

EN BANC

[**A.M. No. P-18-3882 (Formerly OCA IPI No.13-4207-P), December 04, 2018**]

**PUBLIC ASSISTANCE AND CORRUPTION PREVENTION OFFICE,
BY ATTY. JOCELYN Y. DACUMOS, COMPLAINANT, V. SOCIAL
WELFARE OFFICER II CAROLINA A. PAUMIG, OFFICE OF THE
CLERK OF COURT, REGIONAL TRIAL COURT, TAGBILARAN CITY,
RESPONDENT.**

RESOLUTION

TIJAM, J.:

For Our resolution is an administrative matter, charging Carolina Paumig (respondent), Social Welfare Officer II, Clerk of Court, Regional Trial Court (RTC), Tagbilaran City, of serious dishonesty.

Antecedent Facts

This case is rooted from an administrative complaint for serious dishonesty filed by the Public Assistance and Corruption Prevention Office (PACPO), Office of the Ombudsman (OMB) for Visayas, against respondent, who was then a Municipal Social Welfare Development Officer in the Municipality of Corella, Bohol. ^[1]

The said case arose from a Letter-Complaint^[2] of a concerned citizen addressed to the Deputy OMB for Visayas regarding the missing funds from the Self-Employment Assistance sa Kaunlaran (SEA-K) Loan Program of the Department of Social Welfare and Development (DSWD) in the amount of P107,550.00.^[3]

Acting upon the said letter-complaint, PACPO conducted a fact finding investigation. It found that the Municipal Government of Corella, Bohol was the recipient of a funding from the Department of Budget and Management (DBM) under the SEA-K Loan Program of the DSWD. Loans under the program were released to groups or individuals, through checks issued by the Municipal Treasurer. Respondent, as the Municipal Social Welfare Officer, was in-charge with the duty of collecting payments of the loans and remitting the same to the Office of the Municipal Treasurer.^[4]

Sometime in the year 2000, respondent was found to have failed to remit payments she had collected from the loan recipients, amounting to P107,550.00. In a document captioned as Agreement/Promissory Note executed by respondent, she admitted having received SEA-K loan payments from certain individuals in the total amount of P107,550.00 and failed to turn over the same to the Municipal Treasurer as she used them for personal consumption. She acknowledged her fault and voluntarily promised to pay the same in a regular monthly installments of P4,000.00 until fully satisfied. Several demands were made upon respondent by the Municipal Treasurer to make good her promise but the same went unheeded.^[5]

Having clear finding that respondent is guilty of misappropriating public funds, PACPO recommended that respondent be charged criminally and administratively for malversation of public funds and dishonesty.^[6]

Thus, respondent was formally charged before the OMB. Therein, respondent filed a Counter-Affidavit,^[7] stating that she no longer has financial accountability since she has already settled the amount of P107,550.00. Respondent alleged that the said amount was received in full by Corella Municipal Mayor Jose Nicanor Tocmo (Mayor Tocmo) as evidenced by a certified copy of an acknowledgment receipt^[8] dated December 31, 2010. A Letter^[9] dated January 3, 2011 signed by Mayor Tocmo, acknowledging his receipt of the said amount from respondent and recommending that she be relieved of her liability to the municipality and for the cases against her to be discontinued by virtue of such payment.

Respondent further claimed that the said amount merely represents the total amount of discrepancies in the balance of individual payments, which are not yet reconciled on account of scattered records, and not loan payments that she received and misappropriated. Respondent explained that she executed the Agreement/Promissory Note above-cited for clearance purposes only, for her to be allowed to transfer to the RTC. As it is, respondent is now a Social Welfare Officer II in the Office of the Clerk of Court, RTC, Tagbilaran City.^[10]

In its Decision^[11] dated February 19, 2013, the Office of the OMB-Visayas, found respondent guilty of serious dishonesty. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the [respondent] is found guilty of **SERIOUS DISHONESTY** and is hereby meted the penalty of Dismissal from government service, with forfeiture of retirement benefits and perpetual disqualification to hold public office. The Civil Service Commission is ordered to cancel her civil service eligibility, if any, in accordance with Section 9, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292.

The Honorable Municipal Mayor of the Municipality of Corella, Province of Bohol, is hereby directed to implement the aforesaid penalty of Dismissal upon [respondent] and to furnish this Office with the office order or memorandum evidencing said implementation indicating the subject OMB case number.

x x x x.^[12]

In a Letter^[13] dated July 29, 2013 addressed to Deputy Ombudsman for Visayas Pelagio S. Apostol (Deputy Ombudsman Apostol), Mayor Tocmo informed the former that he cannot implement and enforce the Decision considering that respondent is no longer connected with the local government unit of Corella, Bohol.

As respondent is now under the supervision of the Supreme Court, having transferred to the Office of the Clerk of Court, RTC, Deputy Ombudsman Apostol wrote a Letter^[14] dated September 30, 2013 addressed to the Office of the Court Administrator (OCA), informing the OCA of the above-quoted Decision and asking them to implement the same.

Records of the case were then elevated to the Supreme Court and respondent was formally charged with serious dishonesty before the OCA.

In her Comment^[15] dated February 28, 2014, respondent argued that being an employee of the court, it is the Supreme Court, not the OMB, which has disciplinary authority over her. Respondent further contends that the OMB Decision has not yet attained finality in view of her motion for reconsideration thereof. Hence, respondent insists that the OMB Decision cannot be implemented against her. In addition, respondent avers that the act complained of was committed while she was still an employee of the Municipality of Corella, Bohol and that she was already relieved of her liabilities when she transferred to the RTC.

In its Administrative Matter for Agenda^[16] dated September 24, 2015, the OCA found the issue for resolution to be: whether the Decision dated February 19, 2013 of the OMB can be enforced despite respondent's transfer to the judiciary.^[17]

The OCA answered the said issue in the negative, pointing out that when respondent transferred to the judiciary on October 2, 2000, the OMB has no more jurisdiction to discipline her. The OCA cited Section 21 of Republic Act No. 6770^[18] or The Ombudsman Act of 1989, viz.:

Section 21. *Official Subject to Disciplinary Authority; Exceptions.* - The Office of the Ombudsman shall have disciplinary authority over all elective and appointive officials of the Government and its subdivisions, instrumentalities and agencies, including Members of the Cabinet, local government, government-owned or controlled corporations and their subsidiaries, except over officials who may be removed only by impeachment or over Members of Congress, and the Judiciary.^[19]

Said rule is justified by no less than Section 6, Article VIII of the 1987 Constitution, which states that the Supreme Court shall have the administrative supervision over all courts and the personnel thereof.^[20]

Nevertheless, the OCA opined that respondent should still be held administratively liable by the Court despite the fact that the dishonest act was committed before her appointment to the judiciary.^[21]

The OCA then found overwhelming evidence that respondent was indeed responsible for the malversation of public funds, especially because of her express and written admission that she received the subject amount, failed to turn over the same to the Municipal Treasurer, and used the same for personal consumption. Thus, despite allegation that respondent had already settled her accountability, the OCA still recommended that she be found guilty of dishonesty and thereby should be sanctioned with dismissal from service with forfeiture of all retirement benefits due her except accrued leave credits and with prejudice to re-employment in any branch, agency, or instrumentality of the government, including government-owned and controlled corporations.^[22]

In this Court's Resolution^[23] dated June 22, 2016, the Court required respondent to manifest her willingness to submit the case for decision on the basis of the pleadings filed within ten (10) days from notice.

Per January 31, 2018 Resolution^[24] of this Court, however, respondent failed to comply with the said June 22, 2016 Resolution despite receipt of the same on August 5, 2016. Thus, the Court resolved to require respondent to show cause why she should not be held in contempt for such failure and to comply with the June 22, 2016 Resolution.

In a Manifestation/Compliance^[25] dated June 5, 2018, respondent manifested her conformity to have the case submitted for decision on the basis of the pleadings filed. She apologized for her failure to comply at the first instance on account of honest inadvertence due to the difficulties in life that she was facing caused by the death of her husband and the criminal case against her relative to this administrative case. Respondent also manifested that because of such difficulties, she already retired from work and that in order to move on, she plea bargained said criminal case, hence, was merely made to pay a fine of P10,000.00. She asked for this Court's understanding for her failure to comply with the Court's directive and plead that a finding of contempt will be too much for her to handle.

Ruling of the Court

Indeed, while the OMB has no authority to discipline respondent, the latter being a court employee already at the time of the institution of the administrative complaint against her for an act done while she was still employed by the municipality, this Court's disciplinary power is plenary. As we have ruled in the case of *Office of the Court Administrator v. Ampong*,^[26]

[T]hat she committed the dishonest act before she joined the RTC does not take her case out of the administrative reach of the Supreme Court.

The bottom line is administrative jurisdiction over a court employee belongs to the Supreme Court, regardless of whether the offense was committed before or after employment in the judiciary.^[27] (Citation and emphasis omitted)

Hence, in the exercise of our disciplinary power, we now proceed to examine if there is substantial evidence to hold respondent administratively liable. The OCA correctly found that overwhelming evidence supports the finding that respondent was responsible for the receipt of the loan payments and the failure to turn them over to the Municipal Treasurer. These are public funds that respondent failed to account and used for personal consumption.

Jurisprudence states that the "[f]ailure of a public officer to remit funds upon demand by an authorized officer constitutes *prima facie* evidence that the public officer has put such missing funds or property to personal use."^[28] In this case, more than *prima facie* evidence is available in the records. The list of specific names of borrowers and the payment made by each received by the respondent, coupled with the written demands given by the Municipal Treasurer to the respondent to turn over the same which went unheeded, constitute substantial evidence to support the conclusion that respondent is guilty of misappropriating public funds. More importantly, the Agreement/Promissory Note^[29] that respondent executed, admitting to the charge and promising to settle her accountability, is more than telling. Noteworthy is the fact that said document was subscribed and sworn to before Mayor Tocmo.^[30]