

THIRD DIVISION

[G.R. No. 214081, April 10, 2019]

P/INSP. II GILBERT C. SAN DIEGO, PETITIONER, VS. FACT-FINDING INVESTIGATION COMMITTEE* (UNDER THE OFFICE OF THE DEPUTY OMBUDSMAN FOR MILITARY AND OTHER LAW ENFORCEMENT OFFICERS), REPRESENTED BY AGIO DON A. ESQUIVEL, RESPONDENT.

DECISION

PERALTA, J.:

This is a Petition for Review on *Certiorari* seeking to reverse and set aside the Court of Appeals (CA) Decision^[1] dated October 31, 2013 and its Resolution^[2] dated August 28, 2014 in CA-G.R. SP No. 125147. The CA denied the petition for review of the Decision dated June 30, 2011 and the Order dated January 2, 2012 of the Office of the Deputy Ombudsman for the Military and Other Law Enforcement Officers (OMB-MOLEO) in OMB-P-A-09-0920-J. The OMB-MOLEO found petitioner P/Insp. II Gilbert C. San Diego guilty of sixteen (16) counts of Grave Misconduct and six (6) counts of Serious Dishonesty, and imposed upon him the penalty of dismissal from the service, including the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification for re-employment in the government service.

The factual antecedents are as follows:

On June 2, 2008, a formal request was filed before the Office of the Ombudsman for a lifestyle check upon Gilbert C. San Diego, Special Investigator of the National Police Commission (NAPOLCOM), who was allegedly living a lifestyle not commensurate to his salary.

San Diego has supposedly exhibited extravagant spending by giving out large parties and shopping without limits in high-end establishments, and frequently traveled abroad with the use of several passports, bearing different middle names, *i.e.*, "Carlos" and "Careon." He also owns two (2) vehicles, *i.e.*, a 2004-2005 Toyota Vios Sedan and a Nissan Safari Sports Utility Vehicle (SUV) worth P2,000,000.00, as well as shares of stocks of A. Francisco Realty and Development Corporation worth P5,000,000.00.

On July 20, 2009, the OMB-MOLEO rendered a Fact-Finding Report,^[3] recommending that criminal and administrative charges be filed against San Diego, and referring the case to the Criminal Investigation, Prosecution and Administrative Adjudication Bureau (CIPAAB), for the conduct of preliminary investigation and administrative investigation.

On September 29, 2009, the Fact-Finding Investigation Bureau (FFIB) of OMB-

MOLEO filed separate Affidavit-Complaints^[4] dated September 29, 2009, administratively charging San Diego with several counts of Grave Misconduct, Serious Dishonesty and Gross Neglect of Duty, thus:

1. One (1) count for Grave Misconduct and Serious Dishonesty for falsely declaring in his 2006 Statement of Assets, Liabilities, and Net Worth [SALN] that he owns a Nissan Patrol SUV worth P2.4 million when in fact the registered owner thereof is A. Francisco Realty and Development Corporation;^[5]

2. One (1) count for Grave Misconduct and Serious Dishonesty for intentional failure to declare in his 2006 SALN his wife, the business interest and financial connection of his wife and his own business interest and financial connection in A. Francisco Realty and Development Corporation in the amount of P5 million pesos worth of stocks;^[6]

3. One (1) count for Grave Misconduct and Dishonesty when he intentionally failed to declare a condominium unit he declared in 2005 and his licensed firearms in his 2007 SALN;^[7]

4. One (1) count for Grave Misconduct and Serious Dishonesty for falsely declaring in the Application for Marriage License dated April 25, 2005 that Adalia B. Francisco is Adela Gloria B. Francisco and that her civil status is "Widow," the truth of the matter being that both San Diego and Adalia B. Francisco knew that the latter's name is not Adalia Gloria B. Francisco and that her civil status is not a widow;^[8]

5. One (1) count for Grave Misconduct and Serious Dishonesty for not declaring in his 2005 SALN his wife, the business interest and financial connection of his wife and his own business interest and financial connection in A. Francisco Realty and Development Corporation in the amount of P5 million pesos worth of stocks;^[9]

6. Two (2) counts for Grave Misconduct and Serious Dishonesty for misrepresenting and falsely declaring that his middle name is Careon in his passport application, hence, the Department of Foreign Affairs (DFA) issued to him Passport QQ0270116 dated April 9, 2005 and TT0400798 dated July 7, 2006, when, in fact, he knew fully well that his middle name is Carlos and not Careon;^[10]

7. Ten (10) counts for Gross Neglect of Duty for not filing the requisite applications for leave relative to his foreign travels, and ten (10) counts for Serious Dishonesty for his failure to comply with Memorandum Circular No. 304 dated November 19, 1969, as amended by Executive Order No. 6 dated March 12, 1986, for not securing the necessary Authority to Travel in his foreign trips while in government service, considering that out of the 14 trips abroad, he was given only 5 travel authorities, thus:^[11]

Date	Destination	Approved Travel
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		Authority
		September 1-5, 2003 (USA)
1. March 19-21, 2004	Bangkok	
2. July 15-18, 2004	Singapore	
		October 12 - November 18, 2004 (USA)
3. August 6-17, 2005	Bangkok	
4. August 26-29, 2005	Hongkong	
5. September 1, 2005	Hongkong	
6. October 26-29, 2005	Tokyo	
7. February 8-15, 2006	Dubai	
8. March 3-6, 2006	Hong Kong	
9. May 11-13, 2007	Hongkong	
10. June 26-July 15, 2007	Dubai	June 27-July 15, 2007 (England and United Kingdom)
11. October 6-23, 2007	Doha	
12. January 10-21, 2008	Not reflected	January 16 - 31, 2008 (Australia) - Extension
13. February 29-March 3, 2008	Not reflected	February 29 - March 4, 2008 (Vietnam)
14. May 10-12, 2008	Not reflected	

The FFIB of OMB-MOLEO also filed the corresponding Affidavit-Complaints dated September 29, 2009, criminally charging San Diego with six (6) counts of Falsification under Article 171 of the Revised Penal Code and violation of Republic Act (R.A.) No. 1379 (*Act Declaring Forfeiture In Favor of the State Any Property Found To Have Been Unlawfully Acquired By Any Public Officer or Employee and Providing the Proceedings Therefor*).

Attached to the Affidavit-Complaints are the following pieces of documentary evidence: (a) San Diego's SALNs for the years 2002, 2003, 2004, 2005, 2006 and 2007; (b) Certification from the Land Transportation Office on the Nissan Patrol registered under the name of A. Francisco Realty and Development Corporation; (c) the General Information Sheet of the said corporation for the year 2006; (d) the Certification of the Philippine National Police Firearms and Explosive Division on the guns registered under San Diego's name; (e) the Certificate of Marriage and the Application for Marriage License of San Diego and Atty. Francisco; (f) the Marriage Contract dated October 28, 1955 between Noe Cangco Zarate and [Atty.] Adalia B. Francisco; (g) the Certificate of Death of one Enrique A. Agana, the supposed late husband of Atty. Francisco; (h) Certification from the National Statistics Office that it does not have a record of Agana's death certificate; (i) the Certificate of Death of Atty. Francisco; (j) the photocopies of the Passports and Passport Applications of San Diego; (k) the Certification of the Bureau of Immigration on his foreign travels; and (1) his travel authorities from the National Police Commission.

In a Consolidated Counter-Affidavit,^[12] San Diego denied all the administrative and criminal charges against him, and raised the following defenses:

1. Anent his failure to declare his and his wife's business interests in A. Francisco Realty and Development Corporation in his SALNs for 2005 and 2006, San Diego claimed that he was merely a nominal stockholder in the corporation owned and controlled by his late wife, Atty. Francisco, and that he had very little participation in its business, as all the decisions were made by her. He insisted that he was of the mistaken belief, in good faith, that there was no need to disclose his being stockholder, thinking that such disclosure was limited to that of his personal business interests, exclusive of that of his wife and family.
2. Regarding the misdeclaration of the Nissan Patrol SUV in his 2006 SALN, San Diego explained that he was of the mistaken impression that he should declare it in his SALN because he, together with Atty. Francisco, used it for work and personal reasons.
3. As for the non-disclosure in his 2007 SALN of the condominium unit in Libis, Quezon City, which was previously disclosed in the 2005 and 2006 SALNs, San Diego claimed that he was of the mistaken impression that he and his wife already owned it as a conjugal property, but no longer declared it in his SALN upon being advised that title over the property had not yet been transferred because it was purchased through a Contract to Sell, and had not yet been fully paid on installment basis.
4. As for his failure to disclose his firearms (Machine Pistol Uzi, Caliber 9mm and the Pistol Flag Caliber .38), San Diego explained that he had already sold the former to his brother in 1999, while he was of the mistaken impression that the latter need no longer be disclosed, considering that there was a change of format of the 2008 SALN form, and that, firearms are not similar to or the same category as that of cash on hand in banks, mutual funds, bonds, etc.
5. On his failure to secure the necessary leave to travel abroad, San Diego explained that he always applied for such leave, but during the periods in question (2003-2007), requests for leave were always processed at a relatively slow pace that results to leaves being granted only after the targeted period to travel has already lapsed or expired. At any rate, he claimed to have informed his immediate supervisors of his trip prior to leaving abroad, and filed the requisite application for such leave. He also stressed that none of his responsibilities as police investigator was compromised or neglected, and that all his personal trips were funded by his personal finances.
6. On the alleged falsification of his passports, San Diego claimed that as early as 1995 when he initially applied for a passport, an error not of his own making was already committed when, despite stating that his middle name was "Carlos," it was erroneously stated as "Careon." Upon seeking advice from the DFA and from several travel agencies on how to go about correcting such error, he was told to go to court to have it corrected, but he could not afford the services of a lawyer. Eventually, upon being advised that he need not go to court to have his middle name corrected, he executed on January 10, 2007 an Affidavit of Discrepancy, for which the DFA issued him a passport bearing his

correct middle name, "Carlos."

7. On the alleged falsification of his application for marriage license, San Diego stressed that he and Atty. Francisco personally filled up their respective personal information in their application. He claimed that it is absurd to fault him for entries made personally by his wife, and that he did not coerce or mislead his wife when she filled up her application. He insisted that there was merely an honest discrepancy on the part of his wife's official records. As explained by his late wife, her name as appearing in the Certificate of Live Birth and Marriage License is ADELIA GLORIA BLAS FRANCISCO, but when she became of discerning age, she decided to use ADALIA BLAS FRANCISCO. With respect to her birth date, the date October 7, 1932 as appearing in her Certificate of Live Birth, and the date October 7, 1946 stated in their marriage contract was a typographical error, as shown by Atty. Francisco's Sworn Affidavit of Discrepancy dated July 3, 2009. As for her stating in the marriage license application that her civil status is "Widow", this was a result of the fact that her previous husband, Mr. Enrique A. Agana, had died in 1996.

On June 30, 2011, the OMB-MOLEO rendered a Decision,^[13] the dispositive portion of which reads:

WHEREFORE, premises considered, respondent **P/INSP. II GILBERT C. SAN DIEGO** is hereby found **GUILTY of GRAVE MISCONDUCT on SIXTEEN (16) COUNTS** and **SERIOUS DISHONESTY on SIX (6) COUNTS** for which the penalty of **DISMISSAL** from the service is hereby imposed, including the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits and perpetual disqualification for re-employment in the government service, pursuant to Paragraph A(3), Sections 52 and 58(a), Rule IV of the Civil Service Commission Resolution No. 991936 otherwise known as the Uniform Rules on Administrative Cases in the Civil Service.

ACCORDINGLY, the Secretary, DILG and the Director General of the Philippine National Police are hereby directed to implement the subject Decision in accordance with law, with the request to promptly submit to this Office a Compliance Report thereof, indicating the subject OMB Case Number.

Compliance is respectfully enjoined consistent with Section 15(3) of R.A. 6770, otherwise known as the Ombudsman Act of 1989.

SO ORDERED.^[14]

On January 2, 2012, the OMB-MOLEO found no convincing reason to disturb the findings of the investigating prosecutor, and ruled that the other grounds raised in San Diego's motion for reconsideration had been passed upon in its June 30, 2011 Decision.

Aggrieved, San Diego filed before the CA a petition for review under Rule 43 of the Rules of Court, raising two issues: (1) *Whether or not the Office of the Ombudsman's Decision dated June 30, 2011 and Order dated January 2, 2012 violated petitioner's right to be informed of the charges against him;* and (2)