

EN BANC

[G.R. No. 164250, September 30, 2005]

**OFFICE OF THE OMBUDSMAN AND DENNIS M. VILLA-IGNACIO,
IN HIS CAPACITY AS SPECIAL PROSECUTOR, OFFICE OF THE
OMBUDSMAN, PETITIONERS, VS. ATTY. GIL A. VALERA AND
COURT OF APPEALS (SPECIAL FIRST DIVISION), RESPONDENTS.**

D E C I S I O N

CALLEJO, SR., J.:

Before the Court is the petition for review on *certiorari* filed by the Office of the Ombudsman and Dennis M. Villa-Ignacio, in his capacity as the Special Prosecutor, Office of the Ombudsman, seeking the reversal of the Decision^[1] dated June 25, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 83091. The assailed decision set aside the Order dated March 17, 2004 issued by petitioner Special Prosecutor Villa-Ignacio in OMB-C-A-03-0379-J placing respondent Atty. Gil A. Valera, Deputy Commissioner, Office of the Revenue Collection Monitoring Group, Bureau of Customs, under preventive suspension for a period of six months without pay.

Factual and Procedural Antecedents

Respondent Valera was appointed Deputy Commissioner of the Bureau of Customs by President Gloria Macapagal-Arroyo on July 13, 2001. He took his oath of office on August 3, 2001 and assumed his post on August 7, 2001. He is in charge of the Revenue Collection Monitoring Group.

On August 20, 2003, the Office of the Ombudsman received the Sworn Complaint dated July 28, 2003 filed by then Director Eduardo S. Matillano of the Philippine National Police Criminal Investigation and Detection Group (PNP-CIDG). In the said sworn complaint, Director Matillano charged respondent Valera with criminal offenses involving violation of various provisions of Republic Act (R.A.) No. 3019,^[2] the Tariff and Customs Code of the Philippines (TCCP), Executive Order No. 38,^[3] Executive Order No. 298^[4] and R.A. No. 6713^[5] as well as administrative offenses of Grave Misconduct and Serious Irregularity in the Performance of Duty. Likewise subject of the same sworn complaint was respondent Valera's brother-in-law Ariel Manongdo for violation of Section 4 of R.A. No. 3019.

The sworn complaint alleged that:

On January 30, 2002, while in the performance of his official functions, Atty. Gil A. Valera had compromised the case against the Steel Asia Manufacturing Corporation in Civil Case No. 01-102504 before Branch 39, RTC, Manila without proper authority from the Commissioner of the Bureau of Customs in violation of Section 2316 TCCP (Authority of Commission to make Compromise) and without the approval of the

President, in violation of Executive Order No. 156 and Executive Order No. 38. Such illegal acts of Atty. Gil A. Valera, indeed, caused undue injury to the government by having deprived the government of its right to collect the **legal interest, surcharges, litigation expenses and damages** and gave the Steel Asia unwarranted benefits in the total **uncollected** amount of **FOURTEEN MILLION SEVEN HUNDRED SIXTY-TWO THOUSAND FOUR HUNDRED SIXTY-SEVEN PESOS AND SEVENTY CENTAVOS (P14,762,467.70)**, which is violative of Sections 3(e) and (g) respectively of RA 3019.

Further investigation disclosed that Atty. Gil A. Valera while being a Bureau of Customs official directly and indirectly had financial or pecuniary interest in the CACTUS CARGOES SYSTEMS a brokerage whose line of business or transaction, in connection with which, he intervenes or takes part in his official capacity by way of causing the employment of his brother-in-law, Ariel Manongdo, thus, violating Section 3(h) of RA 3019 and RA 6713 and Section 4, RA 3019 as against Ariel Manongdo.

Finally, investigation also disclosed that on April 21, 2002 Atty. Gil A. Valera traveled to Hongkong with his family without proper authority from the Office of the President in violation of Executive Order No. 298 (foreign travel of government personnel) dated May 19, 1995, thus, he committed an administrative offense of Grave Misconduct.^[6]

The sworn complaint prayed that:

- 1) Appropriate preliminary investigation be conducted with the end-in-view of filing the necessary information before the Sandiganbayan;
- 2) Pending investigation, Atty. Gil A. Valera be indefinitely suspended from public office in order to prevent him from further committing acts of irregularity in public office;
- 3) This Group be furnished a copy of the Resolution of this (sic) cases.^[7]

At about the same time as the filing of the complaint against respondent Valera, Director Matillano also filed charges against other officials of the Department of Public Works and Highways (DPWH) and Bureau of Customs. The Philippine Daily Inquirer featured a news article on them with the title "*More gov't execs flunk lifestyle check.*"^[8]

Prior to Director Matillano's sworn complaint, criminal and administrative charges were also filed with the Office of the Ombudsman by Atty. Adolfo Casareño against respondent Valera. The complaint of Atty. Casareño contained similar allegations as those in the complaint of Director Matillano in that respondent Valera, without being duly authorized by the Commissioner of Customs, entered into a compromise agreement with Steel Asia Manufacturing Corp. in Civil Case No. 01-102504 to the prejudice of the government.

The cases against respondent Valera before the Ombudsman were docketed as follows:

OMB-C-C-02-0568-I (For: Violation of Sec. 3(e), R.A. 3019, as amended, and Section 3604 of the Tariff and Customs Code) entitled *Alfredo Casareño v. Gil A. Valera and Antonio M. Lorenzana*

OMB-C-C-03-0547-J (For: Violation of Sec. 3(e), (g) and (h) of R.A. 3019, as amended) entitled *PNP-CIDG v. Gil A. Valera and Ariel N. Manongdo*

OMB-C-A-0379-J (For: Grave Misconduct and Serious Irregularity in the Performance of Duty) entitled *PNP-CIDG v. Gil A. Valera*

On November 12, 2003, Ombudsman Simeon V. Marcelo issued a Memorandum^[9] inhibiting himself from the foregoing criminal cases as well as the related administrative case and directing petitioner Special Prosecutor Villa-Ignacio to act in his (the Ombudsman's) stead and place. The said memorandum reads:

MEMORANDUM

TO : HON. DENNIS M. VILLA-IGNACIO
Special Prosecutor
Office of the Special Prosecutor

SUBJECT : OMB-C-C-02-0568-I entitled "Alfredo Casareño vs. Gil Valera, et al.," CPL No. C-03-1829 entitled "PNP-CIDG vs. Atty. Gil Valera and Ariel Manongdo" and OMB-C-A-0379-J entitled "PNP-CIDG vs. Atty. Gil Valera"

DATE : November 12, 2003

The undersigned is inhibiting himself in the above-captioned cases. Please act in his stead and place.

(Sgd.) SIMEON V. MARCELO
Tanodbayan
(Ombudsman)

On March 17, 2004, pursuant to the above memorandum, petitioner Special Prosecutor Villa-Ignacio, in the administrative case OMB-C-A-0379-J, issued the Order placing respondent Valera under preventive suspension for six months without pay. In the said order, petitioner Special Prosecutor Villa-Ignacio found that respondent Valera entered into the compromise agreement with Steel Asia Manufacturing Corp. in Civil Case No. 01-102504 without being duly authorized to do so by the Commissioner of Customs and without the approval of the Secretary of Finance in violation of Section 2316^[10] of the TCCP.

As earlier mentioned, Civil Case No. 01-102504 was a collection suit filed by the Republic of the Philippines represented by the Bureau of Customs against Steel Asia Manufacturing Corp. for payment of duties and taxes amounting to P37,195,859.00. The said amount was allegedly paid by Steel Asia Manufacturing Corp. with spurious

tax credit certificates. In addition to the principal amount, the government likewise demanded payment of penalty charges (25% thereof), legal interest from date of demand, litigation expenses and exemplary damages.

Petitioner Special Prosecutor Villa-Ignacio made the finding that by entering into the said compromise agreement whereby Steel Asia Manufacturing Corp. shall pay the overdue taxes and duties in thirty (30) monthly installments of P1,239,862 from January 2002 to June 2004, respondent Valera may have made concessions that may be deemed highly prejudicial to the government, *i.e.*, waiver of the legal interest from the amount demanded, penalty charges imposed by law, litigation expenses and exemplary damages. Further, by the terms of the compromise agreement, respondent Valera had virtually exonerated Steel Asia Manufacturing Corp. of its fraudulent acts of using spurious tax credit certificates.

Petitioner Special Prosecutor Villa-Ignacio concluded the Order dated March 17, 2004 by stating that “[c]onsidering the strong evidence of guilt of respondent Deputy Commissioner Valera and the fact that the charges against him consist of Grave Misconduct and/or Dishonesty which may warrant his removal from the service, it is hereby declared that the requirements under Section 24 of R.A. No. 6770, in relation to Sec. 9, Rule III of Administrative Order No. 7, on the Rules of Procedure of the Office of the Ombudsman, as amended, are present, and placing respondent Deputy Commissioner Valera under preventive suspension pending administrative investigation on the matter for a period of six (6) months without pay is clearly justified.”^[11]

The decretal portion of the March 17, 2004 Order reads:

WHEREFORE, pursuant to Sec. 24 of R.A. No. 6770, otherwise known as the Ombudsman Act of 1989, in relation to Sec. 9, Rule III of Administrative Order No. 7, respondent ATTY. GIL A. VALERA, Deputy Commissioner, Office of the Collection and Monitoring Group, Bureau of Customs, is hereby placed under preventive suspension for SIX (6) MONTHS WITHOUT PAY.

Pursuant to Sec. 27(1) of R.A. No. 6770, this Order of Preventive Suspension is deemed immediately effective and executory.

The Honorable Commissioner Antonio M. Bernard, Bureau of Customs, is hereby directed to implement the Order immediately upon receipt hereof and to promptly inform this Office of compliance herewith.

Respondent Atty. Gil A. Valera, Deputy Commissioner, Office of the Collection and Monitoring Group, Bureau of Customs, is hereby ordered to file his counter-affidavit and other controverting evidence to the complaint, copy of which together with the annexes, is hereto attached, within ten (10) days from receipt hereof in three (3) legible copies addressed to the Central Records Division, Office of the Ombudsman, Ombudsman Building, Agham Road, Government Center, North Triangle, Diliman, Quezon City, furnishing the complainant with a copy of said counter-affidavit.

Further, respondent is also ordered to submit proof of service of his

counter-affidavit to the complaint, who may file its reply thereto within a period of ten (10) days from receipt of the same.

Failure to comply as herein directed within the period prescribed by the rules shall be deemed as a waiver of the right to submit the party's counter-affidavit or reply, nonetheless, despite said non-filing, the investigation shall proceed pursuant to existing rules.

This Order is being issued by the undersigned in view of the inhibition of the Honorable *Tanodbayan* Simeon Marcelo from his case as contained in a Memorandum dated 12 November 2003.

SO ORDERED.^[12]

Respondent Valera sought reconsideration of the said Order claiming denial of due process. He averred that he had already submitted his counter-affidavit refuting the charges leveled against him by the PNP-CIDG way back on November 6, 2003. He pointed out that Director Matillano's sworn complaint was filed on August 20, 2003 and it was only two months later or on October 22, 2003 that the Ombudsman found enough basis to proceed with the administrative investigation of the case by requiring respondent Valera to file his counter-affidavit. He did so on November 6, 2003. During the said period of two months, the Preliminary Investigation and Administrative Adjudication Bureau-A (PIAB-A) of the Office of the Ombudsman did not find enough bases to preventively suspend him. According to respondent Valera, he was at a loss as to why it was only then (March 17, 2004) that he was being placed under preventive suspension.

Acting on respondent Valera's motion for reconsideration, petitioner Special Prosecutor Villa-Ignacio issued the Order dated April 5, 2004 explaining that the delay in the issuance of the preventive suspension order was due to the inhibition of the Ombudsman from the case and for which reason, he (petitioner Special Prosecutor Villa-Ignacio), by virtue of the Memorandum dated November 12, 2003, had to act in his place and stead. Petitioner Special Prosecutor Villa-Ignacio averred that contrary to respondent Valera's assertion, his counter-affidavit would not justify the reversal of the March 17, 2004 Order since he failed to show that he had the requisite authority from the Commissioner of Customs to enter into the said compromise agreement with respect to the Steel Asia Manufacturing Corp. case. It was not shown under what authority and on what basis respondent Valera entered into the said compromise agreement.

In light of the foregoing ratiocination, petitioner Special Prosecutor Villa-Ignacio denied respondent Valera's motion for reconsideration. The decretal portion of his Order dated April 5, 2004 reads:

WHEREFORE, the undersigned finds no cogent reason to reconsider the suspension order previously issued dated 17 March 2004 but considers the Counter-Affidavit received by the Office of the Ombudsman 06 November 2003 as sufficient compliance to the portion of the assailed Order directing him to file his counter-affidavit. Consequently, the Order insofar as it requires him to file counter-affidavit contained in the 17 March 200^[4] Order is SET ASIDE.^[13]