

## SECOND DIVISION

[ G.R. No. 133715, February 23, 2000 ]

**DOUGLAS R. VILLAVERT, PETITIONER, VS. HON. ANIANO A. DESIERTO, IN HIS CAPACITY AS OMBUDSMAN, HON. ARTURO C. MOJICA, IN HIS CAPACITY AS DEPUTY OMBUDSMAN-VISAYAS, AND COMMISSION ON AUDIT, REGION VII, CEBU CITY, RESPONDENTS.**

### R E S O L U T I O N

**BELLOSILLO, J.:**

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court, in relation to Sec. 27 of RA 6770<sup>[1]</sup> (*The Ombudsman Act of 1989*), seeking the annulment of the *Memorandum*<sup>[2]</sup> of the Deputy Ombudsman-Visayas dated 17 July 1997, in Adm. Case No. OMB-VIS-ADM-95-0088, approved by the Ombudsman, which recommended the dismissal of petitioner from the Philippine Charity Sweepstakes Office (PCSO), Cebu, as well as the Order<sup>[3]</sup> dated 30 January 1998 denying petitioner's motion for reconsideration.

Petitioner Douglas R. Villavert is a Sales & Promotion Supervisor of PCSO Cebu Branch responsible for the sale and disposal of PCSO sweepstakes tickets withdrawn by him, which are already considered sold. As Villavert is not expected to sell all withdrawn tickets on his own, he is allowed by the PCSO to consign tickets to ticket outlets and/or to engage the help of sales agents, usually sidewalk peddlers and hawkers.

From 20 March to 12 June 1994, or for two (2) months of weekly draws, petitioner Villavert incurred a total of P997,373.60 worth of unpaid PCSO tickets. On 13 October 1994 he wrote the Chairman and Acting General Manager of PCSO, Manuel L. Morato, proposing to settle his unpaid ticket accounts.<sup>[4]</sup> His proposal involved the payment of P50,000.00 in cash as down payment; payment of the remaining amount in equal monthly installments of P5,000.00; application of all his per diems and commissions to his account as they became due; and, sale of fifty (50) booklets or more per draw.<sup>[5]</sup>

On 11 January 1995 Lorna H. Muñoz, COA State Auditor III, wrote petitioner demanding the immediate settlement of the latter's past due ticket accounts with PCSO in the total amount of P997,373.60 with interest at the rate of fourteen percent (14%) per annum. Muñoz also required petitioner to submit within seventy-two (72) hours a written explanation for the delay.<sup>[6]</sup> In response, petitioner informed Muñoz that he had already submitted a proposal for the settlement of his past due accounts and that pending its approval he had already made a total payment of P23,920.68.

Meanwhile, on 26 January 1995 the PCSO Board of Directors<sup>[7]</sup> approved Resolution No. 059, Series of 1995, which adopted the recommendation of the Management Committee to reinstate sales supervisors Rene de Guia and Luis Renolla, Jr., and rehabilitate their accounts. By reason of the Resolution, OIC Manager of the Sales Department, Carlos M. Castillo, requested Chairman Morato to give petitioner the same terms and conditions given to de Guia and Renolla, Jr.

On 20 February 1995 Santos M. Alquizalas, COA Director IV, recommended to the Deputy Ombudsman for the Visayas Arturo C. Mojica that the shortage in the ticket accounts of petitioner should be properly treated under Art. 217<sup>[8]</sup> of the Revised Penal Code, Sec. 3 of RA 3019,<sup>[9]</sup> and RA 6713.<sup>[10]</sup> Taken as a letter-complaint, it was docketed as Adm. Case No. OMB-VIS-ADM-95-0088.

On 27 February 1995 petitioner submitted an amended proposal of settlement for his accounts: a down payment of ten percent (10%) of the total unpaid account or P97,345.29, and the balance to be paid on equal monthly installments equivalent to ten percent (10%) of the down payment or P9,734.52. Petitioner likewise bound himself from then on to purchase all his tickets in cash; to have a ticket quota of no less than fifty (50) booklets for the small draws, and twenty-five (25) booklets for the big draws; and, not to be entitled to his salary for the month if he failed to meet his quota in any draw within that month. The amended proposal was favorably indorsed and recommended for approval by Regional Manager of PCSO-Cebu, William H. Medici, and by PCSO OIC-Manager of the Sales Department, Carlos M. Castillo.<sup>[11]</sup>

On 19 April 1995 petitioner filed his counter-affidavit where he explained the circumstances which led him to incur subject unpaid ticket accounts. He emphasized his proposal to settle his liability and underscored the favorable indorsement of the Regional Manager of PCSO Cebu as well as by the PCSO OIC-Manager of the Sales Department.<sup>[12]</sup>

On 4 June 1996 petitioner filed a Manifestation<sup>[13]</sup> with respondent Deputy Ombudsman-Visayas informing the latter of the approval by PCSO Chairman and Acting General Manager of his amended proposal for settlement. However, in an Order dated 14 August 1996 respondent Deputy Ombudsman-Visayas required petitioner to secure further approval from the PCSO Board of Directors.<sup>[14]</sup>

In compliance, petitioner submitted *inter alia* a copy of the *Affidavit of Desistance*<sup>[15]</sup> executed by the Regional Director of PCSO-Cebu manifesting the disinterest of the PCSO in further prosecuting the case against petitioner. On 20 December 1996 the PCSO Board of Directors approved petitioner's proposed settlement of 13 October 1994 in its Resolution No. 1491, Series of 1996.<sup>[16]</sup>

Graft Investigation Officer II Edgemelo C. Rosales, after due consideration of the evidence submitted by petitioner, rendered a resolution recommending the dismissal of Adm. Case No. OMB-VIS-ADM-95-0088 in view of: (a) the approval of petitioner's proposal of settlement by the PCSO Chairman-Acting General Manager; (b) the findings that petitioner did not mismanage his responsibilities in the sale of sweepstakes tickets; and, (c) the *Affidavit of Desistance* executed by the PCSO through its authorized representative. Despite the recommendation, however, the