

## FIRST DIVISION

**[ G.R. No. 165036, July 05, 2010 ]**

**HAZEL MA. C. ANTOLIN, PETITIONER, VS. ABELARDO T. DOMONDON, JOSE A. GANGAN, AND VIOLETA J. JOSEF, RESPONDENTS.**

**[G.R. NO. 175705]**

**HAZEL MA. C. ANTOLIN PETITIONER, VS. ANTONIETA FORTUNA-IBE, RESPONDENT.**

### D E C I S I O N

**DEL CASTILLO, J.:**

Examinations have a two-fold purpose. First, they are summative; examinations are intended to assess and record what and how much the students have learned. Second, and perhaps more importantly, they are formative; examinations are intended to be part and parcel of the learning process. In a perfect system, they are tools for learning. In view of the pedagogical aspect of national examinations, the need for all parties to fully ventilate their respective positions, and the view that government transactions can only be improved by public scrutiny, we remand these cases to the trial court for further proceedings.

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

Petitioner took the accountancy licensure examinations (the Certified Public Accountant [CPA] Board Exams) conducted by the Board of Accountancy (the Board) in October 1997.<sup>[1]</sup> The examination results were released on October 29, 1997; out of 6,481 examinees, only 1,171 passed. Unfortunately, petitioner did not make it. When the results were released, she received failing grades in four out of the seven subjects.<sup>[2]</sup>

Subject	Petitioner's Grade
Theory of Accounts	65 %
Business Law	66 %
Management Services	69 %
Auditing Theory	82 %
Auditing Problems	70 %
Practical Accounting I	68 %
Practical Accounting II	77 %

Convinced that she deserved to pass the examinations, she wrote to respondent Abelardo T. Domondon (Domondon), Acting Chairman of the Board of Accountancy,

and requested that her answer sheets be re-corrected.<sup>[3]</sup> On November 3, 1997, petitioner was shown her answer sheets, but these consisted merely of shaded marks, so she was unable to determine why she failed the exam.<sup>[4]</sup> Thus, on November 10, 1997, she again wrote to the Board to request for copies of (a) the questionnaire in each of the seven subjects (b) her answer sheets; (c) the answer keys to the questionnaires, and (d) an explanation of the grading system used in each subject (collectively, the Examination Papers).<sup>[5]</sup>

Acting Chairman Domondon denied petitioner's request on two grounds: first, that Section 36, Article III of the Rules and Regulations Governing the Regulation and Practice of Professionals, as amended by Professional Regulation Commission (PRC) Resolution No. 332, series of 1994, only permitted access to the petitioner's answer sheet (which she had been shown previously), and that reconsideration of her examination result was only proper under the grounds stated therein:

Sec. 36 An examinee shall be allowed to have access or to go over his/her test papers or answer sheets on a date not later than thirty (30) days from the official release of the results of the examination. Within ten (10) days from such date, he/she may file his/her request for reconsideration of ratings. Reconsideration of rating shall be effected only on grounds of mechanical error in the grading of his/her testpapers or answer sheets, or malfeasance.<sup>[6]</sup>

Second, Acting Chairman Domondon clarified that the Board was precluded from releasing the Examination Papers (other than petitioner's answer sheet) by Section 20, Article IV of PRC Resolution No. 338, series of 1994, which provides:

Sec. 20. *Illegal, Immoral, Dishonorable, Unprofessional Acts* - The hereunder acts shall constitute prejudicial, illegal, grossly immoral, dishonorable, or unprofessional conduct:

A. Providing, getting, receiving, holding, using or reproducing questions

x x x x

3. that have been given in the examination except if the test bank for the subject has on deposit at least two thousand (2,000) questions.<sup>[7]</sup>

After a further exchange of correspondence,<sup>[8]</sup> the Board informed petitioner that an investigation was conducted into her exam and there was no mechanical error found in the grading of her test papers.<sup>[9]</sup>

### ***Proceedings before the Regional Trial Court***

Undeterred, on January 12, 1998, petitioner filed a Petition for Mandamus with Damages against the Board of Accountancy and its members<sup>[10]</sup> before the Regional

Trial Court (RTC) of Manila. The case was raffled to Branch 33, and docketed as Civil Case No. 98-86881. The Petition included a prayer for the issuance of a preliminary mandatory injunction ordering the Board of Accountancy and its members (the respondents) to furnish petitioner with copies of the Examination Papers. Petitioner also prayed that final judgment be issued ordering respondents to furnish petitioner with all documents and other materials as would enable her to determine whether respondents fairly administered the examinations and correctly graded petitioner's performance therein, and, if warranted, to issue to her a certificate of registration as a CPA.<sup>[11]</sup>

On February 5, 1998, respondents filed their Opposition to the Application for a Writ of Preliminary Mandatory Injunction, and argued, *inter alia*, that petitioner was not entitled to the relief sought, that the respondents did not have the duty to furnish petitioner with copies of the Examination Papers, and that petitioner had other plain, speedy, adequate remedy in the ordinary course of law, namely, recourse to the PRC.<sup>[12]</sup> Respondents also filed their Answer with Compulsory Counterclaim in the main case, which asked that the Petition for Mandamus with Damages be dismissed for lack of merit on the following grounds: (1) petitioner failed to exhaust administrative remedies; (2) the petition stated no cause of action because there was no ministerial duty to release the information demanded; and (3) the constitutional right to information on matters of public concern is subject to limitations provided by law, including Section 20, Article IV, of PRC Resolution No. 338, series of 1994.<sup>[13]</sup>

On March 3, 1998, petitioner filed an Amended Petition (which was admitted by the RTC), where she included the following allegation in the body of her petition:

The allegations in this amended petition are meant only to plead a cause of action for access to the documents requested, not for re-correction which petitioner shall assert in the proper forum depending on, among others, whether she finds sufficient error in the documents to warrant such or any other relief. None of the allegations in this amended petition, including those in the following paragraphs, is made to assert a cause of action for re-correction.<sup>[14]</sup>

If only to underscore the fact that she was not asking for a re-checking of her exam, the following prayer for relief was deleted from the Amended Petition: "and, if warranted, to issue to her a certificate of registration as a CPA."

On June 23, 1998, respondents filed a Manifestation and Motion to Dismiss Application for Writ of Preliminary Mandatory Injunction, on the ground that petitioner had taken and passed the May 1998 CPA Licensure Examination and had taken her oath as a CPA.<sup>[15]</sup> Petitioner filed her Opposition on July 8, 1998.<sup>[16]</sup> Subsequently, on October 29, 1998, respondents filed their Answer with Counterclaim to the amended petition. They reiterated their original allegations and further alleged that there was no cause of action because at the time the Amended Petition was admitted, they had ceased to be members of the Board of Accountancy and they were not in possession of the documents sought by the petitioner.<sup>[17]</sup>

## ***Ruling of the Regional Trial Court***

In an Order dated October 16, 1998, the trial court granted respondent's Motion to Dismiss Petitioner's Application for a Writ of Preliminary Mandatory Injunction (not the main case), ruling that the matter had become moot since petitioner passed the May CPA Licensure 1998 Examination and had already taken her oath as a CPA.<sup>[18]</sup>

Undaunted, petitioner sought and obtained leave to file a **Second** Amended Petition for Mandamus with Damages<sup>[19]</sup> where she finally impleaded the PRC as respondent and included the following plea in her prayer:

WHEREFORE, petitioner respectfully prays that:

x x x x

2. Judgment be issued -

(a) commanding respondents to give petitioner all documents and other materials as would enable her to determine whether respondents fairly administered the same examinations and correctly graded petitioner's performance therein **and, if warranted, to make the appropriate revisions on the results of her examination.** (Emphasis ours)

On June 21, 2002, the trial court dismissed the petition on the ground that the petition had already become moot, since petitioner managed to pass the 1998 CPA Board examinations.<sup>[20]</sup> Petitioner sought reconsideration<sup>[21]</sup> which was granted by the trial court in its Omnibus Order<sup>[22]</sup> dated November 11, 2002. The Omnibus Order provides in part:

On the motion for reconsideration filed by the petitioner, the Court is inclined to reconsider its Order dismissing the petition. The Court agrees with the petitioner that the passing of the petitioner in the subsequent CPA examination did not render the petition moot and academic because the relief "and if warranted, to issue to her a certificate of registration as Certified Public Accountant" was deleted from the original petition. As regard the issue of whether the petitioner has the constitutional right to have access to the questioned documents, the Court would want first the parties to adduce evidence before it can resolve the issue so that it can make a complete determination of the rights of the parties.

The Court would also want the Professional Regulation Commission to give its side of the case the moment it is impleaded as a respondent in the Second Amended Petition for Mandamus filed by the petitioner which this Court is inclined to grant.

As to the Motion for Conservatory Measures filed by the petitioner, the Court denies the same. It is clear that the PRC has in custody the documents being requested by the petitioner. It has also an adequate facility to preserve and safeguard the documents. To be sure that the

questioned documents are preserved and safeguarded, the Court will order the PRC to preserve and safeguard the documents and make them available anytime the Court or petitioner needs them.

WHEREFORE, the Order of this Court dated June 20, 2002 is reconsidered and set aside. The Professional Regulation Commission is ordered to preserve and safeguard the following documents:

- a) Questionnaire in each of the seven subjects comprising the Accountancy Examination of October, 1997;
- b) Petitioner's Answer Sheets; and
- c) Answer keys to the questionnaires.

SO ORDERED.<sup>[23]</sup>

Respondents filed a motion for reconsideration which was denied.<sup>[24]</sup>

### ***Proceedings before the Court of Appeals***

The RTC Decisions led to the filing of three separate petitions for *certiorari* before the Court of Appeals (CA):

- (a) CA-GR SP No. 76498, a petition filed by respondents Domondon, Gangan, and Josef on April 11, 2003;
- (b) CA-GR SP No. 76546, a petition filed by respondent Ibe on April 30, 2003; and
- (c) CA-GR SP No. 76545, a petition filed by the Board of Accountancy and PRC.

It is the first two proceedings that are pending before us. In both cases, the CA set aside the RTC Decisions and ordered the dismissal of Civil Case No. 98-8681.

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

In its December 11, 2006 Decision<sup>[25]</sup> in CA-GR SP No. 76546, the CA ruled that the petition has become moot in view of petitioner's eventual passing of the 1998 CPA Board Exam. In CA-GR SP No. 76498, the CA found, in a Decision dated February 16, 2004,<sup>[26]</sup> that (i) Section 20, Article IV of PRC Resolution No. 338 constituted a valid limitation on petitioner's right to information and access to government documents; (ii) the Examination Documents were not of public concern, because petitioner merely sought review of her failing marks; (iii) it was not the ministerial or mandatory function of the respondents to review and reassess the answers to examination questions of a failing examinee; (iv) the case has become moot, since petitioner already passed the May 1998 CPA Board Examinations and took her oath as a CPA; and (v) petitioner failed to exhaust administrative remedies, because,