

ELEVENTH DIVISION

[CA-G.R. SP NO. 123745, May 22, 2014]

**ROLANDO B. FALLER, PETITIONER, VS. THE OMBUDSMAN AND
FIELD INVESTIGATION OFFICE, RESPONDENTS.**

D E C I S I O N

ANTONIO-VALENZUELA, J.:

This is the Petition^[1] filed by Rolando B. Faller ("petitioner Faller") assailing the Decision dated 03 March 2010^[2] ("assailed Decision"), and the Omnibus Order dated 03 October 2011^[3] ("assailed Omnibus Order"), both issued by the Office of the Ombudsman ("OMB"), in OMB-C-A-08-0656-L for grave misconduct, dishonesty, and conduct prejudicial to the best interest of the service.

The facts are as follows: The Field Investigation Office ("FIO") of the OMB filed the Complaint,^[4] against petitioner Faller, Agnes VST Devanadera ("Devanadera"), Divina Gracia F. Cruz ("Cruz"), and Jose Marie C. Capili ("Capili").

The Complaint alleged: On 01 September 2004, Devanadera was appointed as Government Corporate Counsel ("GCC"); on 12 November 2004, petitioner Faller was appointed as Government Corporate Attorney IV ("GCA IV") in the Office of the Government Corporate Counsel ("OGCC"); on 09 February 2005, petitioner Faller was designated as Chief of Staff ("COS") and Head Executive Assistant ("HEA") to Devanadera, under OGCC Office Order No. 013; Section 4 of Presidential Decree No. 1415 ("PD 1415") created the OGCC Trust Fund, and authorized the OGCC to make special assessments upon government-owned or controlled corporations ("GOCCs") it services; Section 3.1.3 (b) of the Implementing Rules and Regulations ("IRR") of PD 1415 limited the purposes of attorney's fees received by the OGCC to the upgrading of facilities and equipment, granting of employee's incentive pay and other benefits, and defraying of such other incentive expenses not provided for in the General Appropriations Act ("GAA"); Section 44, Chapter 5, Book VI of Executive Order No. 292 (otherwise known as the Administrative Code of 1987; "EO 292") mandated the accrual of special assessment fees and attorney's fees to the unappropriated surplus of the General Fund of the government; the OGCC entered into the Memorandum of Agreement^[5] ("MOA") with the Government Service Insurance System ("GSIS") for representation in the extrajudicial foreclosures of delinquent Individual Real Estate Loans; for services under the MOA, the GSIS deposited a total of P 11,845,000.00 to the account of the OGCC with the Land Bank of the Philippines ("LBP"); these fees formed part of the OGCC Trust Fund, which is allotted for the purposes provided for in Section 4 of PD 1415; on 23 January 2007, Devanadera issued the Memorandum to Finance^[6], for the release of attorney's fees to herself, and petitioner Faller; on 24 January 2007, Disbursement Voucher ("DV") No. 2007-01-273^[7] in the amount of P500,000.00, and DV No. 2007-01-274^[8] in the amount of P 200,000.00, were issued in favor of Devanadera, and petitioner

Faller, respectively, after certification from Cruz that the supporting documents for the disbursement were complete and proper; on 25 January 2007, LBP Check No. 310160^[9] for P 108,000.00, and LBP Check No. 310159^[10] for P 450,000.00, were signed by Capili and Devanadera, and released to petitioner Faller and Devanadera, respectively^[11]; the payment of attorney's fees to petitioner Faller and Devanadera was contrary to the purposes of the OGCC Trust Fund provided for in Section 3.1.3 (b) of the IRR of PD 1415; on 08 February 2007, Devanadera issued the Memorandum to Finance^[12], for the financing of the procurement of reading materials, to be taken from the Special Assessment Fees received from the GSIS Foreclosure Project; on the same day, DV No. 2007-02-413^[13] in the amount of P100,000.00, and DV No. 2007-02-414^[14] in the amount of P 30,000.00, were signed by Cruz, and issued in favor of Devanadera, and petitioner Faller, respectively; on the same day, LBP Check No. 310277^[15] for P 30,000.00 and LBP Check No. 310276^[16] for P 100,000.00, were signed by Capili and Devanadera, and released to petitioner Faller and Devanadera, respectively; on 23 January 2008, the Commission on Audit ("COA") issued Audit Observation Memorandum ("AOM") No. 2008-002^[17] concerning the OGCC, and finding that payments for the purchase of reading materials totaling P 130,000.00 were made without proper documentation, contrary to the provisions of Section 4(6) of Presidential Decree No. 1445 ("PD 1445"), and paragraph V of COA Circular No. 97-004 dated 07 July 1997; Subpoena Duces Tecum^[18] was issued to the OGCC's Accounting Division to produce the supporting documents relative to the procurement of reading materials; the OGCC's Accounting Division issued the Certification^[19] that the requested documents were not available, and the procurement of reading materials did not undergo the proper procurement process; OGCC-COA issued the Certification^[20] that the required documents for the said purchase were not attached to the DVs; without any justification, payments were made to petitioner Faller and Devanadera, instead of a bona fide supplier; the amounts involved were exorbitant and unreasonable for the purchase of reading materials; the documents for the procurement of reading materials (i.e., Memorandum to Finance, DVs, and LBP Checks) were expeditiously issued, which indicated the existence of a conspiracy to embezzle the GSIS Special Assessment Fund.

The Complaint prayed that a formal administrative inquiry be instituted against petitioner Faller, Devanadera, Cruz, and Capili for Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service.

On 24 March 2009, the OMB issued the Order^[21] finding basis to proceed with preliminary investigation, and directing petitioner Faller, Devanadera, Cruz, and Capili to file counter-affidavits, witness affidavits, and other supporting documents.

On 24 April 2009, petitioner Faller and Devanadera filed the Joint Counter-Affidavit^[22], which alleged: the OGCC had authority to collect and use special assessment fees under Section 4 of PD 1415, and EO 292; the OGCC had authority to collect attorney's fees from its government-owned or controlled corporations ("GOCC") clients under Title IV, Chapter 3, Section 10 of EO 292; under Office Order No. 122 dated 21 June 2002^[23] and Office Order No. 006 dated 27 January 2004^[24], the handling lawyers were entitled to receive their rightful shares in the attorney's fees paid by GOCCs; GSIS paid P 700,000.00 as attorney's fees, which amount was rightfully paid to the handling lawyers, petitioner Faller and

Devanadera; petitioner Faller's and Devanadera's receipts of attorney's fees neither caused undue injury to any party, nor resulted to any benefit or advantage to any private party; petitioner Faller and Devanadera did not act with evident bad faith, manifest partiality or gross inexcusable negligence; petitioner Faller and Devanadera did not have custody or control of the funds of the OGCC; petitioner Faller and Devanadera left the reading materials purchased in the premises of the OGCC; there was no shortage of funds in the OGCC; there was no criminal intent on the part of petitioner Faller and Devanadera; the COA did not find any irregularity in the use of the OGCC funds, but only a failure to submit satisfactory explanation for the payment of the checks to petitioner Faller and Devanadera; AOM No. 2008-002 cannot be made a basis for the criminal and administrative charges against petitioner Faller and Devanadera.

On 03 March 2010, the OMB issued the assailed Decision. The dispositive portion of the assailed Decision read:

PREMISES CONSIDERED, respondents Agnes VST Devanadera, Rolando B. Faller, Jose Marie C. Capili, and Divina Gracia F. Cruz are found GUILTY of Grave Misconduct, Dishonesty, and Conduct Prejudicial to the Best Interest of the Service for which they are meted the supreme penalty of DISMISSAL FROM THE SERVICE. They are ordered jointly and solidarily to restitute to the Office of the Government Corporate Counsel Trust Liability Account the total amount of Php 760,000.00.

The accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification for reemployment in the government service likewise attaches.

SO ORDERED.^[25]

Petitioner Faller and Devanadera filed the Motion for Reconsideration^[26], and the Supplemental Motion for Reconsideration,^[27] questioning the OMB's Decision. The OMB denied the Motions in the assailed Omnibus Order.

Thus, this Petition, with the following assignment of errors:

First Reason

THE OMBUDSMAN ERRED AND, INDEED, DENIED THE PETITIONER'S RIGHT TO DUE PROCESS WHEN SHE GAVE DUE COURSE TO, AND FOUND LIABILITY AGAINST HIM, SOLELY ON THE BASIS OF AN AUDIT OBSERVATION REPORT WHICH WAS BOTH NOT TESTIFIED ON BY THE AUTHORS AND NOT MADE KNOWN TO THE PETITIONERS.

Second Reason

THE OMBUSMAN ERRED WHEN, UPON HER DENYING THE PETITIONER HIS RIGHT TO DUE PROCESS FOUND HIM LIABLE TO RESTITUTE THE TO THE OFFICE OF THE GOVERNMENT COUNSEL THE AMOUNT OF PHP 760,000.00 SOLIDARILY WITH THEN GOVERNMENT CORPORATE COUNSEL DEVANADERA, ACCOUNTANT DIVINA GRACIA F. CRUZ AND ASSISTANT GOVERNMENT COUNSEL JOSE MARIE CAPILI WITH THE ACCESSORY PENALTIES OF

**CANCELLATION OF ELIGIBILITY, FORFEITURE OF RETIREMENT
BENEFITS, AND PERPETUAL DISQUALIFICATION FROM
REEMPLOYMENT IN THE GOVERNMENT SERVICE.**^[28]

The issue is whether the OMB erred in issuing the assailed Decision, and the assailed Omnibus Order.

The Petition^[29] answers in the affirmative. The OMB erred in issuing the assailed Decision, and the assailed Omnibus Order. It thrusts: petitioner Faller was cleared of all accountability when he left the OGCC, as shown by the Accountability Clearance^[30]; the use of the AOM No. 2008-002 as basis for the charges against petitioner Faller, deprived him of his right to due process as petitioner Faller was not furnished a copy of AOM No. 2008-002; the addressee, Alberto Agra ("Agra;" successor to Devanadera as GCC), could not properly act on AOM No. 2008-002, since the facts required to be submitted as answers were not known to him; Agra did not ask petitioner Faller for an explanation regarding AOM No. 2008-002; Agra, and Sheraline Morada ("Morada;" Executive Assistant to Devanadera), attested that the reading materials were in the premises of the OGCC, and on 29 June 2011, the reading materials were turned over to Agra; the disbursement of attorney's fees to handling lawyers was based upon OGCC Office Order No. 122, Series of 2002; OGCC Office Order No. 122, Series of 2002 was implemented by OGCC Office Order No. 006, Series of 2004 (i.e., guidelines on the disbursement of attorney's fees); petitioner Faller relied upon the validity of OGCC Office Order No. 006, Series of 2004, since it was in effect when he entered the OGCC, and there was no record of any challenge to it; OGCC Office Order No. 006, Series of 2004 enjoyed the presumption of regularity because it was an official act; petitioner Faller did not participate in the preparation of documents which authorized the disbursement in his favor of attorney's fees of P 200,000.00; petitioner Faller relied upon the regularity of performance of duty of Devanadera, who authorized the disbursement; petitioner Faller did not act in evident bad faith or manifest partiality; there was no substantial evidence to support the FIO ruling.

The Comment^[31] of the respondents Ombudsman and FIO (by the Office of the Solicitor General, "OSG"), answers in the negative. The OMB did not err in issuing the assailed Decision, and the assailed Omnibus Order. It parries: petitioner Faller was not deprived of the right to due process even if he was not furnished with a copy of AOM No. 2008-002 prior to the filing of the Complaint, because petitioner Faller was furnished the document after the filing of the Complaint, and he was able to answer the findings stated there when he filed the Joint Counter-Affidavit; the filing of the Joint Counter-Affidavit was sufficient to satisfy the requirement that parties be given the opportunity to be heard; non-presentation of the persons who prepared AOM No. 2008-002 did not amount to a denial of due process; under the Rules of Procedure of the OMB, the OMB may render a decision based on the evidence on record, without need of any formal hearing; the OMB rendered a decision based on the affidavits submitted by the parties, and after the issuance of the assailed Decision, petitioner Faller filed the Motion for Reconsideration, the Supplemental Motion for Reconsideration, and the Second Supplemental Motion for Reconsideration; *Torralba v. Sandiganbayan* was not applicable (*Torralba* was a criminal case where there was deprivation of due process due to failure to furnish a copy of the audit report during preliminary investigation, while this case was an administrative case where petitioner Faller was furnished with a copy of AOM No. 2008-002 after the Complaint was filed, and he was given ample opportunity to be

heard); the assailed Decision and assailed Order were based not solely upon AOM No. 2008-002, but on the "sketchy and ambiguous documentation" of the purchase of the reading materials; petitioner Faller and Devanadera failed to submit documentation to show that the purchase of the reading materials complied with Section 4(6) of PD 1445; petitioner Faller's evidence (i.e., Agra's affidavit) was not worthy of credence since it was self-serving and did not any way substantiate petitioner Faller's and Devanadera's claims; Special Assessment Fees were distinct from attorney's fees, and petitioner Faller erred in using these terms interchangeably; petitioner Faller's acts of receiving payment for the alleged purchase of reading materials and receiving payment for attorney's fees despite non-compliance with the Auditing Code, COA rules, and OGCC office orders, constituted grave misconduct, dishonesty and conduct prejudicial to the best interest of the service; petitioner Faller's acts caused serious damage and/or undue injury to the government; there was substantial evidence to prove the charges against petitioner Faller; since petitioner Faller was found administratively liable, the Office of the Ombudsman did not err in ordering his dismissal from government service.

Petitioner Faller filed the Reply to Comment^[32]. The Reply reiterated the arguments in the Petition, and added: Agra's affidavit was not self-serving because he was not being investigated by the OMB, and had no compulsion to execute it; it was not contested that Agra paid for the books, and after the payment, Assistant Government Corporate Counsel Raul Ragandang turned over the books to Agra.

Petitioner Faller filed the Petitioner's Memorandum^[33] reiterating the arguments in the Petition and Reply to Comment, while the OSG filed the Memorandum^[34] reiterating the arguments in the Comment.

THE COURT'S RULING

We rule in the affirmative. The OMB erred in issuing the assailed Decision, and the assailed Omnibus Order, effectively dismissing petitioner Faller from government service.

PETITIONER FALLER WAS ACCORDED ADMINISTRATIVE DUE PROCESS.

Petitioner Faller posits that he was denied his right to due process because he was not given a copy of AOM No. 2008-002 before the filing of the Complaint.

We find this position untenable.

The essence of due process in administrative proceedings is the opportunity to explain one's side or seek a reconsideration of the action or ruling complained of. As long as the parties are given the opportunity to be heard **before judgment is rendered**, the demands of due process are sufficiently met. What is offensive to due process is the denial of the opportunity to be heard.^[35]

In this case, the OMB accorded petitioner Faller administrative due process: the OMB furnished petitioner Faller with copies of the Complaint, AOM No. 2008-002, and other pertinent documents, after the Complaint was filed; after petitioner Faller received the documents, he filed the Joint Counter-Affidavit; the OMB rendered the assailed Decision on the basis of the affidavits and other evidence adduced by the parties; after the OMB issued the assailed Decision, petitioner Faller filed the Motion