

## SECOND DIVISION

[ G.R. Nos. 168578-79, September 30, 2008 ]

**NIETO A. RACHO, PETITIONER, VS. HON. PRIMO C. MIRO, IN HIS CAPACITY AS DEPUTY OMBUDSMAN FOR THE VISAYAS, HON. VIRGINIA PALANCA-SANTIAGO, IN HER CAPACITY AS OMBUDSMAN DIRECTOR, AND HON. ANTONIO T. ECHAVEZ, IN HIS CAPACITY AS PRESIDING JUDGE OF THE REGIONAL TRIAL COURT - CEBU CITY, BRANCH 8, RESPONDENTS.**

### DECISION

**QUISUMBING, J.:**

This petition for certiorari and mandamus under Rule 65 of the Rules of Court seeks the annulment of the Joint Order<sup>[1]</sup> dated April 1, 2005 of the Office of the Ombudsman (OMB) in the Visayas. The OMB had denied reconsideration of its Reinvestigation Report<sup>[2]</sup> in OMB-V-C-02-0240-E and its Resolution in OMB-C-C-03-0729-L, both dated January 10, 2005. Petitioner herein also assails both issuances of the OMB.

The factual antecedents of this case are as follows.

On November 9, 2001, DYHP *Balita* Action Team (DYHP) of the Radio Mindanao Network, Inc. addressed a letter<sup>[3]</sup> on behalf of an anonymous complainant to Deputy Ombudsman for the Visayas Primo C. Miro. The letter accused Nieto A. Racho, an employee of the Bureau of Internal Revenue (BIR)-Cebu, of having accumulated wealth disproportionate to his income. Photocopied bank certifications disclosed that Racho had a total deposit of P5,793,881.39 with three banks.

Pio R. Dargantes, the Graft Investigation Officer I (GIO) assigned to investigate the complaint, directed DYHP to submit a sworn statement of its witnesses. Instead, the latter filed a Manifestation<sup>[4]</sup> dated October 16, 2002 withdrawing its complaint for lack of witnesses. Consequently, GIO Dargantes dismissed the case. He ruled that the photocopied bank certifications did not constitute substantial evidence required in administrative proceedings.<sup>[5]</sup>

Then, in two separate Memoranda dated May 30, 2003,<sup>[6]</sup> Ombudsman Director Virginia Palanca-Santiago disapproved GIO Dargantes's Resolution. In OMB-V-A-02-0214-E, Director Palanca-Santiago held Racho administratively liable for falsification and dishonesty, and meted on him the penalty of dismissal from service with forfeiture of all benefits and perpetual disqualification to hold office.<sup>[7]</sup> In OMB-V-C-02-0240-E, Director Palanca-Santiago found probable cause to charge Racho with falsification of public document under Article 171(4)<sup>[8]</sup> of the Revised Penal Code.<sup>[9]</sup> The latter moved for reconsideration but it was denied by the Deputy Ombudsman.

On May 30, 2003, Racho was charged with falsification of public document, docketed as Criminal Case No. CBU-66458 before the Regional Trial Court (RTC) of Cebu City, Branch 8. The Information alleged:

That on or about the 7<sup>th</sup> day of February, 2000, and for sometime subsequent thereto, at Cebu City, Philippines, and within the jurisdiction of this Honorable Court, above-named accused NIETO A. RACHO, a public officer, being the Chief, Special Investigation Division, Bureau of Internal Revenue (BIR), Regional Office No. 13, Cebu City, in such capacity and committing the offense in relation to [his] office, with deliberate intent, with intent to falsify, did then and there willfully, unlawfully and feloniously falsify a public document, consisting of his Statement of Assets, Liabilities and Networth, Disclosure of Business Interest and Financial Connections; and Identification of Relatives In The Government Service, as of December 31, 1999, by stating therein that his cash in bank is only FIFTEEN THOUSAND PESOS (P15,000.00), Philippine Currency and that his assets minus his liabilities amounted only to TWO HUNDRED THREE THOUSAND SEVEN HUNDRED FIFTY EIGHT PESOS (P203,758.00), Philippine Currency, when in truth and in fact, said accused has BANK DEPOSITS or cash in banks amounting to FIVE MILLION SEVEN HUNDRED NINETY THREE THOUSAND EIGHT HUNDRED ONE PESOS and 39/100 (P5,793,801.39),<sup>[10]</sup> Philippine Currency, as herein shown:

1) Metropolitan Bank and Trust Company - Cebu, Tabunok Branch:

<u>Unisa No.</u>	<u>Amount</u>
3-172-941-10	P1,983,554.45
3-172-941-11	<u>949,341.82</u>
Total -	P2,932,896.27

2) Philippine Commercial International Bank - Magallanes Branch, Cebu**City**:

<u>Account No.</u>	<u>Amount</u>
Equalizer - 29449-29456	P1,000,000.00
PCC Fund - 99-0095-0-0020-clf.b	200,000.00
Optimum Savings - 00-8953-06860-9	<u>28,702.53</u>
Total -	P1,228,702.53

3) Bank of the Philippine Islands - Cebu (Mango) Branch, Gen. Maxilom Avenue, Cebu City:

<u>Account No.</u>	<u>Amount</u>
Gold Savings - 1023-2036-49	P1,632,282.59

thus deliberately failed to disclose an important fact of which he has the legal obligation to do so as specifically mandated under Section 8 of Republic Act No. 6713 (The Norms of Conduct and Ethical Standards for

Public Officials and Employees) and Section 7 of Republic Act No. 3019, As Amended (The Anti-Graft and Corrupt Practices Act), thereby making untruthful statement in a narration of facts.

CONTRARY TO LAW.<sup>[11]</sup>

Racho appealed the administrative case and filed a petition for certiorari under Rule 65 with the Court of Appeals to question the ruling in OMB-V-C-02-0240-E. In a Decision<sup>[12]</sup> dated January 26, 2004, the appellate court annulled both Memoranda and ordered a reinvestigation of the cases against petitioner. Thereafter, petitioner filed a Motion to Dismiss<sup>[13]</sup> dated July 21, 2004. The same was denied for lack of merit in an Order<sup>[14]</sup> dated August 24, 2004.

On reinvestigation, petitioner submitted a Comment<sup>[15]</sup> dated January 4, 2005 along with supporting documents. On January 10, 2005, the OMB issued the assailed Reinvestigation Report, the dispositive portion of which states:

With all the foregoing, undersigned finds no basis to change, modify nor reverse her previous findings that there is probable cause for the crime of FALSIFICATION OF PUBLIC DOCUMENT, defined and penalized under Article 171 of the Revised Penal Code, against respondent Nieto A. Racho for making untruthful statements in a narration of facts in his SALN. As there are additional facts established during the reinvestigation, re: failure of Mr. Racho to reflect his business connections, then the Information filed against him should be amended to include the same. Let this Amended Information be returned to the court for further proceedings.

SO RESOLVED.<sup>[16]</sup>

Petitioner sought reconsideration but was denied by the OMB in the Joint Order dated April 1, 2005. It decreed:

The Motion for Reconsideration of respondent did not adduce any new evidence, which would warrant a reversal of our findings; neither did it present proof of errors of law or irregularities being committed.

This being so, this Motion for Reconsideration of respondent is hereby DENIED. The findings of this Office as contained in the two (2) REINVESTIGATION REPORTS (in OMB-V-C-02-0240-E and OMB-V-A-02-0214-E) and RESOLUTION (in OMB-C-C-03-0729-L) stand.

SO ORDERED.<sup>[17]</sup>

In the instant petition, Racho cites the following issues:

I.

WHETHER OR NOT RESPONDENT OMBUDSMAN DIRECTOR, AS WELL AS RESPONDENT DEPUTY OMBUDSMAN FOR THE VISAYAS WHO SANCTIONED HER DEED, COMMITTED GRAVE ABUSE OF DISCRETION EQUIVALENT TO LACK OR IN EXCESS OF JURISDICTION WHEN SHE

REFUSED OR FAILED TO INHIBIT HERSELF FROM CONDUCTING THE SUPPOSED "*REINVESTIGATION*";

II.

WHETHER OR NOT HEREIN PETITION[ER] WAS DENIED DUE PROCESS OF LAW IN THE SUPPOSED "*REINVESTIGATION*";

III.

WHETHER OR NOT RESPONDENT OMBUDSMAN DIRECTOR, AS WELL AS RESPONDENT DEPUTY OMBUDSMAN FOR THE VISAYAS WHO SANCTIONED HER DEED, COMMITTED GRAVE ABUSE OF DISCRETION EQUIVALENT TO LACK OR IN EXCESS OF JURISDICTION WHEN SHE HELD THAT PETITIONER'S MOTION FOR RECONSIDERATION DID NOT ADDUCE PROOF OF ANY IRREGULARITY IN THE "*REINVESTIGATION*"; AND

IV.

WHETHER OR NOT BY REASON OF THIS HONORABLE COURT'S INHERENT POWER TO DO ALL THINGS REASONABLY NECESSARY FOR THE ADMINISTRATION OF JUSTICE, EVEN IF NOT PRAYED FOR IN THE INSTANT PETITION, THE SUBJECT OMBUDSMAN CASES OMB-V-C-02-0240-E AND OMB-C-C-03-0729-L CAN BE DISMISSED.<sup>[18]</sup>

Stated simply, the issues now for determination are as follows: (1) Whether Ombudsman Director Palanca-Santiago gravely abused her discretion when she did not inhibit herself in the reinvestigation; (2) Whether petitioner was denied due process of law on reinvestigation; and (3) Whether there was probable cause to hold petitioner liable for falsification under Article 171(4) of the Revised Penal Code.

Petitioner ascribes grave abuse of discretion on the part of Ombudsman Director Palanca-Santiago since she did not inhibit herself in the reinvestigation. He claims a denial of due process because of the fact that Director Palanca-Santiago handled the preliminary investigation as well as the reinvestigation of the cases. In both instances, the latter found probable cause to indict petitioner for falsification. For this reason, petitioner believes that Director Palanca-Santiago has turned hostile to him. He insists that respondent director had lost the cold neutrality of an impartial judge when she found probable cause against him on preliminary investigation. Petitioner penultimately questions the haste with which the reinvestigation was concluded and the lack of hearing thereon. In essence, he insists on the dismissal of his cases before the OMB.

On November 6, 2006, the OMB thru the Office of the Special Prosecutor (OSP) filed a Memorandum<sup>[19]</sup> dated October 23, 2006 for respondents. The OSP avers that the instant petition stated no cause of action since it did not implead the Hon. Ombudsman Simeon Marcelo as a respondent. That Director Palanca-Santiago resolved the investigation adverse to petitioner, the OSP contends, did not necessarily indicate partiality. The OSP explains that the Reinvestigation Report was merely recommendatory and the finding of probable cause was done in line with official duty. It points out further that petitioner failed to cite specific acts by which

Director Palanca-Santiago showed hostility towards him. Finally, the OSP charges petitioner with forum shopping since he had already raised the issue of respondent director's impartiality in his petition assailing the Memorandum dated May 30, 2003, before the Court of Appeals.

After considering the contentions and submissions of the parties, we are in agreement that the instant petition lacks merit.

The prosecution of offenses committed by public officers is vested primarily in the OMB. For this purpose, the OMB has been given a wide latitude of investigatory and prosecutory powers under the Constitution and Republic Act No. 6770<sup>[20]</sup> (The Ombudsman Act of 1989). Its discretion is freed from legislative, executive or judicial intervention to ensure that the OMB is insulated from any outside pressure and improper influence.<sup>[21]</sup> Hence, unless there are good and compelling reasons to do so, the Court will refrain from interfering with the exercise of the Ombudsman's powers, and will respect the initiative and independence inherent in the latter who, beholden to no one, acts as the champion of the people and the guardian of the integrity of the public service.<sup>[22]</sup>

The Ombudsman is empowered to determine whether there exists reasonable grounds to believe that a crime has been committed and that the accused is probably guilty thereof and, thereafter, to file the corresponding information with the appropriate courts.<sup>[23]</sup> Such finding of probable cause is a finding of fact which is generally not reviewable by this Court.<sup>[24]</sup> The only ground upon which a plea for review of the OMB's resolution may be entertained is an alleged grave abuse of discretion. By that phrase is meant the capricious and whimsical exercise of judgment equivalent to an excess or lack of jurisdiction. The abuse of discretion must be so patent and so gross as to amount to an evasion of a positive duty; or to a virtual refusal to perform a duty enjoined by law; or to act at all in contemplation of law, as when the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.<sup>[25]</sup>

Considering the facts and circumstances of this case, we find no grave abuse of discretion on the part of respondents. As already well-stated, as long as substantial evidence supports the Ombudsman's ruling, his decision will not be overturned.<sup>[26]</sup> Here, the finding of the Ombudsman that there was probable cause to hold petitioner liable for falsification by making untruthful statements in a narration of facts rests on substantial evidence.

The OMB evaluated petitioner's Statement of Assets, Liabilities and Networth (SALN) for the year 1999<sup>[27]</sup> against certified true copies of his bank deposits during the same year. In his SALN, petitioner declared P15,000 cash in bank as of December 31, 1999. The bank certifications of petitioner's deposits, however, confirmed that he had an aggregate balance of P5,793,881.39 in his accounts with three banks. Original certifications dated June 17, 1999 issued by the Bank of the Philippine Islands (BPI)<sup>[28]</sup> and Equitable PCI Bank (Equitable PCIB)<sup>[29]</sup> revealed accounts for P1,632,282.59 and P1,228,702.53, respectively. A photocopied certification dated June 16, 1999 from Metrobank<sup>[30]</sup> indicated a deposit of P2,932,896.27.

The OMB did not accord weight to the Joint Affidavit<sup>[31]</sup> submitted by petitioner. In