

## EN BANC

[ G.R. No. 109666, June 20, 2001 ]

**ROGERIO R. OLAGUER, ERNESTO S. SALVADOR AND IRMA R. FUENTES, PETITIONERS, VS. HON. EUFEMIO DOMINGO, IN HIS CAPACITY AS CHAIRMAN, HON. ROGELIO B. ESPIRITU AND HON. SOFRONIO URSAL, AS COMMISSIONERS, EMMA M. ESPINA, IN HER CAPACITY AS DIRECTOR, ALL OF THE COMMISSION ON AUDIT, AND LAKAMBINI RAZON, IN HER CAPACITY AS RESIDENT AUDITOR FOR NATIONAL HOME MORTGAGE FINANCE CORPORATION, RESPONDENTS.**

### DECISION\*

**PUNO, J.:**

This is a petition for *certiorari* under Rule 65 of the Rules of Court seeking to annul (1) Decision No. 2700 dated February 19, 1993 of the Commission on Audit (COA); (2) the Memorandum dated April 10, 1991 of the Corporate Audit Office of the COA; and (3) the Memorandum dated September 3, 1990 of the resident auditor of the National Home Mortgage Finance Corporation.

The instant case involves the post-audit findings on disbursements of the National Home Mortgage Finance Corporation (NHMFC) for the purchase of a parcel of land under the Community Mortgage Program. Petitioners are all career service professionals of the NHMFC who were assigned to the NHMFC's Community Mortgage Group (CMG). Petitioner Rogerio Olaguer was the Manager of the CMG, petitioner Ernesto S. Salvador was the Chief of Division, Project Evaluation, Monitoring and Relations Division, and petitioner Irma R. Fuentes was the Chief of Division, Documentation and Processing Division.

The NHMFC is a government corporation and an implementing arm of the National Shelter Program of the government that provides home financing to people in the lower income bracket of Philippine society. In 1987, the NHMFC, together with the Housing and Urban Development Council (HUDC), the Presidential Commission on Urban Poor (PCUP) and the Home Insurance Guaranty Corporation (HIGC) conceptualized and proposed guidelines for the introduction of a Community Mortgage Program in housing. In 1988, the NHMFC launched the Community Mortgage Program as a sub-program of the Unified Home Lending Program. The Community Mortgage Program was an innovative scheme in mortgage financing whereby several beneficiaries could acquire an undivided tract of land through the concept of community ownership. The Program was intended primarily to assist residents of blighted areas to own the lots they occupy or the lots to where they shall be relocated through low income financing to be coursed through duly accredited originators such as the National Housing Authority (NHA), HIGC, Local Government Units (LGU's) and Non-Government Organizations (NGO's).

On December 19, 1988, HIGC Vice-President Carlos P. Doble issued an appraisal policy for the Community Mortgage Program. The policy was concurred in by HIGC President Federico Gonzales, the NHMFC Officer-in-Charge/ EVP Ramon Albert and HUDC Chairman Teodoro Katigbak.<sup>[1]</sup>

In 1989, the HIGC received a request from the Severino H. Gonzales, Jr. Construction Co., Inc., through its General Manager, Ceres Pajaron, for an appraisal of the value of a parcel of land in Barangay Sta. Catalina, Angeles City, Pampanga for community mortgage purposes.

The HIGC conducted an appraisal of the property and found that the land, registered under TCT Nos. 81241 and 81242 in the name of the Severino H. Gonzales Construction Co., Inc., covered 735,565 square meters, or 73.56 hectares in area, was adjacent to Clark Air Base and was approximately four (4) kilometers away from Angeles City proper. The property was flat in terrain, free from squatters, untenanted and devoted to non-agricultural purposes. It was an interior lot and, if provided with a road right-of-way, had a fair market value of P60.00 per square meter or P600,000.00 per hectare. The results of the appraisal was contained in a "Rawland Appraisal Report" dated February 13, 1989 of the HIGC.<sup>[2]</sup>

On the same day the Rawland Appraisal Report was made, i.e., February 13, 1989, HIGC Vice-President Carlos P. Doble sent a letter to Ceres Pajaron of the Severino H. Gonzales Construction Co., Inc. informing her that the property had an appraised value of P60.00 per square meter.<sup>[3]</sup>

On March 29, 1989, the Sapang Palay Community Development Foundation, Inc. (SPCDFI), a non-stock, non-profit and non-government organization that serves as a link between community-based organizations and the NHMFC, applied with the NHMFC for a Purchase Commitment Line of P91,647,661.90 to cover various Community Mortgage projects in its pipeline. Included therein was an application for a loan of P34,000,000.00 by the ALPRAC-Alyansa ng Maka-Maralitang Asosasyon at Kapatirang Organisasyon (AMAKO), a sub-federation of SPCDFI. This application, however, was not acted upon by the NHMFC's Accreditation and Project Evaluation Department (APED) after finding that the documents submitted were incomplete.<sup>[4]</sup>

On April 4, 1989, the SPCDFI, through its President, Nelson Concepcion, applied with the NHMFC for accreditation as originator of land and housing projects through a Purchase Commitment Line. This application embraced sixteen (16) project sites in various parts of the country and one of which was the Angeles City project, referred to as the AMAKO Project. The AMAKO Project covers the same land originally titled in the name of Romeo Gatan and later sold to and registered in the name of the Severino H. Gonzales, Jr. Construction Co., Inc. Earlier, in August 1988, the same property was offered by the Severino H. Gonzales Jr. Construction Co., Inc. for sale to members of SPCDFI-AMAKO.<sup>[5]</sup>

In the meantime, the guidelines for the Community Mortgage Program were amended by, among others, increasing the loan ceiling and changing the origination fee.<sup>[6]</sup> On April 12, 1989, the Amended/Expanded Guidelines were approved by the NHMFC Board of Directors.<sup>[7]</sup>

On September 7, 1989, Nelson Concepcion, SPCDFI President and at the same time Housing and Settlement Division Head of the Presidential Commission on Urban Poor, delivered to the NHMFC the documents of AMAKO for preliminary evaluation. Deficiencies were noted and the documents were returned to SPCDFI for compliance.

On September 28, 1989, the Task Force on Community Mortgage Program was created within the NHMFC. Petitioner Olaguer was appointed Task Force Head, petitioner Salvador as Executive Assistant and petitioner Fuentes as Unit Head, Documentation and Processing Unit. The Task Force on CMP was later renamed as the Community Mortgage Management Office (CMMO) with nineteen (19) plantilla positions.

On October 3, 1989, SPCDFI-AMAKO submitted another application letter with revised project profile. This time, SPCDFI -AMAKO requested for an increase in purchase commitment line from P34 million to P36.8 million with the undertaking that SPCDFI shall shoulder other incidental costs like survey cost, transfer cost and mortgage registration cost.<sup>[8]</sup>

On October 4, 1989, the SPCDFI's application for accreditation was received by the Accreditation and Project Evaluation Department (APED) of the NHMFC.

On October 5, 1989, the APED submitted a Memorandum to the NHMFC President, thru the Officer in Charge, Credit and Collection Group, recommending approval of the AMAKO Project and the grant of a loan of P36,800,000.00 to the SPCDFI for purchase of the AMAKO land.<sup>[9]</sup> In the Memorandum, it was stated that the said project was evaluated in accordance with NHMFC's CMP Corporate Circular No. 001 dated April 17, 1989 and was found to have complied with its requirements. It was also stated that the existing land use of the property is residential, that there are 2,641 prospective beneficiaries of the land, and that the subject land is untenanted as certified by the Department of Agrarian Reform.

The APED Memorandum was endorsed by the NHMFC Credit and Collection Group thru NHMFC President Ramon Albert to the NHMFC Board of Directors for approval.<sup>[10]</sup> The NHMFC Board, in its Resolution No. 662 dated October 23, 1989, approved the recommendation.<sup>[11]</sup>

Thereafter, the MCR Specialist of the CMP Task Force conducted an investigation on AMAKO. In two (2) Memoranda dated November 20, 1989 and December 12, 1989 addressed to petitioners Olaguer and Salvador and signed by Jeffrey Calimlim and Ma. Helena Borrromeo, it was found that AMAKO was an organization under the SPCDFI with head office in Angeles City, Pampanga; that AMAKO has 2,641 beneficiaries belonging to fourteen (14) local associations, eight (8) of which are under the Association for the Landless Poor Residents of Angeles City (ALPRAC); that AMAKO merged with ALPRAC to become the umbrella organization; that a majority of AMAKO's members are squatters and lessors of the land they occupy for more than eight (8) years; and that retention fees and other fees for the home lots were being collected by AMAKO from its members. As regards the project site, it was found to be relatively flat, vegetated with wild grass and was untenanted. There was an "existing road" leading to the site but no public transportation traversed said road. The property was an interior lot and had no road right-of-way for ingress and

egress.<sup>[12]</sup> As a result of the investigation, the following problems were identified:

"The following problems have been identified during the recent investigation:

1. The non-existence of the right- of- way, the land classification, the lack of transportation and the site being adjacent to Clark Air Base, might pose a serious implication on the proposed project.
2. The beneficiaries were being charged with fees beyond the actual cost incurred.
3. Subject property is an interior lot which is contrary to the beneficiaries' knowledge."<sup>[13]</sup>

As a result of the findings in the two (2) Memoranda of the MCR Specialist, petitioner Olaguer and Mr. Calimlim of the MCR Specialist were instructed to conduct interviews and take videotapes of the site for documentation purposes.<sup>[14]</sup>

On January 4, 1990, in accordance with the APED Memorandum which the NHMFC Board duly approved, the amount of P36,796,711.55 was released by the NHMFC to the Severino H. Gonzales Construction Co., Inc. This amount represented the proceeds of the loan of AMAKO as purchase price for the Angeles property, with the same property set up as collateral.

Thereafter, the CMMO was reorganized and upgraded to the Community Mortgage Group with forty (40) plantilla positions. Petitioner Olaguer was appointed Manager, petitioner Salvador as Chief of Division, Project Evaluation, Monitoring and Relations Division, and petitioner Fuentes as Chief of Division, Documentation and Processing Division.

Meanwhile, an audit was conducted by NHMFC resident auditor, herein respondent, Lakambini Razon. In a Memorandum dated September 3, 1990 addressed to NHMFC President Ramon A. Albert, respondent Razon disallowed in audit the loan of AMAKO. The Memorandum reads as follows:

"This is to inform you that our audit of the aforesaid voucher paid under PNB Check No. 372994 dated January 4, 1990 in favor of Severino H. Gonzales, Jr. Construction, Inc. in the amount of P36,796,711.55 has been disallowed in audit for the following reasons:

1. Non-submission of documentary requirements/non-complying or defective documents as required under NHMFC Corporate Circular No. CMP-001 as amended-
  - a. Non-existence of the lease purchase agreement executed by the beneficiaries and the affidavits or certification of income of

the beneficiaries at the time of take-out.

- b. Non-compliance with the warranty of undertaking to submit the required documents within 90 days from date of issuance of Letter of Guaranty dated December 14, 1989, as of this date.
  - c. No explanation was made why the Manager of CMMO in his memo to this Office dated July 16, 1990 alleged that Block No. 32-37 are open spaces, although a master list of Block No. 32 was submitted to this Office on July 31, 1990.
  - d. The schematic plan shows that Block No. 65 is an open space, whereas payment was made thereof since it is included in the master list of beneficiaries consisting of sixteen (16) borrowers amounting to P220,597.65.
2. Irregular/ excessive expenditures per COA Circular No. 85-55A dated September 8, 1985, thus disadvantageous to the Corporation.
- a. The HIGC's appraisal of the subject property dated February 13, 1989 is P60/ sq. m. if provided with a right-of-way but the MCR specialist of CMP Task Force reported to the Manager of CMMO on December 12, 1989 on its non-existence.
  - b. The certificates of land conversion dated November 14 and December 14, 1988 issued by the Department of Agrarian Reform of Angeles City submitted by the landowner appear to be spurious per verification made by the CMMO staff in their memorandum dated March 5, 1990.
  - c. The property was bought by the landowner per Entry No. 4346- TCT No. 60675 on April 28, 1988 for only P1 million and per tax declaration submitted the fair market value of the property is only P7,355,660.00, however, the Corporation accepted the property as collateral for P36,796,711.55.
  - d. The amount paid was excessive, that is 90% of the appraised value of P60/ sq. m. which is almost equal to the selling price of the landowner per his voluntary offer to sell dated August 15, 1988. Further, per report of the CVEED dated July 31, 1990 the current raw land value of the property is only P20/ sq. m. if the same is classified as a residential area. However, actual land use is agricultural and tenanted.
  - e. The Corporation also paid an amount of P7,014,251.00 (130,207 sq. m. x P53.87) for creeks and rivers which form part of the 683,065 sq. m. of the property , per site inspection report of CMMO personnel dated July 5, 1990. Considering that 130,207 sq. m. or 13 hectares thereof are composed of creeks and rivers with a value of P7,014,251.00, a large