

## FIRST DIVISION

[ G.R. No. 173268, August 23, 2012 ]

### ERNESTO A. FAJARDO, PETITIONER, VS. OFFICE OF THE OMBUDSMAN, NATIONAL BUREAU OF INVESTIGATION AND BUREAU OF CUSTOMS, RESPONDENTS.

#### D E C I S I O N

##### **DEL CASTILLO, J.:**

Under the "threefold liability rule," any act or omission of any public official or employee can result in criminal, civil, or administrative liability, each of which is independent of the other.<sup>[1]</sup>

This Petition for Review on *Certiorari*<sup>[2]</sup> under Rule 45 of the Rules of Court assails the Decision<sup>[3]</sup> dated April 27, 2006 and the Resolution<sup>[4]</sup> dated June 28, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 91021.

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

Petitioner Ernesto A. Fajardo was employed by respondent Bureau of Customs (BOC) as a Clerk I from February 26, 1982 to February 29, 1988 and as a Clerk II from March 1, 1988.<sup>[5]</sup> However, due to the exigency of the service, he was designated as a Special Collecting Officer at the Ninoy Aquino International Airport (NAIA) Customs House, Collection Division, Pasay City.<sup>[6]</sup>

In May 2002, Nancy Marco (Marco), a Commission on Audit (COA) State Auditor detailed at the NAIA Customs House,<sup>[7]</sup> was directed by her superior, Auditor Melinda Vega-Fria, to conduct a post audit of the abstract of collection of all collecting officers of the NAIA Customs House.<sup>[8]</sup> In the course of her audit, State Auditor Marco noticed that in petitioner's daily abstract of collection dated August 16, 2002, he received checks in the amounts of P295,000.00, P247,000.00, P122,000.00, P108,000.00 and P105,000.00.<sup>[9]</sup> To verify whether it was possible for him to receive such amounts in one day, a daily analysis of the sales of accountable forms with the corresponding documentary stamps was made.<sup>[10]</sup>

In the Audit Observation Memorandum (AOM No. 2002-008)<sup>[11]</sup> dated November 26, 2002, State Auditor Prudencia S. Bautista (Bautista) reported that petitioner has an unremitted collection from sales of accountable forms with money value and stamps in the amount of P20,118,355.00 for the period January 2002 to October 2002.<sup>[12]</sup> Upon further investigation by State Auditor Marco, it was discovered that based on the analysis of the monthly sales of accountable forms and stamps, petitioner failed to remit the total amount of P53,214,258.00<sup>[13]</sup> from January 2000 to October 2002.<sup>[14]</sup>

On January 6, 2003, Customs Commissioner Antonio M. Bernardo requested respondent National Bureau of Investigation-National Capital Region (NBI-NCR) to conduct an investigation on the reported misappropriation of public funds committed by petitioner.<sup>[15]</sup>

On January 8, 2003, the resident auditors of NAIA Customs House, namely: Marco, Bautista, and Filomena Tolorio, executed separate "Sinumpaang Salaysay"<sup>[16]</sup> at the NBI. They stated under oath that based on the Analysis of the Monthly Sales of Accountable Forms and Stamps for the years 2000<sup>[17]</sup> and 2001,<sup>[18]</sup> and the period January 1, 2002 to October 31, 2002,<sup>[19]</sup> and the Summary of Analysis of Sale of Stamps and Accountable Forms for the period January 2000 to October 2002,<sup>[20]</sup> petitioner failed to remit the total amount of P53,214,258.00.<sup>[21]</sup>

Thereafter, on January 10, 2003, an Information for violation of Republic Act (RA) No. 7080 (Plunder) was filed against petitioner.<sup>[22]</sup> The case was raffled to Branch 119 of the Regional Trial Court (RTC) of Pasay City and docketed as Criminal Case No. 03-0043.<sup>[23]</sup>

On February 8, 2003, Customs District Collector Celso P. Templo demanded from petitioner the unremitted collection but the latter failed to return the money and duly account for the same.<sup>[24]</sup>

Finding sufficient basis to commence an administrative investigation, Mary Susan S. Guillermo, the Director of the Administrative Adjudication Bureau of the Office of the Ombudsman, in an Order<sup>[25]</sup> dated February 11, 2003, directed petitioner to file his counter-affidavit.

On May 19, 2003, petitioner filed his Counter-Affidavit<sup>[26]</sup> categorically denying the accusation hurled against him. He claimed that there was no under remittance on his part because the sale of BOC forms does not automatically result in the sale of documentary stamps from the Documentary Stamp Metering Machine.<sup>[27]</sup> He likewise assailed the validity of the AOM No. 2002-008 on the ground that it was not referred to the COA Legal and Adjudication Office as mandated by Section 1, subsection 2 of the General Guidelines of COA Memorandum No. 2002-053 dated August 26, 2003.<sup>[28]</sup>

#### Ruling of the Ombudsman

On May 3, 2005, the Ombudsman rendered a Decision<sup>[29]</sup> finding petitioner guilty of dishonesty and grave misconduct.<sup>[30]</sup> Pertinent portions of the Decision read:

The bulk of the evidence presented supports the finding that indeed respondent failed to remit the collection from the sales of accountable forms with money value and of documentary stamps of the Ninoy Aquino International Airport Custom House for the years 2000 and 2001 and from January 01 to October 31, 2002 in the total sum of FIFTY THREE MILLION SIX HUNDRED FIFTY EIGHT THOUSAND THREE HUNDRED

SEVENTYONE PESOS (P53,658,371.00) despite demand on February 8, 2003 by the Custom[s] District Collector Celso P. Templo for him to return the same.

The above-mentioned unremitted amount was discovered after representatives from the COA-NAIA Customhouse discovered discrepancies in the collections and remittances of respondent Fajardo during the period covering January 1, 2002 to October 30, 2002 amounting to P20,118,355.00 which was initially communicated to District Collector Celso Templo through an Audit Observation Memorandum No. 2002-008 dated November 26, 2002. This leads to a further investigation resulting to the analysis of Monthly Sales of Accountable Forms and Stamps prepared by the COA State Auditors covering the period January 1, 2000 to October 30, 2002, which showed that the total amount of unremitted collections for the sale of accountable forms with money value and customs documentary and BIR stamps amounted to P53,658,371.00.

The following table shows a comparison of collections and remittances per report of Mr. Ernesto Fajardo and per audit by the team for the period January 2000 to October 30, 2002. As per audit report, the total amount of collections is P440,623,111.00, whereas respondent's report disclosed total collections in the amount of P387,913,381.00.

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The above-cited comparison focused on the examination and verification of documents covering collections and remittances of Fajardo. The documents composed of liquidated and unliquidated entries coming from the following offices:

- 1) Liquidation and Billing Division – which has the function of verifying, reviewing and checking computation of formal entries;*
- 2) Cashiers – [who submit] to COA all informal entries after they have collected customs duties, taxes and other charges for the imported good; and also the Bonds Division and Office of the Deputy Collector for Operations which also have custody of various forms without money value such as bonds, clearances, etc., where Customs Documentary Stamps (CDS) [are] required by regulations to be affixed. The audit likewise concentrated on Confirmation with from Brokers regarding the sale of CDS.*

In fact, confirmation letters were sent to 212 [b]rokers who purchased BOC Accountable Forms from NAIA for the period January 2000 to October 2002. Selection was based on the volume of purchases made by the brokers. The selected brokers had the highest number of purchases of BOC Accountable Forms with money value requiring payment of CDS.

From the existing procedural flowchart of the Collection Division, NAIA [Customs House], it appeared that the Collection Division has a Section in charge [of] the sale of BOC Forms and CDS. Per Organizational Chart of the Collection Division, Mr. Fajardo is the Collecting Officer assigned to perform such function. The organizational chart also shows that there are three (3) other personnel [under] Fajardo's supervision such as the BC Forms Clerk, CDS Clerk and the one in charge [of] the sale of BC Forms with CDS at Pair Cargo, a Customs Bonded Warehouse. The Flow Chart of Accountable Forms submitted by the Collection Division shows that it is the Collecting Officer (Fajardo) who is authorized to accept payment for the sale of Forms and CDS. The assigned Clerk assists him in the stamping on the forms of the required CDS, but returns the same to the Collecting Officer already stamped for release to the [b]rokers.

The Collecting Officer thereafter prepares Report of Collections and deposit[s] collections to the LBP. He also records transactions in his official cash book where he tallies his collections with the remittances made for the day.

This flow of transactions is also supported by the Sworn Statements executed by Mr. Pica and Ms. Caber who attested that they assisted Fajardo in the performance of his functions. Ms. Caber stamps the forms with required CDS using the franking machine while Mr. Pica has the following duties, among others:

- 1) Checks correctness of RIV of forms requisitions;*
- 2) Checks serial number of entries to be sold for the day;*
- 3) Assists in the issuance of OR and having it signed by Mr. Fajardo as Collecting Officer.*

Both of them further attested that payments are personally received by Fajardo. There are times, however, that they receive the payment but turn the same over to Fajardo.

Since Fajardo is the only Collecting Officer authorized to receive payment from the Sale of BOC Forms and CDS at the Collection Division, NAIA [Customs House], he is accountable for all the collections from the sale by NAIA [Customs House] of Bureau of Customs Accountable Forms and Customs Documentary and BIR Stamps (CDS).

To explain how that total aggregate amount was arrived at, COA State Auditor Nancy Marco said that from her Analysis on the Monthly Sales of Accountable Forms and Stamps of respondent for the period January 1, 2002 to October 31, 2002, said respondent was able to sell accountable forms with money value and stamps in the sum of P157,612,585.00 but remitted only P137,494,230.00 to the LandBank, NAIA Customs. On January 2001 – December 2001, respondent sold forms and stamps in the sum of P237,905,834.00 but remitted only P123,753,065.00. For the year 2000 said respondent sold the same forms and stamps in the sum of P145,320,000.00 but remitted only P126,666,186.00. From her

summary, the total forms and stamps which respondent sold for said period was in the total sum of P441,127,739.00. However, respondent remitted only the sum of P389,913,481.00. Therefor[e], the total sum which respondent failed to remit amounted to P53,214,258.00.00, which was later on corrected in the COA final audit report [to] P53,658,371.00 or an increase of P44,113.00.

A review of the above analysis initiated by COA State Auditors [Filomena Bascon] Tolorio and Prudencia S. Bautista, confirmed the [foregoing] findings.

The investigating panel is, therefore, of the view that respondent ERNESTO A. FAJARDO, being a special collecting officer of the NAIA Custom[s] House, is duty bound to remit collections of payments from the sale of Bureau of Customs (BOC) accountable forms with money value as well as Customs Documentary Stamps, to the Government via Landbank, the government's authorized depository bank. Respondent's failure to remit the amount he collected constitutes Dishonesty and Grave Misconduct.

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**FOREGOING CONSIDERED**, pursuant to Section 52 (A-1) and (A3), Rule IV of the Uniform Rules on Administrative Cases (CSC Resolution No. 991936), dated August 31, 1999, respondent ERNESTO A. FAJARDO is hereby found guilty of DISHONESTY and GRAVE MISCONDUCT and is meted the corresponding penalty of DISMISSAL FROM THE SERVICE including all its accessory penalties and without prejudice to criminal prosecution.

**SO ORDERED.**<sup>[31]</sup>

Petitioner moved for reconsideration<sup>[32]</sup> which was denied in an Order<sup>[33]</sup> dated July 22, 2005, the dispositive portion of which reads:

**PREMISES CONSIDERED**, the instant motion for reconsideration is hereby **DENIED** and the DECISION dated 03 May 2005, is hereby **AFFIRMED** with finality.

The Honorable **ALEXANDER M. AREVALO**, Commissioner, Bureau of Customs, is hereby directed to implement the Decision dated 03 May 2005, with the request to promptly submit to this Office, thru the Preliminary Investigation and Administrative Adjudication Bureau – C, 4<sup>th</sup> Floor, Ombudsman Bldg., Agham Road, Government Center, North Triangle, Diliman, Quezon City, a Compliance Report thereof, indicating therein the subject OMB case number.

Compliance is respectfully enjoined consistent with Section 15 (3) of Republic Act No. 6770 (Ombudsman Act of 1989).