

EIGHTH DIVISION

[CA-G.R. CR NO. 29493, August 08, 2006]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
NENITA B. HU, ACCUSED-APPELLANT.**

D E C I S I O N

VILLARAMA, JR., J.:

On appeal is the Judgment^[1] dated August 12, 2004 of the Regional Trial Court of Makati City, Branch 138 in Criminal Case No. 03-857 convicting the accused Nenita B. Hu of Simple Illegal Recruitment, the dispositive portion of which reads as follows:

"WHEREFORE, judgment is rendered finding accused NENITA B. HU guilty of simple illegal recruitment defined and penalized under Republic Act No. 8042 [Migrant Workers and Overseas Filipinos Act of 1995] Sections 6 and 7 and she is sentenced to suffer the penalty of imprisonment of not less than six [6] years and one [1] day but not more than twelve [12] years and a fine of Php200,000.00 She is further ordered to pay complainant Carlito M. Dungca Php100,000.00 to reimburse him for the fee of Php55,000.00 and other damages.

"Let the case as against ETHEL GENOVES be removed from the docket of active cases of this Court and the records are ordered sent to the archives.

"SO ORDERED."^[2]

The facts are as follows: Accused Nenita B. Hu is the President of Brightturn International Services ("Brightturn"), a local recruitment agency engaged in the business of deploying Filipinos for overseas work. ^[3] Her co-accused Ethel Genoves, on the other hand, is the proprietress of Riverland Consultancy Services ("Riverland") with office address at LPL Building, Sen. Gil J. Puyat, Avenue, Makati City. ^[4] Private complainant Carlito Dungca is a welder and resident of San Jose, Concepcion, Tarlac. Dungca had wanted to work abroad and an old friend, Jun Salta, told him he is an agent of Riverland. On October 3, 2001, Jun Salta brought Dungca to the office of Riverland at LPL Building where Dungca met accused Ethel Genoves. ^[5]

Dungca was briefly interviewed by accused Hu at the office of Riverland and was asked if he had been to Taiwan or abroad. Accused Genoves referred Dungca to Brightturn to apply for a job as factory worker in Taiwan. One (1) week later, Dungca was brought to the office of Brightturn where he was interviewed by his prospective employer. Thereafter, Dungca was told by Salta that according to accused Genoves, that the job applicants including him did not pass the exam and

that they will just be accommodated ("Isisingit daw kamit"). Accused Genoves demanded from Dungca placement fee in the amount of P50,000.00, which according to her will be given to accused Hu of Brightturn. Dungca paid the placement fee which she gave to accused Genoves, he first gave the latter P5,000.00 and then another P40,000.00 for which he was issued official receipts dated October 18, 2001 and November 8, 2001. On November 12, 2001, Dungca gave another P5,000.00 to accused Genoves who issued her a temporary receipt.^[6] Sometime in March 2002, Dungca together with other applicants were following up their applications at the office of Brightturn. Accused Hu showed them a list of those who had already paid. He was asked by accused Hu to pay another P5,000.00 for surety bond which was received by a female staff; no receipt was issued for said amount. They were told that the amounts they paid through Genoves are incomplete. Dungca was given his purported Contract for Employment in Taiwan and Addendum to the Contract, which accused Hu sent thru Jun Salta. The Addendum to the Contract was signed by accused Hu. Dungca was given the referral slip for his medical examination at the Joint DOH MARINA Consultative Committee, also signed by accused Hu.^[7] However, upon submission of the documents to the Philippine Overseas Employment Administration (POEA), it was found out that the contract or license of the agency had already expired. The applicants were then referred again to another agency, Best One. They kept on following up their job applications with accused Hu and Genoves at their offices, but nothing happened. On June 25, 2002, Dungca executed his "*Sinumpaang Salaysay*" before the POEA Administering Officer.^[8]

On March 12, 2003, accused Genoves and Hu were formally charged with Illegal Recruitment Constituting Economic Sabotage as defined and penalized under Section 6 (m) in relation to Section 7 (b) of R. A. No. 8042, under the following Information:

"That in or about and during the period from October 11, 2001 to May 8, 2002, in the City of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and all of them mutually aiding and helping one another, representing themselves to have the capacity to contract, enlist, transport and refer workers for employment abroad, without license or authority to do so, did then and there willfully, unlawfully and feloniously recruit for a fee complainants THOMAS S. VILLANUEVA, RENATO B. DE LEON, CARLITO M. DUNGCA, GERRY F. BALILO, ALLAN S. VILLAPANA, ALVIN S. FIGUEROA and JAYSON CALARA individually or as a group, for employment abroad, but said accused failed to actually deploy without valid reasons said complainants and to reimburse the expenses incurred by them in connection with the documentation and processing for purposes of deployment, to the latter's damage and prejudice.

"CONTRARY TO LAW."^[9]

Accused Hu was arrested on May 6, 2003 while her co-accused Genoves could no longer be found at her given address.^[10] During her arraignment on November 18, 2003, accused duly assisted by counsel *de officio* pleaded not guilty to the charge.^[11] At the trial, private complainant testified while the accused was also the lone

witness for the defense.

CARLITO DUNGCA testified that he met accused Hu and Genoves at the LPL Building in the office of Riverland on October 3, 2001. Jun Salta, their agent, referred him to the accused and so he went to the office of Genoves where he was interviewed for just a minute by Hu. Hu asked him if he had been to Taiwan or abroad; Genoves referred him to the agency of Hu, Brightturn. One (1) week later, he was brought to the office of Brightturn where some twenty (20) applicants, including him, were interviewed by their prospective employer. He knew it was the office of Mrs. Hu because he was interviewed at the other side of her office. He learned a few days after from Jun Salta that according to Genoves they did not pass the exam, and they were told that they will just be accommodated ("*Isisingit daw po kami*"). Genoves asked placement fee from them in the amount of P50,000.00 excluding the surety bond. He paid the placement fee: first, he gave P5,000.00, and then P40,000.00, and another P5,000.00. Genoves said that the money they gave to her are being turned over to Mrs. Hu. He confirmed this when Mrs. Hu at her office sometime in March 2002 showed him a list of payments received by her thru Genoves. At the time, they were following up their job application and Mrs. Hu told them that the money being turned over by Genoves are not complete and so they were asked to pay P5,000.00 so that their papers will be processed. They gave the money to Mrs. Hu thru her lady staff in the office. No receipt was issued for such payment of P5,000.00. The agent told them and explained that it is Mrs. Hu who is the one (1) issuing the receipts. He paid the P5,000.00 on March 26, 2002. But nothing happened to their job applications; he had applied for a job as factory worker in Taiwan. He has official receipts for the payment of placement fee, but for the P5,000.00 Genoves gave only a temporary receipt signed by her (Exhibits "A", "B" and "C"). When asked about the originals of these receipts, the witness explained these are with Branch 58. Accused kept promising but still they were not deployed for the jobs abroad. He also incurred other expenses like the pictures, passport, medical examination and transportation expenses. All in all, he had spent about P100,000.00; he lives in Tarlac and his fare in going back and forth to Metro Manila is P300.00.^[12]

On cross-examination, private complainant said that Jun Salta is an old friend and that he did not himself promise employment to him, but it is the agency which deploys applicants for work abroad. When Salta brought them to Riverland he mentioned about Brightturn Agency. When they first applied to Salta, there was no available job for males and so he referred them to Riverland Agency. The office of Brightturn Agency is in San Marcelino St., but he does not remember the exact address. Together with Salta and one (1) Mr. Gonzaga, they were referred to Brightturn at the office of Genoves who accompanied them in going to the office of Brightturn. He does not recall who interviewed him at Brightturn. A few days after, he was told that he did not pass the interview. When the agency failed to deploy them despite payment of the placement fee, he and several applicants demanded for reimbursement. As to the list shown to him by Mrs. Hu, it includes applicants also of Riverland. He does not know the applicants of Brightturn; he knows only their physical appearance and their names. The P5,000.00 for surety bond was asked by Mrs. Hu but it was her lady staff who received the money. Those receipts he has with him were voluntarily issued by the agency but the temporary receipt was given because Genoves was not present at the time and he was unable to go back to Riverland to ask for an official receipt.^[13]

On re-direct examination, private complaint said that the Addendum to the Contract (Exhibit "E") was given to him by the staff of Brightturn while the Referral Slip (Exhibit "F") was sent by Mrs. Hu through Jun Salta. They filled up that form (Addendum to the Contract) which was forwarded to the POEA and then they learned that the contract has already expired and so they were referred again to Best One. He had met accused Hu about four (4) times, first in the office of accused Genoves; the second time was when they were demanding explanation why they were not yet deployed abroad; the third one (1) was when they gave the P5,000.00; and the last time was when they were about to withdraw the money they had paid. They were not able to withdraw their money as Mrs. Hu told them she was going to deploy them but nothing happened.^[14] On re-cross examination, private complainant stated that Best One is a consultative agency, to which Brightturn forwarded the document (Exhibit "F") because the latter's license already expired, even his passport given to Mrs. Hu was forwarded to Best One. He gave his passport to the staff of Mrs. Hu; he knows that person to be her staff because they have pictures in the office.^[15]

NENITA HU testified that she is a businesswoman and President of Brightturn International Services, Inc., a recruitment agency with office located at 1916 San Marcelino St., Malate, Manila. She has been connected with said company since 1997. Between October to December 2001, their recruitment officer was Sally Briones. The agency was already closed since January 2002. They conduct preliminary interviews of job applicants only at their office. The purpose of said interview is to know the applicants' skills, asking them about office procedure and their educational background. They kept the data in their office for future reference. After an applicant is hired, they sign a contract which is then filed with the POEA. The placement fee they charge is equivalent to one (1) month salary which they collect when documents are already being processed by the POEA. At the time Brightturn was still operating between October 2001 and January 2002, it was Elena Ampilles who collected placement fees, as authorized by their cashier. Applicants pay the placement fee at the office which issues them official receipt of the company. Accused presented samples of their official receipt which is duly stamped by the Bureau of Internal Revenue (BIR) [Exhibit "1"], the date of which is September 23, 1999. As to copies of those receipts issued between October 2001 and January 2002, they cannot locate these any more in their office because when the NBI invited her, she does not know where the receipts are. She knows the private complainants in this case as they went to the office in March 2002 to know if they have job orders since if there were none, they will ask for refund of the placement fee. She asked them to wait for Sheryl who is the one (1) who knows their application. Job Orders refer to the position coming from the principal abroad. When Sheryl appeared in the office, Sheryl told her that private complainants did not apply personally in their office but Sheryl asked them to go to Best One to apply because their job orders were already transferred to Best One as their office was no longer accepting applicants in December. On her part, she asked if applicants have paid to Brightturn, instead they showed her a receipt from Riverland. She then advised them that if they want to continue their application with Best One, they should withdraw their money or placement fee from the agency. She denies knowing her co-accused Genoves, as she knows only the receipts signed by Genoves; the applicants also told her that Ethel Genoves and Janet Barros are one (1) and the same person. Genoves has no participation with respect to their application with

Brightturn.^[16]

On cross-examination, accused maintained that she met the private complainants only in March 2002 when they came to the office to ask if they have any job orders. It was Miss Sheryl who told them that their job orders were already in Best One and if they wish to apply and have job orders, they could go there. It was already first week of April 2002 when the applicants went to Best One. Private complainant Dungca went to Best One only in March. She admitted that the Referral Slip (Exhibit "F") bears her signature, with date indicated as April 22, 2002. She explained that the office already has ready referral slips signed by her and that their referral slip was not honored so Best One issued another referral slip. She prepared the referral slip for medical examination. She likewise admitted her signature in the Addendum to the Contract (Exhibit "E") as President of Brightturn, but it was a ready signed contract. If she was not the one (1) who entertained the application, it is the staff of Brightturn, Sheryl and Sally. She further explained that starting December 2001, there are plenty of selected workers of Oriental who backed out, and so they are asking if they can be inserted for the Job Orders, and the staff of Brightturn gives all the names of Brightturn's applicants, one (1) of those is private complainant Dungca. They processed Dungca's papers but since the POEA did not any more at the time (January 2002) allow Brightturn to process, she got Best One as one (1) of the representatives. The Addendum to the Contract was actually submitted to the POEA stamped January 17, 2002. That was the reason she asked Emmy and Sheryl to come to the office because they are the ones who know the application. At that time she learned that applicants who have been selected by the agency's principal are withdrawing their applications, they saw each other there. The POEA stamp on the contract means that it is ready for visa, the Embassy for Taiwan implemented a new rule that every worker bound for their country must pass through POEA personal appearance, as without it Taiwan could not give them a visa. Hence, they sent Dungca for personal appearance to the POEA on January 17, 2002; they were sent there as applicants of Best One. She admitted that she signed Exhibit "E" as President of Brightturn.^[17]

On re-direct examination, accused said that as President of Brightturn she is incharge of overall management and operations but did not include the conduct of preliminary interviews of applicants or the preparation of documents of applicants. Exhibit "E" was prepared by Miss Emmy, their operation manager who prepares the documents before giving them to the liaison officer for processing and submission to the embassy. Dungca was an applicant of Brightturn on the second week of December, but she came to know of his application only in March. Sheryl told her that they applied sometime in December. She said Brightturn did not receive any commission from Dungca's application. She denied that they asked a placement fee from him because when the applicants made personal appearance at POEA in January, she was afraid that she will not pursue the renewal of the agency's license.

^[18] On re-cross examination, accused affirmed that Dungca was already an applicant of Brightturn as early as December but she did not know about it since only her authorized staff transacted with him. It is not always the case though that she does not know all the applicants of their agency. It was just that when Dungca came to their office, they found out that the office was robbed and documents, mostly passports, were stolen. She confirmed that Exhibits "E" and "F" were executed in connection with Dungca's application with Brightturn.^[19]