

FIRST DIVISION

[G.R. NO. 135350, March 03, 2006]

THE PRESIDENTIAL AD HOC FACT-FINDING COMMITTEE ON BEHEST LOANS, REPRESENTED BY FELIX M. DE GUZMAN, PCGG CHAIRMAN, ORLANDO L. SALVADOR, CONSULTANT, TECHNICAL WORKING GROUP (TWG) OF THE PRESIDENTIAL AD HOC FACT-FINDING COMMITTEE ON BEHEST LOANS (FFCBL) AND DANILO R. V. DANIEL, TWG COORDINATOR, FFCBL, PETITIONER, VS. THE HONORABLE OMBUDSMAN, ANIANO DESIERTO, ANICETO EVANGELISTA, JULIO V. MACUJA, ANOS FONACIER AND MARIANO ZAMORA, RESPONDENTS

D E C I S I O N

CALLEJO, SR., J.:

The Presidential Ad Hoc Fact-Finding Committee on Behest Loans^[1] (petitioner Committee) filed the present Petition for Review on *Certiorari* seeking to reverse and set aside the Order dated September 30, 1997 of the Ombudsman in OMB-0-97-1059. The said order dismissed, on the ground of prescription, the criminal complaint for violation of Section 3(e) and (g) of Republic Act (RA) No. 3019^[3] filed by petitioner Committee against respondents Aniceto Evangelista, Julio Macuja, Gregorio Licaros, Anos Fonacier, Mariano Zamora and Esperanza Zamora. Likewise sought to be reversed and set aside is the Order^[4] dated August 6, 1998 dismissing petitioner Committee's motion for reconsideration.

The factual and procedural antecedents are as follows:

On October 8, 1992, then President Fidel V. Ramos issued Administrative Order No. 13 creating the Presidential Ad Hoc Fact-Finding Committee on Behest Loans composed of the Chairman of the Presidential Commission on Good Government (PCGG) as Chairman, and as members, the Solicitor General, representatives from the Office of the Executive Secretary, the Department of Finance, the Department of Justice, the Development Bank of the Philippines (DBP), the Philippine National Bank (PNB), the Asset Privatization Trust (APT), the Government Corporate Counsel, and the Philippine Export and Foreign Loan Guarantee Corporation.

Under said administrative order, petitioner Committee was tasked to:

1. Inventory all behest loans; identify the lenders and borrowers, including the principal officers and stockholders of the borrowing firms, as well as the persons responsible for granting the loans or who influenced the grant thereof;
2. Identify the borrowers who were granted "friendly waivers", as well as the government officials who granted these waivers; determine

the validity of these waivers;

3. Determine the courses of action that the government should take to recover those loans, and to recommend appropriate actions to the Office of the President within sixty (60) days from the date hereof.

[5]

On November 9, 1992, Pres. Ramos issued Memorandum Order No. 61 broadening the scope of petitioner Committee's functions:

Sec. 1. The Ad Hoc Fact Finding Committee on Behest Loans shall include in its investigation, inventory, and study all non-performing loans which shall embrace both behest and non-behest loans.

The following criteria may be utilized as a frame of reference in determining a behest loan:

- a. It is undercollateralized (sic);
- b. The borrower corporation is undercapitalized;
- c. Direct or indirect endorsement by high government officials like presence of marginal notes;
- d. Stockholders, officers or agents of the borrower corporation are identified as cronies;
- e. Deviation of use of loan proceeds from the purpose intended;
- f. Use of corporate layering;
- g. Non-feasibility of the project for which financing is being sought; and
- h. Extra-ordinary speed in which the loan release was made.

Moreover, a behest loan may be distinguished from a non-behest loan in that while both may involve civil liability for non-payment or non-recovery, the former may likewise entail criminal liability.^[6]

Several loan accounts were referred to petitioner Committee for its investigation including the loan transaction between Bayview Plaza Hotel, Inc. (BPHI) and DBP.

After it had examined and studied all the documents relative to the said loan transaction, petitioner Committee determined that it bore the characteristics of a behest loan as defined under Memorandum Order No. 61 since the loan was undercollateralized while the corporation was undercapitalized.

Specifically, petitioner Committee's investigation revealed that the Bayview property was acquired by DBP through foreclosure for the amount of P16.160 million. The appraisal of said property was placed at P25,804,200 as of May 1971; hence, there was a deficiency claim in the amount of P9,644,200. However, under its Board Resolution No. 842 dated March 29, 1978, DBP dropped the bank's deficiency claim

against the heirs of the late Esperanza Zamora, whose family was the majority stockholder of BPHI.

Other findings of petitioner Committee showed that the Bayview property was leased, with option to purchase, to Universal Hotels and Tourism Development Corporation (UHTDC) for 25 years effective October 6, 1974. As of April 1, 1986, the total obligation of UHTDC was P52,559,463.16. The said obligation, however, was reduced by P11 million upon the letter-request dated January 3, 1977 of respondent Anos Fonacier, one of the incorporators and President of UHTDC, which was approved by then President Ferdinand Marcos by way of a marginal note on the said letter.

On June 11, 1997, based on the Sworn Statement of Orlando Salvador, consultant of the PCGG, petitioner Committee filed with the Office of the Ombudsman the criminal complaint against respondents Aniceto Evangelista, Julio Macuja, Gregorio Licaros, Anos Fonacier, Mariano Zamora and Esperanza Zamora. Respondents Evangelista and Macuja were then Acting Manager Real Estate Development and Governor, respectively, of DBP. They approved the loan and/or accommodations granted to BPHI. As earlier mentioned, respondent Fonacier was one of the incorporators and President of UHTDC. Respondent Mariano Zamora, married to the late Esperanza Zamora, was an incorporator and majority stockholder of BPHI.

The criminal complaint reads in part:

- a. BPHI was registered on April 29, 1952 with the following incorporators: (Evidence 1)

Mariano Zamora
Esperanza A. Zamora
Federico Leuterio
Angelina A. Zamora
Harry Rindler

- b. BPHI applied for foreign loan guaranty from DBP in the amount of \$7.450 million (P29.055 million) and was approved under B/R No. 5191 dated July 6, 1967, as amended, for the purpose of financing the completion of its Bay View Annex and Rivera Hotel projects. The DBP guarantee in favor of the applicant-corporation shall include a guarantee in favor of the PNB which will in turn, issue the corresponding 10 year stand by Letter of Credit in favor of the Weston International Corporation (Evidence 9). The corresponding L/C was issued by PNB on September 12, 1967. (Evidence 5).
- c. The guarantee loan was without sufficient collateral and BPHI itself had no sufficient capital to be entitled to the amount of the loan considering that at the time the guarantee loan was granted BPHI['s] total collateral loan value of assets amounted to P16,112,495.77 (Evidence 12) and its paid-up capital amounted to P2.250 million. (Evidence 13).
- d. BPHI properties was [sic] acquired by DBP on December 5, 1972 thru foreclosure for P16.160 million. The appraisal of said property

was P25,804,200.00 as of May 1971, (Evidence 22) or a deficiency claim in the amount of P9,644,200.00.

e. The bank deficiency claim against the heirs of Esperanza A. Zamora was dropped by DBP under B/R No. 842 dated March 29, 1978.

f. Other findings:

f-1. The Bay View Hotel, Inc. property was leased with option to repurchase, to Universal Hotels and Tourism Development Corporation (UHTDC) for 25 years effective October 6, 1974. (Evidence 20).

f-2. UHTDC was incorporated and registered with SEC on September 10, 1974 with the following incorporators:

Anos Fonacier
Jose V. Madarang
Amado V. Santos
Lamberto Ocampo
Rosauro S. Atangan

f-3. The total obligation of UHTDC as of April 1, 1986 were [sic] as follows: (Evidence 27).

Accounts Receivable —	P27,460,000.00
Rental	
Interest (on unpaid rental)	13,731,620.13
Service Charge	355,888.22
Advances	5,512,568.36
Add'l. interest and	<u>5,499,463.16</u>
Penalty charges	
Total	52,559,463.16

However, the total obligation was reduced by P11.0 million as per letter of Mr. Fonacier dated January 3, 1977 and approved by Ex President F. E. Marcos. (Evidence 22).

5. Pursuant to Administrative Order No. 13 dated October 18, 1992, creating the Presidential Ad Hoc Fact-Finding Committee on Behest Loans and further defined its scope under Memorandum Order No. 61 dated November 9, 1992 (copies attached), the Committee unanimously resolved that the presence of two (2) or more of the eight (8) criteria mentioned under Memorandum Order No. 61 will classify the account as Behest Loan based on the following criteria:

1. The loans are under collateralized

2. The loans are under capitalized. x x x^[7]

The criminal complaint further alleged that from the foregoing facts and circumstances it appeared that the respondents were criminally liable under Section 3(e) and (g) of RA 3019 which reads:

Sec. 3. Corrupt practices of public officers. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

e. Causing undue injury to any party, including the Government or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

x x x x

g. Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

After consideration of petitioner Committee's allegations, the Ombudsman promulgated the assailed Order dated September 30, 1997 in OMB-0-97-1059 dismissing the complaint on the ground of prescription. The Ombudsman conceded that there was ground to proceed with the conduct of preliminary investigation; however, it found that to do so would just be an exercise in futility because the offenses charged have already prescribed.

According to the Ombudsman, the transactions subject of the charge transpired: (1) in July 1967 when DBP approved BPHI's application for the foreign loan guaranty; (2) in March 1978 when DBP dropped the deficiency claim against the heirs of Esperanza Zamora in connection with the foreclosure of the Bayview property; and (3) in January 1977 when the outstanding obligation of UHTDC was reduced upon the marginal note of then Pres. Marcos on the letter-request of respondent Fonacier.

These acts being complained of, the Ombudsman noted, are governed by the law in force at the time of their commission, which was RA 3019 prior to its amendment by *Batas Pambansa Blg. 195* in March 1982. The old RA 3019 provided that the offenses thereunder prescribe in ten years. Since the criminal complaint against the respondents for violation of Section 3(e) and (g) of RA 3019 was filed only in June 1997, then the offenses have long prescribed in 1977, 1988 and 1987, as the case may be. The prescriptive period commenced to run in 1967, 1978 and 1977, when the alleged transactions took place. The Ombudsman reasoned, thus:

And since a case was filed against the herein respondents only in June 1997, the offenses have long prescribed in 1977, 1988 and 1987 as the case may be.

This is so because prescription commenced to run in 1967, 1978 and