

## SECOND DIVISION

[ G.R. No. 221296, February 22, 2017 ]

**OFFICE OF THE OMBUDSMAN, PETITIONER, VS. NICASIO A. CONTI, RESPONDENT.**

### D E C I S I O N

**MENDOZA, J.:**

This Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court filed by the Office of the Ombudsman (*Ombudsman*) seeks to review and set aside the May 19, 2015 Decision<sup>[2]</sup> and the October 28, 2015 Resolution<sup>[3]</sup> of the Court of Appeals (CA), in CA-G.R. SP No. 126698, entitled *Nicasio A. Conti v. Office of the Ombudsman*. The CA issuances reversed the August 26, 2011 Decision and the May 25, 2012 Order of the Ombudsman, finding respondent Nicasio A. Conti (*Conti*) guilty of Dishonesty, Misconduct and Conduct Prejudicial to the Best Interest of the Service.

#### *The Antecedents*

This case stemmed from the filing of a complaint by the Field Investigation Office (*FIO*) of the Ombudsman against Chairman Camilo L. Sabio and Commissioners Narciso S. Nario, Teresito L. Javier, Ricardo M. Abcede, and Conti of the Presidential Commission on Good Government (*PCGG*), for Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service.

The complaint alleged that Resolution No. 2007-010,<sup>[4]</sup> which was issued and signed by the abovementioned PCGG Commissioners, resolved to lease five new vehicles from a leasing company and gave way to two lease agreements in 2007 and 2009 between PCGG and the United Coconut Planter's Bank (*UCPB*). FIO asserted that the said resolution was in violation of existing laws and administrative issuances which required the availability of appropriation of funds and the conduct of public bidding as prerequisites for the validity of a government contract.<sup>[5]</sup>

On April 5, 2010, the Ombudsman ordered the PCGG Commissioners to file their respective counter-affidavits. All but Conti complied with the directive. Subsequently, two (2) criminal Informations against all of them were filed before the Sandiganbayan for violation of Section 3(e) of Republic Act (*R.A.*) No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.<sup>[6]</sup>

On August 26, 2011, the Ombudsman found all five (5) PCGG Commissioners administratively liable for Dishonesty, Misconduct and Conduct Prejudicial to the Best Interest of the Service. Thus:

WHEREFORE, this Office finds respondents CAMILO L. SABIO, RICARDO M. ABCEDE, TERESIO L. JAVIER, NARCISO S. NARIO and NICASIO CONTI

guilty of **DISHONESTY, MISCONDUCT, AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE**. Had they remained in the service, they would have been meted the penalty of **SUSPENSION** for **six (6) months and one (1) day** pursuant to Section 52 (B) (2) and (A) (20), Rule IV of the Uniform Rules on Administrative Cases in the Civil Service. They are ordered to pay a FINE equivalent to their **salary for six (6) months**, to be deducted from their retirement benefits.

**SO ORDERED.**<sup>[7]</sup>

#### *The Motion for Reconsideration of Conti*

On April 2, 2012, Conti moved for reconsideration of the Ombudsman decision. Claiming that he was denied due process, he sought the reversal of the findings of the Ombudsman. He averred that he only learned of the filing of the cases before the Sandiganbayan for the first time through news reports; that he searched online and found a report on the website of ABS-CBN; that he was shocked and surprised by the filing of the cases because he was never informed and he never received any *subpoena* from the Ombudsman; that on February 16, 2012, he secured a photocopy of the records of the criminal cases from the Sandiganbayan where it appeared that his copy of the decision was sent to "30 Bituan St., North Araneta Avenue, Quezon City" on February 1, 2012 as shown in the registry receipt; that the said address used to be his address and he had since moved to #1 F. Sevilla St., Sevilla Townhomes, Barangay Pedro Cruz, San Juan City, in 2006; that he could not have received any notice even if it was sent to the PCGG office because he was already separated from the service as of August 2008; and lastly, that he never received any notice, *subpoena* or order from the Ombudsman during the conduct of the administrative and criminal investigation.<sup>[8]</sup>

On May 25, 2012, the Ombudsman denied Conti's motion for reconsideration.<sup>[9]</sup>

Aggrieved, Conti filed a petition for review before the CA.

#### *The Ruling of the CA*

In its May 19, 2015 Decision, the CA *granted* Conti's petition. It found that Conti was indeed deprived of due process as he did not receive a copy of the Ombudsman's order requiring him to file a counter-affidavit; that such denial of due process was not cured by the filing of his motion for reconsideration as it was filed precisely to raise the issue of the violation of his right to due process; that he was not even furnished copies of the affidavits and other pieces of evidence considered by the Ombudsman; and that, hence, he was deprived of a fair opportunity to squarely and intelligently answer the accusations hurled against him.<sup>[10]</sup>

In the same decision, the CA ruled that Conti could not be held administratively liable for dishonesty, misconduct, and conduct prejudicial to the best interest of the service. It noted that nothing in Resolution No. 2007-010 would show that Conti intended to defraud, lie or make a false statement; that the decision to avail of new vehicles through lease was justified by the unavailability of funds; that the FIO did not present countervailing evidence to prove that Conti, in so acting, was predisposed to lie, cheat, deceive, or defraud; and that under the prevailing

circumstances, the burden to prove by substantial evidence that Conti had the intent to commit a wrong was not satisfied. As far as misconduct was concerned, the CA opined that Conti's reliance on the long standing practice in the PCGG to lease vehicles militated against any wrongful intention to transgress any rule as it displayed good faith on his part. There being good faith, no misconduct could be attributed to him. Finally, the CA concluded that he did not commit acts prejudicial to the best interest of the service as it was not shown that false statements were made in the resolution or that there was any misappropriation of public funds.<sup>[11]</sup> Thus:

**WHEREFORE**, premises considered, the instant *Petition for Review* is **GRANTED**. The Decision dated 26 August 2011 and Order dated 25 May 2012 both rendered by the Office of the Ombudsman in OMB-C-A-10-0123-B, *insofar as Petitioner Nicasio A. Conti is concerned*, are **REVERSED** and **SET ASIDE**. Accordingly, the administrative complaint for Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service filed by the Field Investigation Office-Office of the Ombudsman against *Petitioner Nicasio A. Conti* is **DISMISSED**.

**SO ORDERED.**<sup>[12]</sup>

On October 28, 2015, the CA denied the Ombudsman's motion for reconsideration.

Hence, this petition.

### **ISSUES**

- I. THE HONORABLE COURT OF APPEALS (12TH Division) GRIEVOUSLY ERRED IN RULING THAT RESPONDENT NICASIO A. CONTI WAS DENIED DUE PROCESS IN OMB-C-A-10-0123-B.
- II. THE HONORABLE COURT OF APPEALS (12th Division) GRIEVOUSLY ERRED IN FINDING THAT RESPONDENT NICASIO A. CONTI IS NOT LIABLE FOR DISHONESTY, GRAVE MISCONDUCT AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE.<sup>[13]</sup>

The Ombudsman, through the Office of the Solicitor General (OSG), argues that Conti was not denied his right to due process and as he was served notices at the addresses that he stated in his employment records at the PCGG and provided by the latter to the Ombudsman. The Ombudsman would not have known of his address other than what could be found in the employment records. The fact of Conti's receipt of a copy of the complete case records from the Ombudsman, although belatedly, showed no deprivation of due process.

The OSG cites the case of *Ruivivar v. Office of the Ombudsman*<sup>[14]</sup> (*Ruivivar*) where it was held that there was no denial of due process when a party received copies of the affidavits, which were never controverted. It stresses that the Ombudsman considered Conti's motion for reconsideration where the latter controverted the allegations against him and even presented evidence to support his position; and that it re-evaluated the evidence and reviewed the records of the case for months before issuing the order affirming his administrative liability. The OSG points out that no grave error of facts, laws or serious irregularities tainted the Ombudsman

decision.<sup>[15]</sup>

In addition, the OSG assigns as an error the CA opinion that because no particular rule of action covered the lease agreement for vehicles, Conti could not be held administratively liable for dishonesty, grave misconduct and conduct prejudicial to the best interest of the service. The OSG invites the attention of the Court to COA Circular No. 85-55-A,<sup>[16]</sup> dated September 8, 1985, which requires public bidding in the lease-purchase of equipment including service vehicles. Thus, the PCGG should have conducted a public bidding first before entering into a lease-purchase agreement as the wording of the above circular cannot be mistaken.<sup>[17]</sup>

The OSG further states that the decision of Conti and the rest of the members of the Commission to enter into the questioned vehicle lease contracts without public bidding cannot be justified by what they called the long standing practice<sup>[18]</sup> of the PCGG as this would sanction a violation of R.A. No. 9184, otherwise known as the Government Procurement Reform Act. It also cited COA Circular No. 85-55-A,<sup>[19]</sup> Article XVI of Art. IV of R.A. No. 9184<sup>[20]</sup> and Sec. 54.2 (b) of its Implementing Rules and Regulations (IRR)<sup>[21]</sup> to show that even that "long standing practice" negates the defense of urgency.

As Resolution No. 2007-010 providing for the lease of vehicles to the PCGG in 2007 made no mention of any urgency to meet a need, the OSG argues that the defense of urgent necessity to lease the vehicles to restore vital public services was belatedly thought of only after the case had been filed. It stresses that the practice of the PCGG Commissioners and their predecessors of resorting to lease-purchase agreement failed to observe COA Circular No. 85-55-A, R.A. No. 9184 and its IRR, all of which intended to prevent the pernicious practice of giving undue favor or advantage to a contracting party to the detriment and prejudice of the government, and, thus, a transgression of some definite rule of action was clear. It adds that "[m]ore than a prejudice amounting to any monetary loss, the loss of faith in government service is a greater prejudice which this Honorable Court should guard against."<sup>[22]</sup>

Respondent Conti insists that he was deprived of his right to due process as there was nothing on record that showed he was even notified of the proceedings before the Ombudsman until it rendered a decision on the case. He emphasizes that "due process of law contemplates notice and opportunity to be heard before judgment is rendered."<sup>[23]</sup> Conti also pleads that this Court consider the fact that, even in his motion for reconsideration, he never had the fair opportunity to squarely and intelligently answer nor refute the accusations against him and present any evidence in support of his defense as he was not furnished with, or had otherwise received affidavits, whether before or after the decision was rendered. According to him, all he had at the time he filed his motion for reconsideration was a copy of the Ombudsman decision and the two informations in the said case.

### **Ruling of the Court**

*Conti was deprived of his Constitutional Right to Due Process*

Section 1, Article III of the 1987 Constitution guarantees that: