EN BANC

[G.R. No. 230185, July 07, 2020]

EDDA V. HENSON, PETITIONER, VS. COMMISSION ON AUDIT, RESPONDENT.

DECISION

HERNANDO, J.:

Before the Court is a Petition for *Certiorari*[1] filed under Rule 64, in relation to Rule 65, of the Rules of Court assailing the December 13, 2011 Decision[2] and the December 27, 2016 Resolution[3] of respondent Commission on Audit (COA)-Commission Proper (CP).

Factual Antecedents

The Intramuros Administration (IA) is a government agency created under Presidential Decree (PD) No. 1616 on April 10, 1979.[4] Under its charter, it is mandated to undertake the orderly restoration and development of Intramuros as a monument to the Hispanic Period of the Philippine history.[5]

In December 1991, under the administration of petitioner Edda V. Henson (petitioner), IA held a public bidding for the construction of three (3) houses (House Nos. 5, 6, and 7) in Plaza San Luis Cultural Commercial Complex.[6] Three bidders participated in the bidding.[7] All their bids, however, exceeded the Agency Approved Estimate (AAE) of the project in the amount of P13,187,162.90.[8] But because of time constraints and to avoid the possible reversion of the funds intended for the project, the Bidding and Awards Committee (BAC) of IA opted not to conduct a second bidding, and instead, negotiated with the lowest bidder, Argus Development Corporation (Argus), to reduce its bid to P13,187,162.90.[9] Argus agreed on the condition that IA would supply construction materials in the amount of not less than P3,391,000.00 and that the architectural details would be downgraded.[10]

Contracts for Phase I in the amount of P9,863,237.40 and Phase II in the amount of P3,323,925.50 were executed by the parties on December 27, 1991 and May 15, 1992, respectively.[11]

Supplemental contracts were also executed for Variation Order No. 1 on October 8, 1992 in the amount of P3,377,071.84 and for Variation Order No. 2 on January 26, 1993 in the amount of P1,457,069.71 in view of the conversion of the pension houses into a boutique hotel, and later, into a hotel laboratory school.[12]

On March 23, 1993, Argus completed the project and was paid a total of

P18,001,977.77.[13]

On September 18, 1996, as requested by the then incoming Administrator of IA, Atty. Karlo Q. Butiong, a COA audit team was created to conduct a post-inspection of the project and a re-examination of related documents in view of the inherent and hidden defects in the construction of the project.[14]

On June 5, 1997, Notice of Disallowance (ND) No. 97-0001-101 (92-93) was issued disallowing the amount of P2,328,186.00, broken down as follows:[15]

Reasons for Disallowance	Amount Disallowed
Contract cost of Phase II of the Project amounting to P3,323,925.50 exceeded the COA estimate by 3% due to over-estimate in unit costs and quantities of some pay items	P80,781.62
Supplemental contract cost for Variation Order No. 1 amounting to P3,377,071.84 exceeded the COA estimate by 23.36% due to over-and-under estimate in unit cost and quantities of additive and deductive pay items	P639,523.72
Supplemental contract cost for Variation Order No. 2 amounting to P1,457,069.71 exceeded the COA estimate by 68.28% due to some mathematical error and unsupported claim in Variation Order No. 1	[P]591,259.50
Cost of construction materials supplied by the agency which were confirmed included in the bill of materials but were not deducted from the payments to the contractor	P1,016,621.16
Total	**P2,328,186.00**[16]

Held liable were petitioner for approving the payment and Pelagio R. Alcantara (Alcantara), Chief of Urban Planning and Community Development Office, for certifying the legality of the expenses which were incurred under his supervision.[17]

On March 6, 1998, both petitioner and Alcantara sought reconsideration.[18] They likewise requested that they be furnished copies of the documents upon which the ND was based.[19]

Ruling of the Regional Director

On March 31, 1998, the Director of the National Government Audit Office (NGAO) II rendered a Decision upholding the disallowance.[20]

Unfazed, petitioner and Alcantara appealed to respondent COA- CP arguing that the disallowance was not supported by evidence considering that the auditor failed to conduct an actual canvass of the materials used in the construction; that they were

denied due process as the audit team failed to disclose its findings within a reasonable time; and that there was no negligence or bad faith on their part.[21]

In his Answer, the then Director of NGAO II contended that the appeal was belatedly filed as it was filed beyond the six (6)-month period.[22]

Ruling of respondent COA-CP

Although it found that the appeal was indeed belatedly filed, respondent COA-CP, nevertheless, took cognizance of the appeal in the interest of substantial justice.[23]

Respondent COA-CP partially granted the appeal as it found that petitioner and Alcantara were not afforded due process in accordance with COA Memorandum No. 97-012 dated March 31, 1997.[24] Apparently, while the source of the reference values or base prices were disclosed to petitioner and Alcantara, the audit team failed to furnish them with authenticated copies of the source documents such as the Canvass Sheets, the price quotations, and other supporting documents to allow them to compare the prices and to refute the disallowances or justify the legality of the purchases, item by item.[25] The auditor also failed to conduct an actual canvass of the prices of specific items purchased and instead relied on the price data supplied by the Price Evaluation Division – Technical Services Office.[26] Consequently, respondent COA-CP reconsidered the disallowed amounts of P80,781.62 and P639,523.72 in the contract costs for Phase II and Variation Order No. 1.[27]

Respondent COA-CP, however, affirmed the disallowed amounts of P1,016,621.16, representing the cost of construction materials supplied by IA which were included in the bill of materials but were not deducted from the payment made to Argus, and P591,259.50, representing the excess contract costs due to mathematical error and unsupported claim in Variation Order No. 1.[28]

Respondent COA-CP also found that the provisions of the law on public bidding were not complied with.[29] Thus, aside from petitioner and Alcantara, it also held liable for the disallowance the Project Construction Manager, Bibiano M. Valbuena; the BAC Chairman, Merceditas C. de Sahagun; and the BAC members, namely, Dominador C. Ferrer, Jr., Augusto P. Rustia, Pelagio R. Alcantara, Jr., and Manuela T. Waquiz.[30]

The dispositive portion of the December 13, 2011 Decision reads:

> **WHEREFORE,** foregoing premises considered, the herein appeal is **PARTIALLY GRANTED**. The amount of disallowance is hereby reduced from P2,328,186.00 to P1,607,880.66 in view of the reconsidered amount of P720,305.34. Accordingly, ND No. 97-0001-101 (92-93) dated June 5, 1997 is hereby modified to the amount of P1,607,880.66. Likewise, the Project Construction Manager and the BAC Chairman and members are included as persons liable, namely, Mr. Valbuena, Ms. de Sahagun, Messrs. Ferrer, Jr., Rustia, and Alcantara, and Ms. Waquiz.

> The ATL, IA, is hereby instructed to issue the corresponding Notice of Settlement of Suspension/Disallowance/Charge for the reconsidered disallowance amounting to P720,305.34 and the Supplemental ND in the amount of P1,607,880.66 to the aforementioned persons liable. The Director, Cluster D- Economic Services, National Government Sector, this Commission, shall supervise and monitor the implementation of this decision.[31]

Petitioner moved for reconsideration but the same was unavailing.

Hence, petitioner filed the instant Petition raising the following issues:

> THE RESPONDENT [COA-CP] COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT FAILED TO DISCLOSE THEIR FINDINGS TO THE PETITIONER, DECIDE THE PETITION FOR REVIEW AND MOTION FOR RECONSIDERATION WITHIN REASONABLE TIME;
>
> THE RESPONDENT [COA-CP] COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT UPHELD THE DISALLOWANCE IN THE AMOUNT OF P1,016,621 REPRESENTING THE COST OF CONSTRUCTION MATERIALS SUPPLIED BY THE AGENCY; [AND]
>
> THE RESPONDENT [COA-CP] COMMITTED GRAVE ABUSE OF DISCRETION IN FINDING PETITIONER AS ONE OF THOSE LIABLE TO THE DISALLOWANCE OF [P]591,259 ALLEGEDLY UNSUPPORTED CLAIM IN VARIATION ORDER NO. 1 DUE TO MATHEMATICAL ERROR.[32]

The Court's Ruling

The Petition must fail.

Timeliness of the Petition

First off, respondent COA-CP contends that the instant Petition should be dismissed outright for late filing. Respondent COA-CP alleges that the instant Petition was belatedly filed because as per records, a copy of the December 27, 2016 Resolution was earlier served at the address of record of petitioner's counsel by personal service on January 17, 2017, and again, by registered mail on January 26, 2017; that said copy was not received by petitioner's counsel because she had already moved out; and that a certified true copy of the Decision was resent to petitioner's counsel at her new address only because of her letter belatedly informing respondent COA-CP of the change of address.[33]

Petitioner, on the other hand, counters that in the absence of proof, such as an affidavit attesting that a copy of the December 27, 2016 Resolution was indeed served on her counsel on January 17, 2017 through personal service, and again, on

January 26, 2017 through registered mail, the reckoning of the period to file the instant Petition should be March 13, 2017, the actual date of receipt of her counsel.[34] She also claims that a mere photocopy of the logbook[35] of respondent COA-CP indicating that service was made on her counsel on January 17, 2017, and again, on January 26, 2017 will not suffice.[36]

The Court sides with respondent COA-CP.

In the case of *Gatmaytan v. Sps. Dolor*[37] the Court gave no credence to the allegation of the petitioner that her counsel received a copy of the decision on a later date for lack of evidentiary basis. In that case, the petitioner claimed that the Court of Appeals erroneously reckoned the date of service on an earlier date as the service on that date was ineffectual having been made on her counsel's former address. Though the Court, in that case, found that the service earlier made to petitioner's counsel was indeed ineffectual, it nevertheless affirmed the dismissal of the appeal due to the failure of the petitioner to discharge the burden of proving the actual date of receipt of her counsel. The Court emphasized that the burden of proving a fact lies on the party who alleges it and that mere allegation does not suffice.

Similarly, in this case, petitioner contends that the counting of the period should commence on March 13, 2017 in the absence of proof that service was made on January 17 and 26, 2017. Petitioner, however, fails to realize that the burden of proving the timeliness of the instant Petition lies with her,[38] not respondent COA-CP. It is incumbent upon her to prove, first, that the service made on her counsel's former address was ineffectual because her counsel was able to promptly inform respondent COA-CP of her change of address, and second, that her counsel received the December 27, 2016 Resolution only on March 13, 2017. These she failed to do.

It bears stressing that "in the absence of a proper and adequate notice to the court of a change of address, the service of the order or resolution of a court upon the parties must be made at the last address of their counsel of record."[39] Hence, in case there is a change in address, it is the duty of the lawyer to promptly inform the court and the parties of such change to ensure that all official and judicial communications sent by mail will reach him.[40]

Here, based on the letters[41] attached to her Compliance, it appears that petitioner's counsel belatedly informed respondent COA-CP of her change of address. Thus, the service made by respondent COA-CP on January 17 and 26, 2017 at the old address of petitioner's counsel are deemed valid and effectual.

Besides, even if the Court disregards this procedural defect or lapse in the interest of substantial justice, the Petition would still be dismissed for lack of merit.

Due process

Invoking her right to due process, petitioner puts in issue the failure of respondent COA-CP to promptly resolve her case within the prescribed period under the Constitution as it took respondent COA-CP thirteen (13) years before finally deciding the case on December 13, 2011,[42] She likewise maintains that she was deprived