

EN BANC

[G.R. No. 126557, March 06, 2001]

RAMON ALBERT, PETITIONER, VS. CELSO D. GANGAN, IN HIS CAPACITY AS CHAIRMAN, COMMISSION ON AUDIT, ROGELIO ESPIRITU, IN HIS CAPACITY AS COMMISSIONER, COMMISSION ON AUDIT, SOFRONIO URSAL, IN HIS CAPACITY AS COMMISSIONER, COMMISSION ON AUDIT, EMMA M. ESPINA, IN HER CAPACITY AS DIRECTOR, COMMISSION ON AUDIT, AND LAKAMBINI RAZON, IN HER CAPACITY AS THEN RESIDENT AUDITOR FOR NATIONAL HOME MORTGAGE FINANCE CORP., RESPONDENTS.

D E C I S I O N

BUENA, J.:

This petition for *certiorari* seeks to nullify Commission on Audit (COA) Decision No. 2700 dated February 19, 1993, finding petitioner, then President of the National Home Mortgage Finance Corporation (NHMFC), liable for the amount of P36,796,711.55 covering the payment of the loan proceeds for the lot acquired by the Alyansang Maka-Maralitang Asosasyon at Kapatirang Organisasyon (AMAKO) which was disallowed in audit.

The facts are undisputed:

The Housing and Urban Development Coordination Council (HUDCC) together with the Presidential Commission for Urban Poor (PCUP), NHMFC, and Home Insurance Guarantee Corporation (HIGC) formed an inter-agency committee to conceptualize and prepare the guidelines and procedures for the Community Mortgage Program (CMP),^[1] a sub-program of the Unified Home Lending Program (UHLP). The CMP is an innovative scheme in mortgage financing where an undivided tract of land may be acquired by several beneficiaries through the concept of community ownership. It was adopted to assist residents of blighted or depressed areas to initially own the lots they occupy, and, eventually, to build a decent house thereon to the extent of their affordability within the concept of low-cost-home financing and after due compensation to the landowner. The beneficiaries of the financing shall then form or establish an association, or cooperative, duly registered with appropriate governmental agencies and accredited with the PCUP. Under the financing procedure of the CMP, an application of an association for a loan is coursed through duly accredited originators, such as the National Housing Authority (NHA), and Non-Government Organizations (NGOs).^[2]

On August 20, 1988, the NHMFC Board issued Resolution No. 419, Series of 1988, approved the CMP.^[3]

On December 19, 1988, Carlos P. Doble, then Vice President of HIGC, issued an

appraisal policy for the CMP which was concurred in by the HIGC President, Federico Gonzales, herein petitioner, NHMFC OIC/EVP, and HUDC Teodoro Katigbak.^[4] On the same date, Doble likewise issued to HIGC Technical Service Department personnel the Appraisal Policy for the CMP.^[5]

On April 12, 1989, the NHMFC board issued Resolution No. 546, Series of 1989, approving the amended/expanded guidelines for CMP.^[6]

On April 4, 1989, the Sapang Palay Community Development Foundation Inc., (Foundation) applied for accreditation with the NHMFC as originator of land and housing project through a Purchase Commitment Line. The application consists of sixteen (16) project sites situated in different parts of the country. Among these is the AMAKO Project which was submitted for accreditation to the NHMFC by Nelson Concepcion, President of the Foundation. The AMAKO project refers to seventy-three (73) hectares of land located at Sta. Catalina, Angeles City, which was offered by Severino H. Gonzales, Jr. Construction, Co, Inc. (SHGCCCI), through its shareholder, Engineer Ceres Pajaron, to the members of AMAKO. Mr. Concepcion who was also the concurrent head of the PCUP's Housing and Settlement Division, delivered on September 7, 1989, to the CMP Unit - then under Mortgage Takeout Department (MROD)-NHMFC - the project documents of AMAKO for pre-evaluation which were returned to the Foundation on September 22, 1989 by the CMP unit.

On October 4, 1989, Mr. Concepcion submitted an application for Purchase Commitment Line in the amount of P36,794,250.00, specifically for the AMAKO project together with an Information Sheet of the Foundation, the AMAKO project profile, and the Department of Agrarian Reform certification dated December 4, 1988. On the same day, Mr. Generozo Cruz, Foundation Vice President and PCUP Director, redelivered the documents to the CMP unit to discuss the Foundation's proposal on the AMAKO project.

On October 5, 1989, the Officer-in-charge of the Credit and Collection Group, NHMFC, recommended to petitioner the grant of an additional line in favor of Sapang Palay Community Development Foundation, Inc., in the total amount of P36,8000,000.00^[7] - approved by the NHMFC Credit Committee on October 13, 1989 - subject, however, to the approval of the NHMFC Board.

On December 14, 1989, the NHMFC, upon the recommendation of the CMP Task Force, together with the Certification of Mortgage Examinations,^[8] issued a Letter of Guaranty in favor of SHGCCCI.^[9] Thereafter, the disbursement voucher (No. 89F2-5732) was prepared by the CMP Task Force in favor of SHGCCCI.^[10] Mr. Rogelio Olaguer, head of the CMP Task Force, likewise inspected the project site and assured petitioner that the project is above board and in accordance with the NHMFC-CMP guidelines. With this assurance, petitioner approved the payment to the SHGCCCI. Thus, on January 4, 1990, the amount of P36,796,711.55 under Philippine National Bank - Land Bank of the Philippines Check No. 362994, was released to Engineer Severino A. Gonzales, Jr. of the SHGCCCI.^[11]

Sometime in June 1990, petitioner instructed the Community Mortgage Management Office (CMMO) to conduct a routine inspection of the AMAKO Project. Upon verification, it was discovered that the AMAKO project was three (3) months in

arrears in their amortization. As a consequence, petitioner, sometime in July 1990, tasked the Committee on Evaluation of Originating Institutions to investigate the originators with respect to their compliance with corporate circulars, other rules and regulations issued by NHMFC regarding its lending programs. One of the originators investigated was the Foundation which was instrumental in the granting of the loan to the AMAKO Project.^[12]

On September 3, 1990, the COA Resident Auditor of NHMFC disallowed the loan granted to the AMAKO Project for the following reasons: (a) non-submission of documentary requirements/non-complying or defective documents as required under NHMFC Corporate Circular No. CMP-001; and (b) irregular/excessive expenditures per COA Circular No. 85-55A dated September 8, 1985. The Auditor determined the following officers of NHMFC, as personally liable, viz.: petitioner as President; Fermin T. Arzaga, OIC, Finance, Corpan & Computer Services Group; Roger Olaguer, Head, CMP Task Force; Vivien Noble, Deputy Head, CMP Task Force; Ernesto Salvador, Executive Asst. CMP Task Force; Cynthia O. Alas, Div. Chief II, Budget and Irma Fuentes, COD, CMMO.^[13]

On September 18, 1990, petitioner filed with the Ombudsman a letter-complaint against his subordinate employees who appeared to be responsible for the fraud with respect to the AMAKO loan transaction.^[14] However, said complaint was withdrawn by petitioner's successor, Acting President Florentino Mauricio, and re-filed with the Civil Service Commission on August 5, 1991. Petitioner also filed a civil case for sum of money, annulment, damages and attorney's fees with preliminary attachment, against SHGCC, AMAKO, Sapang Palay & Development Foundation, Inc., and other persons responsible for the misrepresentation, tortious and fraudulent acts in connection with the loan granted to AMAKO project.^[15] The complaint was subsequently amended to include Rogelio Olaguer, Ernesto S. Salvador and Vivien Noble, who are employees of NHMFC, and Eugenio M. Cunanan, Jr. of HIGC.^[16]

On October 19, 1990, petitioner requested for the lifting of the disallowance on the loan grant to AMAKO^[17] which was denied on October 25, 1990. Petitioner moved for a reconsideration which was elevated to the COA Corporate Audit Office pursuant to Section 65 of PD 1445.^[18]

On February 19, 1993, the COA rendered Decision No. 2700, finding petitioner as among the persons liable for the amount representing the payment of the loan proceeds obtained by AMAKO. COA disallowed the plan payment because it found the payment irregular and an excessive expenditure, and held petitioner primarily liable pursuant to Section 103 of P.D. 1445.^[19]

Petitioner's motion for reconsideration of the above-mentioned decision was denied on August 29, 1996 per COA Decision No. 96-484,^[20] excerpts of which reads:

"x x x x x x x x x

"In a motion for reconsideration dated April 6, 1993, Mr. Albert, thru Counsel, contended that he (Mr. Albert) cannot and should not be held personally liable for the amount of the loan as he acted only in the

performance of his official duties and that there was no clear showing of bad faith, malice or gross negligence on his part.

"This Commission finds the explanation or justification devoid of merit. It is significant to note that Mr. Albert himself was the final approving authority of the transaction in question and that the officers/employees who processed the same were directly under his supervision. The CMP Task Force created in his very own office provides a situation where he could have conclusively determined the validity of a transaction involving such large amount as P36,796,711.55.

"Likewise, this Commission cannot with expediency exculpate Mr. Albert from liability by accepting his claim of good faith and exercise of due diligence, otherwise this principle would be rendered worthless. Good faith and exercise of due diligence are disputable presumptions, and these presumptions are overcome by evidence of specific acts constituting an offense, as where there exists the fact that loss of government funds resulted from official action. Besides, Section 3 (9) of R.A. 3019 (Anti-Graft Law) declares to be unlawful the act of `entering, in behalf of the Government, into contract or transaction manifestly or grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.'"

Aggrieved, petitioner now comes to this Court contending that he cannot be held personally liable for the amount of P36,796,11.55 representing the loan proceeds to AMAKO, because the questioned COA decisions do not have any findings that he has knowingly participated in the alleged fraudulent transaction. He claims that there is no clear showing that he acted in bad faith, with malice, or gross negligence when he approved the loan transaction. The approval of the loan was based on the certification of the duly authorized officers of the Community Mortgage Program Task Force.

While the petition is pending , NHMFC filed a petition for extra-judicial foreclosure of real estate mortgage against AMAKO which was represented by its president, Mr. Mario J. Mamawan, before the Regional Trial Court of Angeles City docketed as FC Case No. 98-10.

On March 31, 1998, the property was sold at public auction with NHMFC as the highest bidder. A Certificate of Sale was subsequently issued in favor of NHMFC.^[21]

The AMAKO property was then published and offered for sale three times in April 1999, and once in May 1999, but with no bidder. The property was then offered under the negotiated sale of rights over foreclosed property offer of which was published in June 1999.

In response to the published offer, VIVE EAGLE LAND, INC. (VIVE) offered to purchase the property for P40,000,000.00.

On October 21, 1999, the Board of Directors of the NHMFC approved the sale^[22] in favor of VIVE per its Resolution No. 2998 Series of 1999.^[23] The sale was confirmed on November 18, 1999.^[24]