

THIRD DIVISION

[G.R. No. 197307, February 26, 2014]

**FLOR GUPILAN-AGUILAR AND HONORE R. HERNANDEZ,
PETITIONERS, VS. OFFICE OF THE OMBUDSMAN, REPRESENTED BY
HON. SIMEON V. MARCELO; AND PNP-CIDG, REPRESENTED BY DIR.
EDUARDO MATILLANO, RESPONDENTS.**

D E C I S I O N

VELASCO JR., J.:

The Case

This Petition for Review on Certiorari under Rule 45 seeks to reverse and set aside the July 22, 2009^[1] Decision of the Court of Appeals and its June 13, 2011 Resolution in CA-G.R. SP No.88954, affirming the decision of the Ombudsman in OMB-C-A-03-0327-I that found petitioners guilty of grave misconduct and dishonesty and dismissed them from the service.

The Facts

In June 2003, the Philippine National Police Criminal Investigation and Detection Group (PNP-CIDG) conducted an investigation on the lavish lifestyle and alleged nefarious activities of certain personnel of the Bureau of Customs, among them petitioners Flor Gupilan-Aguilar (Aguilar), then Chief of the Miscellaneous Division, and Honore Hernandez (Hernandez), Customs Officer III. Aguilar was then receiving a basic annual salary of PhP 249,876. Her year-to-year assets, liabilities and net worth for CYs 1999 to 2002, taken from her Statement of Assets, Liabilities and Net Worth (SALNs) for the corresponding years, are shown below:

Real Properties ^[2]	1999 ^[3]	2000 ^[4]	2001 ^[5]	2002 ^[6]
House and Lot in Quezon City	P880,000.00	P980,000.00	P1,030,000.00	P1,030,000.00
Apartment in Caloocan City	P500,000.00	P550,000.00	P550,000.00	P550,000.00
Personal Properties ^[7]				
Car	P450,000.00	P450,000.00	P450,000.00	P900,000.00
Jewelry	P500,000.00	P600,000.00	P650,000.00	P750,000.00
Appliances	P100,000.00	P120,000.00	P125,000.00	P135,000.00
Furniture and Fixture	P100,000.00	P120,000.00	P125,000.00	P150,000.00
Total Assets	P2,530,000.00	P2,820,000.00	P2,930,000.00	P3,515,000.00
Liabilities				
GSIS	-	P450,000.00	P400,000.00	P300,000.00
Car Loan	-	-	-	P500,000.00

Total Liabilities	-	P450,000.00	P400,000.00	P800,000.00
Net Worth	P2,530,000.00	P2,370,000.00	P2,530,000.00	P2,715,000.00

Her SALNs for the years aforementioned do not reflect any income source other than her employment. The spaces for her spouse's name and business interest were left in blank.

Following weeks of surveillance and lifestyle probe, the PNP-CIDG investigating team, headed by Atty. Virgilio Pablico, executed on July 28, 2003 a *Joint-Affidavit*, depicting Aguilar, who, in her Personal Data Sheet, indicated "Blk 21 Lot 8 Percentage St. BIR Vill, Fairview, QC" as her home address, as owning properties not declared or properly identified in her SALNs, specifically the following:

Real Properties

1. Lot 6, Blk 21, BIR Village, Fairview, Quezon City worth approximately Php1,000,000.00;
2. A 4-bedroom Unit 1007-A Antel Seaview Towers, 2626 Roxas Blvd., Pasay City worth Php12,000,000.00, with rights to 4 parking slots; and
3. Residential lot in Naga City worth Php148,200.00

Personal Properties

Make/Model Plate No. Registered Owner

Honda CRV	BIM-888	Flor G. Aguilar
Isuzu Trooper	HRH-659	Honore R. Hernandez
BMW (red)	XCR-500	Asia Int'l Auctioneer, Inc.
BMW (silver)	XFD-441	Southwing Heavy Industries, Inc. [8]

It was also unearthed that, during a four-year stretch, from July 1999 to June 2003, Aguilar, per the Bureau of Immigration (BI) records, took 13 unofficial trips abroad, eight to Los Angeles, California, accompanied most of the time by daughter Josephine. During the same period, her two other daughters also collectively made nine travels abroad. Per the PNP-CIDG's estimate, Aguilar would have spent around PhP 3,400,000 for her and her daughters' foreign travels.

In view of what it deemed to be a wide variance between Aguilar's acquired assets and what she spent for her four-year overseas travels, on one hand, and her income, on the other, the PNP-CIDG, through P/Director Eduardo Matillano--in a letter-complaint of July 28, 2003, with enclosures, on a finding that she has violated Republic Act No. (RA) 1379^[9] in relation to RA 3019^[10] and 6713^[11]--charged her with grave misconduct and dishonesty. Hernandez was charged too with the same offenses. Upon evaluation of the complaint and of the evidence presented, which included the aforementioned joint-affidavit, the Ombudsman created an investigating panel which then conducted administrative proceedings on the complaint, docketed as OMB-C-A-03-0327-I.

By Order of September 3, 2003, then Overall Deputy Ombudsman Margarito Gervacio, Jr. placed Aguilar under preventive suspension for six (6) months without pay. Another Order, ^[12] however, was issued, effectively lifting the order of preventive suspension on the stated ground that Aguilar's untraversed controverting evidence "considerably demonstrated the weakness of the evidence in support of the complaint."

In the meantime, Aguilar filed her *Counter-Affidavit*,^[13] primarily addressing the allegations in the aforementioned joint-affidavit. In it, she belied allegations about not declaring Lot 6, Blk 21, BIR Village, Fairview. As explained, what she considers her dwelling in that area consists of a duplex-type structure that sits on the Lot 8 she originally owned and the contiguous Lot 6, which she subsequently acquired from one Norma Jurado. Anent Unit 1007-A of Antel Seaview Towers, Aguilar pointed to her US-based brother Carlo as owner of this condo unit, the latter having purchased it from Mina Gabor on July 14, 2003. Carlo, as she averred, has allowed her to stay in the unit. Appended to Aguilar's counter-affidavit is a Deed of Sale^[14] purportedly executed in Los Angeles in favor of Carlo.

Aguilar also denied owning the so-called third real property, the Panicuason, Naga City lot, since she had already sold it in 1992.

As to allegations that she owns but failed to declare the four above-listed vehicles, Aguilar admitted to owning only the subject Honda CRV van, but denied the charge of failing to declare it in her SALN. She ascribed ownership of the Isuzu Trooper to Hernandez. As for the red and silver BMW cars registered in the name of the entities mentioned in the complaint, Aguilar alleged that they were merely lent to her by her brother's friend.

Not being the owner of the properties aforementioned, Aguilar wondered how she can be expected to include them in her SALN.

Finally, she claimed having seven brothers and two sisters in the US who had sponsored her US trips and who at times even sent airline tickets for her and her daughters' use.

Hernandez, for his defense, alleged that the complaint adverted only to his being the registered owner of an Isuzu Trooper. There is no specification, he added, as to his acquisition of, and not declaring, unexplained wealth.^[15]

Ruling of the Ombudsman

Based on the evidence on record and the parties' position papers, the investigating panel issued for approval a draft *Decision*^[16] dated June 3, 2004, which found Aguilar guilty of the offenses charged. And while Hernandez was also charged and investigated, the *fallo* and even the body of the proposed decision was silent as to him, save for the following line:

x x x the fact that the motor vehicle, Isuzu Trooper with Plate No. HRH 659 is registered in his [Hernandez's] name, does not make him administratively liable.^[17]

Evidently not totally satisfied with the panel's recommended action, the Ombudsman directed that a joint clarificatory hearing be conducted, and one was held on September 23, 2004. The proceedings resulted in the issuance of what the investigating panel styled as *Supplemental Decision*^[18] dated January 6, 2005 further detailing the bases for the earlier finding on Aguilar's liability. Like the earlier draft, no reference was made in the *fallo* of the *Supplemental Decision* to Hernandez's guilt or innocence.

Following a review of the two issuances thus submitted, then Ombudsman Simeon Marcelo issued on January 18, 2005 a decision denominated *Supplement*,^[19] approving, with modification, the adverted *Decision* and *Supplemental Decision*. The modification relates to the liability of Hernandez whom the Ombudsman found to be Aguilar's dummy and equally guilty of grave misconduct and dishonesty deserving too of the penalty of dismissal from the service. Dispositively, the *Supplement* reads:

WHEREFORE, the Decision dated 03 June 2004 and Supplemental Decision dated 06 January 2005 are approved insofar as it finds respondent Flor Aguilar

guilty of the administrative offenses of Grave Misconduct and Dishonesty and is hereby meted the penalty of DISMISSAL from the service, with the accessory penalty of cancellation of eligibility, forfeiture of retirement benefits and perpetual disqualification for re-employment in the government service.

Further, the undersigned hereby disapproves the ruling contained in the Decision dated 03 June 2004 with regard to Honore Hernandez, the latter being likewise found guilty of the administrative offenses of Grave Misconduct and Dishonesty and is hereby meted the penalty of Dismissal from the service, with the accessory penalty of cancellation of eligibility, forfeiture of retirement benefits and perpetual disqualification for re-employment in the government service.

SO ORDERED.

Aguilar and Hernandez moved for but were denied reconsideration^[20] via an Order^[21] of February 28, 2005. The two then went to the Court of Appeals (CA) on a petition for review under Rule 43, docketed as CA-G.R. SP No. 88954. Even as they decried what they tag as a case disposition in installments, petitioners asserted the absence of substantial evidence to support the allegations in the complaint, and that the judgment of dismissal is recommendatory and not immediately executory.

Ruling of the Court of Appeals

The CA, in its assailed Decision of July 22, 2009, affirmed that of the Ombudsman, disposing as follows:

WHEREFORE, the instant petition is DENIED and the assailed Decision of the Ombudsman finding petitioners guilty of Grave Misconduct and Dishonesty, and meted them the penalty of DISMISSAL from the government service, with the accessory penalty of cancellation of eligibility, forfeiture of retirement benefits and perpetual disqualification for reemployment in the government service in OMB-C-A-03-0327-I is AFFIRMED.

SO ORDERED.^[22]

Even as it junked petitioners' contention on the sufficiency of the complainant's inculpatory evidence and on the nature of the Ombudsman's judgment, the CA declared that petitioners' remedy under the premises is an appeal to this Court by force of Section 14 in relation to Sec. 27 of RA 6770 or the *Ombudsman Act of 1989*. Sec. 14 provides that **"[n]o court shall hear any appeal or application for remedy against the decisions or findings of the Ombudsman, except the Supreme Court on pure questions of law,"** while Sec. 27 states that **"[f]indings of fact by the [OMB] when supported by substantial evidence are conclusive."**

On June 13, 2011, the CA denied petitioners' motion for reconsideration.

Hence, the present petition raising the following issues:

1. Whether or not a Rule 43 petition to assail the findings or decisions of the Ombudsman in an administrative case is proper;
2. Whether or not the acts complained of constitute grave misconduct, dishonesty or both;
3. Whether or not there is substantial evidence to support the assailed findings of the Ombudsman and the CA; and
4. Whether or not the decision of the Ombudsman is but recommendatory or immediately executory.

Petitioners also invite attention to the June 4, 2012 decision of the Regional Trial Court (RTC) of Manila in Criminal Case No. 08-263022, acquitting Aguilar for falsification allegedly involving the same disputed transactions in OMB-C-A-03-0327-I.

The Court's Ruling

The petition, on its procedural and substantial aspects, is partly meritorious. The Court shall first address procedural issues and concerns raised in this recourse.

Petitioners properly appealed to the CA

Petitioners first contend that the CA erred in its holding that, in line with Sec. 14^[23] and Sec. 27 of RA 6770, they should have appealed the Ombudsman's Decision to this Court on questions of law instead of filing a Rule 43 petition before the CA.

Petitioners stand on solid ground on this issue.

The Ombudsman has defined prosecutorial powers and possesses adjudicative competence over administrative disciplinary cases filed against public officers. What presently concerns the Court relates to the grievance mechanism available to challenge the OMB's decisions in the exercise of that disciplinary jurisdiction.

The nature of the case before the Office of the Ombudsman (OMB) determines the proper remedy available to the aggrieved party and with which court it should be filed. In administrative disciplinary cases, an appeal from the OMB's decision should be taken to the CA under Rule 43, unless the decision is not appealable owing to the penalty imposed.

In the case at bar, the Ombudsman, in the exercise of his administrative disciplinary jurisdiction had, after due investigation, adjudged petitioners guilty of grave misconduct and dishonesty and meted the corresponding penalty. Recourse to the CA via a Rule 43 petition is the proper mode of appeal. Rule 43 governs appeals to the CA from decisions or final orders of quasi-judicial agencies.^[24]

Reliance by the CA on Sec. 14 in relation to Sec. 27 of RA 6770 to support its position as to which court a party may repair to to assail the OMB's decision in disciplinary cases is misinformed. As has been held, those portions of said Sec. 27 and any other provisions implementing RA 6770, insofar as they expanded the appellate jurisdiction of this Court without its concurrence, violate Article VI, Sec. 30 of the 1987 Constitution.^[25] We said so in the landmark *Fabian v. Desierto*:^[26]

WHEREFORE, Section 27 of [RA] 6770 (Ombudsman Act of 1989), together with Section 7, Rule III of [A.O.] 07 (Rules of Procedure of the [OMB]), and any other provision of law or issuance implementing the aforesaid Act and **insofar as they provide for appeals in administrative disciplinary cases from the Office of the Ombudsman to the Supreme Court, are hereby declared INVALID and of no further force and effect.** (Emphasis added.)

As a consequence and in line with the regulatory philosophy adopted in appeals from quasi-judicial agencies in the 1997 Revised Rules of Civil Procedure, appeals from decisions of the Ombudsman in administrative disciplinary cases should be taken to the CA under the provisions of Rule 43.^[27] *Barata v. Abalos, Jr.*,^[28] *Coronel v. Desierto*,^[29] and recently *Dimagiba v. Espartero*^[30] have reiterated the pertinent holding in *Fabian*.

The Decision of the Ombudsman is mandatory and immediately executory

This brings us to the issue on the nature of the Ombudsman's decisions in administrative disciplinary suits, it being petitioners' posture that such decisions, as here, are only recommendatory and, at any event, not immediately executory for the reason that the