

FIRST DIVISION

[G.R. No. 215994, June 06, 2016]

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

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*^[1] are the Decision^[2] dated May 22, 2014 and the Resolution^[3] dated December 17, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 123745, which found petitioner Rolando B. Faller (Faller) guilty of simple misconduct and conduct prejudicial to the best interest of the service and, accordingly, meted the penalty of suspension for one (1) year, directed him to restitute the amount of P760,000.00 to the Office of the Government Corporate Counsel (OGCC), and imposed the accessory penalty of disqualification from promotion corresponding to the one-year period of suspension.

The Facts

On May 25, 2005, the Government Service and Insurance System (GSIS), represented by its President and General Manager, Winston F. Garcia (Garcia), executed a Memorandum of Agreement^[4] (MOA) with the OGCC, headed by then Government Corporate Counsel (GCC) Agnes VST Devanadera (Devanadera), whereby the OGCC agreed to handle the extrajudicial foreclosure of delinquent real estate loan accounts of GSIS (GSIS Foreclosure Project). In consideration thereof, GSIS endeavored to pay special assessment fees in accordance with the actual service that the OGCC may render.^[5] The total special assessment fees received by the OGCC from the GSIS Foreclosure Project was in the amount of P11,845,000.00.^[6]

Sometime thereafter, Devanadera issued two (2) memoranda authorizing the release of proceeds from the special assessment fees collected from the GSIS Foreclosure Project, purportedly as their partial share therefrom as attorney's fees. Thus, a Memorandum^[7] dated January 23, 2007 (January 23, 2007 Memo) requested the release of the amounts of P500,000.00 to Devanadera and P200,000.00 to her then Chief of Staff and Head Executive Assistant,^[8] herein respondent Rolando B. Faller (Faller). The January 23, 2007 Memo was accompanied by Disbursement Voucher (DV) Nos. 2007-01-273^[9] and 2007-01-274,^[10] both of which were certified by Divina Gracia F. Cruz (Cruz), then Accountant III. Subsequently, Landbank Check Nos. 310159^[11] for P450,000.00 and 310160^[12] for P180,000.00 were issued in favor of Devanadera and Faller, respectively, co-signed by Jose Capili (Capili), the Assistant GCC for Administration, and Devanadera herself.

Likewise, Devanadera issued a Memorandum^[13] dated February 8, 2007 (February 8, 2007 Memo) requesting the release of the amounts of P100,000.00 to Devanadera and P30,000.00 to Faller from the special assessment fees received from the GSIS Foreclosure Project, purportedly for the purchase of reading materials to aid them in the discharge of their duties. It was accompanied by DV Nos. 2007-02-413^[14] and 2007-02-414,^[15] which were both certified by Cruz. On the same day, Landbank Check Nos. 310276^[16] for P30,000.00 and 310277^[17] for P100,000.00 were issued in favor of Faller and Devanadera, respectively, again co-signed by Capili and Devanadera herself.

On January 23, 2008, the Commission on Audit (COA) issued Audit Observation Memorandum (AOM) No. 2008-002^[18] finding irregularities surrounding the alleged purchase of reading materials amounting to P130,000.00 charged from the special assessment fees from the GSIS Foreclosure Project. The COA found that disbursements were made directly to the agency officials, *i.e.*, Devanadera and Faller, instead of to *bona fide* suppliers and without proper documentation, in violation of the provisions of Section 4 (6) of Presidential Decree (PD) No. 1445,^[19] otherwise known as the "Government Auditing Code of the Philippines."

When herein petitioner Field Investigation Office (FIO), Office of the Ombudsman (Ombudsman) issued a *subpoena duces tecum*^[20] directing the Accounting Division of the OGCC to submit before it the supporting documents relative to the OGCC's purchase of reading materials, Accountant III Ariel J. Ubiña certified^[21] that no such documents were available in their records given that the procurement of these reading materials did not undergo the proper procedure which required the execution of the said documents.

Consequently, the FIO filed the instant complaint^[22] against Devanadera, Faller, Cruz, and Capili: (a) criminally charging them with two (2) counts of violation of Article 217^[23] of the Revised Penal Code or Malversation of Public Funds as well as two (2) counts of violation of Section 3 (e) of Republic Act No. 3019; and (b) administratively charging them with grave misconduct, dishonesty, and conduct prejudicial to the best interest of the service, all in connection with the disbursements charged against the special assessment fees collected from the GSIS Foreclosure Project with an aggregate amount of P830,000.00.

In their defense,^[24] Devanadera and Faller claimed that their receipt of the attorney's fees from the GSIS Foreclosure Project fees was sanctioned under the Administrative Code of 1987 and, more specifically, under OGCC Office Order No. 006, series of 2004^[25] which prescribed guidelines in the distribution of attorney's fees. They likewise contended that they indeed purchased reading materials from the funds paid to them and left them in the OGCC premises.^[26] They averred that the lack of documentation was the responsibility of Cruz who, unfortunately, can no longer be located as she had already Left the OGCC.^[27] Finally, they claimed that they cannot be held liable for Malversation, not being "accountable officers" as contemplated under the law.^[28]

For his part, Capili argued that he cannot be held liable as a co-conspirator in the absence of any positive evidence showing that he actively participated in the alleged

offenses. Moreover, he claimed that his act of affixing his signature on the checks issued in favor of Devanadera and Faller was only ministerial.^[29]

The Ombudsman Ruling

In a Decision^[30] dated March 3, 2010, the Ombudsman found Devanadera, Faller, Cruz, and Capili guilty of grave misconduct, dishonesty, and conduct prejudicial to the best interest of the service and accordingly, ordered their dismissal. They were likewise directed to jointly and solidarity retribute to the OGCC Trust Liability Account the total amount of P760,000.00.^[31]

The Ombudsman found dearth of evidence to show that Devanadera and Faller had actually purchased reading materials using the funds given to them, and that the said reading materials exist in the OGCC premises.^[32] It pointed out that the purported purchase could have been easily substantiated with the presentation of official receipts, invoices, delivery receipts, turn-over lists, or other similar documents.^[33] Thus, without positive proof that the purchase had been made or that the reading materials exist, coupled with the lack of supporting documentation, the implication was that Devanadera and Faller had appropriated to themselves the total amount of P130,000.00.^[34]

With respect to the payment of attorney's fees, the Ombudsman ruled that the context of "attorney's fees" provided in the Administrative Code of 1987 (Section 10, Chapter 3, Title III, Book IV) is in contemplation of attorney's fees awarded by the courts in connection with a litigated case.^[35] Taken together with OGCC Order No. 006, series of 2004, these are the attorney's fees which shall be further distributed to handling lawyers of litigated cases as incentives.^[36] In this case, the GSIS Foreclosure Project was extrajudicial in character.^[37] Moreover, it appears that Faller was the sole OGCC lawyer assigned to the said project whose participation was not as a litigating lawyer but as Operations Manager thereof.^[38]

Furthermore, the MOA between GSIS and the OGCC specified that the fees paid by the former are special assessment fees, not attorney's fees.^[39] As such, it cannot be the subject of distribution in the manner set forth under Office Order No. 006, series of 2004. Relative thereto, special assessment fees are governed by separate guidelines, distinct from those governing the distribution of attorney's fees.^[40]

In view of its findings, the Ombudsman held that there was undue injury to the government when Devanadera and Faller appropriated for themselves the amount of money charged against the GSIS Foreclosure Project fees to which they were not entitled.^[41] Similarly, Capili was adjudged liable as a co-signatory of the subject checks. The Ombudsman opined that as Assistant GCC, he should have been familiar with the prescribed procedure for the procurement of reading materials as well as payment of attorney's fees.^[42]

Finally, the Ombudsman ruled that conspiracy existed in this case, as Devanadera, Faller, Cruz, and Capili had colluded to defraud the government of the total amount of P830,000.00. It appreciated the aggravating circumstance of "taking undue advantage of official position" as having attended the commission of the offense.^[43]

Aggrieved, Devanadera and Faller moved for reconsideration^[44] while Capili moved for reinvestigation.^[45] Both motions were, however, denied in an Omnibus Order^[46] dated October 3, 2011.

Faller, for and on his sole behalf, elevated the matter before the CA *via* petition for review.^[47]

The CA Ruling

In a Decision^[48] dated May 22, 2014, the CA modified the Ombudsman ruling insofar as Faller is concerned, finding him guilty only of simple misconduct and conduct prejudicial to the best interest of the service and accordingly, imposed upon him the penalty of suspension for one (1) year with the accessory penalty of disqualification from promotion corresponding to the one (1) year period of suspension. Likewise, he was ordered to restitute to the OGCC Trust Liability Account the amount of P760,000.00.^[49]

In so ruling, the CA found the third element that constitutes grave misconduct, *i.e.*, corruption, clear intent to violate the law or flagrant disregard of the established rule, to be lacking in this case.^[50] Thus, the CA found no evidence to prove that Faller's receipt of the attorney's fees as well as the funds for the purchase of reading materials was done with a clear intent to violate the law, or was done in flagrant disregard of established rules. Consequently, Faller can only be found guilty of simple misconduct.^[51]

The CA further exonerated Faller from liability for dishonesty, finding that he "merely received attorney's fees, and amounts representing payment for reading materials." He had no hand in preparing the documents required therefor nor did he authorize any disbursement.^[52]

However, the CA sustained Faller's liability for conduct prejudicial to the best interest of the service, considering that he received sums of money without compliance with the rules. In this regard, the CA held that Faller should have been more circumspect with respect to his conduct, as his involvement in the foregoing incidents diminished, or tended to diminish, the people's trust in the OGCC.^[53]

The Ombudsman^[54] and Faller^[55] filed separate motions for partial reconsideration, which were both denied in a Resolution^[56] dated December 17, 2014; hence, this petition filed by the FIO of the Ombudsman.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA erred when it ruled that Faller is administratively liable for simple misconduct and conduct prejudicial to the best interest of the service.

The Court's Ruling

The petition is without merit.

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer.^[57] To constitute an administrative offense, misconduct should relate to or be connected with the performance of the official functions and duties of a public officer.^[58] **The misconduct is considered as grave if it involves additional elements such as corruption or willful intent to violate the law or to disregard established rules, which must be proven by substantial evidence; otherwise, the misconduct is only simple.** Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others.^[59]

On the other hand, dishonesty is defined as the concealment or distortion of truth in a matter of fact relevant to one's office or connected with the performance of his duty.^[60] It implies a disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity; lack of honesty, probity, or integrity in principle; and lack of fairness and straightforwardness;^[61] disposition to defraud, deceive or betray.^[62]

After a punctilious review of the records, the Court concurs with the findings of the CA that Faller should not be held administratively liable for grave misconduct and/or dishonesty.

While there were violations of established and definite rules of action, namely: (a) the disbursement of attorney's fees to Faller despite the fact that the GSIS Foreclosure Project did not involve any court litigation contrary to OGCC Office No. 006, series of 2004,^[63] and (b) the failure to comply with Section 4 (6)^[64] of PD No. 1445, and paragraph V of COA Circular No. 97-004 dated July 1, 1997^[65] which should have been observed in the purchase of the reading materials subject of this case, there is no substantial evidence to prove that the foregoing violations were precipitated by Faller with corruption or a willful intent to violate the law so as to render him administratively liable for Grave Misconduct. Apart from admittedly receiving the checks for P180,000.00 purportedly as attorney's fees and P30,000.00 for the purchase of reading materials, both charged against the GSIS Foreclosure Project fees, records do not show that Faller directly or actively participated in the disbursement of the said funds, or authorized the same. His receipt of the sum of P180,000.00 was based on his assumption that the funds he received were in the nature of attorney's fees as compensation for his work on the GSIS Foreclosure Project, which, unfortunately, does not qualify as a matter of litigation under OGCC Office Order No. 006, series of 2004 as above-explained.

Neither were the foregoing infractions indicative of a disposition to deceive or lie so as to hold Faller administratively liable for dishonesty. While it has been established that Faller received the check for P30,000.00 purportedly as funds for the purchase of reading materials in connection with the discharge of his duties, it has not been shown, however, that he intended to defraud the government of the said amount. Moreover, the affidavits^[66] executed by Atty. Alberto C. Agra (Atty. Agra), Devanadera's successor as GCC, tend to prove that the reading materials do exist in the OGCC premises, the same having been purchased during the tenure of his predecessor - Devanadera - and turned over to him upon his assumption in office.