

## **THIRD DIVISION**

**[ G.R. No. 148607, September 05, 2012 ]**

**ELSA B. REYES, PETITIONER, VS. SANDLGANBAYAN (4TH DIVISION) AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

**[G.R. NO. 167202]**

**ARTEMIO C. MENDOZA, PETITIONER, VS. SANDIGANBAYAN (4<sup>TH</sup> DIVISION) AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

**[G.R. NO. 167223]**

**ELSA B. REYES, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

**[G.R. NO. 167271]**

**CARLOAD A. MIRANDA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

## **D E C I S I O N**

**ABAD, J.:**

These cases pertain to the liability of public officers and private individuals for investing public funds through private investment companies without proper authorization.

### **The Facts and the Case**

On May 27, 1982 the President of the Philippines issued Executive Order 806,<sup>[1]</sup> establishing the Instructional Materials Corporation (IMC), a government-owned and controlled corporation under the Department of Education, Culture, and Sports (DECS). IMC's task was to develop, produce, and distribute public school textbooks for elementary and high schools. Among others, IMC was empowered, with the approval of its Board of Directors, to invest its unscheduled funds pending their intended use.<sup>[2]</sup>

The present controversy arose when Senator Wigberto Tafiada denounced alleged illegal investments that IMC made in Associated Bank from March 1989 to September 1990. Then DECS Secretary Isidro Carifio directed a special audit of IMC from December 6, 1990 to February 6, 1991 covering the alleged illegal deposits. On August 20, 1991 the Special Audit Team<sup>[3]</sup> reported a questionable investment of P231.56 million in a private bank of advances that IMC received from the

government. Said the report:

- a. Of the P732 million advances including adjustments received by IMC from the different government entities during the period January 1, 1989 to September 30, 1990, only P209 million or 28.56% has been liquidated and used for the purpose intended. Advances amounting to P231.56 million was not deposited with authorized government depository bank but was instead used for unauthorized purchase of government securities from private brokers using Associated Bank as its conduit in violation of LOI 1302 dated March 25, 1983 and COA-MOF-MOB Joint Circular No. 9-81 dated October 19, 1981. In such placement, IMC incurred additional investment cost of P571,028.19 representing conduit fee paid to Associated Bank for services rendered to IMC and the Broker.
- b. Government securities amounting to P118.67 million could not be accounted for during the count conducted on December 6, 1990. Available documents showed that the private broker was allowed to take custody of these securities in violation of Section 101 of PD 1445. Of the amount, custody for securities with face value of P74.10 million was denied by the Philippine National Bank.
- c. Placement with private brokers were neither approved by the General Manager nor covered by a board resolution sanctioning such placements.<sup>[4]</sup>

Pending recovery of the unaccounted government securities worth P116 million mentioned above, the government filed criminal charges of violation of Section 3(e)<sup>[5]</sup> of Republic Act (R.A.) 3019<sup>[6]</sup> before the Sandiganbayan against petitioners Caridad Miranda (Miranda) and Artemio Mendoza (Mendoza), General Manager and Finance Division Chief of IMC, respectively. They were accused of investing IMC funds by buying government securities from Associated Bank, brokered by Eurotrust Capital Corporation (Eurotrust). It was alleged that the investment was with evident bad faith because Miranda and Mendoza did not secure prior authority from the IMC Board.

The government also indicted petitioner Elsa B. Reyes (Reyes), Eurotrust's president, for investing IMC funds by buying government securities or BF Homes Assets Privatization Certifications from Associated Bank. These certificates were then sold to IMC for a profit of P571,028.19. IMC also failed to collect from Reyes a balance of P116 million from investment instruments that matured.

The information alleged:

[A]ccused ARTEMIO MENDOZA, without authority, obtained from the IMC Cashier the following checks which were payable to and received by IMC from the Department of Education, Culture and Sports and the Educational Development Projects Implementing Task Force (EDPITAF)

intended for the production and distribution of elementary textbooks and other instructional materials from (*sic*) the public schools, namely: x x x.

[T]hereafter accused ARTEMIO MENDOZA caused accused CARIDAD MIRANDA to sign and indorse the aforementioned checks in blank which accused CARIDAD MIRANDA did, notwithstanding the fact that their (*sic*) indorsement in blank was unnecessary since the aforesaid checks were all for deposit; then accused ARTEMIO MENDOZA, without any disbursement vouchers whatsoever, and instead of depositing the said checks to the account of IMC, delivered them to accused ELSA REYES who, without any authority from IMC, thereafter caused the IMC funds covered by the aforementioned checks to be invested in government securities such as Treasury Bills, Treasury Notes, Land Bank Bonds or BF Homes Assets Privatization Certificates purchased from Associated Bank, a private or non-government financial institution, in violation of P.D. No. 1115, if the required volume was available in the said bank, and if no such volume could be provided by Associated Bank, accused ELSA REYES sold the necessary volume to Associated Bank which in turn sold them to IMC, thereby causing IMC to pay an additional investment cost of P571,028.19; thereafter, upon termination or maturity dates of said investments, accused ARTEMIO MENDOZA and CARIDAD MIRANDA failed to demand the return of the funds from accused ELSA REYES who thereupon reinvested them or lent them to B.E. Ritz Mansion Investment Corporation (BERMIC) which, however, failed to pay its obligation in full, leaving an uncollected balance of P116,000,000.00, x x x.<sup>[7]</sup>

During the trial, the prosecution presented the findings of the Special Audit Team and the Committee on Investment headed by Mr. Melchor Tipace. Mary Adelino (Adelino), a member of the audit team testified that P118,666,655.48 in government securities were unaccounted for as of December 1990. She also testified that IMC incurred additional investment cost by way of conduit fee paid to Associated Bank in the amount of P571,028.19.

By way of defense, Miranda denied any involvement in the transactions with Eurotrust. She met Reyes for the first time only when the audit report was released to her. She also learned from Reyes that it was Mendoza whom she dealt with for the investments through Eurotrust.

Miranda also denied that she conspired with co-accused Mendoza when she signed and indorsed IMC checks to purchase securities from Eurotrust. She signed the checks as part of IMC's standard procedure, not knowing that Mendoza will use them to make the illegal investment.

Mendoza denied Miranda's claim. Mendoza said that, as finance officer, he can only determine what unscheduled funds IMC can invest. It was Miranda, he added, who authorized, when she signed the checks, to release the funds for investment through Eurotrust. Reyes, on the other hand, alleged that she did not know that Mendoza had no authority to invest IMC funds through Eurotrust.

After the prosecution ended the presentation of its evidence and filed a formal offer of its documentary exhibits, Reyes objected on the ground that witness Adelino's

testimony covering the audit report was hearsay since she joined the audit team as a replacement member only in January 1991. She also objected to the offer of documentary evidence that were not marked or made known to the parties during pre-trial.

In a Resolution dated February 21, 2001, the Sandiganbayan set aside Reyes' objection and admitted the prosecution's evidence. It denied her motion for reconsideration on April 6, 2001, prompting her to file a motion for leave to file a demurrer. But the court denied this, too, for having been filed out of time since the 5-day period within which to file such leave was to be counted from Reyes' receipt of the February 21, 2001 Resolution.

In her motion for reconsideration, Reyes claimed that the 5-day period should rather be counted from her receipt of the denial of her motion for reconsideration of the Order admitting the prosecution's evidence. But the Sandiganbayan rejected this view, prompting Reyes to file a petition for *certiorari* before this Court in G.R. 148607 for alleged grave abuse of discretion. Meanwhile, trial in the case proceeded.

On September 22, 2004 the Sandiganbayan Fourth Division, voting 32, rendered a Decision<sup>[8]</sup> finding Mendoza and Miranda guilty beyond reasonable doubt of the charge against them and imposing on them the penalty of imprisonment of 6 years and 1 month as minimum up to 10 years as maximum and perpetual disqualification from public office. They were also ordered, by way of restitution, to return the missing government securities amounting to P118,666,655.48 or pay their cash equivalent.

The majority in the court found that Miranda and Mendoza conspired with Reyes in the investment of IMC funds with Eurotrust absent authorization from the IMC Board. By using their positions as General Manager and Finance Officer, respectively, Miranda and Mendoza caused undue injury to the government when the securities bought with IMC funds were not recovered. Furthermore, Miranda and Mendoza were fully aware of their lack of authority, yet they proceeded with the investment. For the majority, this constituted evident bad faith.

The Justices who dissented claimed, on the other hand, that the prosecution failed to establish Miranda's active participation in the investment made through Eurotrust. That she signed blank checks without knowing where the funds will be deposited (and these were ultimately used by Mendoza to pay Eurotrust for the securities) may indicate incompetence or negligence but not bad faith.

Petitioners filed their respective motions for reconsideration which were denied by Resolution dated February 22, 2005. This led to the filing of separate petitions for review on *certiorari* by Mendoza in G.R. 167202, Reyes in G.R. 167223 and Miranda in G.R. 167271 before the Court. By Resolution of April 17, 2006, the Court consolidated the four petitions since they arose from the same criminal case that involved the same parties and raised substantially similar or closely related issues.

### **The Issues Presented**

These cases present the following issues:

1. In G.R. 148607 instituted by Reyes, whether the Sandiganbayan committed grave abuse of discretion in not counting the 5-day period to file a motion for leave to file demurrer, not from its denial of her opposition to the order admitting the prosecution's documentary evidence, but from its rejection of her motion for reconsideration of that denial order.

2. In G.R. 167202, 167223 and 167271 separately filed by petitioners, whether or not the Sandiganbayan erred in finding them guilty of causing undue injury to the government by using IMC funds for the purchase of investment securities through third parties in violation of section 3(e) of R.A. 3019.

### **The Court's Rulings**

The information alleged that petitioners Miranda and Mendoza acted with evident bad faith in connection with the subject investment transactions. The majority in the Sandiganbayan found that they acted with evident bad faith when they pursued the investment despite want of authority from the IMC Board.

Bad faith connotes, not only bad judgment or negligence, but also a dishonest purpose or conscious wrongdoing.<sup>[9]</sup> But bad faith alone on the part of the accused is not sufficient. Such bad faith must be evident.<sup>[10]</sup>

Nothing in the record shows that corrupt motive spurred Miranda in her actions or that she received some material benefit for signing the checks that moved the funds out of IMC. All that can be proved against her is the fact that she indorsed the IMC checks subject of the case. But this does not prove a dishonest purpose. She testified that it was a standard practice for the General Manager to sign the dorsal portion of checks for deposit. Indeed, Miranda presented similar checks with her indorsement which were deposited into IMC's accounts with government depositories. The prosecution did not rebut this.

While it is true that Miranda did not have to acknowledge the checks in order for them to be deposited, her indorsements were superfluous. They did not alter the nature of the checks as payable to IMC since Miranda did not have clear authority to indorse its checks for renegotiation. Her signing authority was limited to only P400,000.00 and under IMC Office Order 11, s. 1987, two signatures to IMC checks were required for this. Her indorsement of the checks in question may be regarded as laxity but it does not amount to a criminal design. That the checks in question were not deposited but were instead renegotiated after Miranda indorsed them should not be taken against her but against the individuals who managed to do so and the banks that allowed the unauthorized withdrawal of those funds.

There is likewise no proof that Miranda acted with perceptible bias in favor of Reyes. They both deny ever knowing each other prior to the questioned transactions. Reyes dealt exclusively with Mendoza who was IMC's Finance Division Chief. Miranda was unaware that IMC funds were being diverted to unauthorized investments instead of being deposited in its accounts.

The prosecution cited Miranda's approval and submission of IMC's annual report for 1989 as proof that she connived with Mendoza. The investment of more than P123 million of IMC funds with Eurotrust had been included in the balance sheet