

SECOND DIVISION

[G.R. No. 237582, June 03, 2019]

OFFICE OF THE OMBUDSMAN, PETITIONER, V. JULITO D.
VITRIOLO, RESPONDENT.

R E S O L U T I O N

PERLAS-BERNABE, J.:

Assailed in this petition^[1] for review on *certiorari* are the Decision^[2] dated August 17, 2017 and the Resolution^[3] dated January 29, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 149063 which: (a) denied the Omnibus Motion to Intervene and To Admit Attached Motion for Reconsideration^[4] (Omnibus Motion) filed by petitioner Office of the Ombudsman (Ombudsman); (b) upheld the administrative liability of respondent Julito D. Vitriolo (respondent) for violation of Section 5 (a) of Republic Act (R.A.) No. 6713,^[5] otherwise known as the "Code of Conduct and Ethical Standards for Public Officials and Employees"; and (c) modified the penalty imposed upon him to suspension for thirty (30) days.

The Facts

At the time material to this case, respondent was the Executive Director of the Commission on Higher Education (CHED).

In September 1996, the Pamantasan ng Lungsod ng Maynila (PLM) and the National College of Physical Education^[6] (NCPE) entered into a Memorandum of Agreement (MOA) stipulating that programs for Bachelor of Science and Master's degrees in Physical Education shall be offered by NCOPE using the facilities of PLM without compensation, under the condition that PLM shall select the faculty members for the programs and issue the diplomas to the graduates.^[7] However, on September 29, 2003, the Securities and Exchange Commission (SEC) revoked the registration of NCPE for non-compliance with reportorial requirements. Nonetheless, the MOA was renewed in September 2005. Subsequently, or on February 28, 2007, the Commission on Audit (COA) issued a memorandum finding the MOA to be prejudicial to the interest of PLM. Thus, then PLM President Adel Tamano suspended the MOA effective September 2008.^[8]

On May 19, 2011, Oliver B. Felix (Felix), a former faculty member of the College of Physical Education (CPE) at PLM, filed a Complaint-Affidavit (First Complaint) against respondent before the Ombudsman for grave misconduct, gross neglect of duty, incompetence, and inefficiency in the performance of official duties.^[9] Felix alleged that he submitted a letter-request to respondent on **May 21, 2010** requesting for a certification that, among others, PLM was not authorized by the CHED to implement the Expanded Tertiary Education Equivalent Accreditation Program (ETEEAP) under Executive Order (EO) No. 330. However, respondent prevented the issuance of said certification. Felix later found out that respondent made a "deal" with Atty. Gladys

France J. Palarca (Atty. Palarca), PLM's then Acting Legal Counsel, that he would not issue a citation against PLM's infractions.^[10]

Further, Felix alleged that on **June 29, 2010**, he wrote another letter to respondent to follow up on his concerns regarding PLM's alleged "diploma mill." However, the latter did not act upon Felix's letters. Additionally, Felix asserted that respondent colluded with Atty. Rafaelito M. Garayblas (Atty. Garayblas), Acting President of PLM, Dr. Lauro O. Domingo (Dr. Domingo), President of the PLM-NCPE Alumni Association, and Atty. Palarca for the issuance of diplomas and transcripts of records to bogus students of PLM.^[11] Accordingly, respondent should be held administratively and criminally liable.

The Ombudsman held mediation conferences relative to Felix's First Complaint. At the mediation conference on August 9, 2011, the parties reached an agreement (August 9, 2011 agreement) whereby respondent endeavored to "act on [Felix's] May 21, 2010 and June 29, 2010 submissions and issue the necessary citations and sanctions to PLM, for it to CEASE and DESIST all illegal academic programs x x x."^[12]

Felix subsequently wrote respondent on September 9, 2011 expressing his expectation that the latter would substantially comply with their August 9, 2011 agreement. In a letter dated September 22, 2011, respondent stated that he had "directed the Office of Programs and Standards (OPS) and the Office of the SUCs and LUCs Concerns to provide an update on the actions taken"^[13] on Felix's **May 21, 2010** and **June 29, 2010** letters.

Three (3) years later, or on **June 30, 2014**, Felix sent respondent a letter captioned "Notice of Impending Legal Action" stating that despite their August 9, 2011 agreement, the latter tolerated the "diploma mill" of PLM, as CHED failed to conduct any investigation or hearing regarding the same.^[14] In a letter dated **July 11, 2014**, respondent explained to Felix that the person assigned to look into his concerns had already retired but that a memorandum had already been issued to the concerned officials to provide updates on what was accomplished relative to the alleged "diploma mill" operations of PLM.^[15]

Dissatisfied, Felix filed the present complaint on June 30, 2015 charging respondent with grave misconduct, gross neglect of duty, inefficiency and incompetence in the performance of official duties, as well as violations of Sections 5 (a), (c), and (d) of RA 6713 and Sections 3 (a), (e), and (f) of RA 3019,^[16] alleging that respondent has not complied with the August 9, 2011 agreement. Likewise, Felix reiterated the allegation in his First Complaint that respondent made an illicit deal with Atty. Palarca encouraging the issuance of diplomas and transcripts of records to non-PLM graduates.

In defense,^[17] respondent denied the charges and claimed that: (a) the August 9, 2011 agreement was not in the nature of a compromise agreement; (b) that he had issued various actions pertinent to the issue of PLM's "diploma mill"; (c) that he wrote a letter to Felix on **July 11, 2014**; and (d) that he referred Felix's letter to the Director of the OPS, who later referred the matter to CHED-National Capital Region. Moreover, respondent asserted that the alleged "illicit deal" with Atty. Palarca was misleading, as Felix based his allegation on a report issued by one Attorney III Rhuel D. Panis to the PLM Board of Regents, which made mention of his

advice to PLM to issue diplomas and transcripts of records because it has to respect vested rights. Likewise, he contended that in order to make him liable for grave offenses under the civil service rules, his alleged acts must be attended with bad faith.^[18]

The Ombudsman Ruling

In a Joint Resolution^[19] dated December 29, 2016, the Ombudsman: (a) found probable cause to indict respondent for violations of Sections 3 (a) and (e) of RA 3019; and (b) as regards the administrative charges against respondent, found him guilty of violation of Sections 5 (a), (c) and (d) of RA 6713, gross neglect of duty, grave misconduct, inefficiency, and incompetence, and accordingly, meted upon him the penalty of dismissal from the service, with the corresponding accessory penalties. Anent the latter, the Ombudsman found that it was only on **July 11, 2014**, or more than four (4) years after Felix's **May 21, 2010** letter and three (3) years after his First Complaint was filed before the Ombudsman on May 19, 2011 that respondent replied to him. As such, respondent failed to promptly respond to Felix's letters and inform him about the status of the requested action. Likewise, it was pointed out that this was not respondent's first offense, as the Ombudsman had already suspended him for one (1) month without pay for misconduct, having signed a memorandum without authority to do so.^[20]

Without filing a motion for reconsideration and without impleading the Ombudsman, respondent filed a petition for review^[21] under Rule 43 of the Rules of Court before the CA, **which only took cognizance of the administrative aspect of the case, ratiocinating that the CA "has jurisdiction over orders, directives and decisions of the Office of the Ombudsman in administrative disciplinary cases only."**^[22]

Proceedings Before the CA

In a Decision^[23] dated August 17, 2017, the CA upheld the Ombudsman's ruling holding respondent administratively liable for violation of Section 5 (a)^[24] of RA 6713 upon a finding that he failed to promptly reply to Felix's **May 21, 2010** and **June 29, 2010** letters within the prescribed period of fifteen (15) days. However, with respect to Felix's **June 30, 2014** letter,^[25] respondent was able to reply thereto within nine (9) days from receipt through his letter dated **July 11, 2014**. Further, the CA noted that he took steps to address Felix's concerns by referring the same to the proper offices and followed-up on their actions as well. Moreover, records show that he ordered an investigation of PLM relative to the issue of irregularities thereat.

Thus, the CA concluded that respondent's only infraction was his failure to reply to Felix's **May 21, 2010** and **June 29, 2010** letters and to communicate to him the actions taken by his office. Accordingly, the CA found the penalty of dismissal to be too harsh and disproportionate to the infraction committed. Modifying the Ombudsman decision, the CA instead meted upon respondent the penalty of suspension for thirty (30) days pursuant to Rule 10, Section 46 (F)(12)^[26] of the Revised Rules on Administrative Cases in the Civil Service (RRACCS) which classifies his infraction as a *light offense* and dismissed the charges of gross neglect of duty, grave misconduct, inefficiency and incompetence for lack of substantial evidence. Accordingly, he was ordered reinstated immediately to his former position without

loss or diminution in salaries and benefits and to be paid his salary and other emoluments corresponding to the period he was out of the service by reason of the judgment of dismissal decreed by the Ombudsman.^[27]

As the Ombudsman was not impleaded as respondent in the CA proceedings, it filed the Omnibus Motion seeking to intervene in the case and consequently, the reversal of the CA ruling. However, the CA denied the same in a Resolution^[28] dated January 29, 2018, ruling that: (a) the Ombudsman, being the administrative agency that rendered the judgment appealed from, is *not a party* in the said appeal, and (b) its Omnibus Motion was filed out of time, having been filed only on September 28, 2017 while the CA's Decision was promulgated on August 17, 2017; hence, this petition filed by the Ombudsman insisting that the Omnibus Motion be granted and consequently, that it be allowed to intervene in the case and seek the reversal of the CA ruling on respondent's administrative liability.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA erred in denying the Ombudsman's Omnibus Motion.

The Court's Ruling

Jurisprudence defines intervention as a remedy by which a third party, not originally impleaded in the proceedings, becomes a litigant therein to enable him to protect or preserve a right or interest which may be affected by such proceedings.^[29] It is, however, settled that intervention is not a matter of right, but one that is instead addressed to the sound discretion of the courts^[30] and can be secured only in accordance with the terms of the applicable statute or rule.^[31]

Based on the Rules of Court, intervention, may be allowed when the movant has legal interest in the matter in controversy. Legal interest is defined as such interest that is actual and material, direct and immediate such that the party seeking intervention will either gain or lose by the direct legal operation and effect of the judgment.^[32] Likewise, the movant must file the motion to intervene *before* rendition of the judgment, intervention not being an independent action but merely ancillary and supplemental to an existing litigation.^[33]

The Court has already clarified in *Ombudsman v. Bongais*^[34] (*Bongais*) that the Ombudsman has legal standing to intervene on appeal in administrative cases resolved by it. Even if not impleaded as a party in the proceedings, it has legal interest to intervene and defend its ruling in administrative cases before the CA, which interest proceeds from its duty to act as a champion. of the people and to preserve the integrity of public service.^[35]

As it stands, therefore, the Ombudsman's legal standing to intervene in appeals from its rulings in administrative cases has been settled and is the prevailing rule, in accordance with the Court's pronouncement in *Bongais*, ***provided***, that the *Ombudsman moves for intervention before rendition of judgment*, pursuant to Rule 19 of the Rules of Court,^[36] lest its motion be denied.

The rule requiring intervention before rendition of judgment, however, is not inflexible. Jurisprudence is replete with instances where intervention was allowed