

SECOND DIVISION

[G.R. No. 183890, April 13, 2011]

OFFICE OF THE OMBUDSMAN, PETITIONER, VS. MANUEL P. VALENCIA, RESPONDENT.

D E C I S I O N

MENDOZA, J.:

At bench is a petition for review assailing the April 11, 2008 Decision^[1] and the July 16, 2008 Resolution^[2] of the Court of Appeals (CA) in CA-G.R. SP No. 89299, which [1] reversed and set aside the September 30, 2004 Decision³ and January 31, 2005 Order⁴ of the Office of the Ombudsman (*Ombudsman*) finding respondent Manuel P. Valencia, Jr. (*Valencia*), Chief Customs Operations Officer of the Bureau of Custom (BOC), guilty of Dishonesty; and [2] nullified the October 14, 2003 Order^[5] of the Ombudsman that placed Valencia under preventive suspension.

From the records, it appears that Valencia declared the following assets and liabilities in his sworn Statement of Assets and Liabilities and Networth (*SALN*) as of December 31, 1999:^[6]

I. ASSETS

a. Real Properties

Kind	Location	Year Acquired	Assessed Value	Acquisition Cost
House/Lot	Parañaque	1988	P713,210.00	P1,225,070
Total				P 1,225,070

b. Personal and other Properties

Kind	Year Acquired	Acquisition Cost
Car	1988	P299,000.00
Jewelries	1979	P100,000.00
Cash on Hand/In Bank		P275,000.00
Total		P674,000.00

II. LIABILITIES

Nature	Amount

Loans & Mortgage	P350,000.00
Total	P 350,000.00

As of December 31, 2001, Valencia declared the following assets and liabilities:

I. ASSETS

a. Real Properties

Kind	Location	Year Acquired	Assessed Value	Acquisition Cost
House/Lot	Parañaque	1998	P713,210.00	P1,225,070
Total				P 1,225,070

b. Personal and other Properties

Kind	Year Acquired	Acquisition Cost
Jewelries	Various years	P150,000.00
Cash on Hand/In Bank		P600,000.00
Total		P750,000.00

II. LIABILITIES

Nature	Amount
Loans & Mortgage	P250,000.00
Total	P 250,000.00

On July 21, 2003, not satisfied that the entries made by Valencia in his SALN were reflective of his actual net worth, Napoleon P. Guenero (*Guerrero*), Intelligence Officer V of the Department of Finance, filed a complaint/motion for Subpoena/Subpoena *Duces Tecum*^[7] with the Ombudsman against him for violation of Republic Act (R.A.) No. 13798 in relation to Section 8,^[9] R.A. No. 3019.^[10]

The criminal aspect of the complaint was docketed as OMB-C-C-03-0447-H, while the administrative aspect was docketed as OMB-C-A-03-0275-H.

In his complaint, Guerrero alleged that Valencia maintained two (2) US dollar time deposit accounts with the Far East Bank and Trust Company (*FEBTC*). The first account with the amount of US\$2,013,248.80 was covered by Certificate No. 962460, while the second, with the amount of US\$1,812,165.38, was covered by Certificate No. 962461. According to Guerrero, these huge amounts were "the actual fruits of his illegal transactions and activities of as an employee of the Bureau of Customs."^[11]

In support of his allegation that Valencia maintained these accounts, Guerrero attached two (2) Letters of Agreement^[12] placing the two US dollar time deposit accounts under the custody of FEBTC and authorizing said bank to apply the proceeds of the accounts to the forward contracts entered into by Valencia and FEBTC.

The complaint also alleged that the house and lot declared by Valencia in his SALNs was grossly undervalued considering that the house, described as "impressive," was erected on a parcel of land consisting of five (5) contiguous lots. ^[13]

Finally, it was alleged that from the credit card billings of his Bank of the Philippine Islands (BPI) Mastercard, it could be inferred that Valencia maintained a lavish lifestyle.

Guerrero sought issuance of a subpoena *duces tecum* against FEBTC and BPI for the production of records relative to the two U.S. dollar time deposits of Valencia and his Mastercard account, respectively.

Instead of a counter-affidavit, Valencia filed a *Motion To Set Aside Orders Both Dated September 3, 2003*^[14] contending that the case was not yet ripe for preliminary investigation/administrative adjudication, and that he should be excused from filing a counter affidavit because 1] the complaint was subscribed and sworn to before Assistant Ombudsman Ernesto M. Nocos (*Nocos*), a person not authorized to administer oaths under Section 41 of the Revised Administrative Code, as amended by R.A. No. 6733;^[15] 2] the complaint lacked the certification from Nocos that he "personally examined the complaint and that he is satisfied that he voluntarily executed and understood his complaint" in violation of Section 3 (a), Rule 112 of the Rules of Court; and 3] similar charges against him, in CPL No. 99-1783, were earlier dismissed by the Ombudsman for lack of evidence.

In its Order^[16] dated October 3, 2003, the Ombudsman denied Valencia's motion, citing Section 15 and Section 26 of R.A. No. 6770, otherwise known as the "Ombudsman Act of 1989." The Ombudsman added that the properties involved in CPL No. 99-1783 were different from those alleged by Guerrero to have been unlawfully acquired. Valencia was, thus, ordered to submit his counter-affidavit, those of his witnesses, as well as other supporting documents.

Answering the charges hurled against him, Valencia alleged in his Consolidated Counter-Affidavit^[17] that at the time he joined the Bureau of Customs on October 1, 1982, his family had been in the textile and garment business for more than fifteen (15) years; and that because of their business, his family was able to purchase a house and lot in Dasmarinas Village, Makati City, then valued at P400,000.00. The house and lot was later on sold for P1,500,000.00. His family then transferred to B.F. Homes in Parañaque and rented a house.

Then, sometime in 1985, his family transferred again to a house and lot belonging to his aunt, Paulina Potente (*Potente*), also in B.F. Homes, Paranaque. As his aunt preferred to live in General Trias, Cavite, he offered to lease-purchase the house to which she agreed. From 1985 to 1987, he introduced improvements to the house worth P600,000.00.

At the rear portion of the house of Potente, two (2) vacant lots belonging to one Rosalinda B. Silva were being offered for sale. Being adjacent to the house of his aunt, he purchased the same on August 24, 1988 for a total consideration of P268,950.00. Consequently, a Deed of Absolute Sale¹⁸ was executed by the parties and Transfer Certificates of Title (TCT) Nos. 12695 and 12696 were eventually issued in his name.

After fully paying the three (3) lots owned by his aunt, he obtained a Deed of Absolute Sale^[19] dated September 26, 1988 executed by Potente in his favor. As a result, TCT Nos. 14704, 14705 and 14706 were issued in his name. When declared for real property tax purposes, the Assessor's Office of Paranaque assigned a market value in the amount of P641,870.00 and assessed value of P513,500.00 for the house.^[20]

It was Valencia's contention that his properties were accurately valued in his SALNs, and that his house, which may look impressive, was a result of regular maintenance and minor additions or renovations introduced from time to time.

Valencia denied that he had been maintaining the two US dollar time deposits pointing out that the Letters of Agreement did not even bear his signature. Thus, the agreements were mere scraps of paper with no probative value. On October 14, 2003, on the basis of the complaint of Guerrero, the Ombudsman placed Valencia under preventive suspension for six (6) months without pay. He sought the lifting of the order of preventive suspension, but his request was denied by the Ombudsman in its Order^[21] dated November 14, 2003.

When the parties were required to submit their position papers, Valencia manifested that he would waive his right to a formal investigation and would submit the case for decision.^[23]

Complainant Guerrero did not file a position paper.

On April 6, 2004, for the purpose of verifying the complaint, the Ombudsman issued a subpoena *duces tecum*²⁴ against the BPI Card Customer Service Department. It requested for the clear and certified copies of Valencia's Mastercard transactions from 2003 backward.

After receiving the photocopies of the monthly statements for Valencia's Mastercard transactions, the Ombudsman required Valencia to file his Comment. Valencia, however, filed a *Motion to Set Aside Order dated July 16, 2004 and for Early Resolution of Cases*,^[25] According to him, the said order of the Ombudsman requiring him to file his comment after eight (8) long months of inaction was "irregular, unprocedural and in violation of his constitutional right to due process." He further pointed out that the monthly statements of the BPI Mastercard transactions were not original documents, thus, the authenticity and due execution of which must first be proven.

Valencia's motion was not acted upon by the Ombudsman. Instead, the Ombudsman issued a subpoena *duces tecum*^[26] addressed to the manager of FEBTC to produce documents relative to the alleged time deposits in his name. Due to the acquisition

of FEBTC by BPI, a similar subpoena ' was addressed to the president of BPI on August 11, 2004.

In a letter^[28] dated August 20, 2004, invoking the Court's ruling in *Lourdez T. Marquez v. Hon. Aniano A. Desierto*,^[29] BPI informed the Ombudsman that absent any case pending before a court of competent jurisdiction, it was legally restricted from producing documents regarding bank deposits, particularly foreign currency deposits, without the written permission of the depositor.

Despite said letter, on August 27, 2004, Ernesto N. Olaguer (*Olaguer*), the Service Manager of BPI in charge of the records of all deposit accounts, submitted an affidavit³⁰ stating that "[d]espite diligent efforts, and given the limited information on the US Dollar Time deposits, wherein only the number of the time deposit certificates and the amount were specified, [he was] not able to locate any time deposit records belonging to Manuel P. Valencia, Jr."

In its September 2, 2004 Order,^[31] the Ombudsman required Olaguer and the counsel for BPI to appear before it for clarificatory hearing.

On September 30, 2004, being of the view that Valencia maintained a lavish lifestyle and lived beyond the modest means that his salary as a government official could offer, the Ombudsman opined that he must have derived income from unlawful sources. This, according to the Ombudsman, constituted deception and dishonesty which warranted his dismissal from office. Thus, the Ombudsman disposed:

FOREGOING CONSIDERED, pursuant to Section 52 (A-1) Rule IV of the Uniform Rules on Administrative Cases (CSC Resolution No. 991936), dated August 31, 1999, respondent MANUEL P. VALENCIA is hereby found guilty of DISHONESTY and is meted the corresponding penalty of DISMISSAL FROM THE SERVICE including all its accessory penalties and without prejudice to criminal prosecution.

SO ORDERED.

Valencia sought reconsideration of the Decision of the Ombudsman, but the same was denied on January 31, 2005.

At the CA, however, the decision of the Ombudsman was reversed. According to the CA, the charge of Unexplained Wealth under R.A. No. 1379 in relation to Section 8 of R.A. No. 3019 was separate and distinct from the offense of Dishonesty under Section 36 of Article IX of the Civil Service Decree of the Philippines.^[32] The CA reasoned out that to hold Valencia liable for Dishonesty when in fact the charge against him was for Unexplained Wealth, violated Valencia's right to due process, especially his right to be informed of the charges against him and to be convicted only of the offense charged.

Furthermore, it added that even if the offense of Dishonesty were to be considered, there was no substantial evidence on record to hold Valencia administratively liable. The CA, thus, explained: