

EN BANC

[G.R. No. 242764, January 19, 2021]

THEO-PAM TRADING CORPORATION, PETITIONER, VS. BUREAU OF PLANT INDUSTRY AND THE COMMISSION ON AUDIT, RESPONDENTS.

D E C I S I O N

INTING, J.:

This resolves the Petition for *Certiorari*^[1] assailing the Commission on Audit (COA) Decision No. 2016-135^[2] dated July 28, 2016 and Resolution No. 2018-33^[3] dated July 18, 2018 (assailed issuances). In the assailed issuances, the COA Commission Proper (COA Proper) denied Theo-Pam Trading Corporation (Theo-Pam)'s Money Claim against respondent Bureau of Plant Industry (BPI) for the payment of various laboratory chemicals amounting to P2,361,060.00.

The Antecedents

This case stemmed from a Petition^[4] filed by Theo-Pam against BPI before the COA Proper for the payment of the latter's obligation amounting to P2,361,060.00 plus interest, attorney's fees, and litigation expenses (Money Claim).

On various dates between May and October 2009, BPI prepared four purchase orders (POs)^[5] naming Theo-Pam as the supplier and directing/requesting the latter to furnish BPI various types of chemicals. BPI Director Joel S. Rudinas (BPI Director Rudinas), as the head of the agency, and Susana SG. Gonzalo, OIC, Laboratory Services Division, as the *head of the requisitioning office/department (end user)*, signed and approved the POs. Leonida L. Morales, Budget Officer, also signed the POs and *certified* them as to the availability of funds for the corresponding transactions.

In turn, Theo-Pam issued wholesale invoices corresponding to each BPI PO, viz.:

PO No.	PO Date	Invoice No.	Invoice Date	Amount
154-09	May 25, 2009	185906	June 4, 2009	P88,000.00
206-09	June 15, 2009	186335	June 20, 2009	724,600.00
240-09	July 10, 2009	186584	June 29, 2009	240,500.00
397-09	October 2, 2009	189804	October 20, 2009	1,307,960.00
				=====
Outstanding balance due				P2,361,060.00

from BPI

=====

German T. Yatco, National Pesticide Analytical Laboratory (NPAL) Senior Agriculturalist, and Noreen D. Escobar, NPAL Chemist I,^[6] affixed their signatures on Wholesale Invoice Nos. 186335 and 186584, respectively, indicating that they have "[r]eceived the above articles in good order and condition."^[7]

On May 26, 2010, Theo-Pam informed^[8] then BPI Director Dr. Larry R. Lacson (BPI Director Lacson) that it has delivered the aforementioned orders to the end user, NPAL of the BPI Laboratory Services Division. However, it has not yet received any payment for the orders.

To "settle different issues regarding the chemicals and re-agents procured by the [NPAL]"^[9] as detailed in the above-enumerated POs, BPI Director Lacson issued Memorandum Order No. 34,^[10] Series of 2010, dated June 21, 2010 forming an Inspection/Verification Team, viz.:

The team is tasked to perform the following functions with the objective of determining whether the subject chemicals where [sic] delivered and consumed by NPAL

- Conducts/documents physical inventory of all chemicals and their empty containers delivered to NPAL on the aforementioned POs;
- Inventory/Review all residue analysis certificates issued relative to the subject chemical purchased;
- Does interview works [sic] on NPAL staffs [sic] regarding the receipt and use of chemicals.

In another Letter^[11] dated June 23, 2010, Theo-Pam, through counsel, reiterated BPI's outstanding balance and demanded BPI to settle its account within five days. Otherwise, Theo-Pam will proceed with the appropriate legal actions. On even date, BPI Director Lacson responded as follows:

This is to acknowledge the receipt of your letter date[d] 23 June 2010 regarding the BPI's outstanding and overdue account in the amount of Two Million Three Hundred Sixty One Thousand and Sixty Pesos (PhP 2,361,060.00)

We would like to assure you that this Office is doing everything to ensure that [Theo-Pam] will get what is due to them without prejudice to the interest of the government.^[12]

Subsequently, the Inspection/Verification Team detailed their findings in a Memorandum^[13] dated July 9, 2010 (Team Report), viz.:

- A. During our ocular inspection in the area where the waste materials/ empty containers of the subject chemicals are stored, the group find [sic] it difficult to identify which of the waste materials/ empty containers (x x x) in the area belong to the subject chemicals and which are not belong [sic] x x x:

x x x x

- B. The group reviewed the records of Residue Analysis Certificates issued by the National Pesticide Analytical Laboratory (NPAL) and found out that there is neither name nor amount of chemicals used being indicated in the certificate. The name and amount of chemicals used by the said office can be seen only in their RIS, monthly report and accomplishment report.
- C. *During our interview with some of the NPAL staff who are involved either in the receipt, consumption and/ or utilization of the subject chemicals, the said staff categorically denied any ghost delivery x x x and confirmed that the subject chemicals were delivered and the same were used and consumed for their operations.* It has been said and affirmed that the subject chemicals were necessary for the analysis of Okra and Mango, otherwise the exportation of said commodities to Japan will be greatly affected. (x x x)

CONCLUSION

While the group found difficulty in determining the delivery and consumption of the subject chemicals on the basis of the Waste Materials and Certificates of Residue Analysis available, *yet there are substantial evidences [sic] to prove that such chemicals had been delivered and consumed by the end-user.* These evidences [sic] include the Delivery Receipts issued by the supplier (Theo-Pam) as well as the testimonies made by the NPAL Staff who are involved either in the receipt, consumption and/or utilization of the said chemicals. *It is worth mentioning however, that if there are lapses committed in the procurement process that led to the delay of the payment, the team believes that such lapses cannot justify the non-payment of the subject chemicals. Therefore, it is respectfully recommended that immediate settlement of this account* be made in accordance with the Delivery Receipts issued (x x x), in order to uphold the good relationship with the supplier Theo-Pam, who in one way or the other, help [sic] BPI in extending its technical services to the different stakeholders particularly the exporters by offering/providing chemicals at reasonable prices.^[14] (Italics supplied.)

Thereafter, in a Letter^[15] dated July 26, 2010, BPI Director Lacson inquired from the COA, through Resident Auditor Adora Rimando, regarding the aforementioned orders, viz.:

Dear Ms. Rimando:

The Bureau of Plant Industry would like to inquire from your Office the best course of action *concerning the unpaid chemicals delivered by Theo Pam to the Bureau of Plant Industry.* Below are the circumstances which may help your Office in assessing the situation:

- A. That *there were deliveries done by Theo-Pam of various chemicals, covered by the approved Purchase Order Nos. 154-09, 206-09, 240-09 and 397-09. Considering the urgency/ necessity of the subject chemicals in their operation, the same were received and accepted in good faith by the end-user, National Pesticide Analytical Laboratory.* (x x x)
- B. *To further attest to the truth of the deliveries, Ms. Noreen D. Escobar and Mr. German Yatco of BPI NPAL submitted a certification appertaining thereto;* (x x x)
- C. That there were BAC Resolutions Declaring Single Calculated Responsive Bids for the aforementioned transactions (x x x);
- D. *Despite of the certification of the BPI Budget Office on the availability of funds to pay the subject PO's, the same remained outstanding due to the refusal of the Property Officer and the BPI Inspector to affix their respective signature on the Inspection Reports because of the alleged failure of the end-user to inform them before using the delivered chemicals;*
- E. The undersigned in so many times had talked to the persons involved to try to find out the truth and come up with the solutions favorable to the government but fair and just to supplier, *since it was established during the February 10, 2010 meeting that there were indeed deliveries;*
- F. A Team was created under Memorandum Order No. 34, to conduct inventory and verification of the waste materials/ empty containers of the subject chemicals and was also directed to submit a definite findings and conclusion [sic] within 10 working days (x x x). In a report submitted to the Director, the Inventory Team recommended the immediate settlement of the Account in accordance with the Delivery Receipts (x x x).

In view of the aforementioned facts, *we are ready to commence the payment of the said chemicals* but before that, may we solicit the opinions and recommendations of the Commission on Audit on the legality of paying the deliveries considering the refusal on the part of Property Officer and the Inspector to affix their respective signatures on the Inspection and Acceptance Reports. Can the report of the Team (Memorandum Order No. 34) be used as sufficient document in lieu of the Inspection Report?^[16] (Italics supplied.)

On September 6, 2010, Theo-Pam requested an update regarding the COA's recommendation for the subject transactions. In a Letter^[17] dated September 13, 2010, BPI Director Clarito M. Barron (BPI Director Barron) expressed that the COA noted lapses in BPI's procurement procedures, viz.:

Ms. Adora Rimando, State Auditor IV of the Commission on Audit, in a letter reply to former BPI Director Larry R. Lacson query dated July 26, 2010 stated that *there was a failure to comply with some requirements such as non-notification of the Property Officer of the deliveries to be accepted and inspected by the BPI's property inspectors.* Thus, there are

still issues to be resolved regarding the deliveries before any payment can be made to your client.

As soon as the problem is resolved and payment is in order, we will immediately notify your office.^[18] (Italics supplied.)

In another Letter^[19] dated December 21, 2010, BPI Director Barren informed Theo-Pam as follows:

x x x During our exchange of notes, we already accentuated that [Theo-Pam]'s claim cannot be processed due to some issues still unresolved at this time. We had already looked into this situation and when we examined, *the more it is difficult to pinpoint who is responsible or accountable for the release of payments to give their concurrence because of questions which remained unanswered. Please bear in mind that these issues would not have happened if the proper procedures were followed.*

Theo Pam Trading has been our partner for over twenty years and we believe that their representative knows the rules to follow but for these deliveries it is unfortunate that they were overlooked. While we do not deny that there is fault on the part of the bureau's officers and personnel, willingly or not, it cannot be denied also that there are lapses on your client's side. Rest assured that we are doing our very best to reconcile our documents to resolve as carefully as possible so that we will not encounter the same particularly in compliance with the Commission on Audit's rules and regulations. x x x^[20] (Italics supplied.)

BPI's balance remained outstanding. Thus, on May 3, 2012, Theo-Pam filed its *Money Claim* before the COA Proper alleging as follows: *First*, BPI purchased items from them as evidenced by four BPI POs and the corresponding Theo-Pam Wholesale Invoices. *Second*, Theo-Pam allowed BPI 30 days from the invoice date to pay for the purchase amounts. *Third*, BPI admitted receiving the orders. *Fourth*, despite repeated demands, BPI failed to settle its outstanding balance.

In its *Answer*,^[21] BPI, represented by the Office of the Solicitor General, mainly denied the actual delivery of the orders. It countered as follows:

First, the aforementioned BPI POs and Theo-Pam Wholesale Invoices do not prove actual delivery. In particular, the wholesale invoices appended to Theo-Pam's Money Claim contained irregularities: (a) there were erasures in relation to the date; (b) it had notations that did not appear on the wholesale invoice copies retained by BPI; and (c) the signature of the personnel who allegedly received the delivery did not match the signature on BPI's file copy of the same invoice.^[22]

Second, the subject transactions did not comply with BPI's new procurement process flow (BPI Process Flow) as directed by then BPI Director Rudinas through an office memorandum^[23] dated May 28, 2009 addressed to all BPI employees, viz:

(4c) Property

- Preparation of Purchase Order

(5a) End User