

OFFICE OF THE OMBUDSMAN, PETITIONER, VS. NIETO A. RACHO, RESPONDENT.*G.R. No. 185685. January 31, 2011*

Ponente: MENDOZA, J.

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This petition for review on certiorari[1] under Rule 45 of the Rules of Court filed by the Office of the Ombudsman (Ombudsman) assails the February 21, 2008 Decision[2] and November 20, 2008 Resolution[3] of the Court of Appeals-Cebu (CA) in CA-G.R. CEB-SP No. 00694 which reversed and set aside the administrative aspect of the April 1, 2005 Joint Order[4] of the Office of the Ombudsman-Visayas.

The April 1, 2005 Joint Order of the Ombudsman found respondent Nieto A. Racho (Racho) guilty of dishonesty and ordered him dismissed from the service with forfeiture of all benefits and perpetual disqualification from public office. The assailed CA Decision, however, found Racho guilty of negligence only and reduced the penalty to suspension from office for six months, without pay.

From the records, it appears that DYHP Balita Action Team (DYHP), in a letter dated November 9, 2001, reported to Deputy Ombudsman for the Visayas, Primo Miro, a concerned citizen's complaint regarding the alleged unexplained wealth of Racho, then Chief of the Special Investigation Division of the Bureau of Internal Revenue (BIR), Cebu City.[5] To support the allegation, the complainant attached copies of bank certifications, all issued in June of 1999, by Metrobank Cebu (Tabunok Branch),[6] BPI Cebu (Mango Branch),[7] and PCI Bank (Magallanes Branch).[8] In total, Racho appeared to have an aggregate bank deposit of P5,798,801.39.

Acting on the letter, the Ombudsman launched a fact-finding investigation and directed the BIR to submit Racho's Statements of Assets, Liabilities and Net Worth (SALN) from 1995 to 1999. BIR complied with the order and gave copies of Racho's SALN. Soon, the Ombudsman found that Racho did not declare the bank deposits in his SALN, as mentioned in the DYHP's letter. Accordingly, the Ombudsman filed a Complaint for Falsification of Public Document under Article 171 of the Revised Penal Code (OMB-V-C-02-0240-E) and Dishonesty (OMB-V-A-02-0214-E) against Racho.

The Ombudsman, in its August 21, 2002 Memorandum, adopted the Final Evaluation Report[9] of Administrative Officer Elpidio Montecillo as the sworn complaint. Thereafter, Racho submitted his counter-affidavit attacking the procedural infirmities of the complaint against him.[10] At the scheduled clarificatory hearing, Racho invoked his right to remain silent. On January 02, 2003, Graft Prosecution Officer (GPO) Pio Dargantes did not give weight to the bank documents because they were mere photocopies. As a result, he dismissed the complaint for dishonesty (OMB-V-A-02-214-E) due to insufficiency of evidence.[11]

On review, Director Virginia Palanca, through a memorandum dated May 30, 2003,[12] decreed that Racho's act of not declaring said bank deposits in his SALN, which were disproportionate to his and his wife's salaries, constituted falsification and dishonesty. She found Racho guilty of the administrative charges against him and imposed the penalty of dismissal from service with forfeiture of all benefits and perpetual disqualification to hold

public office.

Racho moved for reconsideration[13] but his motion was denied in an Order dated July 15, 2003.[14]

Racho appealed the said order of dismissal to the CA. On January 26, 2004, the CA reversed the Ombudsman's ruling and ordered the reinvestigation of the case.[15]

In compliance with the CA's decision, the Ombudsman reinvestigated the case. In his Comment,[16] Racho denied sole ownership of the bank deposits. In support of his position, he presented the Joint Affidavit[17] of his brothers and nephew, particularly Vieto, Dean and Henry Racho, allegedly executed on December 18, 2004. In the joint sworn statement, it was alleged that he and his siblings planned to put up a business and eventually established "Angelsons Lending and Investors, Inc.," a corporation registered[18] with the Securities and Exchange Commission (SEC) on April 30, 1999. To prove their agreement, Racho presented a Special Power of Attorney,[19] dated January 28, 1993, wherein his brothers and nephew designated him as the trustee of their investments in the business venture they were intending to put up and authorized him to deposit their money into his questioned bank accounts to defray business-related expenses. Racho averred that his wife also set up a small business named "Nal Pay Phone Services" registered under the Department of Trade and Industry (DTI) on April 30, 1999.[20]

On January 10, 2005, in its Reinvestigation Report, the Office of the Ombudsman-Visayas found no reason to deviate from its previous findings against Racho.[21] Thus, the Reinvestigation Report disposed:

With all the foregoing, undersigned finds no basis to change, modify nor reverse her previous findings that there is probable cause for the crime of FALSIFICATION OF PUBLIC DOCUMENT, defined and penalized under Article 171 of the Revised Penal Code, against respondent Nieto A. Racho for making untruthful statements in a narration of facts in his SALN. As there are additional facts established during the reinvestigation, re: failure of Mr. Racho to reflect his business connections, then the Information filed against him should be amended to include the same. Let this Amended Information be returned to the court for further proceedings.

SO RESOLVED.[22]

Racho filed a motion for reconsideration[23] but the Ombudsman denied it in its April 1, 2005 Joint Order.[24]

Racho elevated the case to the CA by way of a petition for review[25] under Rule 43 of the Rules of Court assailing the administrative aspect of the April 1, 2005 Joint Order of the Ombudsman-Visayas.

On February 21, 2008, the CA rendered the challenged decision. Citing *Pleyto v. Philippine National Police (PNP)-Criminal Investigation and Detection Group (CIDG)*,[26] the CA opined that in charges of dishonesty "intention is an important element in its commission." [27] The CA ruled that Racho "never denied the existence of the bank accounts. Instead, he undertook to explain that those were not wholly owned by him and endeavored to secure and submit documentary evidence to buttress explanation. Judging from his conduct, there is want of intent to conceal information. Intent, as held in the *Pleyto* case, is essential to constitute dishonesty and without the intent to commit a wrong, the public officer is not dishonest, albeit he is adjudged to be negligent." [28]

Accordingly, the decretal portion of the CA decision reads:

WHEREFORE, the instant Petition for Review on the administrative aspect of Ombudsman Visayas JOINT ORDER dated April 1, 2005 is hereby GRANTED. The said JOINT ORDER, in so far as it affirmed the petitioner's guilt for dishonesty and imposed the penalty of dismissal with forfeiture of all benefits and perpetual disqualification to hold office is hereby REVERSED and SET ASIDE. Petitioner is adjudged GUILTY of NEGLIGENCE in accomplishing his Statement of Assets, Liabilities and Networth (SALN) and is

ORDERED to be SUSPENDED FROM OFFICE WITHOUT PAY FOR A PERIOD OF SIX (6) MONTHS.[29]

The Ombudsman moved for reconsideration,[30] but the CA stood by its decision and denied said motion in its November 20, 2008 Resolution.[31]

Hence, this petition.

In its Memorandum,[32] the Office of the Ombudsman submits the following:

ISSUES

I.

THE ACTIVE PARTICIPATION OF THE OFFICE OF THE OMBUDSMAN IN THE INSTANT CASE IS SANCTIONED BY THE MANDATE OF THE OFFICE AS AN "ACTIVIST WATCHMAN."

II

THE HONORABLE COURT OF APPEALS' RELIANCE ON A FICTITIOUS DOCUMENT WHOSE AUTHENTICITY HAS BEEN PUT TO QUESTION IN A SEPARATE CRIMINAL CASE PRESENTS AN EXCEPTION TO THE GENERAL RULE THAT AN APPEAL BY CERTIORARI UNDER RULE 45 SHOULD RAISE ONLY QUESTIONS OF LAW CONSIDERING THAT -

THE OFFICE OF THE OMBUDSMAN FOUND THE SPECIAL POWER OF ATTORNEY AND THE JOINT AFFIDAVIT OFFERED AS EVIDENCE BY RESPONDENT TO BE SPURIOUS, HOWEVER, THE HONORABLE COURT OF APPEALS WITHOUT RULING ON THE AUTHENTICITY OF THE SAME DOCUMENTS, RELIED ON THE SAME TO FIND RESPONDENT GUILTY ONLY OF NEGLIGENCE;

AND

THE COURT OF APPEALS' FINDING OF LACK OF INTENT ON THE PART OF RESPONDENT RACHO TO CONCEAL INFORMATION IS NOT BASED ON THE EVIDENCE

III

THE OFFICE OF THE OMBUDSMAN HAS REPEATEDLY RAISED THE SPURIOUS CHARACTER OF THE JOINT AFFIDAVIT AND SPECIAL POWER OF ATTORNEY BEFORE THE COURT OF APPEALS. THE COUNTER-AFFIDAVITS COUNTERING ITS AUTHENTICITY WAS SUBMITTED FOR THE FIRST TIME BEFORE THE COURT OF APPEALS, AND NOT BEFORE THIS HONORABLE COURT.

IV

THE DECISIONS, RESOLUTIONS AND ORDERS OF THE OFFICE OF THE OMBUDSMAN ARE IMMEDIATELY EXECUTORY EVEN PENDING APPEAL UNDER SECTION 7, RULE III OF THE RULES OF PROCEDURE OF THE OFFICE OF THE OMBUDSMAN, AS AMENDED; CONSEQUENTLY THE WRIT OF INJUNCTION EARLIER ISSUED SHOULD BE LIFTED.[33]

The Ombudsman argues that the CA failed to see the discrepancies on Racho's Special Power of Attorney itself "such as a statement that the date of registration of the Nal Pay Phone Services was 'last April 30, 1999,' when the Special Power of Attorney had been allegedly executed on 28 January 1993." [34] The Ombudsman insists that these inconsistencies should have alerted the CA to delve more deeply into the case and check if Racho's explanation through the supposed dubious documents should be given weight at all.[35]

THE COURT'S RULING

The Court finds merit in the petition.

As a general rule, only questions of law may be raised in a petition for review on certiorari because the Court is not a trier of facts.[36] When supported by substantial evidence, the findings of fact of the CA are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the following recognized exceptions:

- (1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;
- (2) When the inference made is manifestly mistaken, absurd or impossible;
- (3) Where there is a grave abuse of discretion;
- (4) When the judgment is based on a misapprehension of facts;
- (5) When the findings of fact are conflicting;
- (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;
- (7) When the findings are contrary to those of the trial court;
- (8) When the findings of fact are conclusions without citation of specific evidence on which they are based;
- (9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and
- (10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.[37] [Emphasis supplied]

Undeniably, the findings of fact of the Ombudsman are different from those of the CA. Thus, the Court finds it necessary to take a second look at the factual matters surrounding the present case.

From the records, it is undisputed that Racho admitted the bank accounts, but explained that the deposits reflected therein were not entirely his. Racho proffered that some of the money came from his brothers and nephew as part of their contribution to the business that they had planned to put up. He presented a Special Power of Attorney (SPA), dated January 28, 1993, and Joint Affidavit of his siblings that echoed his explanation.

In the appreciation of the said documents, the Ombudsman and the CA took opposing views. The Ombudsman did not give weight to the SPA due to some questionable entries therein. The CA, on the other hand, recognized the fact that Racho never denied the existence of the bank accounts and accepted his explanation. Accordingly, the CA decreed that although Racho was remiss in fully declaring the said bank deposits in his SALN, the intent to make a false statement, as would constitute dishonesty, was clearly absent.

The pivotal issue in this case, however, is whether or not Racho's non-disclosure of the bank deposits in his SALN constitutes dishonesty.

The Court views it in the affirmative.

Section 7 and Section 8 of Republic Act (R.A.) [3019[38]] explain the nature and importance of accomplishing a true, detailed and sworn SALN, thus:

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 corresponding Department Head, or in the case of a Head Department or chief of an independent office, with the Office of the President, a true, detailed and sworn 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 on or before the fifteenth day of April following the close of said calendar year.

Sec. 8. Prima Facie Evidence of and Dismissal Due to Unexplained Wealth. -- If in accordance with the provisions of Republic Act Numbered One Thousand Three Hundred Seventy-Nine, a public official has been found to have acquired during his incumbency, whether in his name or in the name of other persons, an amount of property and/or money manifestly out of proportion to his salary and to his other lawful income, that fact shall be ground for dismissal or removal. Properties in the name of the spouse and dependents of such public official may be taken into consideration, when their acquisition through legitimate means cannot be satisfactorily shown. Bank deposits in the name of or manifestly excessive expenditures incurred by the public official, his spouse or any of their dependents including but not limited to activities in any club or association or any ostentatious display of wealth including frequent travel abroad of a non-official character by any public official when such activities entail expenses evidently out of proportion to legitimate income, shall likewise be taken into consideration in the enforcement of this Section, notwithstanding any provision of law to the contrary. The circumstances hereinabove mentioned shall constitute valid ground for the administrative suspension of the public official concerned for an indefinite period until the investigation of the unexplained wealth is completed.

In the case of *Carabeo v. Court of Appeals*,^[39] citing *Ombudsman v. Valeroso*,^[40] the Court restated the rationale for the SALN and the evils that it seeks to thwart, to wit:

Section 8 above, speaks of unlawful acquisition of wealth, the evil sought to be suppressed and avoided, and Section 7, which mandates full disclosure of wealth in the SALN, is a means of preventing said evil and is aimed particularly at curtailing and minimizing, the opportunities for official corruption and maintaining a standard of honesty in the public service. "Unexplained" matter normally results from "non-disclosure" or concealment of vital facts. SALN, which all public officials and employees are mandated to file, are the means to achieve the policy of accountability of all public officers and employees in the government. By the SALN, the public are able to monitor movement in the fortune of a public official; it is a valid check and balance mechanism to verify undisclosed properties and wealth.

Complimentary to the above-mentioned provisions, Section 2 of R.A. [1379]^[41] states that "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."

By mandate of law, every public official or government employee is required to make a complete disclosure of his assets, liabilities and net worth in order to suppress any questionable accumulation of wealth because the latter usually results from non-disclosure of such matters. Hence, a public official or employee who has acquired money or property manifestly disproportionate to his salary or his other lawful income shall be prima facie presumed to have illegally acquired it.

It should be understood that what the law seeks to curtail is "acquisition of unexplained wealth." Where the source of the undisclosed wealth can be properly accounted, then it is "explained wealth" which the law does not penalize.

In this case, Racho not only failed to disclose his bank accounts containing substantial deposits but he also failed to satisfactorily explain the accumulation of his wealth or even identify the sources of such accumulated wealth. The documents that Racho presented, like those purportedly showing that his brothers and nephew were financially capable of sending or contributing large amounts of money for their business,[42] do not prove that they did contribute or remit money for their supposed joint business venture.

Equally, the Special Power of Attorney[43] that was supposedly issued by Vieto, Dido and Henry Racho in favor of Racho on January 28, 1993 to show their business plans, contained a glaringly inconsistent statement that belies the authenticity of the document, to wit:

1. To be the Trustee Attorney-in-fact of our investment in ANGELSONS LENDING AND INVESTORS, INC. of whom we are the Stockholders/Investors as well as the NAL PAY PHONE SERVICES, which was registered by the DTI last April 30, 1999 in the name of NIETO RACHO's wife of whom we are likewise investors. [emphasis supplied]

Definitely, a document that was allegedly executed in 1993 could not contain a statement referring to a future date "registered by the DTI last April 30, 1999." This certainly renders the intrinsic and extrinsic value of the SPA questionable.

More important, the Joint Affidavits allegedly executed by Racho's siblings and nephew to corroborate his story were later disowned and denied by his nephew, Henry, and brother, Vieto, as shown by their Counter-Affidavits.[44] Henry averred that he was out of the country at the time of the alleged execution of the Joint Affidavit on December 18, 2004 and he arrived in Manila only on September 16, 2005. Vieto, on the other hand, denied having signed the Joint Affidavit. He disclosed that as a left-handed person, he pushes the pen instead of pulling it. He concluded that the signature on the Joint Affidavit was made by a right-handed person.[45] He likewise included a copy of his passport containing his real signature for comparison.[46]

Thus, the SPA and Joint Affidavits which should explain the sources of Racho's wealth are dubious and merit no consideration.

Although Racho presented the SEC Certificate of Registration of Angelsons,[47] the business that he supposedly put up with his relatives, he showed no other document to confirm that the business is actually existing and operating. He likewise tried to show that his wife built a business of her own but he did not bother to explain how the business grew and merely presented a Certificate of Registration of Business Name from the DTI.[48] These documents, however, do not prove that Racho had enough other sources of income to justify the said bank deposits. Ultimately, only P1,167,186.[33[49]] representing his wife's retirement benefits, was properly accounted for. Even this money, however, was reduced by his loan payable of P1,000,000.00 as reflected in his 2000 SALN.[50]

Dishonesty begins when an individual intentionally makes a false statement in any material fact, or practicing or attempting to practice any deception or fraud in order to secure his examination, registration, appointment or promotion.[51] It is understood to imply the 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.[52] It 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.[53] Section 52 (A)(1), Rule IV of the Revised Uniform Rules on Administrative Cases in Civil Service treats dishonesty as a grave offense the penalty of which is dismissal from the service at the first infraction.[54]

Indeed, an honest public servant will have no difficulty in gathering, collating and presenting evidence that will prove his credibility, but a dishonest one will only provide shallow excuses in his explanations.

For these reasons, the Court is of the view that *Pleyto v. Philippine National Police (PNP)-Criminal Investigation and Detection Group (CIDG)*[55] which the CA cited as basis to exculpate Racho of dishonesty, is not applicable in this case. In the *Pleyto* case, the Court recognized *Pleyto's* candid admission of his failure to properly and completely fill out his SALN, his vigorous effort to clarify the entries and provide the necessary information and supporting documents to show how he and his wife acquired their properties.[56] The Court found substantial evidence that *Pleyto* and his wife had lawful sources of income other than *Pleyto's* salary as a government official which allowed them to purchase several real properties in their names and travel abroad.[57]

Unfortunately for Racho, his situation is different. The Court, thus, holds that the CA erred in finding him guilty of simple neglect of duty only. As defined, simple neglect of duty is the failure to give proper attention to a task expected from an employee resulting from either carelessness or indifference.[58] In this case, the discrepancies in the statement of Racho's assets are not the results of mere carelessness. On the contrary, there is substantial evidence pointing to a conclusion that Racho is guilty of dishonesty because of his unmistakable intent to cover up the true source of his questioned bank deposits.

It should be emphasized, however, that mere misdeclaration of the SALN does not automatically amount to dishonesty. Only when the accumulated wealth becomes manifestly disproportionate to the employee's income or other sources of income and the public officer/employee fails to properly account or explain his other sources of income, does he become susceptible to dishonesty because when a public officer takes an oath or office, he or she binds himself or herself to faithfully perform the duties of the office and use reasonable skill and diligence, and to act primarily for the benefit of the public. Thus, in the discharge of duties, a public officer is to use that prudence, caution and attention which careful persons use in the management of their affairs.[59]

The Court has consistently reminded our public servants that public service demands utmost integrity and discipline. A public servant must display at all times the highest sense of honesty and integrity, for no less than the Constitution mandates the principle that a public office is a public trust; and all public officers and employees must at all times be accountable to the people and serve them with utmost responsibility, integrity, loyalty and efficiency.[60]

WHEREFORE, the petition is GRANTED. The February 21, 2008 Decision and November 20, 2008 Resolution of the Court of Appeals-Cebu are hereby REVERSED and SET ASIDE. The administrative aspect of the April 1, 2005 Joint Order of the Office of the Ombudsman-Visayas is hereby REINSTATED.

SO ORDERED.

Carpio, (Chairperson), Nachura, Peralta, and Abad, JJ., concur.

[1] Rollo, pp. 12-47.

[2] *Id.* at 49-61. Penned by Associate Justice Franchito N. Diamante with Associate Justice Isaias P. Dicdican and Associate Justice Priscilla Baltazar-Padilla, concurring.

[3] *Id.* at 64-64b.

[4] CA rollo, pp. 46-51.

[5] Rollo, p. 74.

[6] CA rollo, p. 98.

[7] *Id.* at 99.

- [8] Id. at 100.
- [9] Id. at 104-105.
- [10] Id. at 113-118.
- [11] Id. at 106-108.
- [12] Id. at 119-126.
- [13] Id. at 127-135.
- [14] Id. at 138-143.
- [15] Id. at 144.
- [16] Id. at 145-147.
- [17] Rollo, pp. 97-99.
- [18] CA rollo, pp. 156-171.
- [19] Rollo, pp. 100-101.
- [20] CA rollo, pp. 172-185.
- [21] Rollo, pp. 80-96.
- [22] Id. at 96.
- [23] CA rollo, pp. 52-66.
- [24] Id. at 46-51.
- [25] Id. at 13-45.
- [26] G.R. No. 169982, November 23, 2007, 538 SCRA 534.
- [27] Rollo, p. 58.
- [28] Id. at 58-58a.
- [29] Id. at 60.
- [30] Id. at 125-149.
- [31] Id. at 64-64b.
- [32] Id. at 268-299.
- [33] Id. at 280-281.
- [34] Id. at 33.
- [35] Id. at 34.
- [36] Office of the Ombudsman v. Lazaro-Baldazo, G.R. No. 170815, February 2, 2007, 514 SCRA 141, 144.
- [37] Heirs of Jose Lim v. Juliet Villa Lim, G.R. No. 172690, March 03, 2010.
- [38] Anti-Graft and Corrupt Practices Act.

[39] G.R. Nos. 178000 and 178003, December 04, 2009, 607 SCRA 394, 412.

[40] G.R. No. 167828, April 02, 2007, 520 SCRA 140, 149-150.

[41] 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.

[42] CA rollo, pp. 187-194; 200-209; 212.

[43] Rollo, pp. 100-101.

[44] Id. at 115-116; pp. 122-123.

[45] Id. at 122.

[46] Id. at 124.

[47] CA rollo, pp. 156-171.

[48] Id. at 172-186.

[49] Id. at 195-199.

[50] Id. at 79.

[51] Pleyto v. PNP-CIDG, G.R. No. 169982, November 23, 2007, 538 SCRA 534, 586.

[52] Ampong v. Civil Service Commission, CSC-Regional Office No. 11, G.R. No. 167916, August 26, 2008, 563 SCRA 293, 307.

[53] Civil Service Commission v. Sta. Ana, 435 Phil. 1, 12 (2002).

[54] De Guzman v. Delos Santos, 442 Phil. 428, 440 (2002).

[55] G.R. No. 169982, November 23, 2007, 538 SCRA 534.

[56] Id. at 586.

[57] Id. at 594.

[58] Galero v. Court of Appeals, G.R. No. 151121, July 21, 2008, 559 SCRA 11, 22.

[59] Atty. Salumbides, et. al. v. Office of the Ombudsman, et. al., G.R. No. 180917, April 23, 2010.

[60] Bascos, Jr. v. Taganahan, G.R. No. 180666, February 18, 2009, 579 SCRA 653, 680.

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