

## SECOND DIVISION

[ G.R. No. 181195, June 10, 2013 ]

**FREDERICK JAMES C. ORAIS, PETITIONER, VS. DR. AMELIA C. ALMIRANTE, RESPONDENT.**

### DECISION

**DEL CASTILLO, J.:**

Where the respondent is absolved of the charge, or in case of conviction, where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the Ombudsman's decision shall be final, executory, and unappealable. Indeed, in one case, the Court went so far as to declare that in such cases, the Court of Appeals (CA) had no appellate jurisdiction to review, rectify or reverse the order or decision of the Ombudsman.

This Petition for Review on *Certiorari*<sup>[1]</sup> seeks a review and setting aside of the CA's August 17, 2006 Decision,<sup>[2]</sup> as well as its December 10, 2007 Resolution<sup>[3]</sup> in CA-G.R. SP No. 82610, entitled "*Frederick James C. Orais, petitioner, versus Dr. Amelia C. Almirante, respondent.*"

#### ***Factual Antecedents***

In 2003, petitioner Frederick James C. Orais, Veterinary Quarantine Inspector-Seaport of the Veterinary Quarantine Service-Seaport, Region VII Office of the Department of Agriculture (DA), filed with the Office of the Ombudsman a Complaint<sup>[4]</sup> for corruption and grave misconduct against his superior, herein respondent Dr. Amelia C. Almirante, Veterinary Quarantine Officer-Seaport. Docketed as OMB-V-A-03-0184-D, petitioner accused respondent of committing the following anomalies:

1. Ordering, directing, persuading and inducing Veterinary Quarantine Inspector Luz Tabasa to receive money in check or in cash, from importers of meat products and other imported items for the preparation and issuance of Clearance Certificate[s] without [issuing any official receipt therefor];
2. Directly or indirectly request[ing] or receiv[ing] money in check or in cash [in the amount of P600.00] from importers of meat products and other goods allegedly as inspection fee without issuing official receipts therefor;
3. Knowingly approving [and/or] granting permit[, ] authority or privilege to private or contractual workers of the office to perform some veterinary quarantine functions, like allowing them to board

and inspect domestic vessels carrying quarantine products or items, conduct quarantine inspections on imported items in ports or inland quarantine sites, issue quarantine permits, etc.;

4. Knowingly approving and granting monetary considerations to private or contractual workers whom x x x respondent authorized or permitted to perform some veterinary quarantine services; and
5. Lack of delicadeza or lack of professionalism, justness and sincerity; knowingly allowing a situation [where she and her husband Oscar Almirante work in the same office, with the latter as her subordinate, thus creating doubt or suspicion that she is granting favors or undue advantage to the latter in the assignment of quarantine inspections].<sup>[5]</sup>

In support of his Complaint, petitioner attached the affidavits of Luz Tabasa (Tabasa), Agriculturist II – Veterinary Quarantine Inspector; Dr. Verna Agriam (Agriam), Bohol Veterinary Quarantine Officer; and Alfredo Barbon (Barbon), Janitor-Utility employed by Perfect Clean General Services, janitorial and maintenance contractor.<sup>[6]</sup>

In her March 27, 2003 Affidavit,<sup>[7]</sup> Tabasa alleged that private contractual employees including Barbon, who are not DA employees, were assigned by respondent to perform quarantine functions like inspection of imported cargoes in cold storages/warehouses/processing plants and the preparation and issuance of clearance certificates, commodity clearance for export, and shipping permits; that in the preparation and issuance of clearance certificates, no official receipt is issued but the money paid therefor is remitted to respondent, who would only issue an acknowledgment receipt signed by her; and that for every inspection she made, she was given P250.00 by respondent.

Agriam, on the other hand, alleged in her April 2, 2003 Affidavit<sup>[8]</sup> that respondent defied Special Orders of the Regional Director of DA Region 7 which assigned her (Agriam) to the Veterinary Quarantine Services at Seaport, refusing to honor said orders of assignment; that instead, she was assigned at DA Region 7 Regulatory Division, Cebu City; that respondent allowed and authorized janitors and contractual employees employed by a private manpower agency to perform quarantine functions like issuance of quarantine permits, inspection of domestic vessels, and veterinary inspections, despite an August 9, 2002 Memorandum<sup>[9]</sup> issued to her by the Regional Executive Director which ordered her to desist from the practice.

Barbon's March 27, 2003 Affidavit<sup>[10]</sup> stated that he was employed by Perfect Clean General Services, manpower contractor; that apart from his actual duty as janitor, respondent likewise authorized him to perform quarantine services, namely: to inspect imported products or items at quarantine sites owned by companies such as Tennessee Feedmill, Popular Feedmill, and Upland Feedmill; to board and inspect local/domestic vessels for quarantine services; to disinfect chicken dung of some clients; and to issue quarantine domestic shipping permits. Barbon added that for every inspection he made, respondent gave him P100.00, while respondent kept the additional P500.00 as her share; that he had been performing quarantine services

until the latter part of 2002; and that he performed overtime work but was not given overtime pay therefor.

In her June 16, 2003 Counter-Affidavit,<sup>[11]</sup> respondent claimed that there was no truth to the accusations against her; that all payments were received by the DA Regulatory Division through its duly authorized Collection Officers who issue the proper official receipts therefor, pursuant to Orders of Payment issued by respondent; that all Clearance Certificates were issued by the Veterinary Quarantine Office, and not by respondent; that the payments made for which acknowledgment receipts were issued do not cover Clearance Certificates, but reimbursements/payments made to quarantine personnel for their overtime services, transportation, meals, lodging and other expenses incurred in the examination and inspection of imported animal meat/by-products, which is authorized under DA Administrative Order No. 22, series of 1993<sup>[12]</sup> (DAO 22) issued by then Acting Secretary of Agriculture Joemari D. Gerochi; that petitioner's accusation that respondent received money from importers of meat products as "inspection fee" without issuing official receipts is untrue, and is not supported by specifics as to which importers, transactions, or dates are covered, and the exact amounts she allegedly received; that if indeed importers were aggrieved or victimized, said importers would have complained or come forward, yet none has come out to complain or act as petitioner's witness; that the amounts given to Tabasa and Barbon as alleged in their affidavits were duly authorized payments pursuant to DAO 22 for their transportation, meals, lodging, etc., and were not bribes or donations from respondent; that petitioner and Tabasa were motivated by hatred and resentment for respondent's refusal to sign their respective Daily Time Records (DTRs) on account of their multiple absences and irregular reporting to work, which have become constant sources of disagreement and conflict between them.<sup>[13]</sup>

In a June 29, 2003 Reply-Affidavit,<sup>[14]</sup> petitioner submitted the respective Affidavits<sup>15</sup> of Rogelio C. Mainit (Mainit), DA utility driver, and Danilo E. Tidoso (Tidoso), representative of Gusay Customs Brokerage. Mainit merely alleged that he would serve as temporary/occasional driver to respondent and other quarantine personnel. Tidoso, on the other hand, claimed that he acted as customs broker to two importers of feed additives and supplements, and that for the inspection and clearance of these clients' imports, he would pay a flat rate of P700.00 per vessel to the Veterinary Quarantine Office, after which an acknowledgment receipt is issued therefor. To this, respondent explained that DAO 22 authorized the payment/reimbursement of transportation and other allowable expenses, including overtime, and the rate is agreed upon by her office and the importers' representatives or brokers, who find it difficult to liquidate their cash advances if payment thereof is made on contractual basis, and regardless of distance traveled by the inspector, volume of imported items, or whether inspection/service was carried out during regular working day, holiday or after office hours upon the request of the importer concerned.<sup>[16]</sup>

On July 18, 2003, petitioner filed a Supplemental Affidavit accusing respondent of refusal to obey office memoranda and other Special Orders issued by her superiors.<sup>[17]</sup> To this, respondent submitted her Supplemental Counter-Affidavit,<sup>[18]</sup> arguing that the flat rate payments for overtime work of quarantine personnel and reimbursements of transportation, meal and lodging expenses were the result of an

agreement arrived at between her office and the representatives/ brokers of the concerned importers who found it difficult to liquidate their cash advances if payments were instead made on a contractual basis.

### ***Ruling of the Office of the Ombudsman***

On July 31, 2003, the Office of the Ombudsman rendered its Decision<sup>[19]</sup> in favor of respondent, as follows:

WHEREFORE, premises considered, the above entitled case filed against respondent **DR. AMELIA C. ALMIRANTE**, Veterinary Quarantine Officer-Seaport, Department of Agriculture, Regional Office No. 7, Veterinary Quarantine Service Seaport, Port of Cebu, Cebu City, is **DISMISSED** for lack of substantial basis.

SO DECIDED.<sup>[20]</sup>

The Ombudsman held that respondent's acts were in accordance with law and the regulations of her office. There was no irregularity covering the issuance of Clearance Certificates; nor was it irregular to issue acknowledgment receipts covering payments for overtime and reimbursements of transportation, meal and lodging expenses incurred by quarantine personnel during the course of each quarantine inspection. These amounts were given directly to quarantine personnel who incurred the expenses per DAO 22; thus, no government official receipt is necessary as the proceeds do not go to the government coffers. Moreover, the flat rate for these payments/reimbursements was agreed upon jointly by the DA's Veterinary Quarantine Services-Seaport and the representatives/brokers of the importers concerned. The Ombudsman nevertheless observed that this procedure of payment/reimbursement as authorized under DAO 22 is susceptible to graft and corruption, as there is no transparency and the money collected is not subjected to audit. Still, it held that petitioner has not shown that the amounts received by respondent's office relative to this reimbursement scheme was pocketed by respondent; on the contrary, his witnesses attested that they received from respondent their respective overtime pay and reimbursements for incurred expenses during their quarantine inspections.

As for the charge of assigning contractual employees to perform quarantine services, the Ombudsman held that the matter should have been properly addressed to respondent's superiors, and not the respondent solely, as the matter of assigning, utilizing, or deputizing quarantine personnel is not for the sole account of respondent, but constitutes a Department-wide responsibility.

Regarding the petitioner's accusations of violation of office memoranda and other Special Orders issued by the DA, the Ombudsman dismissed them as trivial, noting that these accusations relate to the internal operation and management of the Regional Office, which it could not interfere with lest it be accused of directly running the affairs of the office. It added that the evidence suggests that contrary to petitioner's allegations, respondent did not disobey any of these memoranda and Special Orders.

Finally, the Ombudsman held that as respondent was not actuated by a dishonest purpose, she may not be held liable for grave misconduct.

Petitioner moved for reconsideration,<sup>[21]</sup> but in a November 4, 2003 Order,<sup>[22]</sup> the same was denied.

Petitioner thus filed a Petition for *Certiorari*<sup>[23]</sup> with the CA.

### ***Ruling of the Court of Appeals***

On August 17, 2006, the CA issued the assailed Decision dismissing the Petition for lack of merit.

The CA held that decisions of the Ombudsman in cases absolving the respondent of the charge are deemed final and unappealable, pursuant to the Rules of Procedure of the Office of the Ombudsman, specifically Section 7, <sup>[24]</sup> Rule III of Administrative Order No. 7, as amended by Administrative Order No. 17 dated September 15, 2003. The appellate court added that absent compelling reasons, it may not disturb the findings of the Office of the Ombudsman in keeping with the principle of non-interference with the investigatory and prosecutorial powers of the office. Citing *Young v. Ombudsman*,<sup>[25]</sup> the CA held that practical considerations called for the application of this principle of non-interference, or else the courts will be swamped with petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman or compelling judicial review of the exercise of its otherwise discretionary functions.

Petitioner filed a Motion for Reconsideration,<sup>[26]</sup> but in the second assailed December 10, 2007 Resolution, the CA denied the same.

### **Issues**

In this Petition, the following issues are raised:

**THE HONORABLE COURT OF APPEALS GRAVELY ERRED WHEN IT SIMPLY CONCURRED WITH THE OFFICE OF THE OMBUDSMAN IN DISMISSING (THE) COMPLAINT BY STATING THAT THE DISMISSAL "WAS DONE IN THE EXERCISE OF ITS INVESTIGATORY AND PROSECUTORY POWERS GRANTED BY LAW" X X X DESPITE KNOWING THE OMBUDSMAN'S FINDINGS (REGARDING) ONE OF THE QUESTIONABLE ACTS OF DR. AMELIA ALMIRANTE – I.E. THE ISSUANCE OF "ACKNOWLEDGMENT RECEIPT" – AS A "SYSTEM SUSCEPTIBLE TO GRAFT AND CORRUPTION."**

**THE HONORABLE COURT OF APPEALS ERRED WHEN IT SIMPLY DISMISSED (THE) PETITION FOR LACK OF MERIT.<sup>[27]</sup>**

### ***Petitioner's Arguments***