

THE OMBUDSMAN AND THE COMMISSIONER OF INTERNAL REVENUE, PETITIONERS, VS. BEATRIZ S. PELIÑO, RESPONDENT.

G.R. No. 179261. April 18, 2008

Ponente: YNARES-SATIAGO, J.

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YNARES-SATIAGO, J.:

This petition for review on certiorari assails the Decision[1] of the Court of Appeals dated January 26, 2007 in CA-G.R. SP No. 93409 which made permanent the Writ of Injunction enjoining herein petitioners from enforcing the Order of the Ombudsman dated August 31, 2005 preventively suspending respondent for six (6) months and its Resolution[2] of July 30, 2007 denying the motion for reconsideration.

On May 11, 2005, the Field Investigation Office (FIO) of the Office of the Ombudsman, as nominal complainant, through its Graft Investigation and Prosecution Officer Maria Olivia Elena A. Roxas, filed a complaint[3] against respondent Beatriz S. Peliño (PELIÑO) and Joseph Albert Peliño Cuaki (CUAKI) for violation of the following laws:

- Eighteen (18) counts of perjury under Article 183 of the Revised Penal Code, for not making a true detailed Statement of Assets, Liabilities and Net Worth (SALN);[4]
- Republic Act No. 6713 (R.A. No. 6713), § 8 in relation to § 11 thereof, in regard to the filing of SALNs;[5]
- Dishonesty and grave misconduct under § 22, paragraphs (a) and (c), Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292, as amended by Civil Service Commission Circular No. 19, series of 1999; and,
- Republic Act No. 1379 (R.A. 1379), for alleged unexplained wealth.[6]

Peliño is the head of the Bureau of Internal Revenue (BIR) Large Taxpayers' Document Processing and Quality Assurance Division, while CUAKI appears on record as PELIÑO's son by one Alfonso D. Cuaki (Alfonso). CUAKI's birth certificate lists Peliño and Alfonso as his parents who were married in Manila on July 16, 1975.

The complaint charges PELIÑO with illegally acquiring and accumulating the following property and investments, as well as incurring expenses and liabilities grossly disproportionate to her income and earning capacity as a government employee, and for not disclosing the same in her annual SALNs:[7]

- A house and lot in Pasig City acquired in 1986 (for P800,000.00) was not declared in her 1986-1988 SALNs, but only in her 1989-2003 SALNs;
- Two (2) lots in Quezon City (Transfer Certificate of Title, or TCT, Nos. 341855 (260 square meters, acquired on March 26, 1986) and 334240 (1,008 square meters, acquired on August 26, 1985) were not declared in her 1986 and 1987 SALNs. These two properties were sold to a certain Dante Gutierrez on April 13, 1988;
- An 84.5-square meter condominium unit (CCT 5188-R) with 12.5-square meter basement parking lot (CCT 5189-R) in San Juan (acquired for P800,000.00) allegedly bought by CUAKI in 1989 and registered in his

name. The deed of sale indicates that CUAKI was of legal age at the time of the execution of the deed, yet he was actually only about three (3) years old on said date. This property was not declared in PELIÑO's 1989-2003 SALNs;

- A house and lot in Antipolo City worth (i.e. market value) P240,000 and with improvements amounting to P501,125.00, which was not declared in her 1989-2003 SALNs. Records further indicate that a loan with a 20-year payment plan was obtained from the GSIS for the purchase thereof, which loan was fully paid after only 12 years;

- A three-storey building and lot in Rosario, Cavite worth P788,400.00 acquired in 1992 but which was not declared in her 1992-2003 SALNs;

- A 578-square meter residential lot in Tanza, Cavite (TCT 408006) acquired in 1993, but not declared in her 1993-2003 SALNs;

- A 1.58 hectare lot in Naic, Cavite (TCT 874663) acquired in 1994, and not declared in her 1994-2003 SALNs;

- A 2.09 hectare lot in Naic, Cavite (TCT 874664) acquired in 1994, and not declared in her 1994-2003 SALNs;

- A 4,475-square meter house and lot in Tagaytay City acquired in 1994, but declared only in her 1999-2002 SALNs. Acquisition cost is P1,000,000.00, while construction cost of the house is P1,251,961.08;

- A 2.48 hectare agricultural land in Tanza, Cavite (TCT 871630) acquired in 1999, but not disclosed in her 1999-2003 SALNs;

- In her 1996 and subsequent SALNs, PELIÑO did not declare her interest as incorporator in Israel Armour Phils., Inc. a marketing company established in 1996 where she has a total of P500,000.00 paid up capital contribution;

- A 2002 model Isuzu Fuego vehicle (plate number XEW 396) acquired in 2002 for P740,000.00 but not declared in her SALN;

- A 2004 model Toyota RAV 4 vehicle worth P1,101,000.00 acquired for cash in the name of CUAKI, who was only nineteen (19) years old then. Moreover, a certification from the BIR shows that from 1993-2003, CUAKI did not file an income tax return, indicating that during that time he did not have any source of income to be able to afford the said vehicle;

- PELIÑO's 2000-2002 SALNs discloses a P800,000.00 loan liability, which was reduced substantially to P200,000.00 in her 2003 SALN. Meanwhile, in her 2003 SALN, PELIÑO's cash in bank increased from P100,000.00 to P108,240.50 only. Thus, while her annual salary during 2002 was only P236,874.00, she was able to discharge a P600,000.00 loan liability during that year;

- Records from the Bureau of Immigration show that respondents frequently traveled abroad (from 1993-2003), for the most part twice every year (except for the year 2001), to such destinations as Hongkong, Seoul, Bangkok, Osaka, Xiamen, Los Angeles and Taipei. "Conservative estimates" place their total incurred expenses (airfare only) at P528,488.44, which most likely PELIÑO paid considering that CUAKI had no income during those years;

- When computed, the respondents' total unexplained wealth amounts to approximately P10,891,009.11, which is the difference between their 1986-2004 accumulated wealth of P P13,144,599.71, and P2,253,590.60, which is PELIÑO's total lawful income for that period.

In relation to the charge of dishonesty and grave misconduct, apart from her failure to file true detailed SALNs as

required, PELIÑO likewise omitted to declare in her Personal Data Sheet[8] that she has a son. On the contrary, she claims that she is single. CUAKE's Certificate of Live Birth[9] shows that PELIÑO and Alfonso are his parents, who were married on July 16, 1975, although subsequent verification would show that no marriage between the two ever took place.[10] PELIÑO herself is categorical in her claim that she never got married.[11]

The complaint likewise sought to place PELIÑO under preventive suspension for six (6) months without pay, in accordance with § 24 of the Ombudsman Act of 1989 (Republic Act No. 6770).[12]

On August 4, 2005, PELIÑO filed a Sworn Explanation detailing her defenses to the accusations against her.

In an Order[13] dated August 31, 2005, the Ombudsman placed PELIÑO under preventive suspension for a period of six (6) months and directed her to file her counter-affidavit and other controverting evidence. Deputy Ombudsman for Luzon Victor C. Fernandez found that the evidence of guilt is strong that PELIÑO committed acts of dishonesty and grave misconduct which would warrant her removal from office if proved. The dispositive portion thereof states:

WHEREFORE, pursuant to Section 9, Rule III of Administrative Order No. 17, in relation to Section 24 of Republic Act No. 6770, and pending the conduct of appropriate disciplinary proceedings, respondent BEATRIZ SANCHEZ PELIÑO is hereby placed under preventive suspension for six (6) months, effective upon receipt hereof.

The Honorable, the Commissioner, Bureau of Internal Revenue, Agham Road, Diliman, Quezon City is hereby furnished a copy of this Order for its implementation in accordance with law, with the directive to inform this Office of the action taken hereon.

The respondent is hereby directed to file her counter-affidavit and other controverting evidence to the said complaint, copy of which is hereto attached, within TEN (10) DAYS from receipt hereof in three (3) legible copies addressed to this Bureau x x x

SO ORDERED.[14]

PELIÑO filed an Urgent Motion to Lift Order of Preventive Suspension,[15] followed by a Supplemental Motion to Lift Order of Preventive Suspension[16] arguing thus:

- The accusations against her are based on "conclusory and presumptive facts of unexplained wealth";
- The complaint did not specify a transaction or transactions from which her alleged "unexplained wealth" was derived;
- The alleged acts of misconduct do not have a direct relation to the performance of her official duties in the BIR;
- The basis for the charge against her - unexplained wealth - is a ground for criminal, not administrative, prosecution. Thus, no preventive suspension may be imposed as an incident thereto, since forfeiture proceedings under R.A. 1379 are criminal in nature;
- The evidence of her guilt is not strong, as the supporting documents do not reflect the true and accurate circumstances surrounding her acquisition of the properties concerned. While there are perjury charges, they constitute a matter for criminal prosecution; suspension in an administrative proceeding is therefore improper;
- There is no need to suspend her because the reasons that justify its exigency and necessity - tampering with evidence (all of which are already in the possession of the complainant) and influencing of witnesses (there is only one, the complainant graft investigation and prosecution officer) - do not exist. Besides, her superior, Deputy Commissioner Kim S. Jacinto-Henares, had issued a certification[17] attesting to the necessity of her

presence at her office for the required work that must yet be done;

- She did not have any duty to report the properties registered in CUAKI's name because the latter is not her son, but a mere de facto guardian thereof. The law - § 8 of R.A. 6713 - requires disclosure only with respect to spouses and unmarried children under eighteen (18) years of age living with the declarant. To prove that CUAKI is not her son, she presents a sworn doctor's certificate[18] attesting to the fact that she had had a hysterectomy (specifically, the surgical removal of her uterus) on July 30, 1983, or two years before CUAKI was born.

- To further support her assertion that CUAKI is not her son, she presents the affidavit of one Carmencita Castillo,[19] the personal secretary of one Henry Go, Vice Chairman of Universal Robina Corporation, attesting to the fact that CUAKI is actually Go's son; that CUAKI was given up for adoption, but received financial support in the aggregate sum of P11,640,000.00 from 1985 up to 2000;

- Prescinding from the foregoing, all properties registered in CUAKI's name - the condominium unit in San Juan and the Toyota RAV 4 - were obtained from proceeds of the monetary support given by Go to PELIÑO for his alleged son;

- The other properties - the house and lot in Pasig City (Valle Verde V), house and lot in Tagaytay City, the Isuzu pickup - as well as the foreign travels were all purchased and taken using the money received (from Go) for CUAKI's regular financial support;

- The other properties - 3-storey building and lot in Rosario, Cavite, residential and agricultural lots in Tanza and Naic, Cavite, investment with Israel Armour Phils., Inc. - are being held by her in trust for the true owners thereof. Thus, there was no need to declare them in her SALN;

- Based on her detailed explanation as to the factual circumstances regarding the properties subject of the present inquiry, the prima facie presumption of illegal accumulation of wealth is controverted.

Meanwhile, or on November 11, 2005, PELIÑO filed her counter-affidavit.[20] On December 9, 2005, the FIO filed its comment[21] on the motion to lift the order of preventive suspension and its supplement.

Before her motion to lift order of preventive suspension and the supplemental motion thereto could be resolved, however, PELIÑO elevated the matter to the Court of Appeals via a petition for certiorari with application for the issuance of a temporary restraining order and/or writ of preliminary injunction against the petitioners claiming grave abuse of discretion in her being placed under preventive suspension while the charges against her were pending.

The appellate court granted PELIÑO's application for a temporary restraining order. On January 26, 2007, it promulgated the assailed Decision,[22] the dispositive portion of which reads as follows:

WHEREFORE, the petition is GRANTED. Accordingly, the Writ of Injunction issued on May 19, 2006, ENJOINING the Ombudsman, its agents and representatives, and the Commissioner of Internal Revenue from enforcing or implementing or otherwise giving effect to the Ombudsman's Order, dated August 31, 2005, placing petitioner on preventive suspension for six months, is made PERMANENT.

SO ORDERED.[23]

Petitioners filed a motion for reconsideration but it was denied hence this petition raising the following issues for resolution:

I
THE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION IN NOT DISMISSING THE PETITION FILED WITH IT OUTRIGHTLY BECAUSE OF PREMATURETY.

II

THE COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE WHICH IS NOT IN ACCORD WITH THE LAW AND PREVAILING JURISPRUDENCE.

In the meantime, it appears that on July 25, 2007, shortly after the appellate court rendered its January 26, 2007 Decision, the Ombudsman resumed proceedings and thereafter issued an Order requiring the parties to submit their respective position papers, after which the case shall be deemed submitted for decision. The FIO submitted its verified position paper on August 7, 2007, while PELIÑO submitted hers on September 14, 2007. On this account, respondent now seeks that the present petition be considered moot.

Preventive suspension is merely a preventive measure, a preliminary step in an administrative investigation; the purpose thereof is to prevent the accused from using his position and the powers and prerogatives of his office to influence potential witnesses or tamper with records which may be vital in the prosecution of the case against him.[24] The case having been submitted for resolution, there is no more need for preventively suspending PELIÑO.

However, there is a need to make a determination as to whether the Ombudsman acted with grave abuse of discretion in issuing the assailed order of preventive suspension. To do this, we must resolve the issue of whether the evidence of PELIÑO's guilt is strong as to justify the issuance of a preventive suspension order against her. In *Garcia v. Mojica*,[25] the Court held that the strength of the evidence to warrant preventive suspension may be properly raised in a petition for certiorari and prohibition, advancing the view that the equitable remedies under Rule 65 of the Rules of Court exist to provide prompt relief where an officer exercising judicial or quasi-judicial functions has acted with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law.

R.A. No. 6713, specifically § 8 in relation to § 11 thereof, requires that public officials file under oath their SALNs and a Disclosure of Business Interests and Financial Connections (DBIFC), under pain of imprisonment or fine, dismissal or removal, as well as disqualification, from public office. The two documents shall contain information on the declarant's properties, real and personal; improvements thereon; other assets such as investments, cash on hand or in banks, stocks, bonds and the like; their acquisition cost, assessed value and current fair market value.[26] § 1(a)(2), Rule VII of the Rules implementing R.A. No. 6713 states:

(2) The Disclosure of Business Interests and Financial Connections shall contain information on any existing interests in, or any existing connections with, any business enterprises or entities, whether as proprietor, investor, promoter, partner, shareholder, officer, managing director, executive, creditor, lawyer, legal consultant or adviser, financial or business consultant, accountant, auditor, and the like, the names and addresses of the business enterprises or entities, the dates when such interests or connections were established, and such other details as will show the nature of the interests or connections.

Pursuant to R.A. No. 3019, every public officer, after assuming office, and within the month of January of every other year thereafter, as well as upon the expiration of his term of office, or upon his resignation or separation from office, shall prepare and file 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.[27] A violation of this requirement proven in a proper administrative proceeding shall be sufficient cause for removal or dismissal of a public officer, even if no criminal prosecution is instituted against him.[28]

Under § 2 of R.A. No. 1379, 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. The elements which must concur for this prima facie presumption to apply are:

- (1) The offender is a public officer or employee;
- (2) He must have acquired a considerable amount of money or property during his incumbency; and,
- (3) Said amount 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.[29]

Thus, an incumbent public officer or employee's failure or omission to include in his SALN or DBIFC property which is manifestly out of proportion to his salary and to his other lawful income and the income from legitimately acquired property, may give cause to his prosecution under R.A. No. 1379, for harboring unexplained wealth. The proceedings thereunder are civil in nature, although forfeiture of the property involved is considered to be in the nature of a penalty.[30]

Perjury in solemn affirmation, on the other hand, is committed when the declarant omits to declare material information that is required of him under oath. It is an act which infirms a public officer's integrity and reliability, qualities that are necessarily connected with the discharge of his functions and duties.[31] In *Burgos v. Aquino*,[32] a court stenographer was suspended for six months for maintaining illicit relations with the complainant's husband and for perjury in not disclosing in her personal information sheet that she had a daughter as a result of that relationship. The Court held therein that her deliberate omission to disclose her child without a valid justification makes her liable for perjury.

Under the laws governing civil service, dishonesty is classified as a grave offense the penalty of which is dismissal from the service at the first infraction. A person aspiring to public office must observe honesty, candor and faithful compliance with the law. Nothing less is expected. This ideal standard ensures that only those of known probity, competence and integrity are called to the challenge of public service.[33] It is understood to imply a disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.[34] Dishonesty is a malevolent act that puts serious doubt upon one's ability to perform his duties with the integrity and uprightness demanded of a public officer or employee.[35]

Republic Act No. 6770 or the Ombudsman Act of 1989, with respect to the imposition of preventive suspension, provides that

SECTION 24. Preventive Suspension.—The Ombudsman or his Deputy may preventively suspend any officer or employee under his authority pending an investigation, if in his judgment the evidence of guilt is strong, and (a) the charge against such officer or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; (b) the charges would warrant removal from the service; or (c) the respondent's continued stay in office may prejudice the case filed against him.

The preventive suspension shall continue until the case is terminated by the Office of the Ombudsman but not more than six months, without pay, except when the delay in the disposition of the case by the Office of the Ombudsman is due to the fault, negligence or petition of the respondent, in which case the period of such delay shall not be counted in computing the period of suspension herein provided. (Emphasis and underscoring supplied)

In preventively suspending a public officer or employee pending investigation, the law does not require that all the four requirements should concur. What is required is merely a showing that the evidence of guilt is strong; and that any of the three (to wit: (a) the charge involves dishonesty, oppression or grave misconduct or neglect in the

performance of duty; (b) the charge warrants removal from the service; or (c) the respondent's continued stay in office may prejudice the case filed against him), is present. The immediate issuance of a preventive suspension order is required to prevent the subject of the suspension from committing further irregularities. The same is in consonance with Section 15 of R.A. No. 6770 which exhorts the Ombudsman to give priority to complaints filed against high ranking government officials and/or those occupying supervisory positions, complaints involving grave offenses as well as complaints involving large sums of money and/or properties.[36]

PELIÑO is charged with eighteen (18) counts of perjury under Article 183 of the Revised Penal Code; violation of R.A. No. 6713, § 8 in relation to § 11 thereof; dishonesty and grave misconduct; and violation of R.A. No. 1379. These are all in relation to PELIÑO's failure to disclose material information in her Personal Data Sheet and Statement of Assets, Liabilities and Net Worth (SALN).

In her counter-affidavit, PELIÑO admits such non-disclosure but claims that her alleged "unexplained wealth" came from, among others, a certain Henry Go, former Vice Chairman of Universal Robina Corporation, who is the biological father of CUAKI. She claims that in 1985, Alfonso brought CUAKI - then a baby - to her home, explaining to her that the boy's father was one of his "business buddies" and that his mother had abandoned him at the hospital. Thereafter, Alfonso had caused the boy to be registered as "Joseph Albert Peliño Cuaki"; that in the boy's birth certificate, it was made to appear that she and Alfonso were married and the boy was their son; but that she never signed the said birth certificate and that her signature which appears therein is a forgery. She claims that she was "shocked, alarmed and angry" at Alfonso "for what he did," and she insisted that he "rectify" the child's birth certificate, but that before he could do so, Alfonso died. Apparently, nothing was ever done to correct the alleged falsified birth papers of the boy, despite the fact that he grew up with PELIÑO, who "learned to love and treat (CUAKI) as (her) own flesh and blood," "nurtured him every day of his life and watched him grow as a proud mother would." [37]

PELIÑO then goes on to claim that due to her constant prodding, Alfonso finally divulged to her that CUAKI's father was Henry Go; that Go later confirmed it to her and he allegedly asked her to take care of his child for him. PELIÑO promised to do so, making a "covenant with God to hold (CUAKI) as (her) own child." [38]

Rosa Cuaki, Alfonso's wife, allegedly could not believe that her husband could have had a child outside of their marriage, so she filed a criminal complaint against PELIÑO for falsification of CUAKI's birth certificate which was dismissed by the Secretary of the Department of Justice.

PELIÑO further insists that Henry Go (who died in 2000), as the supposed father of CUAKI, provided her with the funds - totaling P11,640,000.00 (from 1985 up to 2000) - which were used to purchase the Valle Verde (Pasig City) residence, the San Juan condominium, the house and lot in Tagaytay City, the Isuzu Fuego pickup and the Toyota RAV4, as well as to finance all but one of their yearly trips abroad. She claims that she did not include the Valle Verde residence in her 1986-1988 SALNs because she "regarded" the property as belonging to CUAKI, although the same was in her name. As for the San Juan condominium, the Tagaytay City house and lot, the Isuzu Fuego pickup and the Toyota RAV4, she did not include the same in her SALNs because the money used to purchase the same was not hers, but that it came from Go - proceeds from the financial support that was set aside for CUAKI and administered by her. According to her, the Isuzu pickup was necessary for the then "on-going construction of the house in Tagaytay," while the RAV4 was obtained for CUAKI who was then nineteen years old, to transport him to and from school.

As for the other properties, PELIÑO offers the following explanation, to wit:

Three-storey building and lot in Rosario, Cavite - she did not declare the same in her SALNs because she was a mere trustee of her siblings, who contributed money to purchase the lot and construct the building. PELIÑO

admits though that she is one of the contributors, thus making her a co-owner of the same;[39]

Residential lot in Tanza, Cavite (TCT 408006) - she claims she is a mere trustee of one Seginanda Arayata, to whom she lent P50,000.00. The property is merely collateral that ensures the payment of the loan;

Lots in Naic, Cavite (TCTs 874663 and 874664) and agricultural land in Tanza, Cavite (TCT 871630) - she claims these lots were being held by her in trust for the real owners, whom she helped in one way or another.

Investment in Israel Armour Phils., Inc. - she alleges that Alfonso established said company for the purpose of selling Israeli-made bulletproof equipment, and he made her a mere nominee, "with no genuine interest in its financial success."

Going now to the issue of whether or not the evidence against PELIÑO is strong as would justify preventive suspension, PELIÑO insists, that

Preventive suspension is justified only (a) in cases of dishonesty or grave misconduct, which ultimately is not the charge against her; (b) where the evidence of her guilt is strong, which is hardly the case; and (c) where continued stay in office will prejudice the just, fair, and independent disposition of the administrative case, which in her case is like saying that lighting a candle causes global warming.[40]

Quite the contrary, however, we have held time and again that what the law requires is merely that, first, the evidence of guilt must be strong; and second, that at least any one of the three circumstances - (1) that the charge involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; (2) that the charge warrants removal from the service; or (3) that the respondent's continued stay in office may prejudice the case filed against him - is present.

In PELIÑO's case, we find that evidence of her guilt is strong. The evidence does not show that CUAKI is Go's son, such that it could be believed that PELIÑO, who claims to act as the de facto guardian and administrator of the boy's properties, received a total of P11,640,000.00 from 1985 up to 2000 as financial support from Go, which she used to purchase some of the properties in question. Alfonso and PELIÑO are CUAKI's parents, as the latter's certificate of live birth shows. Although the same has been denied by PELIÑO herself, who claims that CUAKI's birth certificate is a forged document, the said document subsists and has not been duly voided. Being a public document, CUAKI's certificate of live birth offers prima facie evidence of filiation and a high degree of proof is needed to overthrow the presumption of truth contained therein. This is pursuant to the rule that entries in official records made in the performance of his duty by a public officer are prima facie evidence of the facts therein stated. The evidentiary nature of such document must, therefore, be sustained in the absence of strong, complete and conclusive proof of its falsity or nullity.[41]

This being the case, it follows that we cannot, under the law, consider PELIÑO's claim that she used the amount of P11,640,000.00 which she allegedly received from Go (which was intended for CUAKI) to acquire the Valle Verde (Pasig City) residence, the San Juan condominium, the house and lot in Tagaytay City, the Isuzu Fuego pickup and the Toyota RAV4, as well as to finance her yearly trips abroad with CUAKI.

With respect to the other properties registered in PELIÑO's name but which she did not declare in her SALNs:

- Three-storey building and lot in Rosario, Cavite. Although PELIÑO claims that she is a mere trustee of her siblings, who contributed money to purchase the lot and construct the building, she admits[42] that she is one of the contributors, thus making her a co-owner of the property. She should have declared the extent of her interest therein in her SALNs for the years 1992 to 2003;

- Residential lot in Tanza, Cavite (TCT 408006). It appears that PELIÑO obtained title by foreclosing on the property, based upon her admission that the owner, one Seginanda Arayata, owed her money. If the property

constituted mere collateral, then it would have been unnecessary to place the same in PELIÑO's name; a mortgage deed would have sufficed. Nonetheless, PELIÑO should have declared this property in her SALNs for the years 1992 to 2003;

- 1.58 hectare lot in Naic, Cavite (TCT 874663) and 2.09 hectare lot in Naic, Cavite (TCT 874664). Acquired in 1994, but not declared in her 1994-2003 SALNs, PELIÑO claims she holds these properties in trust for the heirs of the late Quintin Javier, yet offers no trust document or the written statement or explanation of any one of the heirs to attest to the truth of her claim.

- P500,000 Investment in Israel Armour Phils., Inc. If PELIÑO was a mere nominee of Alfonso in said company, there should be a document or some other evidence to show this fact. Instead, PELIÑO failed to show any; there is therefore no justification in law for her failure to disclose this interest in her SALNs since her acquisition of the same in 1996. As far as the law is concerned, PELIÑO is the declared owner of the investment.

In *Concerned Taxpayer v. Doblada*,^[43] a sheriff of the regional trial court was dismissed from the service for violating § 7 of R.A. No. 3019 and § 8 of R.A. No. 6713 for his failure to declare a true and detailed SALN for a certain number of years during his stay in government. There were discrepancies, inconsistencies and omissions in his SALNs, consisting of properties and business interests acquired but which were declared in his SALNs only two or more years later.

In *Montemayor v. Bundalian*,^[44] the Court upheld the dismissal of a Regional Director of the Department of Public Works and Highways (DPWH) for unexplained wealth, when he could not sufficiently explain why a piece of property which he claimed belonged to his sister was registered in his name.

PELIÑO claims she is not CUAKI's biological parent; and that in 1983, or two years before CUAKI was born, she had her uterus surgically removed. She blames Alfonso for obtaining the boy's fake birth papers wherein she is declared as the boy's mother. This is, however, a matter of defense which is appropriately threshed out during trial. As against her self-serving denials, the boy's certificate of live birth prevails.

Even granting that the claim of forgery is true and that she had nothing to do with the commission thereof, an inquiry should be made into the extent of PELIÑO's participation in the fraud, taking into consideration that all these years, she may have condoned the use of these documents, or herself used them. During their trips abroad,^[45] CUAKI who was then only a minor^[46] would not have been allowed by the immigration authorities to travel along with PELIÑO without the requisite passport and written permission from CUAKI's real parents, whom PELIÑO does not even know at all, as the evidence suggests. Even assuming that CUAKI's real parents were known to her, they would not have been able to give their written consent just the same, because CUAKI's birth papers declare PELIÑO and Alfonso as his parents. In such event, PELIÑO may be criminally charged with use of falsified documents, as well as administratively, for dishonesty and grave misconduct. Even if it were true that she did not participate in the actual commission of the forgery, she virtually became a party to the fraud, privy to the use of the falsified documents or using them herself, took advantage of it by benefiting from the practical and legal consequences engendered by their mere existence and use.

Finally, CUAKI's birth certificate constitutes proof that PELIÑO, who was working with the BIR,^[47] maintained an adulterous relationship with Alfonso, who was married to Rosa Cuaki.^[48] In addition to the accusations made against her, PELIÑO should be charged with immorality as well.

There likewise appears to be strong evidence to suggest that, apart from failing to disclose the subject properties in her SALNs, PELIÑO is harboring unexplained wealth as well, considering the sheer number of real and personal properties acquired by her in her name and in that of CUAKI. During the period 1993 to 1994, PELIÑO

and CUAKI took four (4) and two (2) foreign trips each, respectively,[49] and PELIÑO acquired no less than four (4) sizable pieces of real property: a 578-square meter residential lot in Tanza, Cavite (TCT 408006); a 1.58 hectare lot in Naic, Cavite (TCT 874663); a 2.09 hectare lot in Naic, Cavite (TCT 874664); and a 4,475-square meter house and lot in Tagaytay City. Yet in her 1993-1994 SALNs,[50] she did not declare any cash in bank; nor is there any indication in her previous (1986-1992) SALNs[51] that she had property which she may have sold (and which is no longer declared in her 1993 and 1994 SALNs) or any business interest from which to draw funds to be able to afford to acquire the said four pieces of property; nor did her liabilities increase (to show, for example, that she took a loan for the purchase of these properties); nor did she inherit said properties; nor was she a donee thereof, as the evidence shows that she appears to have acquired all four by purchase totaling, per purchase price and estimate of the FIO based on market value, P1,063,508.00.[52] In 1993, PELIÑO's annual salary was only P56,522.00; and, for 1994, P65,832.00.[53] The discrepancy is too obvious to ignore.

Indeed, PELIÑO's admissions, coupled with the evidence on record, have farther-reaching implications than the appellate court was willing to consider. The Ombudsman is not guilty of abuse of discretion in placing PELIÑO under preventive suspension because there is enough strong evidence to engender the belief that she is guilty of the accusations lodged against her. Besides, the admissions contained in her defense leave us with more questions than answers, and may have opened a Pandora's box worthy of further serious inquiry by the petitioners.

Thus, we do not subscribe to PELIÑO's argument in her Comment,[54] borrowed from the appellate court's pronouncement, that the FIO complaint, apart from alleging non-disclosure of material facts in the SALNs, did not show any other positive or specific unlawful acts on her part that will support the charge of dishonesty, grave misconduct, lack of integrity or untrustworthiness. Her failure to disclose in her personal data sheet and her SALNs that CUAKI was her son constitutes an act of deception and dishonesty, in that by not disclosing the fact, she is effectively shielding herself from a possible charge of immorality or falsification. Moreover, the non-disclosure of a substantial number of properties opens her to a charge of harboring unexplained wealth, since the acquisition of the undisclosed properties was manifestly out of proportion to her salary as earlier on demonstrated herein.

Considering PELIÑO's high rank and delicate office, the gravity of the charges against her - dishonesty, grave misconduct, accumulation of unexplained wealth and perjury, and the possibility of filing other charges as a result of her admissions in her pleadings, such as immorality, falsification and/or use of falsified documents - which merit dismissal from service as the corresponding penalty, it may not be said that the Office of the Ombudsman exercised its discretion in a despotic and arbitrary manner; preventive suspension was an option which it could properly exercise under the circumstances.

There is nothing improper in suspending an officer pending his investigation and before the charges against him are heard.[55] The immediate issuance of such order is required to prevent the subject of the suspension from committing further irregularities. Such prompt action, moreover, is in consonance with § 15 of R.A. No. 6770 which exhorts the Ombudsman to give priority to complaints filed against high ranking government officials and/or those occupying supervisory positions, those involving grave offenses as well as those involving large sums of money and/or properties.[56]

Ultimately, the Ombudsman is given the discretion to decide when the evidence of guilt is strong. This fact is bolstered by § 24 of R.A. No. 6770, which expressly left such determination of guilt to the judgment of the Ombudsman on the basis of the administrative complaint.[57]

In the instant case, the order of preventive suspension was issued only after PELIÑO filed a sworn explanation detailing her defenses to the charges made against her. It may thus be said that the order for her preventive

suspension was issued after assessment of her defenses. Being so, we find no abuse, much less grave abuse of the exercise of this discretion.

WHEREFORE, the petition is GRANTED. The assailed Decision of the Court of Appeals in CA-G.R. SP No. 93409 dated January 26, 2007 which made permanent the Writ of Injunction enjoining petitioners from preventively suspending petitioner and the Resolution dated July 30, 2007 denying the Motion for Reconsideration are hereby ANNULLED and SET ASIDE.

However, considering that OMB-C-A-05-0237-F (LSC) has been submitted for decision, respondent Beatriz S. Peliño may no longer be placed under preventive suspension, as the necessity therefor no longer exists.

SO ORDERED.

Puno, C.J., Quisumbing, Austria-Martinez, Corona, Carpio-Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, Leonardo-De Castro, and Brion, JJ., concur.
Carpio, J., on leave.

[1] Penned by Associate Justice Magdangal M. de Leon and concurred in by Associate Justices Conrado M. Vasquez and Mariano C. del Castillo; rollo, pp.138-158.

[2] Rollo, pp. 159-161.

[3] Docketed as OMB-C-A-05-0237-F (LSC). Rollo, pp. 25-35.

[4] Art. 183. False testimony in other cases and perjury in solemn affirmation. -- The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period shall be imposed upon any person, who knowingly makes untruthful statements and not being included in the provisions of the next preceding articles, shall testify under oath, or make an affidavit, upon any material matter before a competent person authorized to administer an oath in cases in which the law so requires.

[5] An Act Establishing a Code of Conduct and Ethical Standards for Public Officials and Employees.

SECTION 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) Statements 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 a 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:

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

The documents must be filed:

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

Husband and wife who are both public officials or employees may file the required statements jointly or separately.

The Statements of Assets, Liabilities and Net Worth and the Disclosure of Business Interests and Financial Connections shall be filed by:

- (1) Constitutional and national elective officials, with the national office of the Ombudsman;
- (2) Senators and Congressmen, with the Secretaries of the Senate and the House of Representatives, respectively; Justices, with the Clerk of Court of the Supreme Court; Judges, with the Court Administrator; and all national executive officials with the Office of the President.
- (3) Regional and local officials and employees, with the Deputy Ombudsman in their respective regions;
- (4) Officers of the armed forces from the rank of colonel or naval captain, with the Office of the President, and those below said ranks, with the Deputy Ombudsman in their respective regions; and
- (5) All other public officials and employees, defined in Republic Act No. 3019, as amended, with the Civil Service Commission.

(b) Identification and disclosure of relatives. -- It shall be the duty of every public official or employee to identify and disclose, to the best of his knowledge and information, his relatives in the Government in the form, manner and frequency prescribed by the Civil Service Commission.

(c) Accessibility of documents. -- (1) Any and all statements filed under this Act, shall be made available for inspection at reasonable hours.

(2) Such statements shall be made available for copying or reproduction after ten (10) working days from the time they are filed as required by law.

(3) Any person requesting a copy of a statement shall be required to pay a reasonable fee to cover the cost of reproduction and mailing of such statement, as well as the cost of certification.

(4) Any statement filed under this Act shall be available to the public for a period of ten (10) years after receipt of the statement. After such period, the statement may be destroyed unless needed in an ongoing investigation.

(d) Prohibited acts. -- It shall be unlawful for any person to obtain or use any statement filed under this Act for:

- (a) any purpose contrary to morals or public policy; or
- (b) any commercial purpose other than by news and communications media for dissemination to the general public.

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

in the discretion of the court of competent jurisdiction, disqualification to hold public office.

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

(c) Private individuals who participate in conspiracy as co-principals, accomplices or accessories, with public officials or employees, in violation of this Act, shall be subject to the same penal liabilities as the public officials or employees and shall be tried jointly with them.

(d) The official or employee concerned may bring an action against any person who obtains or uses a report for any purpose prohibited by Section 8 (d) of this Act. The Court in which such action is brought may assess against such person a penalty in any amount not to exceed twenty-five thousand pesos (P25,000). If another sanction hereunder or under any other law is heavier, the latter shall apply.

[6] An Act Declaring Forfeiture In Favor Of The State of Any Property Found To Have Been Unlawfully Acquired By Any Public Officer Or Employee And Providing For The Proceedings Therefor.

[7] CA rollo, pp. 45-169.

[8] Id. at 45.

[9] Id. at 156.

[10] Id. at 157 (Certification by the Manila Civil Registry Office).

[11] Id. at 3.

[12] SECTION 24. Preventive Suspension. – The Ombudsman or his Deputy may preventively suspend any officer or employee under his authority pending an investigation, if in his judgment the evidence of guilt is strong, and (a) the charge against such officer or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; (b) the charges would warrant removal from the service; or (c) the respondent's continued stay in office may prejudice the case filed against him.

The preventive suspension shall continue until the case is terminated by the Office of the Ombudsman but not more than six months, without pay, except when the delay in the disposition of the case by the Office of the Ombudsman is due to the fault, negligence or petition of the respondent, in which case the period of such delay shall not be counted in computing the period of suspension herein provided.

[13] Rollo, pp. 36-47.

[14] Id. at 45-47.

[15] Id. at 48-58.

[16] Id. at 59-84.

[17] CA rollo, p. 193.

[18] Id. at 214.

[19] Id. at 253.

[20] Rollo, pp. 72-84.

[21] Id. at 85-89.

[22] Id. at 138-158.

- [23] Id. at 21.
- [24] Quimbo v. Acting Ombudsman, G.R. No. 155620, August 9, 2005, 466 SCRA 277, 281.
- [25] G.R. No. 139043, September 10, 1999, 314 SCRA 207.
- [26] CA rollo, pp. 45-169.
- [27] Section 7.
- [28] Section 9.
- [29] Republic v. Sandiganbayan, G.R. No. 152154, July 15, 2003, 406 SCRA 190.
- [30] Garcia v. Sandiganbayan, G.R. No. 165835, June 22, 2005, 460 SCRA .
- [31] De Guzman v. Delos Santos, A.M. No. 2002-8-SC. December 18, 2002, 394 SCRA 210.
- [32] A.M. No. P-94-1081, October 25, 1995, 249 SCRA 504.
- [33] Supra note 31 at 219.
- [34] Wooden v. Civil Service Commission, G.R. No. 152884, September 30, 2005, 471 SCRA 512, 526.
- [35] Civil Service Commission v. Sta. Ana, A.M. No. OCA-01-5, 1 August 2002, 386 SCRA 1, 11.
- [36] Castillo-Co v. Barbers, G.R. No. 129952, June 16, 1998, 290 SCRA 717, 724.
- [37] Rollo, p. 74.
- [38] Id. at 75.
- [39] Id. at 77.
- [40] Respondent's Comment; rollo, p. 173.
- [41] Cabais vs. Court of Appeals, G.R. Nos. 106314-15, October 8, 1999, 316 SCRA 338, 343.
- [42] Rollo, p.77.
- [43] A.M. No. P-99-1342, June 8, 2005, 459 SCRA 356.
- [44] G.R. No. 149335, July 1, 2003, 405 SCRA 264.
- [45] CA rollo, at 167 and 169.
- [46] Id. Some of the trips were taken when CUAKI was between 7 and 17 years of age.
- [47] PELIÑO started her employment with the BIR in 1976.
- [48] CUAKI was born in 1985; Alfonso and Rosa Cuaki were married on June 25, 1967; CA rollo, p. 256.
- [49] CA rollo, pp. 167 and 169.
- [50] Id. at 56-57.
- [51] Id. at 58-67.
- [52] Rollo, p. 26.
- [53] Id.

[54] Id. at 188.

[55] Garcia v. Pajaro, G.R. No. 141149. July 5, 2002, 384 SCRA 122.

[56] Supra., note 36.

[57] Buenaseda v. Flavier, G.R. No. 106719, September 21, 1993, 226 SCRA 645, 655.

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