

## SECOND DIVISION

[ G.R. No. 124261, May 27, 2004 ]

**ARMANDO F. BERNARDO, PETITIONER, VS. COURT OF APPEALS,  
CIVIL SERVICE COMMISSION AND LAND BANK OF THE  
PHILIPPINES, RESPONDENTS.**

### D E C I S I O N

**CALLEJO, SR., J.:**

This is a petition for review on certiorari filed under Rule 45 of the Rules of Court, as amended, assailing the Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. SP No. 38318.

The undisputed facts of the case are as follows:

Petitioner Armando F. Bernardo entered the government service on November 5, 1975 as Claims Adjuster of the Land Bank of the Philippines (LBP), Baliuag Branch, a government-owned and controlled corporation. In 1986, he was the Head of the Loans and Discount Division of the bank. He also maintained Savings Account No. 28-110 with the said branch.

On January 27, 1986, Bernardo deposited the amount of P500,000 in his savings account.<sup>[2]</sup> After making the said deposit, he photocopied that page in his bank passbook where the deposit of P500,000 was reflected and, on the same day, withdrew the said amount. He also executed, in his capacity as treasurer-in-trust of the Markay Trading and Manpower Services, Inc. (MTMSI), a Treasurer's Affidavit, falsely certifying that:

... at least 25% of the authorized capital stock of the corporation has been subscribed and 25% of the total subscription has been paid and received by me in cash or property in the amount of P500,000.00 in accordance with the Corporation Code.<sup>[3]</sup>

On the same day, Bernardo, still in his capacity as treasurer-in-trust of the said corporation, executed a letter-authority to the Securities and Exchange Commission (SEC), worded as follows:

This is to authorize your office to examine and verify the deposit in the Land Bank of the Philippines, Baliuag, Bulacan, in my name as Treasurer-in-Trust for Markay Trading and Manpower Services in the amount of Five Hundred Thousand Pesos only (P500,000.00) representing the paid-up capital of the said corporation, which is in the process of incorporation.

This authority is valid and inspection of said deposit may be made even after the issuance of certificate of incorporation to the company.

Should the deposit be transferred to another bank prior to after (sic)

incorporation this letter will also serve as authority to verify and examine the same.

The representative of the Securities and Exchange Commission is also authorized to examine the pertinent books and records of accounts of the corporation as well as all supporting papers to determine the utilization and disbursement of the paid-up capital.<sup>[4]</sup>

On January 30, 1986, the Articles of Incorporation of the MTMSI was registered with the SEC.<sup>[5]</sup> Bernardo signed the said articles<sup>[6]</sup> and was one of its incorporators.<sup>[7]</sup> It also appears in the said articles of incorporation that Bernardo was elected as a member of the Board of Directors.<sup>[8]</sup> Bernardo also executed an affidavit that he was elected treasurer of the corporation. <sup>[9]</sup>

It turned out that while Bernardo was an elected treasurer of MTMSI, he never opened an account with the LBP, Baliuag Branch, for the account of the said corporation.<sup>[10]</sup> In the meantime, Bernardo was promoted to the position of Assistant Branch Manager.

On September 18, 1989, the LBP, through its president, Deogracias N. Vistan, filed a formal charge against Bernardo charging him of gross neglect, grave misconduct, conduct prejudicial to the best interest of the bank, and serious violation of Civil Service Commission (CSC) rules and regulations, thus:

1. That on or about and during the period January 1 – 31, 1986 or prior thereto or subsequently thereafter and while then and there wittingly, knowingly, and voluntarily indulged in the pursuit of private business by making yourself one of the incorporators, allowing and accepting membership in the board of directors and being elected and accepted the position of treasurer of a certain corporation called Markay Trading and Manpower Services, Inc. which is duly registered with the Securities and Exchange Commission on January 30, 1986, without the permission and authority required by the Civil Services rules and regulations.
2. That on or about and during the aforementioned period, and while then duly employed with the Land Bank of the Philippines, you did then and there wittingly, knowingly, voluntarily, and with utter bad faith attested and declared under oath in an official document denominated as "Treasurer's Affidavit," viz: "I hereby certify under oath that at least 25% of the authorized stock of the corporation has been subscribed and at least 25% of the total subscription has been paid and received by me, in cash or property in the amount of not less than P5,000.00, in accordance with the Corporation Code," and in another official document to support the aforesaid declaration, you likewise attested and declared that the said corporation of which you were the duly elected Treasurer has a deposit with the Land Bank of the Philippines, Baliuag, Bulacan, in your name as Treasurer-in-Trust for Markay Trading and Manpower Services, in the sum of Five Hundred Thousand Pesos Only (P500,000.00) representing the alleged paid-up capital of the said corporation, which is in the process of incorporation, when in truth and in fact, you know fully well that such statements were false the truth of the matter being that there was neither any such cash or property ever paid and received by you as the duly

elected Treasurer representing alleged paid-up capital stock of the mentioned corporation nor any deposit of the sum of P500,000.00 with the Land Bank of the Philippines, Baliuag, Bulacan, in your name as Treasurer-in-Trust for Markay Trading and Manpower Services.

The aforementioned acts committed by you are grounds for disciplinary action under Article IX, Section 36, P.D. No. 807, particularly par. (b), sub- pars. (3), (4), (24), and (27), and attended with the aggravating circumstance of habituality.<sup>[11]</sup>

During the formal investigation by Hearing Officer Manuel A. Osias, evidence was presented that during the period of November 13, 1986 to August 24, 1987, checkbooks of MTMSI were signed by Bernardo, as treasurer, and his wife. Bernardo adduced in evidence the affidavits of Saturnino Dimatangal and Alicia Atienza, incorporator and cashier of MTMSI, respectively, declaring that only Maricar Butalid managed and operated the corporation after its establishment and that Bernardo was never seen in the offices of the corporation. Bernardo testified that he did not actually own any shares of stocks in MTMSI, nor was he ever elected to any position of the corporation. He declared that sometime during the last week of January 1986, he was approached and invited to be an incorporator of the MTMSI. He stated that he was almost convinced, but rejected the invitation on January 27, 1986. He also claimed that since he did not engage in business, he did not secure the permission of the LBP.

On October 10, 1990, the hearing officer issued a resolution with the following findings and recommendation:

After due examination of the facts as borne by the testimonial and documentary evidence gathered and presented by both Complainant and Respondent, Respondent is found guilty on both counts. Firstly, for engaging in business, occupation or vocation without securing the permission of the Land Bank in violation of Sec. 36 of P.D. 807 and, secondly, for committing acts of falsification amounting to GRAVE MISCONDUCT in office.

In the determination of the penalties to be imposed, mitigating and aggravating circumstances attendant to the commission of the offense have been considered.

Aside from this pending administrative case, Respondent has two (2) other administrative cases pending final resolution. Thus, we cannot consider this administrative case as his first offense to merit a mitigating circumstance in his favor. However, we should consider his nineteen (19) years in the government service as one mitigating circumstance. On the other hand, in committing these offenses, Respondent utilized the facilities of the Bank and took advantage of his official position in perpetrating said offenses which are considered as two (2) separate aggravating circumstances.

Furthermore, since the Respondent is found guilty of both counts, the penalty imposed should be that corresponding to the most serious charge, which is GRAVE MISCONDUCT in office and the first offense

which is less grave in character can be considered as an aggravating circumstance.

Considering all of the three (3) aggravating circumstances with only one (1) mitigating circumstance to offset one (1) aggravating circumstance, it is hereby recommended that the gravest penalty should be imposed against the Respondent pursuant to P.D. 807.

WHEREFORE, it is respectfully recommended that Respondent ARMANDO BERNARDO be meted out a penalty of *FORCED RESIGNATION* with the attendant administrative disabilities inherent thereto.<sup>[12]</sup>

The LBP approved the recommendation of the hearing officer. Bernardo appealed to the Merit Systems Protection Board (MSPB) which rendered a decision affirming the resolution of the LBP, but modified it in that he was found guilty of misrepresentation of a material fact amounting to dishonesty for engaging directly in a private business without the permission required by the CSC rules and regulations. It, likewise, affirmed the penalty of dismissal from the service imposed by the LBP. Bernardo filed a motion for reconsideration as well as a supplement to the said motion, but the Board denied the same. Bernardo appealed to the CSC on the following grounds:

- A. The MSPB decision failed unconditionally to consider the grounds raised in the Addendum to Motion for Reconsideration;
- B. LBP and MSPB erred in finding that he did not seek permission in joining the corporation as treasurer;
- C. The decision of LBP as affirmed by the MSPB was excessively harsh, unfounded and not supported by relevant and appropriate law.<sup>[13]</sup>

On November 17, 1992, the CSC issued Resolution No. 92-1834 affirming the penalty meted on him by the MSPB on its finding that Bernardo was guilty of grave misconduct, conduct prejudicial to the best interest of the service, and engaging in private business without prior authority from the head of office. But the CSC anchored its finding of Bernardo's guilt for grave misconduct and conduct prejudicial to the best interest of the service on the following ground:

... However, it is noted that Bernardo on the same day he made the deposit also withdrew the same. He admitted that the said deposited amount represented the paid up capital of the corporation and he held the said amount as the treasurer-in-trust of MTMSI. If that is so, the said amount deposited could not be withdrawn prior to the issuance of SEC Registration and without the Resolution of the Board of Directors. Thus, Bernardo made use of his being an employee of the Bank to do this irregular act. His being able to deposit and withdraw on the same date the amount representing the supposed paid up capital of the MTMSI could not have been effected if he was not connected with that Bank. For abusing the trust and confidence of his employer, Bernardo has committed Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service.

WHEREFORE, foregoing premises considered, the Commission resolves to

find Armando Bernardo guilty of Grave Misconduct, Conduct Prejudicial to the Best Interest of the Service and engaging in private business without prior authority from the head of office. He is hereby meted out the penalty of dismissal from the Service. The decision of the MSPB, with respect to the imposition of the penalty, is hereby affirmed.<sup>[14]</sup>

The CSC absolved Bernardo of the charge of dishonesty in connection with his execution of the treasurer's affidavit and the letter of authorization to the SEC. Bernardo filed a motion for reconsideration of the resolution on the following grounds:

1. The acts of the respondent which was the basis for the finding of guilt was not raised in the formal charge which amounted to the violation of his right to due process;
2. The acts of the respondent are not irregular or violative of any existing Civil Service law and rules;
3. The penalty of dismissal is excessive and therefore unjust.<sup>[15]</sup>

Bernardo argued that he was deprived of his right to due process because he was found administratively guilty for acts which were not included in the formal charges lodged against him by the LBP, his employer. On May 31, 1993, the CSC issued Resolution No. 93-2008 denying the said motion for lack of merit.

Bernardo questioned the ruling via a petition for certiorari in this Court, thus:

1. The CSC Resolutions were promulgated in violation of the petitioner's constitutional right to due process;
2. The CSC and LBP Resolutions have no factual or legal basis;
3. The penalty of dismissal imposed on the petitioner is unwarranted, unjust and excessive.<sup>[16]</sup>

The Court gave due course to the petition but referred the same to the Court of Appeals for disposition, pursuant to Administrative Circular No. 1-95.

On March 20, 1996, the CA rendered a decision dismissing the petition for lack of merit.

In his petition in the case at bar, the petitioner raises two issues: (a) whether or not the CA erred in affirming the resolution of the CSC that he violated Section 36(b) (24) of P.D. No. 807, implemented in Section 14, Rule XVIII of the CSC Rules and Regulations; and, (b) whether or not the petitioner was deprived of his right to due process when the CA affirmed the resolution of the CSC finding him administratively guilty of grave misconduct and conduct prejudicial to the best interest of the service based on acts not covered by the formal charges lodged against him.

On the first issue, the petitioner avers that he resigned from the MTMSI even before the corporation started its business operations. He asserts that there is no evidence on record that he actually engaged in business. We do not agree. The evidence on record shows that he was not only an incorporator, but was also a member of the