0347-1, for grave misconduct and dishonesty, which presently concerns this Court.[7]

In its initial evaluation of the "numerous pieces of evidence" which were attached to the Complaint, the Office of the Ombudsman, in its Order, dated 25 September 2003,[8] found that the evidence warranted the preventive suspension of petitioner for six months without pay pending the conduct of the administrative proceedings against him. The said Preventive Suspension Order shall be deemed immediately effective and executory. The petitioner filed with the Court of Appeals CA-G.R. SP No. 79516, a Petition for Certiorari under Rule 65 of the Rules of Court, praying for the nullification of the Preventive Suspension Order issued by the Office of the Ombudsman. However, the said Preventive Suspension Order had already lapsed even before the Court of Appeals could resolve the Petition in CA-G.R. SP No. 79516, thus, rendering the same moot and academic.

In the meantime, petitioner, his wife, and his children filed their respective Counter-Affidavits and Supplemental Affidavits before the Office of the Ombudsman, presenting the following defenses: (1) petitioner admits ownership of the real properties identified in the Complaint but alleges that they were acquired by way of foreclosure or dacion en pago in the course of his wife's lending business in Sta. Maria, Bulacan; (2) petitioner is not solely dependent on his salary since his wife has been operating several businesses in Bulacan, including lending, piggery, and pawnshop, for the last 25 years; (3) his children are not financially dependent on petitioner and his wife, but are full-fledged entrepreneurs and professionals; and (4) the computation of their travel expenses is exaggerated and inaccurate since most of petitioner's trips were sponsored by foreign and local organizations, his wife's trips were promotional travel packages to Asian destinations, and his children's trips were at their own expense.

On 28 June 2004, the Office of the Ombudsman promulgated its Decision[9] in OMB-C-A-03-0347-I, dismissing petitioner from service. The dispositive portion of said Decision reads –

WHEREFORE, premises considered, respondent SALVADOR A. PLEYTO, is hereby found guilty of GRAVE MISCONDUCT and DISHONESTY and is meted the penalty of DISMISSAL FROM THE SERVICE with cancellation of eligibility, forfeiture of retirement benefits, and the perpetual disqualification for reemployment in the government service.

The Honorable Secretary, Department of Public Works and Highways, Port Area, Manila, is hereby directed to implement this Order immediately upon receipt hereof and to promptly inform this Office of compliance therewith.[10]

Petitioner's Motion for Reconsideration was denied by the Office of the Ombudsman in an Order[11] dated 12 October 2004.

Petitioner then assailed before the Court of Appeals the Decision, dated 28 June 2004, and Order, dated 12 October 2004, of the Office of the Ombudsman in OMB-C-A-03-0347-I by filing a Petition for Review under Rule 43 of the Rules of Court with Prayer for Temporary Restraining Order and/or Writ of Preliminary Injunction, docketed as CA-G.R. SP No. 87086. Petitioner prayed to the appellate court that:

- Upon filing of the petition, a Temporary Restraining Order and/or Writ of Preliminary Injunction be

immediately issued directing the Office of the Ombudsman, its officials and agents, or persons acting for and on it [sic] behalf, including the Secretary of the Department of Public Works and Highways from implementing the assailed Decision of the Ombudsman dated 28 June 2004 and its Order dated 12 October 2004.

- After hearing on the merits, that judgment be rendered nullifying the assailed Decision of the Ombudsman dated June 28, 2004 and Order dated October 12, 2004 in OMB-C-A-03-0347-I.

Other relief and remedies just and equitable under the premises are likewise prayed for.[12]

On 5 November 2004, the Court of Appeals issued a Temporary Restraining Order against the implementation of the assailed Decision of the Office of the Ombudsman dismissing petitioner from service and directed the PNP-CIDG, the named respondent in petitioner's Petition for Review, to file its Comment thereto.

The Office of the Solicitor General (OSG), on behalf of the PNP-CIDG, requested an extension of 30 days, or until 28 December 2004, within which to file its Comment on the Petition.

However, even before the OSG could file its Comment, the Office of the Ombudsman filed its own Comment (with Motions to Intervene; Admit Comment; and Recall Temporary Restraining Order) on 29 December 2004. It sought leave from the Court of Appeals to adduce pertinent facts and arguments to show that it acted with due process and impartiality, and relied only on the evidence on record in adjudging petitioner guilty of grave misconduct and dishonesty. The Office of the Ombudsman insisted that it has been shown by overwhelming evidence, as well as by petitioner's own admissions in his counter-affidavit and other pleadings before the Office of the Ombudsman and his Petition before the Court of Appeals, that petitioner committed gross dishonesty for amassing wealth grossly disproportionate to his known lawful income, and refusing to fully declare many of his other properties. Hence, the Office of the Ombudsman submits that the administrative penalty of dismissal from the service imposed on petitioner stands on solid legal and factual grounds, which should be accorded weight and respect, if not finality, by the appellate court.

Petitioner promptly filed a Reply Ad Cautelam (To Ombudsman's Comment) with Supplemental Plea. In addition to opposing the intervention of the Office of the Ombudsman in CA-G.R. SP No. 87086, petitioner also addressed the arguments presented by the Office of the Ombudsman in its Comment on the propriety of his dismissal from service. He avers that he has adequately controverted by clear and convincing evidence the unsubstantiated charges against him. Petitioner thus pleads anew for the immediate and urgent grant of his prayer for a writ of preliminary injunction to enjoin the execution of the order of dismissal of the Office of the Ombudsman.

On 26 January 2005, the Court of Appeals issued a Resolution admitting the Comment of the Office of the Ombudsman, again directing the OSG to file its Comment on the Petition on behalf of PNP-CIDG, and submitting for resolution petitioner's application for the issuance of a writ of preliminary injunction. The OSG, representing the PNP-CIDG, eventually filed its Comment on 31 January 2005.

Finding that the execution of the judgment of dismissal from service of petitioner pending his appeal thereof would possibly work injustice to petitioner, or tend to render the judgment on his appeal ineffectual, the Court of Appeals issued a Resolution[13] on 1 March 2005 granting the writ of preliminary injunction, thus, ordering the Office of the Ombudsman and all persons action on its behalf from implementing its assailed Decision, dated 28 June 2004, and Order, dated 12 October 2004, pending final determination of CA-G.R. SP No. 87086. The appellate court further directed the parties to submit their memoranda.

Petitioner and the Office of the Ombudsman filed their respective Memoranda, while the OSG manifested that it

was adopting its Comment and the Comment of the Office of the Ombudsman on the Petition as its Memorandum.

On 20 July 2005, the Court of Appeals promulgated its Decision in CA-G.R. SP No. 87086, dismissing the Petition and affirming the dismissal from the service of petitioner as adjudged by the Office of the Ombudsman. It summed up its findings thus:

To repeat, the administrative liabilities of the petitioner proven by substantial evidence is his failure to file a truthful and accurate SALN and possession of assets manifestly out of proportion of (sic) his legitimate income. Either one is legal basis for dismissal or removal from office. As a final recourse, the petitioner asks for the chance to correct his SALN before he should be held administratively liable. The Ombudsman ripostes that this would be a mockery of the law, saying that the SALN is not a misdeclare-first-and correct-if-caught instrument, but a full and solemn recording under oath of al (sic) the items required to be reported. Ipse dixit.

IN VIEW OF THE FOREGOING, the decision appealed from is AFFIRMED, and the petition DISMISSED. The writ of preliminary injunction is LIFTED.[14]

The Court of Appeals, in a Resolution,[15] dated 4 October 2005, found that the arguments raised in petitioner's Motion for Reconsideration had already been discussed and passed upon in its Decision, dated 20 July 2005, and there was no cogent reason to warrant reconsideration, much less, a reversal of the appellate court's original findings. Hence, petitioner's Motion for Reconsideration was denied.

Petitioner now comes before this Court via a Petition for Review on Certiorari under Rule 45 of the Rules of Court, assailing the Decision, dated 20 July 2005, and Resolution, dated 4 October 2005, of the Court of Appeals, based on the following grounds:

- The Court of Appeals committed grave error in law in allowing the active intervention of the Ombudsman in the review proceedings and invoking its arguments raised on appeal in the resolution of the case.[16]
- The Court of Appeals gravely erred in adopting in toto the appealed judgment of the Ombudsman, the finding being inconsistent with the evidence on record and the burden of proof required by law being higher than mere substantial evidence as the penalty involves dismissal from service.[17]
- The Court of Appeals committed grave error in law in declaring that petitioner's resort to the Compliance and Review Procedure under Sec. 10 of R.A. 6713 is completely unavailing.[18]

Pursuant to a Resolution issued by this Court on 26 June 2006, a temporary restraining order was issued in the following tenor:

NOW, THEREFORE, you (the Court of Appeals, the Office of the Ombudsman and the Secretary of the Department of Public Works and Highways), your officers, agents, representatives, and/or persons acting upon your orders or, in your place or stead, are hereby ENJOINED, ORDERED, COMMANDED and DIRECTED to desist from implementing the assailed decision and order dated June 28, 2004 and October 12, 2004, respectively, of the Office of the Ombudsman in OMB-C-A-03-0347-I entitled "Philippine National Police-Criminal Investigation and Detection Group vs. Salvador A. Pleyto" dismissing herein petitioner from the service, as affirmed in the decision and resolution dated July 20, 2005 and October 4, 2005, respectively, of the Court of Appeals in CA-G.R. SP No. 87086 entitled "Salvador A. Pleyto vs. Philippine National Police-Criminal Investigation and Detection Group." [19]

Having established the facts leading to the Petition at bar, this Court shall now proceed to review petitioner's assigned errors one at a time.

I.

Petitioner raises before this Court his continued objection to the intervention of the Office of the Ombudsman in the proceedings before the Court of Appeals. It should be recalled that the Office of the Ombudsman, although not named as a respondent in CA-G.R. SP No. 87086, filed its Comment and Memorandum therein, which were admitted by the Court of Appeals.

The Office of the Ombudsman moved to intervene in the Court of Appeals proceedings in representation of the State's interests. As a competent disciplining body, it asserts its rights to defend its own findings of fact and law relative to the imposition of its decisions and ensure that its judgments in administrative disciplinary cases be upheld by the appellate court, consistent with the doctrine laid down by this Court in *Civil Service Commission v. Dacoycoy*[20] and *Philippine National Bank v. Garcia*. [21] As the agency which rendered the assailed Decision, it is best equipped with the knowledge of the facts, laws and circumstances that led to the finding of guilt against petitioner.

Petitioner opposed from the very beginning the intervention of the Office of the Ombudsman in the appellate court proceedings. He pointed out to the Court of Appeals that only the PNP-CIDG was named as a respondent in his Petition for Review, and the Office of the Ombudsman was not impleaded because Section 6, Rule 43 of the Rules of Court expressly mandates that the court or agency which rendered the assailed decision should not be impleaded in the petition. He argued that the non-inclusion of the court or tribunal as respondent in cases elevated on appeal is founded on the doctrine that the court is not a combatant in the appeal proceedings. He called attention to previous rulings of this Court admonishing judges to maintain a posture of detachment in cases where their decisions are elevated on appeal or review.

Petitioner, in the instant Petition, presents the same arguments in support of his first assignment of error. It is noted that the OSG, representing the PNP-CIDG, in its Comment and Memorandum before this Court, did not address the issue on the intervention of the Office of the Ombudsman in CA-G.R. SP No. 87086, focusing solely on the issue on the propriety of the dismissal from service of petitioner.

After a review of both positions on the matter of the intervention of the Office of the Ombudsman in the proceedings before the Court of Appeals, this Court rules in favor of petitioner. The Court of Appeals indeed committed an error in admitting the Comment and Memorandum of the Office of the Ombudsman in CA-G.R. SP No. 87086.

Fabian v. Hon. Desierto[22] already settled that appeals in administrative disciplinary cases from the Office of the Ombudsman should be brought first to the Court of Appeals via a verified Petition for Review under Rule 43 of the Rules of Court. Rule 43 of the Rules of Court, together with Supreme Court Administrative Circular No. 1-95, governs appeals to the Court of Appeals from judgments or final orders of quasi-judicial agencies. In specifying the contents of such a Petition for Review, both Rule 43 of the Rules of Court[23] and Administrative Circular No. 1-95[24] require the full names of the parties to the case without impleading the lower courts or agencies as petitioners or respondents. The only parties in an appeal are the appellant as petitioner and the appellee as respondent. The court, or in this case, the administrative agency which rendered the judgment appealed from, is not a party in said appeal.[25]

This is not a case wherein the petitioner improperly impleaded the Office of the Ombudsman in his Petition for Review in CA-G.R. SP No. 87086. In fact, the petitioner adhered to Rule 43 of the Rules of Court and Administrative Circular No. 1-95, by naming as respondent only the PNP-CIDG, the original complainant against him. It is the Office of the Ombudsman who actively sought to intervene in CA-G.R. SP No. 87086.

It is a well-known doctrine that a judge should detach himself from cases where his decision is appealed to a higher court for review. The *raison d'être* for such doctrine is the fact that a judge is not an active combatant in such proceeding and must leave the opposing parties to contend their individual positions and the appellate court to decide the issues without his active participation. When a judge actively participates in the appeal of his judgment, he, in a way, ceases to be judicial and has become adversarial instead.[26]

The court or the quasi-judicial agency must be detached and impartial, not only when hearing and resolving the case before it, but even when its judgment is brought on appeal before a higher court. The judge of a court or the officer of a quasi-judicial agency must keep in mind that he is an adjudicator who must settle the controversies between parties in accordance with the evidence and the applicable laws, regulations, and/or jurisprudence. His judgment should already clearly and completely state his findings of fact and law. There must be no more need for him to justify further his judgment when it is appealed before appellate courts. When the court judge or the quasi-judicial officer intervenes as a party in the appealed case, he inevitably forsakes his detachment and impartiality, and his interest in the case becomes personal since his objective now is no longer only to settle the controversy between the original parties (which he had already accomplished by rendering his judgment), but more significantly, to refute the appellant's assignment of errors, defend his judgment, and prevent it from being overturned on appeal.

The reliance of the Office of the Ombudsman on this Court's pronouncements in *Dacoycoy* and *Garcia* cases are misplaced.

The issue in the landmark case *Dacoycoy*, was the right of the Civil Service Commission (CSC) to file an appeal with this Court from the decision of the Court of Appeals exonerating the civil service officer *Dacoycoy* from the administrative charges against him. According to Section 39 of the Civil Service Law, appeals, where allowable, shall be made by the party adversely affected by the decision within 15 days from receipt of the decision unless a petition for reconsideration is seasonably filed, which petition shall be decided within 15 days. Previous decisions of this Court ruled that the "party adversely affected" in Section 39 of the Civil Service Law, refers solely to the public officer or employee who was administratively disciplined and, hence, an appeal may be availed of only in a case where the respondent is found guilty. It is within the foregoing context that this Court ruled in *Dacoycoy* in the following manner:

Subsequently, the Court of Appeals reversed the decision of the Civil Service Commission and held respondent not guilty of nepotism. Who now may appeal the decision of the Court of Appeals to the Supreme Court? Certainly not the respondent, who was declared not guilty of the charge. Nor the complainant *George P. Suan*, who was merely a witness for the government. Consequently, the Civil Service Commission has become the party adversely affected by such ruling, which seriously prejudices the civil service system. Hence, as an aggrieved party, it may appeal the decision of the Court of Appeals to the Supreme Court. By this ruling, we now expressly abandon and overrule extant jurisprudence that "the phrase 'party adversely affected by the decision' refers to the government employee against whom the administrative case is filed for the purpose of disciplinary action which may take the form of suspension, demotion in rank or salary, transfer, removal or dismissal from office" and not included are "cases where the penalty imposed is suspension for not more than thirty (30) days or fine in an amount not exceeding thirty days salary" or "when the respondent is exonerated of the charges, there is no occasion for appeal." In other words, we overrule prior decisions holding that the Civil Service Law "does not contemplate a review of decisions exonerating officers or employees from administrative charges" enunciated in *Paredes v. Civil Service Commission*; *Mendez v. Civil Service Commission*; *Magpale v. Civil Service Commission*; *Navarro v. Civil Service Commission and Export Processing Zone Authority* and more recently *Del Castillo v. Civil Service Commission*.[27]

The similar issue arose in *Garcia*. In said case, the Philippine National Bank (PNB) imposed upon its employee

Garcia the penalty of forced resignation for gross neglect of duty. On appeal, the CSC exonerated Garcia from the administrative charges against him. In accordance with its ruling in *Dacoycoy*, this Court affirmed the standing of the PNB to appeal to the Court of Appeals the CSC resolution exonerating Garcia. After all, PNB was the aggrieved party which complained of Garcia's acts of dishonesty. Should Garcia be finally exonerated, it might then be incumbent upon PNB to take him back into its fold. PNB should therefore be allowed to appeal a decision that, in its view, hampered its right to select honest and trustworthy employees, so that it can protect and preserve its name as a premier banking institution in the country.

Having established the foregoing, the Office of the Ombudsman cannot use *Dacoycoy* and Garcia to support its intervention in the appellate court proceedings for the following reasons:

First, petitioner was not exonerated from the administrative charges against him, and was in fact dismissed for grave misconduct and dishonesty by the Office of the Ombudsman in its decision in the administrative case, OMB-C-A-03-0347-I. Thus, it was petitioner who appealed to the Court of Appeals being, unquestionably, the party aggrieved by the judgment on appeal.

Second, the issue herein is the right of the Office of the Ombudsman to intervene in the appeal of its decision, not its right to appeal. Its decision has not even been reversed yet so no question has arisen as to the standing of the Office of the Ombudsman to appeal from the reversal of its judgment. The Office of the Ombudsman only wishes to intervene in CA-G.R. SP No. 87086 to make sure that its decision dismissing petitioner from service is upheld by the appellate court.

And third, *Dacoycoy* and Garcia should be read together with *Mathay, Jr. v. Court of Appeals*[28] and *National Appellate Board of the National Police Commission v. Mamauag*,[29] in which this Court qualified and clarified the exercise of the right of a government agency to actively participate in the appeal of decisions in administrative cases. In *Mamauag*, this Court ruled:

RA 6975 itself does not authorize a private complainant to appeal a decision of the disciplining authority. Sections 43 and 45 of RA 6975 authorize "either party" to appeal in the instances that the law allows appeal. One party is the PNP member-respondent when the disciplining authority imposes the penalty of demotion or dismissal from the service. The other party is the government when the disciplining authority imposes the penalty of demotion but the government believes that dismissal from the service is the proper penalty.

However, the government party that can appeal is not the disciplining authority or tribunal which previously heard the case and imposed the penalty of demotion or dismissal from the service. The government party appealing must be one that is prosecuting the administrative case against the respondent. Otherwise, an anomalous situation will result where the disciplining authority or tribunal hearing the case, instead of being impartial and detached, becomes an active participant in prosecuting the respondent. Thus, in *Mathay, Jr. v. Court of Appeals*, decided after *Dacoycoy*, the Court declared: To be sure, when the resolutions of the Civil Service Commission were brought before the Court of Appeals, the Civil Service Commission was included only as a nominal party. As a quasi-judicial body, the Civil Service Commission can be likened to a judge who should "detach himself from cases where his decision is appealed to a higher court for review."

In instituting G.R. No. 126354, the Civil Service Commission dangerously departed from its role as adjudicator and became an advocate. Its mandated function is to "hear and decide administrative cases instituted by or brought before it directly or on appeal, including contested appointments and to review decisions and actions of its offices and agencies," not to litigate.[30]

Should the Office of the Ombudsman insist on its right to intervene based on *Dacoycoy* and Garcia, then its exercise of such right should likewise be qualified according to *Mathay* and *Mamauag*. As the disciplining authority or tribunal which heard the case and imposed the penalty, it must remain partial and detached. It must be

mindful of its role as an adjudicator, not an advocate. It should just have allowed the government agency prosecuting the administrative charges against petitioner, namely, the PNP-CIDG, appropriately represented by the OSG, to participate in CA-G.R. SP No. 87086.

Not being an appropriate party to intervene in CA-G.R. SP No. 87086, any participation of the Office of the Ombudsman therein, more particularly, through its Comment, Memorandum, and other pleadings, should not have been considered by the Court of Appeals. Not even the adoption by the OSG of the Comment of the Office of the Ombudsman as its Memorandum can cure the defect of such Comment which was filed by a non-party to the case. To rule otherwise would be to condone the wrongful intervention of the Office of the Ombudsman in the appellate court proceedings and to allow a circumvention of a fundamental rule of procedure, for it would still afford the Office of the Ombudsman the opportunity to effectively present its position and arguments in the case despite its absence of interest or personality therein, a dangerous precedent indeed.

Intervention of the Office of the Ombudsman cannot be allowed on liberality. Obedience to the requirements of procedural rules is needed if the parties are to expect fair results therefrom, and utter disregard of the rules cannot justly be rationalized by harping on the policy of liberal construction.[31] Procedural rules are tools designed to facilitate the adjudication of cases. Courts and litigants alike are thus enjoined to abide strictly by the rules. And while the Court, in some instances, allows a relaxation in the application of the rules, this was never intended to forge a bastion for erring litigants to violate the rules with impunity. The liberality in the interpretation and application of the rules applies only in proper cases and under justifiable causes and circumstances. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice.[32]

II.

This Court now proceeds to petitioner's second assignment of error in which he alleges that the judgment against him was grossly inconsistent with the evidence on record and the burden of proof required by law. Undoubtedly, petitioner is requesting that this Court consider and weigh again the evidence presented before the Office of the Ombudsman, as well as the Court of Appeals, and make its own findings of fact.

While it is an established rule in administrative law that the courts of justice should respect the findings of fact of said administrative agencies, the same is not absolute and there are recognized exceptions thereto. Courts may not be bound by the findings of fact of an administrative agency when there is absolutely no evidence in support thereof or such evidence is clearly, manifestly and patently insubstantial;[33] when there is a clear showing that the administrative agency acted arbitrarily or with grave abuse of discretion or in a capricious and whimsical manner, such that its action may amount to an excess or lack of jurisdiction;[34] or when the precise issue in the case on appeal is whether there is substantial evidence supporting the findings of the administrative agency.[35] The last exception exists in this case and compels this Court to review the findings of fact of the Office of the Ombudsman, as affirmed by the Court of Appeals.

There are two principal findings against petitioner as a result of the proceedings below: (1) petitioner failed to satisfactorily prove that his acquisition of properties, as well as his foreign travels, were within his lawful income; and (2) petitioner willfully concealed and misdeclared his assets in his 2001 and 2002 Statement of Assets, Liabilities and Net Worth (SALN). It was on the basis thereof that petitioner was found guilty of gross misconduct and dishonesty by both the Office of the Ombudsman and the Court of Appeals.

The Complaint of the PNP-CIDG and the attached Joint Affidavit of its investigating officers identified the following properties in the name of petitioner and his wife:

- One residential house and lot in Quezon City;
- Poblacion, Sta. Maria, Bulacan:
- Three residential lots measuring 998, 998 and 359 sq. m.;
- One residential house built on a lot measuring 356 sq. m.;
- Pulong Buhangin, Sta. Maria, Bulacan:
- Two commercial lots measuring 462 and 898 sq. m.;
- Two residential lots measuring 143 and 152 sq. m.;
- Four agricultural lots measuring 6,597; 1,000; 3,000; and 746 sq. m.
- Caypombo, Sta. Maria, Bulacan:
- Eight residential lots each measuring 340 sq. m.;
- Four agricultural lots two of which measuring 140 sq. m. each and the other two measuring 450 sq. m. each.;
and
- Three residential lots measuring 50, 500, and 600 sq. m., in Catmon, Sta. Maria, Bulacan.[36]

The same Complaint and Joint Affidavit also attributed to petitioner ownership of the following properties registered in the names of his children who were alleged to have no substantial income to acquire the same:

- One residential house built on a lot measuring 632 sq. m. in the name of Russel Pleyto;
- One residential lot measuring 113 sq. m. in the name of Russel Pleyto, married to Shirley Pleyto;
- One commercial building on three commercial lots in the name of Mary Grace Pleyto;
- One residential lot measuring 244 sq. m. in the name of Salvador Pleyto, Jr.; and
- One residential lot measuring 138 sq. m. in the name of Mary Grace Pleyto.[37]

All these properties are worth P16,686,643.20, based on their 2003 adjusted market value as determined by the local assessor, way over the total value of real properties declared by petitioner in his 2001 and 2002 SALNs, i.e., P5,956,400.00 and P9,384,090.25, respectively.

In support of its foregoing allegations, the PNP-CIDG submitted the transfer certificates of title (TCTs), tax declarations, and pictures of the real properties in the names of the petitioner, his wife and children. It also presented copies of petitioner's 2001 and 2002 SALNs so that the list of real properties and their values declared therein may be compared with the actual list of real properties and their values as uncovered by the PNP-CIDG in its investigation.

Petitioner does not deny ownership of the real properties in his and his wife's names. What he contests with regard to the said real properties are the findings that these were beyond his and his wife's financial capacity to acquire and, thus, deemed to have been acquired illegally. Petitioner and his wife submitted their respective Counter-Affidavits, attaching thereto certificates of business registration, income tax returns, audited balance sheets, deeds of sale, and bank promissory notes, all meant to establish how petitioner and his wife acquired the said real properties.

It is worthy to note that in its Decision, dated 27 May 2004, in OMB-C-A-03-0347-I, the Office of the Ombudsman determined the value of the real properties in the names of petitioner and his wife to be

P16,686,643.20, based on the 2003 adjusted market value of said real properties as assessed by the local assessor. While it may be conceded that the adjusted market value of the real properties is true and correct, such valuation bears no significance to the issue in this case, namely, whether petitioner and his wife had the financial capacity to acquire the real properties. To answer this question, the relevant valuation would be the acquisition cost of the real properties vis-à-vis, the financial capacity of the petitioner and his wife at the time of their acquisition. Any appreciation (or depreciation) in the value of the real properties after their acquisition until present has no bearing herein.

To address this apparent faux pas, the Office of the Ombudsman, in its Order, dated 12 October 2004, prepared a table,[38] this time, using the acquisition costs of petitioner's real and personal properties as declared in his SALNs, to determine his net worth, which is then compared to his annual salary from 1992 to 2002, to wit:

SUMMARY OF SALNs AND ANNUAL SALARY OF UNDERSECRETARY PLEYTO

	YEAR
	REAL PROPERTIES
	PERSONAL PROPERTIES
	LIABILITIES
	NETWORTH
	INC./(DEC) OF NETWORTH
	OVER PREVIOUS YEAR
	ANNUAL SALARY
1992	
	P1,004,100.00
	P1,316,791.00
	P1,425,000.00
	P895,891.00
	P136,620.00
1993	
1,314,400.00	
1,210,900.00	
1,045,000.00	
1,480,300.00	

P584,409.00

166,980.00

1994

1,314,100.00

1,558,287.00

1,080,000.00

1,792,387.00

312,087.00

190,560.00

1995

2,064,100.00

1,714,677.30

1,780,000.00

1,998,777.30

206,390.30

202,560.00

1996

3,456,400.00

2,303,544.60

3,507,000.00

2,252,944.60

254,167.30

217,716.00

1997

3,526,400.00

2,884,066.00

3,800,000.00

2,610,466.00

357,521.40

239,472.00

1998

4,526,400.00

3,352,294.50

4,595,200.00

3,283,494.50

673,028.50

259,404.00

1999

4,526,400.00

4,105,107.50

4,340,142.80

4,291,364.70

1,007,870.20

265,896.00

2000

5,826,400.00

3,854,407.20

5,293,830.50

4,386,976.70

95,612.00

292,488.00

2001

5,956,400.00

4,029,641.40

5,401,488.80

4,584,552.60

197,575.90

314,784.00

2002

9,384,090.25

7,400,695.70

10,828,566.20

5,956,219.75

1,371,667.15

319,380.00

This table was meant to illustrate that it was impossible for petitioner to have acquired the real properties considering his annual salary. Based on the said table, the Court of Appeals agreed with the Office of the Ombudsman that the progressive, albeit unexplained rise in petitioner's net worth, is *prima facie* evidence of ill-gotten wealth.

This Court is not convinced.

The Court of Appeals applies against the petitioner the *prima facie* presumption laid down in Section 2 of Republic Act No. 1379 (An Act Declaring Forfeiture in Favor of the State Any Property Found to Have Been Unlawfully Acquired by any Public Officer or Employee And Providing for the Proceedings Therefor), which reads:

Sec. 2. Filing of petition. – Whenever any public officer or employee has acquired during his incumbency an amount of property which is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property, said property shall be presumed *prima facie* to have been unlawfully acquired. x x x (Emphasis supplied.)

A *prima facie* presumption, also referred to as disputable, rebuttable or *juris tantum*,^[39] is satisfactory if uncontradicted, but may be contradicted and overcome by other evidence.^[40] The presumption in Section 2 of Republic Act No. 1379 is merely *prima facie* and may still be overcome by evidence to the contrary. In fact, Section 5 of the same statute requires the court, before which the petition for forfeiture is filed, to set public hearings during which the public officer or employee may be given ample opportunity to explain to the satisfaction of the court how he had acquired the property in question. Similarly, the public officer or employee administratively charged before the Office of the Ombudsman, such as petitioner herein, must be given sufficient opportunity to present evidence to rebut the *prima facie* presumption applied against him: that his properties were illegally acquired.

Indeed, after a cursory look at the table, it would be easy to conclude that petitioner's annual salary cannot support his yearly increase in net worth, thus, giving rise to the *prima facie* presumption that petitioner's properties, specifically the real properties, were acquired unlawfully.

Nonetheless, this Court finds that the table prepared by the Office of the Ombudsman, using what the petitioner referred to as the "net-worth-to-income-discrepancy analysis," may be effective only as an initial evaluation tool, meant to raise warning bells as to possible unlawful accumulation of wealth by a public officer or employee, but it is far from being conclusive proof of the same. While the variations in net worth from year to year may be readily apparent by mere comparison, the reasons therefor may not be so easily discerned. An increase in net worth in the succeeding year may not always be due to the acquisition of more properties by purchase. Many factors may account for the increase in net worth, such as the reduction or payment of liabilities in the succeeding year resulting in an increase in net worth even though the assets remain constant; or a donation or inheritance which may significantly increase the assets without any or with very minimal corresponding liability. Hence, "net-worth-to-income-discrepancy analysis" may seem deceptively simple, but it is, in fact, more complex, and prudence must be exercised in drawing conclusions therefrom.

To rebut the supposed *prima facie* presumption against him, petitioner submitted evidence to explain the circumstances surrounding the acquisition of each of the real properties in his and his wife's names, and to show

that his and his wife's combined incomes were sufficient for them to acquire said real properties.

In his Petition before this Court, petitioner presented his own table[41] summarizing the properties he and his wife acquired and the evidence they submitted in support thereof. Said table is reproduced below:

PROPERTY

AREA

(in square meters)

YEAR OF ACQUI-SITION

PURCHASE PRICE

(In Pesos)

MODE OF ACQUI-
SITION

PREVIOUS
OWNER

SUPPORTING
EVIDENCE

1. Residential Lot Quezon City

385.4

1977

69,372.00

Purchase-through installment

Urban Estates, Incorporated

Contract to Sell Attached as Annex "12" of Salvador Pleyto's Counter-Affidavit (Annex "H" of the Petition)

2. Residential Lot Caypombo, Sta. Maria

340

1979

1,500.00

Purchase

Anacoreta Reyes

STANDARD DEED OF SALE FORM used by Mrs. Pleyto in her lending business in cases where the defaulting debtor opts to settle the unpaid account with property.

Attached as Annexes "2" and "47" to "48" of Miguela Pleyto's Supplemental Counter-Affidavit (Annex "I" of the Petition)

3. Residential Lot Caypombo, Sta. Maria

340

1979

1,500.00

Purchase

Anacoreta Reyes

-do-

Attached as Annexes “2” and “47” to “48” of Miguela Pleyto's Supplemental Counter-Affidavit (Annex “I” of the Petition)

4. Residential Lot Caypombo, Sta. Maria

340

1979

1,500.00

Purchase

Anacoreta Reyes

-do-

Attached as Annexes “2” and “47” to “48” of Miguela Pleyto's Supplemental Counter-Affidavit (Annex “I” of the Petition)

5. Residential Lot Caypombo, Sta. Maria

340

1979

1,500.00

Purchase

Anacoreta Reyes

-do-

Attached as Annexes “2” and “47” to “48” of Miguela Pleyto's Supplemental Counter-Affidavit (Annex “I” of the Petition)

6. Residential Lot Caypombo, Sta. Maria

340

1979

2,000.00

Purchase

Anacoreta Reyes

-do-

Attached as Annexes “2” and “47” to “48” of Miguela Pleyto's Supplemental Counter-Affidavit (Annex “I” of the Petition)

7. Residential Lot Caypombo, Sta. Maria

340

1979

2,000.00

Purchase

Anacoreta Reyes

-do-

Attached as Annexes “2” and “47” to “48” of Miguela Pleyto's Supplemental Counter-Affidavit (Annex “I” of the Petition)

8. Residential Lot Caypombo, Sta. Maria

340

1980

2,000.00

Purchase

Anacoreta Reyes

-do-

Attached as Annexes “2” and “47” to “48” of Miguela Pleyto's Supplemental Counter-Affidavit (Annex “I” of the Petition)

9. Residential Lot Caypombo, Sta. Maria

340

1980

2,000.00

Purchase

Magno and Azucena Reyes

-do-

Attached as Annex “49” of Miguela Pleyto's Supplemental Counter-Affidavit (Annex “I” of the Petition)

10. Residential Lot Poblacion, Sta. Maria

998

1987

(The TCT was issued in 1991 under TCT No. 141909)

-

Inheritance

Candido Guballa and Maria Diaz

-do-

Extra-Judicial Partition and Subdivision Plan

Attached as Annexes “30-31” of Miguela Pleyto's Supplemental Counter Affidavit (Annex “I” of the Petition)

11. Residential Lot Poblacion, Sta. Maria

998

1987

(The TCT was issued in 1993 under TCT No. 182666)

-

Inheritance

Candido Guballa and Maria Diaz

-do-

Extra-Judicial Partition and Subdivision Plan

Attached as Annexes “30-31” of Miguela Pleyto's Supplemental Counter Affidavit (Annex “I” of the Petition)

12. Residential Lot Poblacion, Sta. Maria

356

1988

40,000.00

Purchase

Thelma Cruz Celestino

STANDARD DEED OF SALE FORM used by Mrs. Pleyto in her lending business in cases where the defaulting debtor opts to settle the unpaid account with property.

Attached as Annex “34” of Miguela Pleyot's [sic] Supplemental Counter-Affidavit (Annex “I” of the Petition)

13. Residential Lot Poblacion, Sta. Maria

359

1995

251,300.00

Purchase

Dionisio Buenaventura

-do-

Attached as Annex “32” of Miguela Pleyto's Supplemental Counter-Affidavit (Annex “I” of the Petition)

14. Agricultural Lot Pulong Buhangin, Sta. Maria

1,000

1996

60,000.00

Purchase

Anita Caidoy

-do-

Attached as Annex “44” of Miguela Pleyto's Supplemental Counter-Affidavit (Annex “I” of the Petition)

15. Residential Lot Pulong Buhangin, Sta. Maria

152

1996

40,000.00

Purchase

Ramon and Elizabeth Hambre

-do-

Attached as Annex “42” of Miguela Pleyto's Supplemental Counter-Affidavit (Annex “I” of the Petition)

16. Commercial Lot Pulong Buhangin, Sta. Maria

462

1997

138,600.00

Purchase

Marie Concepcion J. Nicolas

-do-

Attached as Annex “38” of Miguela Pleyto's Supplemental Counter-Affidavit (Annex “I” of the Petition)

17. Commercial Lot Pulong Buhangin, Sta. Maria

898

1997

120,000.00

Purchase

Ma. Concepcion Nicolas and Madonna Nicolas

-do-

Attached as Annex “40” of Miguela Pleyto's Supplemental Counter-Affidavit (Annex “I” of the Petition)

18. Agricultural Lot Pulong Buhangin, Sta. Maria

6,587

1998

500,000.00

Purchase

Reynaldo Evangelista

-do-

Attached as Annex “43” of Miguela Pleyto's Supplemental Counter-Affidavit (Annex “I” of the Petition)

19. Residential Lot Catmon, Sta. Maria

100

1998

100,000.00

Purchase

Rosita Resurreccion

-do-

Annex “50” of Miguela Pleyto's Supplemental Counter - Affidavit (attached as Annex “I” of the Petition)

20. Residential Lot Catmon, Sta. Maria

500

1998

200,000.00

Purchase

Macaria and Herminigildo Ramos

-do-

Attached as Annex “51” of Miguela Pleyto's Supplemental Counter-Affidavit (Annex “I” of the Petition)

21. Residential Lot Catmon, Sta. Maria

600

1998

300,000.00

Purchase

Zosima and Teotimo dela Cruz

-do-

Attached as Annex “52” of Miguela Pleyto's Supplemental Counter-Affidavit (Annex “I” of the Petition)

22. Residential Lot Pulong Buhangin, Sta. Maria

143

1999

42,900.00

Purchase

Lorenzo Gonzales and Remedios Gonzales

-do-

Attached as Annex “41” of Miguela Pleyto's Supplemental Counter-Affidavit (Annex “I” of the Petition)

23. Agricultural Lot Pulong Buhangin, Sta. Maria

3,000

1999

153,909.30

Foreclosure/

Dacion

Eliseo Hermogenes

Real Estate Mortgage Attached as Annexes “45” and “46” of Miguela Pleyto's Supplemental Counter-Affidavit (Annex “I” of the Petition)

24. Agricultural Lot Pulong Buhangin, Sta. Maria

746

1999

38,272.00

Purchase

Eliseo Hermogenes

STANDARD DEED OF SALE FORM used by Mrs. Pleyto in her lending business in cases where the defaulting debtor opts to settle the unpaid account with property.

Attached as Annex “46” of Miguela Pleyto's Supplemental Counter-Affidavit (Annex “I” of the Petition)

In addition to the foregoing 24 lots identified by the PNP-CIDG in its Complaint, petitioner voluntarily disclosed

two more lots in his and his wife's names in Caysio, Sta. Maria, Bulacan, which they acquired through foreclosure in 2002.

Petitioner's table comprehensively presents his and his wife's real properties, the names of the previous owners, the cost, year and mode of their acquisitions, and the supporting evidence. It reveals that the petitioner and his wife acquired their real properties in a span of 22 years, from 1977 to 1999. A number of the real properties were acquired before 1992, the year from which the Office of the Ombudsman began his "net-worth-to-income-discrepancy analysis." Petitioner and his wife acquired the real properties by four modes: (1) purchase by installment; (2) inheritance; (3) dacion en pago, by which the defaulting debtor settles his outstanding account with petitioner's wife with property; and (4) foreclosure of mortgage. The last two modes of acquisition, dacion en pago and foreclosure of mortgage, are exercised in the regular conduct of the lending business of petitioner's wife. Irrefragably, these are legitimate modes of acquiring properties. On their face, the supporting documents for the transactions by which petitioner and his wife acquired their real properties appear to be in order. Notably, the PNP-CIDG, the Office of the Ombudsman, and the Court of Appeals did not challenge the validity or authenticity of any of these documentary evidences. They, instead, focused on questioning the financial capacity of petitioner and his wife to acquire all these real properties.

Petitioner asserts that, other than his salary as a government employee, he and his wife had other sources of income which enabled them to acquire real properties. Petitioner's wife, Miguela Pleyto, has been a successful businesswoman since 1976, operating several businesses, particularly, a piggery and poultry farm, a pawnshop, and a lending investor business. To prove that these are legitimate businesses, petitioner submitted registration papers and certifications from the Department of Trade and Industry.[42] Also to establish the profits from these businesses, petitioner presented the income tax returns and financial statements of his wife's businesses.[43] Moreover, petitioner annexed to his Counter-Affidavit a schedule of loans availed of by petitioner and his wife from different banks from 1979 to 2002, secured by real estate mortgages[44] constituted on their existing real properties and annotated on the appropriate TCTs.

As petitioner explained, the properties were accumulated over the last two decades. Most of the properties are integral to his wife's piggery and lending business. Twelve of the properties he and his wife acquired, including four structures, were devoted to the piggery, while the others were used as collaterals for short-term loans, the proceeds of which were used by his wife in her lending business and which, in turn, enabled her to acquire more properties when defaulting borrowers settled their obligations through dacion en pago or foreclosure of mortgages.

The Court of Appeals, however, rejected petitioner's allegations and evidence of other legitimate sources of income, for the following reasons:

Logic will dictate that the whole divide between assets and income may be closed by evidence that the wife was herself earning enough to account for the acquisition of properties. The spirited position taken by the petitioner on this point, however, did not wash with the Ombudsman. The reason seems to be that he was trying to tout his wife's gross income as proof of her capacity when he should prove her disposable income after deducting her taxes and expenses. The Ombudsman insisted on this approach after realizing that the petitioner and his family had indulged in rather heavy spending. x x x The argument meets with the concurrence of the Solicitor General. He says in his comments, that the gross income of the wife from her business should not be made a barometer of her financial capacity, but to be believable, she should specify her available income after deducting all expenses and taxes, a procedure she did not follow.[45]

It is worthy to note that the Office of the Ombudsman, in preparing the table in its 12 October 2004 Order, used petitioner's gross annual salary for comparison with his annual net worth. Thus, it is only understandable that, in

challenging the said table, petitioner “touted” his wife’s gross annual business income, which he urged should be combined with his gross annual salary. Also considering that the information the Court of Appeals was looking for could actually be deduced and computed from the income tax returns and financial statements already submitted by petitioner, this Court finds it arbitrary for the appellate court to simply brush aside petitioner’s evidence just because it was not presented in the form that it expected. Bearing in mind the significance and impact on the case of petitioner’s evidence, it deserves a closer and more thorough review.

Furthermore, in his Motion for Reconsideration with the Court of Appeals, petitioner directly addressed the afore-quoted observation of the appellate court by presenting the following table[46] in which taxes and expenses were already deducted from his wife’s business income:

	DATE
	YEARLY INCREASE/ DECREASE IN NETWORTH
	SALARY INCOME BUSINESS INCOME
(Income from Business + Depreciation Cost)	
	TOTAL INCOME
(Salary Income + Business Income 1992 - 136,620.00 180,438.50 317,058.50 1993	

584,409.00
166,980.00
181,703.00
348,683.00
1994
312,087.00
190,560.00
242,817.60
433,377.60
1995
206,390.30
202,560.00
240,917.62
443,477.62
1996
254,167.30
217,716.00
333,908.96
551,624.96
1997
357,521.40
239,472.00
489,023.46
728,495.46
1998
673,028.50
259,404.00
485,105.79
744,509.79
1999
1,007,870.20

265,896.00

507,845.21

773,741.21

2000

95,612.00

292,488.00

570,280.67

862,768.67

2001

197,575.90

314,784.00

596,980.95

911,764.95

2002

1,371,667.15

319,380.00

969,565.05

1,288,945.05

TOTAL

5,060,328.75

2,605,860.00

4,798,586.81

7,404,446.81

The figures in the business income column were derived from the income statements of Miguela Pleyto, annexed to her income tax returns, which were prepared by a certified public accountant and submitted to the Bureau of Internal Revenue. The business income figures are already net of business expenses and provisions for income taxes, but include the amounts of depreciation^[47] of buildings, equipment, and furniture/fixtures. Based on the foregoing table, the increase in petitioner's net worth from 1992 to 2002 (P5,060,328.75) no longer appears to be grossly disproportionate to his and his wife's combined income for the same period (P7,404,446.81).

At this point, it is undeniable that petitioner had other sources of income apart from his salary. His wife was also earning substantial income from her businesses. According to Section 2 of Republic Act No. 1379, the prima facie presumption of unlawful acquisition would arise only when the amount of property is manifestly out of proportion to the salary of the public officer or employee and to his other lawful income and the income from legitimately

acquired property.

Other than the real properties, both the Office of the Ombudsman and the Court of Appeals deemed the numerous foreign travels of petitioner, his wife, and his children as proof of petitioner's unexplained wealth, relying on the following attestations[48] of the investigating officers of the PNP-CIDG:

- Our verification with the Bureau of Immigration and Deportation on the travels abroad made by Mr. Pleyto (and his son Salvador Juan Jr) for the duration of his stint as a DPWH official revealed that since 1995, Mr. Pleyto had made seventeen (17) travels abroad. Our cross-checking with the declared official travels abroad of Mr. Pleyto, as appearing in his Personal Data Sheet, revealed that he had made a total of nine (9) unofficial travels abroad. BID records also show that in his two (2) trips abroad, he brought along his son Salvador Juan Pleyto, Jr. that is, when he went on the REAAA council meeting in Kuala Lumpur in October 1999 and when he went to the US also in October 2000 on an unofficial trip (Annexes "81" and "82"); His wife Miguela had seventeen (17) travels abroad (Annex "83") while his other son, Russel had six (6) travels abroad (Annex "84")

- We have estimated that the sum total of the expenses incurred by Mr. Salvador A. Pleyto for the travels abroad by him, his wife and children, at P100,000.00 per travel amounted to THREE MILLION SEVEN HUNDRED THOUSAND PESOS (P3,700,000.00), broken down as follows:

Salvador A. Pleyto – 9 travels - P900,000.00

Miguela G. Pleyto – 17 travels - 1,700,000.00

Russel G. Pleyto – 6 travels - 600,000.00

Salvador G. Pleyto Jr., – 5 travels - 500,000.00

TOTAL : P3,700,000.00

While the investigating officers of the PNP-CIDG also referred to the trips abroad taken by petitioner's children, this Court shall discuss first only the foreign travels of petitioner and his wife. The foreign travels, as well as the real properties of their children, shall be the subject of a separate and later discussion.

After going through the records, the only evidence presented by the PNP-CIDG as regards the foreign travels of petitioner and his family are the travel records[49] provided by the Bureau of Immigration and Deportation (BID), from which the following information were derived:

TRAVEL INFORMATION OF SALVADOR A. PLEYTO

Full Name

DOB

Nationality

Passport No.

Address

:
:
:

:

:

Salvador Pleyto y Aquino

March 22, 1942

Filipino

K862613/CC272892

No. 1 May Street,

Congressional Village, Quezon City

Departure Date

Destination

Arrival Date

-

Tapei

April 22, 1995

October 25, 1995

Seoul

November 06, 1995

May 17, 1996

Hongkong

May 19, 1996

June 15, 1997

Tokyo

July 04, 1997

October 01, 1997

Honolulu

October 17, 1997

October 07, 1998

USA

October 10, 1998

March 27, 1999

Los Angeles

April 06, 1999

May 07, 1999

Hongkong

May 09, 1999

October 02, 1999

Kuala Lumpur

October 10, 1999

March 27, 2000

Hongkong

May 02, 2000

September 03, 2000

USA

October 01, 2000

October 24, 2000

USA

-

March 20, 2001

USA

May 01, 2001

April 18, 2002

-

April 22, 2002

May 10, 2002

USA

-

October 02, 2002

-

October 08, 2002

May 18, 2003

-

June 25, 2003

Total No. of Travels Abroad:

Seventeen (17)

TRAVEL INFORMATION OF MIGUELA PLEYTO

Full Name

DOB

Nationality

Passport No.

Address

:

:

:

:

:

Miguela Pleyto y Guballa

March 28, 1940

Filipino

K850031/CC264659/JJ329075

No. 1 May Street,

Congressional Village, Quezon City

Departure Date

Destination

Arrival Date

October 25, 1995

Seoul/Korea

November 06, 1995

May 17, 1996

Hongkong

May 19, 1996

July 12, 1996

-

July 29, 1996

October 01, 1997

Honolulu

October 17, 1997

May 19, 1998

Los Angeles

May 27, 1998

October 07, 1998

USA

October 10, 1998

March 27, 1999

Los Angeles

April 06, 1999

May 07, 1999

Hongkong

May 09, 1999

October 05, 1999

Singapore

October 10, 1999

October 05, 1999

San Francisco

October 14, 1999

July 14, 2000

Bangkok

July 19, 2000

October 29, 2000

Hongkong

November 06, 2000

April 20, 2001

USA

July 22, 2001

April 18, 2002

Los Angeles

May 01, 2001

May 10, 2002

Bangkok

April 22, 2002

September 30, 2002

Bangkok

October 08, 2002

May 18, 2003

Bangkok

May 25, 2003

Total No. of Travels Abroad:

Seventeen (17)

From 1995 to 2003, petitioner traveled abroad 17 times; 8 trips were found by the investigating officers to be official and only 9 were unofficial. Their summary, though, failed to indicate which of petitioner's trips were official and which were unofficial. It would appear that only the 9 unofficial foreign trips are being charged against petitioner. For the same period, petitioner's wife also took 17 trips abroad.

Petitioner offered the following explanation for his and his wife's foreign travels:

- As to petitioner Pleyto, his alleged travel expense of Php 900 thousand is unfounded. His (9) "unofficial" travels ("official time but with no cost to the government") were all shouldered by sponsoring organizations such as the Road Engineering Association of Asia and Australia (REEAA) and the American Society of Civil Engineers, Philippine Chapter, where he has served as President. The sponsorship includes travel and accommodation and sometimes even one (1) companion. These facts have not been disputed on record. (In fact, for this year, petitioner Pleyto was again a beneficiary of sponsorship travel extended by REEA (sic) where he continues to serve as President.)

- As to Mrs. Pleyto, her alleged travel expense of Php 1.7 M (at Php 100,000 per travel) is bloated and unsubstantiated. To begin with, the number of travels appears to be inaccurate as previously explained. Besides, the estimated expense of Php 100,000 per travel is grossly exaggerated as most of the travels were to Asian destinations. As shown by evidence, the travel package (fare and accommodation) only averages from Php 15,000 to Php 25,000 which contention has not been disputed by contrary evidence. Besides, Mrs. Pleyto, who is already in her senior years and with no more children to support, is entitled to enjoy the comforts of travel.[50]

While 26 foreign trips^[51] may indeed seem excessive, it should be kept in mind that these were taken by two individuals in a span of 9 years. Frequency of foreign travel, by itself, is not proof of unexplained wealth of a public officer or employee. More importantly, it must be established that the trips abroad are beyond his financial capacity, taking into account his salary and his other lawful sources of income.

The travel records from the BID could only establish the details on the trips taken by petitioner and his wife, specifically, the dates of departure and arrival, the destination, and the frequency thereof. Even these details were at times incomplete or contradictory. Take for example the travel information of petitioner, with several missing entries on the dates of departure and arrival and destination. As for the travel information of petitioner's wife, it failed to identify her destination for her trip on 12 to 29 July 1996. The travel information also states that petitioner's wife was in Singapore from 5 to 10 October 1999, yet, in the immediately succeeding entry, it provides that she was in San Francisco, United States of America (USA) from 5 to 14 October 1999. Also according to the travel information, petitioner's wife left for Bangkok, Thailand on 10 May 2002 and returned to the country on 22 April 2002. It appears to this Court that complete reliance was made on the travel records provided by the BID. No further effort was exerted to complete the travel information of petitioner and his wife and clarify or reconcile confusing entries.

It is a long jump to conclude just from the BID travel records that the foreign travels taken by petitioner and his wife were beyond their financial capacity. As this Court has already found, petitioner had other sources of lawful income apart from his salary as a public official. His wife was also earning substantial income from her businesses. Now the question is, whether the petitioner and his wife could afford all their trips abroad considering their combined income.

Obviously, before this question can be answered, the cost of the trips must be initially determined. The investigating officers of the PNP-CIDG estimated the cost of each trip to be P100,000.00, an estimation subsequently adopted by the Office of the Ombudsman and the Court of Appeals. This Court, though, cannot simply affirm such estimation.

Other than the USA (wherein Los Angeles, San Francisco, and Honolulu are located), petitioner and his wife only traveled to cities in East and Southeast Asia (namely, Taipei, Seoul, Hongkong, Tokyo, Kuala Lumpur, and Bangkok). The costs of the trips to the USA and to the neighboring Asian countries cannot be the same; the latter would undeniably be cheaper. The investigating officers, in fixing the amount of all the foreign trips at P100,000.00 each, offered no explanation or substantiation for the same. With utter lack of basis, the figure of P100,000.00 as cost for each foreign travel is random and arbitrary and, thus, unacceptable to this Court. Without a reasonable estimation of the costs of the foreign travels of petitioner and his wife, there is no way to determine whether these were within their lawful income.

This Court finds equally baseless the conclusion that petitioner's children are without substantial income of their own, hence, their properties and foreign travels should be attributed to petitioner and considered as additional evidence of his unexplained wealth.

Petitioner's children are all grown up with the youngest, at the time the case was pending before the Office of the Ombudsman, being 27 years old. Russel and Mary Grace Pleyto, the two older children, are engaged in businesses, while Salvador Pleyto, Jr., is gainfully employed in his mother's businesses. The following real properties are registered and duly covered by certificates of title in their names:

- Russel Pleyto – (2 properties)
- one residential house and lot measuring 632 sq. m. in Poblacion, Sta. Maria, Bulacan;

- one (1) residential lot measuring 113 sq. m. in Pulong Buhangin, Sta. Maria, Bulacan;
- Mary Grace Pleyto – (2 properties)
- one (1) residential lot measuring 138 sq. m. in Pulong Buhangin, Bulacan;
- one (1) commercial lot measuring 133 sq. m., broken down into three lots at 41, 59, and 43 sq. m., in Poblacion, Sta. Maria, Bulacan; and
- Salvador, Jr. – (1 property)
- one (1) residential lot measuring 244 sq. m. in Pulong Buhangin, Sta. Maria, Bulacan.[52]

Given these circumstances, the presumption in Section 2 of Republic Act No. 1379, cannot be automatically extended to the properties that are registered in the names of petitioner's children. The burden is upon the PNP-CIDG, as the complainant against petitioner, to establish that these properties are actually owned by petitioner by proving first that his children had no financial means to acquire the said properties. Fundamental is the rule that the burden of evidence lies with the person who asserts an affirmative allegation.[53] Unfortunately, the PNP-CIDG miserably failed in this regard.

Without presenting any supporting evidence, the investigating officers of the PNP-CIDG alleged in their Joint Affidavit that "it can be immediately deduced that the real properties, both the houses and lots, registered in the names of their three (3) children, namely: Russel Pleyto, Mary Grace Pleyto and Salvador Juan Pleyto, Jr., are [petitioner's] unexplained wealth, since all of them have no substantial income to show that they have the capacity to lawfully acquire the same." [54] The use of the words "immediately deduced" is very revealing of the attitude and approach taken by the investigating officers in this case, again, jumping to a conclusion without reference to and presentation of the evidence in support thereof. The same can also be said of the foreign travels of Russel Pleyto and Salvador Pleyto, Jr., which, without any explanation or basis whatsoever, were included in the computation of travel expenses charged against petitioner.

It is thus surprising that the Office of the Ombudsman affirmed the bare allegations of the investigating officers of the PNP-CIDG, by ruling that:

[T]he following real properties registered in the name of respondent Pleyto's three (3) children, are actually the [petitioner's] unexplainable wealth, since all of them have no substantial income to show that they have lawfully acquired the same, x x x.

x x x x

The annexes submitted do not show substantial net disposable income earned by them. With respect to Salvador, Jr., no income tax return was submitted. Further, there was no credible explanation for the sizeable start-up capitals for their alleged businesses. No proof was submitted as to the alleged donation of P200,000.00 from the parents of respondent Russel Pleyto's wife. As to the alleged donation of P60,000.00, it admittedly came from respondent's Salvador and Miguela Pleyto.[55]

This Court cannot sustain such finding.

Although strictly, the burden of evidence had not shifted to petitioner, he still endeavored to elucidate on how his children legitimately acquired their respective properties, to wit:

As to Russel G. Pleyto, the following facts and explanations are uncontroverted by any contrary evidence –

- Since 1991 or for over ten years, Russel and his wife, Shirley Yap, daughter of established businessman in Bulacan, have been engaged in businesses in Sta. Maria, starting with grocery and garments which they built

from a meager capital of Php60,000.00 extended by Mr. and Mrs. Pleyto by way of a deed of donation during their marriage as well as Php200,000.00 from Shirley's parents. They also obtained financial accommodations and stocks for their grocery and garments from Shirley's family who are also engaged in the same line of business.

- Their financial capacity is shown by documentary evidence such as business permits/licenses of their business enterprises; financial statements and income tax returns from 1998 to 2002, showing gross sales/receipts from grocery and video sales rentals amounting to P7,271,137; various credit lines extended to Shirley Yap-Pleyto in the grocery business.

- In the course of their business, Russel and Shirley Yap-Pleyto were able to acquire two (2) properties: the first refers to their residential house and lot in Poblacion, Sta. Maria, which was acquired six years after their marriage; the second refers to a small parcel of land consisting of 113 sq. meters in the interior side of Pulong Buhangin. Since both of them are engaged in gainful business, there is no way they cannot acquired (sic) the subject properties.

As to Mary Grace G. Pleyto, the following explanations and evidence are uncontroverted by any contrary evidence –

- Mary Grace has been an entrepreneur since 1995, starting off with small laundry business and branching to water refilling and video sales. While she obtained her course from UP, she learned the ropes of entrepreneurship from her own mother. And if she has received any assistance in her business, it was also from her mother, and not from any imputed “unexplained wealth” of her father. Like her mother, she also made use of banks to support her business requirements.

- From 1997 to 2001, she was able to acquire the commercial property in Sta. Maria measuring 143 sq. meters, broken down into three (3) lots at 41 sq. meters, 59 sq. meters, and 43 sq. meters. This property was broken down into three lots because she acquired it portion by portion and in a span of four years. In addition, she also acquired a residential lot in the interior side of Pulong Buhangin measuring only 138 sq. meters (TCT No. 397717[M]).

- When she purchased her first two properties valued at Php131,600, her BIR records and financial statements for the preceding years (1995-1996) already reflect an income of Php531,930, which is more than enough to cover the purchase. As proof of her financial capacity, she has been extended loans by Metrobank using as collateral the same property she acquired. Based on her income tax return and loan documents, there is no reason why she cannot acquire the two (2) properties owned and registered in her name.

As to Salvador G. Pleyto, Jr., the following explanations and evidence are uncontroverted by any contrary evidence –

- Salvador Jr., a La Salle graduate in B.S. Management, has been gainfully employed since 1998 in her mother's businesses, managing R.S. Pawnshop and R.S. Lending Investor. Based on his income tax returns for the years 1999 to 2002 (sic), his earnings amounted to P186, 520.

- In 2001, he was able acquire a property in the interior side of Pulong Buhangin, Sta. Maria for only P20,000 as evidenced by the purchase document.

- Considering his reported income in the preceding years (1999 to 2000) as reflected in his BIR tax records, there is no reason why he could not have acquired the subject property for Php20,000.[56]

To substantiate his foregoing assertions, petitioner presented the TCTs in his children's names, deeds of sale executed by the previous owners to his children, his children's income tax returns and financial statements, business registrations, and bank documents on loans and credit lines.[57]

Certificates of title are the best proof of ownership^[58] that may only be rebutted by competent evidence to the contrary. In this case, the TCTs are in the names of petitioner's children. Indubitably, mere allegation that the properties covered by the TCTs are actually owned by someone else is insufficient.

The Office of the Ombudsman disparaged the other documentary evidence submitted by petitioner because they "do not show substantial net disposable income earned" by petitioner's children. To the contrary, the petitioner presented his children's income tax returns and financial statements that state their gross income, as well as expenses, taxes, and any other deductible liabilities, from which the children's respective net incomes may be determined. Moreover, it is futile for the Office of the Ombudsman to require the petitioner to present the net disposable income of his children when the PNP-CIDG failed to establish the acquisition costs of these properties. What the investigating officers of the PNP-CIDG stated in their Joint-Affidavit were the adjusted market values of the children's properties. As this Court has ruled, financial capacity shall be adjudged vis-à-vis the cost of the properties at the time of acquisition. The subsequent increase (or decrease) in the value of the properties is irrelevant. Without the acquisition costs of the properties, there are no figures that may be measured against the earning capacity of petitioner's children at the time they acquired their properties.

Furthermore, faced with overwhelming evidence that petitioner's two older children, Russel and Mary Grace Pleyto, had their own businesses from which they derived substantial income, the Office of the Ombudsman changed the direction of its attack by questioning their source of capital. This is plainly a different theory from the one originally presented in the PNP-CIDG complaint that petitioner's children could not have acquired their properties because they had no substantial income of their own. No longer is it just a question of ownership of the properties in the children's names, but it is now extended to the ownership of the children's businesses. Just the same, the assertion that petitioner's children could not have established and maintained their own businesses must be supported by evidence, of which none was submitted herein.

As a final note on this matter, the charges that petitioner is the true owner of the properties registered in his children's names and that he spent for their foreign travels must be proven by the PNP-CIDG as the complainant in the administrative case, before the burden of evidence shifts to the petitioner to prove the contrary. The PNP-CIDG cannot just make bare allegations, with tremendous implications and damaging effects, then leave it to the public official charged to successfully and effectively defend himself with controverting evidence. Such is what has happened in this case. Worse, despite the total absence of evidence on the part of the PNP-CIDG regarding the properties and sources of income of petitioner's children, the Office of the Ombudsman hastily dismissed the value of petitioner's evidence.

The last administrative charge against petitioner is that he failed to declare all his assets in the SALN, of which the Office of the Ombudsman and the Court of Appeals found petitioner guilty. The Court of Appeals made the following findings on this point:

Second, failing to declare all his assets in the SALN. A treasure trove of properties admitted by the petitioner to be owned by him and his wife could not be accounted for in the SALN. The non-declaration of his numerous acquisitions was thus willful. The Ombudsman senses that the unexplained rise in the reported net worth of the petitioner would be more astronomical if he were forthright in his declarations.

x x x x

The Ombudsman has found that there are, indeed, properties not reported in the SALN. The laundry list of undeclared assets include properties acquired in 1979, 1980, 1982, 1988, 1993, 1995, 1996, 1997 and 1999. While the petitioner's wife claims to be extensively engaged in business, the SALN also did not report the nature and other particulars of these concerns. She signed the 2001 SALN without answering the question: Do you have any business interest and other financial connections including those of your spouse x x x?

It is clear that the SALN does not reflect a true and accurate record of the assets of the petitioner in violation of the Anti-Graft and Corrupt Practices Act. The addition of the acquisition costs of the unreported assets to the net worth, moreover, will increase it. As dramatized by the Ombudsman's table, the increase in the net worth could not be explained by the petitioner's salary alone and, hence should be treated as unexplained wealth.[59]

Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, requires that a public officer file his statement of assets and liabilities under the following circumstances:

SEC. 7. Statement of Assets and Liabilities. – Every public officer, within thirty days after assuming office and, thereafter, on or before the fifteenth day of April following the close of every calendar year, as well as upon the expiration of his term of office, or upon his resignation or separation from office, shall prepare and file with the office of the corresponding Department Head, or in the case of Head of Department or Chief of an independent office, with the Office of the President, a true, detailed and sworn statement of assets and liabilities, including a statement of the amounts and sources of his income, the amounts of his personal and family expenses and the amount of income taxes paid for the next preceding calendar year: Provided, That public officers assuming office less than two months before the end of the calendar year, may file their first statement or before the fifteenth day of April following the close of said calendar year.

A similar requirement is provided in Section 8 of Republic Act No. 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees, which reads:

SEC. 8. Statements and Disclosure. – Public officials and employees have an obligation to accomplish and submit declarations under oath of, and the public has the right to know, their assets, liabilities, net worth and financial and business interests including those of their spouses and of unmarried children under eighteen (18) years of age living in their households.

(A) Statement of Assets and Liabilities and Financial Disclosure. – All public officials and employees, except those who serve in an honorary capacity, laborers and casual or temporary workers, shall file under oath their Statement of Assets, Liabilities and Net Worth and the Disclosure of Business Interests and Financial Connections and those of their spouses and unmarried children under eighteen (18) years of age living in their households.

The two documents shall contain information on the following:

- real property, its improvements, acquisition costs, assessed value and current fair market value;
- personal property and acquisition cost;
- all other assets such as investments, cash on hand or in banks, stocks, bonds, and the like;
- liabilities; and
- all business interests and financial connections.

The documents must be filed:

- within thirty (30) days after assumption of office;
- on or before April 30, of every year thereafter; and
- within thirty (30) days after separation from service.

All public officials and employees required under this section to file the aforesaid documents shall also execute within thirty (30) days from the date of their assumption of office, the necessary authority in favor of the Ombudsman to obtain from all appropriate government agencies, including the Bureau of Internal Revenue, such documents as may show their liabilities, net worth, and also their business interests and

financial connections in previous years, including, if possible the year when they first assumed any office in the government.

It is undisputed that petitioner has been religiously filing his SALN every year while he was in government service. The allegation of gross misconduct and dishonesty against him is rooted in his purported failure to declare all his assets and business interests in his SALNs.

Petitioner's 2002 SALN declared only 13 properties with a total acquisition cost of P9,384,090.25. Petitioner though admitted in the course of these proceedings that he and his wife owned 28 of the 33 real properties identified by the PNP-CIDG, with the clarification that four of those are mere improvements consisting of piggery structures. Hence, petitioner professes ownership by him and his wife of 24 lots, plus the improvements found thereon. He further volunteers the information that he and his wife acquired two more additional properties in Caysio, Sta. Maria, Bulacan, in 2002, thus, bringing the total number of his and his wife's real property acquisition to 26.

Petitioner denies he was being dishonest or that he had the deliberate intent to conceal his wealth in his 2002 SALN, although he acknowledges that he failed to pay attention to the details therein. His SALNs are prepared by a family bookkeeper/accountant. Also, his wife has been running their financial affairs, including property acquisitions which form part and parcel of her lending business. Thus, as he was not directly involved in the various transactions relating to the lending business, petitioner failed to keep track of the real property acquisitions by reason thereof.

Consequently, petitioner's SALN was not filed in proper form, containing several inaccurate information, such as discrepancies in the year and mode of acquisition of the declared properties, and imprecise descriptions of the said properties since some of the properties were not broken down to their individual titles and, instead, treated as one entry since they are contiguous to one another and to fit all the information in the limited number of spaces provided in the printed SALN form. And these inaccuracies are repeated year after year, since the common practice is copying the entries in the immediately preceding year and just adding any subsequent acquisitions.

In his 2004 SALN,[60] petitioner took pains to rectify the inaccuracies in his previous SALN and declared his real properties as follows:

Kind

Location

Year

Mode of Acquisition

Acquisition Cost (Land, Bldg., Improvement, etc.)

1 H & L

Quezon City

197[7]

Purchase

2,630,000.00

1 H & L

Caypombo, Bulacan

1980

Purchase

190,000.00

1 Lot

- do -

1982

- do -

1 Lot

- do -

- do -

1 Lot

- do -

- do -

1 Lot

- do -

- do -

1 Lot

- do -

- do -

1 Lot

- do -

- do -

1 Lot

- do -

- do -

1 Lot (impv't)

- do -

1979

- do -

1 Lot (impv't)

- do -

- do -

1 Lot (impv't)

- do -

1979

- do -

1 Lot (impv't)

- do -

- do -

1 H & L

Poblacion, Bulacan

1988

Purchase

1,937,700.00

1 Lot

- do -

1987

Inheritance

1 Lot

- do -

1991

- do -

1 Lot

- do -

1993

- do -

1 Lot

- do -

1995

Purchase/Foreclosure

1 Lot

P. Buhangin, Bulacan

1996

Purchase/Foreclosure

1,898,700.00

1 Lot

- do -

1996

- do -

1 H & L

- do -

1997

- do -

1 Lot

- do -

1998

- do -

1 Lot

- do -

1999

- do -

1 Lot

- do -

1999

- do -

1 Lot

- do -

1999

- do -

1 Lot

- do -

1999

- do -

1 Lot

Catmon, Bulacan

1998

Purchase/Foreclosure

1,300,000.00

1 Lot

- do -

- do -

1 Lot

- do -

- do -

2 Lots w/ imprv't

Caysio, Sta. Maria, Bulacan

2002

Purchase/Foreclosure

1,427,690.25

1 Lot

P. Buhangin, Bulacan

2003

Purchase/Foreclosure

100,000.00

TOTAL COST P 9,484,090.25

Except for the lot in Pulong Buhangin, Bulacan, which was purchased only in 2003, the afore-quoted declaration of petitioner's real properties in his 2004 SALN tallies with that in his 2002 SALN. Disregarding the most recent acquisition, the longer and more detailed list of real properties in the 2004 SALN has the same total acquisition cost as the 13 entries in the 2002 SALN, i.e., P9,384,090.25. As additional proof that his 2002 SALN actually includes all his real properties, petitioner points out that the total acquisition cost thereof, P9,384,090.25, is not so far off their 2003 adjusted market value (excluding the real properties in the names of petitioner's children) of

P14,002,109.20 as determined by the PNP-CIDG; the difference can be accounted for by the increase in the value of the real properties through the years.

In contrast, according to the investigating officers of the PNP-CIDG, “[s]ince Mr. Pleyto did not specify in his SALs the exact location of the real properties he and his own wife own, it would not be too easy for the investigators to ascertain which specifically of these numerous real estate properties acquired by the spouses were or were not declared in his latest statement of assets.”[61] Hence, there is no categorical finding by the investigating officers that certain properties were intentionally excluded or concealed by petitioner from his 2002 SALN.

Much of the difficulty in reconciling the list of real properties in the names of petitioner and his wife vis-à-vis the entries in petitioner’s 2002 SALN is due to the inaccuracies in the latter as previously discussed. Without considering the elucidation offered by petitioner and refusing to concede that inaccuracies were committed in the preparation of the 2002 SALN, the Office of the Ombudsman could not reconcile any of the real properties admittedly owned by petitioner and his wife with the real properties declared in the 2002 SALN. This includes petitioner’s residence in Quezon City, which evidence shows he and his wife acquired in 1977, but was erroneously reported in his 2002 SALN to have been acquired in 1975. Following the ratiocination of the Office of the Ombudsman, then it would appear that petitioner completely falsified his declaration of real properties in his 2002 SALN. However, it must be pointed out that petitioner was originally accused of and found guilty by the Office of the Ombudsman and the Court of Appeals of the relatively less serious charge of excluding or concealing some of his properties.

Petitioner is charged with gross misconduct and dishonesty for failing to comply with Section 7 of the Anti-Graft and Corrupt Practices Act, and Section 8 of the Code of Conduct and Ethical Standards for Public Officials and Employees, requiring the submission of a statement of assets and liabilities by a public officer or employee.

As for gross misconduct, the adjective is “gross” or serious, important, weighty, momentous, and not trifling; while the noun is “misconduct,” defined as a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. The word “misconduct” implies a wrongful intention and not a mere error of judgment. For gross misconduct to exist, there must be reliable evidence showing that the acts complained of were corrupt or inspired by an intention to violate the law, or were in persistent disregard of well-known legal rules.[62]

And as for dishonesty, it is committed by intentionally making a false statement in any material fact, or practicing or attempting to practice any deception or fraud in securing his examination, registration, appointment or promotion. Dishonesty is understood to imply a disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity.[63]

Clear from the foregoing legal definitions of gross misconduct and dishonesty is that intention is an important element in both. Petitioner’s candid admission of his shortcomings in properly and completely filling out his SALN, his endeavor to clarify the entries therein and provide all other necessary information, and his submission of supporting documents as to the acquisition of the real properties in his and his wife’s names, negate any intention on his part to conceal his properties. Furthermore, in view of this Court’s findings that these properties were lawfully acquired, there is simply no justification for petitioner to hide them. Missing the essential element of intent to commit a wrong, this Court cannot declare petitioner guilty of gross misconduct and dishonesty.

Neither can petitioner’s failure to answer the question, “Do you have any business interest and other financial connections including those of your spouse and unmarried children living in your house hold?” be tantamount to gross misconduct or dishonesty. On the front page of petitioner’s 2002 SALN, it is already clearly stated that his

wife is a businesswoman, and it can be logically deduced that she had business interests. Such a statement of his wife's occupation would be inconsistent with the intention to conceal his and his wife's business interests. That petitioner and/or his wife had business interests is thus readily apparent on the face of the SALN; it is just that the missing particulars may be subject of an inquiry or investigation.

An act done in good faith, which constitutes only an error of judgment and for no ulterior motives and/or purposes, does not qualify as gross misconduct, and is merely simple negligence.[64] Thus, at most, petitioner is guilty of negligence for having failed to ascertain that his SALN was accomplished properly, accurately, and in more detail.

Negligence is the omission of the diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place.[65] In the case of public officials, there is negligence when there is a breach of duty or failure to perform the obligation, and there is gross negligence when a breach of duty is flagrant and palpable.[66] Both Section 7 of the Anti-Graft and Corrupt Practices Act and Section 8 of the Code of Conduct and Ethical Standards for Public Officials and Employees require the accomplishment and submission of a true, detailed and sworn statement of assets and liabilities. Petitioner was negligent for failing to comply with his duty to provide a detailed list of his assets and business interests in his SALN. He was also negligent in relying on the family bookkeeper/accountant to fill out his SALN and in signing the same without checking or verifying the entries therein. Petitioner's negligence, though, is only simple and not gross, in the absence of bad faith or the intent to mislead or deceive on his part, and in consideration of the fact that his SALNs actually disclose the full extent of his assets and the fact that he and his wife had other business interests.

Gross misconduct and dishonesty are serious charges which warrant the removal or dismissal from service of the erring public officer or employee, together with the accessory penalties, such as cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification from reemployment in government service. Hence, a finding that a public officer or employee is administratively liable for such charges must be supported by substantial evidence.

The quantum of evidence required in administrative cases is substantial evidence. The landmark case *Ang Tibay v. Court of Industrial Relations*[67] laid down the guidelines for quasi-judicial administrative proceedings, including the following:

(4) Not only must there be some evidence to support a finding or conclusion (*City of Manila vs. Agustin*, G. R. No. 45844, promulgated November 29, 1937, XXXVI O.G. 1335), but the evidence must be "substantial." (*Washington, Virginia & Maryland Coach Co. v. National Labor Relations Board*, 301 U. S. 142, 147, 57 S. Ct. 648, 650, 81 Law. ed. 965.) "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." (*Appalachian Electric Power v. National Labor Relations Board*, 4 Cir., 93 F. 2d 985, 989; *National Labor Relations Board v. Thompson Products*, 6 Cir., 97 F. 2d 13, 15; *Ballston-Stillwater Knitting Co. v. National Labor Relations Board*, 2 Cir., 98 F. 2d 758, 760.) * * * The statute provides that 'the rules of evidence prevailing in courts of law and equity shall not be controlling.' The obvious purpose of this and similar provisions is to free administrative boards from the compulsion of technical rules so that the mere admission of matter which would be deemed incompetent in judicial proceedings would not invalidate the administrative order. (*Interstate Commerce Commission v. Baird*, 194 U. S. 25, 44, 24 S. Ct. 563, 568, 48 Law. ed. 860; *Interstate Commerce Commission v. Louisville & Nashville R. Co.*, 227 U. S. 88, 93, 33 S. Ct. 185, 187, 57 Law. ed. 431; *United States v. Abilene & Southern Ry. Co.*, 265 U. S. 274, 288, 44 S. Ct. 565, 569, 68 Law. ed. 1016; *Tagg Bros. & Moorhead v. United States*, 280 U. S. 420, 442, 50 S. Ct. 220, 225, 74 Law. ed. 624.) But this assurance of a desirable flexibility in administrative procedure does not go so far as to justify orders without a basis in

evidence having rational probative force. Mere uncorroborated hearsay or rumor does not constitute substantial evidence. (Consolidated Edison Co. v. National Labor Relations Board, 59 S. Ct. 206, 83 Law. ed. No. 4, Adv. Op., p. 131.) "

(5) The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected. (Interstate Commerce Commission vs. L. & N. R. Co., 227 U. S. 88, 33 S. Ct. 185, 57 Law. ed. 431.) Only by confining the administrative tribunal to the evidence disclosed to the parties, can the latter be protected in their right to know and meet the case against them. It should not, however, detract from their duty actively to see that the law is enforced, and for that purpose, to use the authorized legal methods of securing evidence and informing itself of facts material and relevant to the controversy. Boards of inquiry may be appointed for the purpose of investigating and determining the facts in any given case, but their report and decision are only advisory. (Section 9, Commonwealth Act No. 103.) x x x. (Emphasis supplied.)

In the Petition at bar, great, if not absolute, reliance was made by the Office of the Ombudsman on the Complaint of the PNP-CIDG and the attached Joint Affidavit of its investigating officers. Although certain pieces of documentary evidence were also attached to the said Complaint, such as TCTs and tax declarations of the real properties in the names of petitioner, his wife, and his children, and the travel information provided by the BID, these mostly prove facts which were not denied by petitioner, but for which he had credible explanation or qualification. These pieces of evidence may have been sufficient to give rise to a prima facie presumption of unlawfully acquired wealth against petitioner; however, such a presumption is disputable or rebuttable. When petitioner presented evidence in support of his defense, the Office of the Ombudsman proceeded to question and challenge and, ultimately, disregard in totality petitioner's evidence, despite the fact that the PNP-CIDG no longer presented any evidence to controvert the same.

Each party in an administrative case must prove his affirmative allegation with substantial evidence – the complainant has to prove the affirmative allegations in his complaint, and the respondent has to prove the affirmative allegations in his affirmative defenses and counterclaims.[68] In this case, contrary to the findings of the Office of the Ombudsman and the Court of Appeals, this Court pronounces that substantial evidence sways in favor of the petitioner and against complainant PNP-CIDG.

While this Court commends the efforts of the PNP-CIDG and the Office of the Ombudsman to hold accountable public officers and employees with unexplained wealth and unlawfully acquired properties, it cannot countenance unsubstantiated charges against a hapless public official just to send a message that the government is serious in its campaign against graft and corruption. No matter how noble the intentions of the PNP-CIDG and the Office of the Ombudsman are in pursuing this administrative case against petitioner, it will do them well to remember that good intentions do not win cases; evidence does.

III.

Petitioner's third assignment of error concerns the review and compliance procedure provided in Section 10 of the Code of Conduct and Ethical Standards for Public Officials and Employees, reproduced in full below:

SEC. 10. Review and Compliance Procedure. – (a) The designated Committees of both Houses of the Congress shall establish procedures for the review of statements to determine whether said statements have been submitted on time, are complete and are in proper form. In the event a determination is made that a statement is not so filed, the appropriate Committee shall so inform the reporting individual and direct him to take the necessary corrective action.

(b) In order to carry out their responsibilities under this Act, the designated Committees of both Houses of the Congress shall base the power, within their respective jurisdictions, to render any opinion interpreting this Act,

in writing, to persons covered by this Act, subject in each instance to the approval by affirmative vote of the majority of the particular House concerned.

The individual to whom an opinion is rendered, and any other individual involved in a similar factual situation, and who, after issuance of the opinion acts in good faith in accordance with it shall not be subject to any sanction provided in this Act.

(c) The heads of other offices shall perform the duties stated in subsections (a) and (b) hereof insofar as their respective offices are concerned, subject to the approval of the Secretary of Justice, in the case of the Executive Department and the Chief Justice of the Supreme Court, in the case of the Judicial Department.

Petitioner argues that he should have been given the opportunity to correct his obviously incomplete and/or not properly filed SALN in accordance with the afore-quoted review and compliance procedure. This Court is unconvinced.

From a reading of the provision in question, it is apparent that it primarily imposes upon the heads of offices the duty to review the SALNs of their subordinates. If a head of office finds that the SALN of a certain subordinate is incomplete or not in the proper form, then the head of office must inform the subordinate concerned and direct him to take corrective action. Unquestionably, it is an internal procedure limited within the office concerned. It does not even provide for instances when a complainant, not the head of office, may question the SALN of a public officer or employee.

Such a procedure does not find application in the Petition at bar, because petitioner's SALN was not being reviewed or questioned by his head of office, but by the Office of the Ombudsman. Whether or not petitioner's SALN was actually reviewed by his head of office is irrelevant and cannot bar the Office of the Ombudsman from conducting an investigation of petitioner for violation of Section 8 of the Code of Conduct and Ethical Standards for Public Officials and Employees, as well as Section 7 of the Anti-Graft and Corrupt Practices Act, upon the filing of a Complaint by the PNP-CIDG.

The mandate of the Office of the Ombudsman is expressed in Section 12, Article XI of the Constitution, in this wise:

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

Section 13 thereof, vests in the Office of the Ombudsman the following powers, functions, and duties:

- Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient;
- Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentality thereof, as well as of any government-owned and controlled corporation with original charter, to perform and expedite any act or duty required by law, or to stop, prevent and correct any abuse or impropriety in the performance of duties;
- Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith;
- Direct the officer concerned, in any appropriate case, and subject to such limitations as may be provided by law, to furnish it with copies of documents relating to contracts or transactions entered into by his office

involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action;

- Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents;
- Publicize matters covered by its investigation when circumstances so warrant and with due prudence;
- Determine the causes of inefficiency, red tape, mismanagement, fraud and corruption in the Government and make recommendations for their elimination and the observance of high standards of ethics and efficiency; and
- Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law.

The authority of the Ombudsman to conduct administrative investigations is beyond cavil. Republic Act No. 6770, otherwise known as The Ombudsman Act of 1989, intended to bestow on the Office of the Ombudsman full administrative disciplinary authority. The provisions of The Ombudsman Act of 1989 cover the entire gamut of administrative adjudication which entails the authority to, inter alia, receive complaints, conduct investigations, hold hearings in accordance with its rules of procedure, summon witnesses and require the production of documents, place under preventive suspension public officers and employees pending an investigation, determine the appropriate penalty imposable on erring public officers or employees as warranted by the evidence, and, necessarily, impose the said penalty.[69]

Given its mandate, the Office of the Ombudsman can review the SALN of a public officer or employee if a complaint is filed against the latter, separate and independent of the review of the SALN by the public officer or employee's head of office. In the event that a complaint is filed against a public officer or employee concerning his SALN, the Office of the Ombudsman shall be obliged to comply, not with the review procedure for heads of office in the Code of Conduct and Ethical Standards for Public Officials and Employees, but with the procedure for administrative complaints as laid out in Rule III of the Rules of Procedure of the Office of the Ombudsman. Although in an administrative case before the Office of the Ombudsman, the public officer or employee is no longer afforded the opportunity for corrective action on his SALN, he is still allowed to file counter-affidavits and other evidence in his defense.[70]

In sum, this Court finds substantial evidence that petitioner and his wife have lawful sources of income other than petitioner's salary as a government official that enabled them to acquire several real properties in their names and travel abroad. It also rules that while petitioner may be guilty of negligence in accomplishing his SALN, he did not commit gross misconduct or dishonesty, for there is no substantial evidence of his intent to deceive the authorities and conceal his other sources of income or any of the real properties in his and his wife's names. Hence, the imposition of the penalty of removal or dismissal from public service and all other accessory penalties on petitioner is indeed too harsh. Nevertheless, petitioner failed to pay attention to the details and proper form of his SALN, resulting in the imprecision of the property descriptions and inaccuracy of certain information, for which suspension from office for a period of six months, without pay, would have been appropriate penalty.[71]

However, this Court takes judicial notice that petitioner's birth date is on 22 March 1942, and that he had reached the compulsory retirement age of 65 for public officials on 22 March 2007, while the present Petition was still pending. The reversal by this Court of the judgment of dismissal rendered against petitioner also consequently lifts the accessory penalties imposed upon him, including the forfeiture of his retirement benefits. Therefore, petitioner is entitled to his retirement benefits, having served the government since 1966, or for a span of 41 years. And since petitioner is already compulsorily retired, he can no longer serve his suspension; yet, this Court can still order, in lieu of such penalty, the forfeiture of the amount equivalent to petitioner's salary for six months from his

retirement benefits.

WHEREFORE, premises considered, the instant Petition for Review is hereby GRANTED. The Decision, dated 20 July 2005, and Resolution, dated 4 October 2005, of the Court of Appeals in CA-G.R. SP No. 87086, which affirmed the Decision, dated 28 June 2004, and Order, dated 12 October 2004, of the Office of the Ombudsman in OMB-C-A-03-0347-I, dismissing petitioner Salvador A. Pleyto from service for grave misconduct and dishonesty, are REVERSED and SET ASIDE. Petitioner Salvador A. Pleyto is found GUILTY of NEGLIGENCE in accomplishing his Statement of Assets and Liabilities for the year 2002, and as penalty therefor, it is ORDERED that the amount equivalent to his salary for six (6) months be forfeited from his retirement benefits.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, and Reyes, JJ., concur.
Corona, J., on official leave.

[1] Rollo, pp. 2-82.

[2] Penned by the Ombudsman Investigating Panel composed of Special Prosecutor Officer III (Chairman) Orlando I. Ines, Graft Investigation and Prosecution Officer II (Member) Ma. Isabel A. Alcantara, Graft Investigation and Prosecution Officer II (Member) Evangeline Y. Grafil, and Special Prosecution Officer III (Member) Roberto T. Agagon; reviewed by Preliminary Investigation and Administrative Adjudication Bureau (PIAB) Director Jose T. de Jesus, Jr., with the recommending approval of Assistant Ombudsman Pelagio S. Apostol, and approved by Tanodbayan (Ombudsman) Simeon V. Marcelo, id. at 603-624.

[3] Penned by Associate Justice Mario L. Guariña III, with Associate Justices Marina L. Buzon and Santiago Javier Ranada, concurring, id. at 86-96.

[4] Id. at 102-107.

[5] Id. at 102.

[6] Id. at 108-114.

[7] In OMB-C-C-03-05130-1, the Ombudsman, in its Resolution, dated 14 April 2004, found petitioner liable for violation of Section 7 of Republic Act No. 3019, Republic Act No. 1379 (Forfeiture of Ill-Gotten Wealth), and perjury.

[8] Penned by Tanodbayan (Ombudsman) Simeon V. Marcelo. Rollo, pp. 115-125.

[9] Penned by the Ombudsman Investigating Panel composed of Special Prosecutor Officer III (Chairman) Orlando I. Ines, Graft Investigation and Prosecution Officer II (Member) Ma. Isabel A. Alcantara, Graft Investigation and Prosecution Officer II (Member) Evangeline Y. Grafil, and Special Prosecution Officer III (Member) Roberto T. Agagon; reviewed by Preliminary Investigation and Administrative Adjudication Bureau (PIAB) A Director Jose T. de Jesus, Jr. with the recommending approval of Assistant Ombudsman Pelagio S. Apostol and approved by Tanodbayan (Ombudsman) Simeon V. Marcelo. Id. at 603-624.

[10] Id. at 622.

[11] Penned by the Ombudsman Investigating Panel composed of Special Prosecutor Officer III (Chairman) Orlando I. Ines, Graft Investigation and Prosecution Officer II (Member) Ma. Isabel A. Alcantara, Graft Investigation and Prosecution Officer II (Member) Evangeline Y. Grafil, and Special Prosecution Officer III

(Member) Roberto T. Agagon with the recommending approval of Preliminary Investigation and Administrative Adjudication Bureau (PIAB) A Director Jose T. de Jesus, Jr., reviewed by Assistant Ombudsman Pelagio S. Apostol and approved by Tanodbayan (Ombudsman) Simeon V. Marcelo. Id. at 625-637.

[12] Id. at 713-714.

[13] Penned by Associate Justice Mario L. Guariña III with Associate Justices Marina L. Buzon and Santiago Javier Ranada, concurring. Id. at 890-891.

[14] Id. at 95.

[15] Penned by Associate Justice Mario L. Guariña III with Associate Justices Marina L. Buzon and Santiago Javier Ranada concurring. Id. at 98.

[16] Id. at 28-29.

[17] Id. at 35.

[18] Id. at 69.

[19] Id. at 1191-1193.

[20] 366 Phil. 86 (1999).

[21] 437 Phil. 289 (2002).

[22] 356 Phil. 787, 804-805 (1998).

[23] Section 6(a).

[24] Paragraph 6(a).

[25] It is in the special civil action for certiorari under Section 5, of Rule 65 of the Rules of Court, where the court or judge is required to be joined as party defendant or respondent. (See *Metropolitan Waterworks and Sewerage System v. Court of Appeals*, 227 Phil. 585, 588 (1986); and *Philippine Global Communications, Inc. v. Relova*, 229 Phil. 388, 390 (1986).

[26] *Calderon v. Solicitor General*, G.R. Nos. 103752-53, 25 November 1992, 215 SCRA 876, 881.

[27] *Civil Service Commission v. Dacoycoy*, supra note 20 at 104-105.

[28] 378 Phil. 466 (1999).

[29] G.R. No. 149999, 12 August 2005, 466 SCRA 624.

[30] Id. at 641-642.

[31] *Clavecilla v. Quitain*, G.R. No. 147989, 20 February 2006, 482 SCRA 623, 631.

[32] *Garbo v. Court of Appeals*, 327 Phil. 780, 784 (1996).

[33] *Blue Bar Coconut Philippines v. Tantuico, Jr.*, G.R. No. L-47051, 29 July 1988, 163 SCRA 716, 729.

[34] *Ganitano v. Secretary of Agriculture & Natural Resources*, 123 Phil. 354, 357 (1966).

[35] *Gravador v. Mamigo*, 127 Phil. 136, 142 (1967).

[36] *Rollo*, pp. 102-114.

[37] Id.

[38] Id. at 632.

[39] Florenz D. Regalado, REMEDIAL LAW COMPENDIUM, Vol. II (7[th] Revised edition), p. 636.

[40] Section 3, Rule 131 of the Rules of Court.

[41] Rollo, pp. 38-40.

[42] Records, pp. 213-220.

[43] Id. at 221-243.

[44] Id. at 244-245.

[45] Rollo, p. 94.

[46] Id. at 906.

[47] Depreciation is a reasonable allowance for deterioration of property arising out of its use or employment in business or trade. It is allowed as a deduction for income tax purposes only, but it is not actually paid out. (See Section 34(F) of the National Internal Revenue Code, as amended.)

[48] Records, pp. 11-12.

[49] Id. at 129-130.

[50] Rollo, p. 56.

[51] The 9 unofficial foreign trips taken by petitioner, plus the 17 foreign trips taken by his wife.

[52] Rollo, p. 13.

[53] Aklan Electric Cooperative, Inc. v. National Labor Relations Commission, 380 Phil. 225, 245 (2000); Philippine Fruit & Vegetable Industries, Inc. v. National Labor Relations Commission, 369 Phil. 929, 938 (1999).

[54] Records, p. 10.

[55] Rollo, pp. 619-620.

[56] Id. at 47-50.

[57] Id. at 368-319, 409-417, 577-601.

[58] Heirs of Velasquez v. Court of Appeals, 382 Phil. 438, 458 (2000).

[59] Rollo, pp. 91-94.

[60] Id. at 940-941.

[61] Record, p. 10.

[62] In re Impeachment of Judge Horilleno, 43 Phil. 212, 214 (1922).

[63] Brucal v. Desierto, G.R. No. 152188, 8 July 2005, 463 SCRA 151, 165.

[64] Camus v. Civil Service Board of Appeals, 112 Phil. 301, 306 (1961).

[65] Article 1173, Civil Code.

[66] *Juan v. Arias*, A.M. No. P-310, 23 August 1976, 72 SCRA 404, 410.

[67] 69 Phil. 635, 642-644 (1940).

[68] *Aklan Electric Cooperative v. National Labor Relations Commission*, supra note 53 at 245; *Philippine Fruit & Vegetable Industries, Inc. v. National Labor Relations Commission*, supra note 53 at 938.

[69] *Office of the Ombudsman v. Court of Appeals*, G.R. No. 160675, 16 June 2006, 491 SCRA 92, 116.

[70] SEC. 5. Administrative Adjudication; How Conducted. – (a) If the complaint is docketed as an administrative case, the respondent shall be furnished with a copy of the affidavits and other evidences submitted by the complainant, and shall be ordered to file his counter-affidavits and other evidences in support of his defense, within ten (10) days from receipt thereof, together with proof of service of the same on the complainant who may file reply affidavits within ten (10) days from receipt of the counter-affidavits of the respondent.

[71] This Court, in *Cavite Crusade for Good Government v. Judge Cajigal*, 422 Phil. 1 (2001), found Judge Cajigal guilty of violation of Section 7, Republic Act No. 3019, and Section 8, Republic Act No. 6713 for failing to file his Statements of Assets and Liabilities. However, considering his record in the judiciary and the fact that the Statements of Assets and Liabilities were later filed, this Court suspended him from office for a period of six months, without pay, ordered him to pay a fine in the amount of Twenty Thousand Pesos (P20,000.00), with a stern warning that a repetition of the same or similar acts will be dealt with more severely.

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