

THIRD DIVISION

[G.R. No. 177167, January 17, 2013]

NELSON B. GAN, PETITIONER, VS. GALDERMA PHILIPPINES, INC. AND ROSENDO C. VENERACION, RESPONDENTS.

DECISION

PERALTA, J.:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure seeking the reversal of the March 21, 2007 Decision^[1] of the Court of Appeals in CA-G.R. SP No. 91118, which upheld the assailed resolutions of the National Labor Relations Commission (NLRC) affirming the Labor Arbiter's ruling that petitioner Nelson B. Gan voluntarily resigned and was not constructively dismissed by respondent Galderma Philippines, Inc.

Now the facts.

Respondent Galderma Philippines, Inc. (Galderma), a wholly-owned subsidiary of Galderma Pharma S.A., is engaged in the business of selling, marketing, and distribution of Cetaphil Brand Product Lines (CBPL) that include Cetaphil liquid and bar cleansers, and pharmaceutical products, such as Locetar, Benzac and other prescription drugs. CBPL, which are over-the-counter products sold and/or distributed through supermarkets and health and beauty outlets, are handled by Galderma's Consumer Products Division, while pharmaceutical products, which are mostly prescription drugs sold and/or distributed through drug stores, are handled by its Ethical Products Division.

On February 9, 2001, petitioner Nelson B. Gan (Gan) was hired by Galderma as Product Manager for its Consumer Products Division to handle the marketing of CBPL effective March 1, 2001 with salary and benefits as follows:

1. Monthly Salary - PHP 30,000.00 (Guaranteed 13 months)
2. Sales Incentives Scheme
 - Monthly Incentive (should the monthly sales target for the CBPL be achieved) – PHP 8,000.00
 - Year-to-Date (YTD) Incentive (should the monthly sales target for the CBPL be consistently achieved) – PHP 2,000.00
 - Annual Incentive (should the annual sales target for the CBPL be achieved) – PHP 15,000.00
3. Others
 - Provision and free use of company car

- Monthly car allowance – PHP 3,200.00
- Vision care annual subsidy for Gan and his dependents – PHP 1,200.00
- Rice subsidy – PHP 1,500 every other month
- Grocery items – worth PHP 900.00 upon attainment of the monthly sales target, subject to upgrade to PHP 1,300.00 at the end of every quarter upon national attainment of quarter targets
- Funeral assistance – PHP 10,000
- Monthly cellular telephone reimbursement – PHP 500.00
- Paid vacation leave of ten (10) working days per annum after one (1) year of employment
- Paid sick leave of ten (10) working days per annum after six (6) months of employment
- Paid funeral leave of five (5) days in case of death of an immediate family member (legitimate wife, children and parents)
- Paternity Leave
- Group Life Insurance
- Group Personal Accident Insurance
- Retirement Plan
- Foreign travel incentive like any other employee of Galderma depending on their performance for the year^[2]

Gan was initially under the immediate supervision of Sales and

Marketing Manager, Stephen C. Peregrino (Peregrino). Starting September 1, 2001, however, in view of Peregrino's resignation, he directly reported to Galderma's President and General Manager, respondent Rosendo C. Veneracion (Veneracion).^[3]

With his satisfactory performance during the first year, Gan was acknowledged and rewarded by Galderma through positive performance appraisal, salary and benefits increases, and informal notations on his marketing reports:

18.1 [Gan] was given a FULLY EFFECTIVE RATING by [Veneracion] in his Overall Performance Evaluation for the year 2001, particularly -

Result Assessment

KEY RESULT AREAS	RATING	DESCRIPTION
Brand Growth	5	Fully effective.
Business Expansion	5	Fully effective.
Profitability	5	Fully effective.
Marketing Plan	5	Fully effective.
Implementation	5	Fully effective.

Behavioral Assessment

AREAS OF BEHAVIOR	RATING	DESCRIPTION
Client Orientation – understands clients;	5	Fully effective.

produces services and products for clients; uses knowledge to equip clients; meets clients' needs.		
Drive for Results – makes things happen; is proactive, balances analysis with doing; sets high standards for self; commits to organizational goals.	5	Fully effective.
Teamwork – collaborates with others; shares knowledge; acknowledges [other's] contributions; works effectively in diversity; seeks help as needed.	6	Exceptionally effective.

NOTE: "6" being the highest rate and "1" the lowest.

18.2. [Gan] was given a 40% increase in his gross monthly salary, that is, from PHP 30,000.00 to PHP 42,000.00 effective [1] January 2002 through the 10 December 2001 Office Correspondence (or memorandum) of [Veneracion] x x x.

18.3. [Gan's] PHP 8,000.00 monthly sales incentive was also increased to PHP 9,000.00 effective [1] January 2002 through [Veneracion's] Office Correspondence of 14 December 2001 x x x.

18.4. [Gan's] PHP 3,200.00 monthly car allowance was likewise increased to PHP 4,125.00. This increase, however, was not evidenced by any memorandum and was merely implemented by [Galderma] and included in his monthly pay.

18.5. [Gan] was also included among the select group of employees of [Galderma] entitled to and given an all expense paid overseas trip for 2001 (in Sydney, Australia), but he was unable to join the same due to visa problem.^[4]

Gan's above-average performance in handling CBPL continued in the first quarter of 2002:

19.1. The total 1st quarter net sales of the CBPL was almost double the 2000 annual net sales and already 53% of the 2001 annual net sales x x x

19.2. The average monthly net sales for 2002 was already 96% higher than the average monthly net sales for 2001. If this trend continues, the

annual net sales for the CBPL is expected at PHP 14,020,232.00 or more than double the annual net sales for 2001.

19.3. The excellent year 2002 1st quarter performance of [Gan] was acknowledged by [Veneracion] with his handwritten comments on the CBPL Marketing Report for February 2002 prepared and submitted by [Gan] x x x to wit –

19.3.1. [Veneracion] commended [Gan] for the good sales results for the 1st 2 months of 2002 when he commented – *"Good sales results! Looks like we're off to a good start!! Keep it up!"* – when [Gan] reported that the CBPL generated total gross sales of PHP 1.65 million [or] a 144% attainment vs. the February forecast, which sales total surpassed the previous high of PHP 1.46 million for January 2002.

19.3.2. [Veneracion] commented as *"EXCELLENT"* the eight (8) Press Releases or Articles for the CBPL for the month of February 2002.^[5]

Pursuant to its intention to give him additional product management responsibilities, Galderma provided Gan with product knowledge training on Benzac and Locetar brands in December 2001. Thereafter, Gan's incentive program was revised and took effect in April 2002, thus:

MONTHLY INCENTIVE

Earn cash incentive upon achieving monthly national trade sales forecasts of the Cetaphil Consumer line, Locetar line and Benzac line as follows:

Cetaphil consumer line	P 4,500.00
Locetar line	3,000.00
Benzac line	1,500.00

Earn monthly cash incentive as YTD Consistency Award as follows:

Cetaphil consumer line	P 1,000.00
Locetar line	750.00
Benzac line	250.00

ANNUAL INCENTIVE

Earn cash incentive upon achieving Annual Trade Forecasts of the following:

Cetaphil consumer line	P 7,500.00
Locetar line	5,000.00

The above policy actually modified the 2002 Incentive Program previously communicated to Gan per December 14, 2001 Office Correspondence,⁷ the mechanics of which were as follows:

MONTHLY INCENTIVE:

Earn Ps 9,000 cash incentive upon achievement of monthly national trade sales forecast of the Cetaphil consumer line and/or any product line that management may add to the line-up of consumer products promoted to supermarket accounts.

Earn Ps 2,000 monthly cash incentive as YTD Consistency Award for the Cetaphil consumer line and/or any product line that management may add to the line-up of consumer products promoted to supermarket accounts.

ANNUAL INCENTIVE:

Earn Ps 15,000 cash incentive upon achievement of annual trade sales forecast of the Cetaphil consumer line and/or any product line that management may add to the line-up of consumer products promoted to supermarket accounts.

The December 14, 2001 Office Correspondence further advised that Galderma's management *"reserves the prerogative to modify or cancel [the] incentive program dependent on the company's financial capability to continue with the program" and that "[i]n such an event, a 30-day advance notice shall be provided [to] personnel affected by the change."*

On April 11, 2002, Gan severed his employment ties with Galderma. His resignation letter reads:

April 11, 2002

Gerry Castro
Sr. Product Manager

Please accept my resignation as OTC Product Manager effective July 15, 2002.

I am giving the company this notice in advance so that Galderma Philippines may have ample time to find a suitable replacement for my position.

I plan to pursue the establishment of my own business or explore opportunities with other companies.