

THIRD DIVISION

[G.R. No. 232094, July 24, 2019]

**PARINA R. JABINAL, PETITIONER, VS. HON. OVERALL DEPUTY
OMBUDSMAN, RESPONDENT.**

D E C I S I O N

PERALTA, J.:

Before the Court is a petition for *certiorari* under Rule 65 of the Rules of Court seeking to reverse and set aside the Resolution^[1] dated May 16, 2016 and the Joint Order^[2] dated December 2, 2016 issued by the Office of the Ombudsman in OMB-C-C-15-0487.

On December 4, 2015, the Field Investigation Office of the Ombudsman, represented by Teddy F. Parado, filed a complaint against petitioner Atty. Parina R. Jabinal, Division Manager, Legal Services Department, National Housing Authority (NHA), for violation of Section 7(b)(2) of Republic Act No. (R.A.) 6713, otherwise known as the *Code of Conduct and Ethical Standards for Public Officials and Employees*, which prohibits all public officials and employees from engaging in the private practice of their profession unless authorized. The complaint alleged that petitioner, a legal officer of the NHA in 2008, had notarized two documents, *i.e.*, a Deed of Sale dated August 20, 2008 between the NHA and Milagros Daez, Rosauro D. Villaluz and K-Bon Construction Corporation, and a Deed of Assignment dated September 30, 2008 between Milagros Daez and Rosauro D. Villaluz (First Party), K-Bon Construction Corporation (Second Party) and Alex Uson and Ernesto Yao (Third Party), and she was paid the amount of P30,000.00 for both documents;^[3] that as petitioner's acts of notarization were within the ambit of the term private practice of law, there should have been a prior request made by her to the NHA for authority to engage in the practice of her profession and the NHA's approval thereof, however, there was no document on file of such written authority in 2008;^[4] and that the Branch Clerk of Court of the Regional Trial Court of Quezon City also certified that petitioner was not a commissioned notary public for Quezon City in 2008.^[5]

In her counter affidavit, petitioner alleged that on April 17, 2006, while she was a Legal Staff at the Office of the General Manager of the NHA, she filed a petition for appointment as a notary public for and in Quezon City, attaching the authority issued by the NHA to engage in private practice, which was granted by the Executive Judge of RTC Quezon City on May 4, 2006, covering the period from 2006-2007. On February 9, 2008, she filed another petition for a notarial commission, attaching a letter of authority issued by the NHA, but the certificate for notarial commission was issued by the RTC Judge on March 3, 2009 for the period from 2009-2010; that she claimed inadvertence made in good faith when she notarized the two above-mentioned documents in August and September 2008 when her notarial commission was still on petition; and her act was based on her customary notarial practice in

2006-2007.

On May 16, 2016, the Ombudsman found probable cause against petitioner, the dispositive portion of which reads:

WHEREFORE, finding probable cause to indict PARINA R. JABINAL, for violation of Section 7, (b), (2), R.A. 6713 (2 counts) for engaging in notarial practice while employed as Legal Officer of NHA in 2008 without prior authority from the NHA, let the corresponding Informations be filed against her in the Metropolitan Trial Court of Quezon City.^[6]

Petitioner filed a motion for reconsideration and a supplemental motion for reconsideration. In a Joint Order dated December 2, 2016, petitioner's motion for reconsideration, with regard to the instant criminal case, was denied, and the May 16, 2016 Resolution was affirmed.

The corresponding Informations for two (2) counts of violation of Section 7(b)(2) of R.A. 6713 were subsequently filed before the Metropolitan Trial Court of Quezon City.

Petitioner files the instant petition for *certiorari* on the following grounds:

The Hon. Over-All Deputy Ombudsman gravely erred and abused his discretion, amounting to lack or excess of jurisdiction, in factually assuming that petitioner's acts in notarizing the two (2) documents in August and September 2008 constituted habitual and/or unauthorized private practice of law contemplated under Section 7(b)(2) of R.A. 6713.

The Hon. Overall Deputy Ombudsman gravely erred and abused his discretion, amounting to lack or excess of jurisdiction, in finding that probable cause exists against the petitioner and that she should be criminally indicted before the court for violation of Section 7(b)(2), R.A. 6713, in utter disregard of existing judicial pronouncements by the Supreme Court.^[7]

Petitioner avers that there is no contest that she notarized the two documents, but she did so in good faith believing in all honesty that she was a commissioned notary public for the year 2008; that it was an honest mistake or oversight to assume that she had filed her petition for notary for the year 2008-2009; and that she has been a notary public in Quezon City from 2004 to 2010. She claims that she had been notarizing documents involving NHA as it was part of her duties and responsibilities, hence, it would be a mistaken factual conclusion for the Ombudsman to deem that notarial practice at NHA *ipso facto* constitutes private practice of law. Petitioner contends that under jurisprudential pronouncements, private practice referred to in Section 7(b)(2) of R.A. 6713 contemplates a succession of acts of the same nature habitually or customarily holding one's self to the public as a lawyer and demanding payment for such services, which does not obtain under the circumstances of this

case. She claims that she had served the government with utmost dedication and integrity from 2005 until her dismissal from work.

The sole issue for resolution is whether the Ombudsman committed grave abuse of discretion in finding that probable cause exists against petitioner.

We dismiss the petition.

Both the Constitution^[8] and R.A. No. 6770^[9] or *The Ombudsman Act of 1989*, give the Ombudsman wide latitude to act on criminal complaints against public officials and government employees. Since the Ombudsman is armed with the power to investigate, it is in a better position to assess the strengths or weaknesses of the evidence on hand needed to make a finding of probable cause.^[10] As this Court is not a trier of facts, We defer to the sound judgment of the Ombudsman. This Court's consistent policy has been to maintain non-interference in the determination by the Ombudsman of the existence of probable cause.^[11]

Nonetheless, this Court is not precluded from reviewing the Ombudsman's action when there is a charge of grave abuse of discretion.^[12] Grave abuse of discretion exists where a power is exercised in an arbitrary, capricious, whimsical or despotic manner by reason of passion or personal hostility so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined by, or in contemplation of law.^[13]

In order for the instant petition for *certiorari* to succeed, it is incumbent upon petitioner to sufficiently establish her allegations that the Ombudsman committed grave abuse of discretion in finding probable cause for her violation of Section 7(b) (2) of R.A. 6713. Probable cause, for the purpose of filing a criminal information, has been defined to constitute such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof.^[14] Probable cause does not mean "actual or positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. It does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged.^[15]

Section 7(b)(2) of R.A. 6713, in relation to Section 11 of the same law, provides:

Section 7. *Prohibited Acts and Transactions.* - In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

x x x x

(b) Outside employment and other activities related thereto. - Public officials and employees during their incumbency shall not:

x x x x

(2) Engage in the private practice of their profession unless authorized by the Constitution or law, provided, that such practice will not conflict or tend to conflict with their official functions; or

x x x x

Section 11. *Penalties.* – x x x Violations of Sections 7, 8 or 9 of this Act shall be punishable with imprisonment not exceeding five (5) years, or a fine not exceeding five thousand pesos (P5,000), or both, and, in the discretion of the court of competent jurisdiction, disqualification to hold public office.

Clearly, public officials and employees during their incumbency are prohibited from engaging in the private practice of their profession unless authorized by law or the Constitution and such practice should not be in conflict with their official functions. Memorandum Circular No. 17^[16] of the Executive Department allows government employees to engage directly in the private practice of their profession provided there is a written permission from the Department head.

In this case, petitioner admitted having notarized a Deed of Sale and a Deed of Assignment in August and September 2008, respectively. It appears that she was paid the amount of P30,000.00 for notarizing said documents. The acts of notarization are within the ambit of the term "practice of law,"^[17] thus, a prior request and approval thereof by the NHA are required. However, there is no showing of any written authority from the NHA issued in 2008 allowing petitioner to engage in notarial practice. In fact, she was not a commissioned notary public in Quezon City in 2008.

In *Abella v. Atty. Cruzabra*,^[18] the respondent, who was then the Deputy Register of Deeds of General Santos City, had notarized around 3,000 documents without obtaining prior authority from the Secretary of Justice to engage in the private practice of his profession. She was found guilty of engaging in notarial practice without the written authority from the Secretary of Justice. Thus:

It is clear that when respondent filed her petition for commission as a notary public, she did not obtain a written permission from the Secretary of the DOJ. Respondent's superior, the Register of Deeds, cannot issue any authorization because he is not the head of the Department. And even assuming; that the Register of Deeds authorized her, respondent failed to present any proof of that written permission. Respondent cannot feign ignorance or good faith because respondent filed her petition for commission as a notary public after Memorandum Circular No. 17 was issued in 1986.^[19]