

## EN BANC

[ G.R. No. 167622, June 29, 2010 ]

**GREGORIO V. TONGKO, PETITIONER, VS. THE MANUFACTURERS LIFE INSURANCE CO. (PHILS.), INC. AND RENATO A. VERGEL DE DIOS, RESPONDENTS.**

### R E S O L U T I O N

**BRION, J.:**

This resolves the *Motion for Reconsideration*<sup>[1]</sup> dated December 3, 2008 filed by respondent The Manufacturers Life Insurance Co. (Phils.), Inc. (Manulife) to set aside our Decision of November 7, 2008. In the assailed decision, we found that an employer-employee relationship existed between Manulife and petitioner Gregorio Tongko and ordered Manulife to pay Tongko backwages and separation pay for illegal dismissal.

The following facts have been stated in our Decision of November 7, 2008, now under reconsideration, but are repeated, simply for purposes of clarity.

The **contractual relationship between Tongko and Manulife had two basic phases. The first or initial phase began on July 1, 1977**, under a Career Agent's Agreement (*Agreement*) that provided:

It is understood and agreed that the Agent is an independent contractor and nothing contained herein shall be construed or interpreted as creating an employer-employee relationship between the Company and the Agent.

x x x x

a) The Agent shall canvass for applications for Life Insurance, Annuities, Group policies and other products offered by the Company, and collect, in exchange for provisional receipts issued by the Agent, money due to or become due to the Company in respect of applications or policies obtained by or through the Agent or from policyholders allotted by the Company to the Agent for servicing, subject to subsequent confirmation of receipt of payment by the Company as evidenced by an Official Receipt issued by the Company directly to the policyholder.

x x x x

The Company may terminate this Agreement for any breach or violation of any of the provisions hereof by the Agent by giving written notice to the Agent within fifteen (15) days from the time of the discovery of the

breach. No waiver, extinguishment, abandonment, withdrawal or cancellation of the right to terminate this Agreement by the Company shall be construed for any previous failure to exercise its right under any provision of this Agreement.

Either of the parties hereto may likewise terminate his Agreement at any time without cause, by giving to the other party fifteen (15) days notice in writing.<sup>[2]</sup>

Tongko additionally agreed (1) to comply with all regulations and requirements of Manulife, and (2) to maintain a standard of knowledge and competency in the sale of Manulife's products, satisfactory to Manulife and sufficient to meet the volume of the new business, required by his Production Club membership.<sup>[3]</sup>

The **second phase** started in 1983 when Tongko was named Unit Manager in Manulife's Sales Agency Organization. In 1990, he became a Branch Manager. Six years later (or in 1996), Tongko became a Regional Sales Manager.<sup>[4]</sup>

Tongko's gross earnings consisted of commissions, persistency income, and management overrides. **Since the beginning, Tongko consistently declared himself self-employed in his income tax returns. Thus, under oath, he declared his gross business income and deducted his business expenses to arrive at his taxable business income. Manulife withheld the corresponding 10% tax on Tongko's earnings.**<sup>[5]</sup>

In 2001, Manulife instituted manpower development programs at the regional sales management level. Respondent Renato Vergel de Dios wrote Tongko a letter dated November 6, 2001 on concerns that were brought up during the October 18, 2001 Metro North Sales Managers Meeting. De Dios wrote:

The first step to transforming Manulife into a big league player has been very clear - to increase the number of agents to at least 1,000 strong for a start. This may seem diametrically opposed to the way Manulife was run when you first joined the organization. Since then, however, substantial changes have taken place in the organization, as these have been influenced by developments both from within and without the company.

x x x x

The issues around agent recruiting are central to the intended objectives hence the need for a Senior Managers' meeting earlier last month when Kevin O'Connor, SVP-Agency, took to the floor to determine from our senior agency leaders what more could be done to bolster manpower development. At earlier meetings, Kevin had presented information where evidently, your Region was the lowest performer (on a per Manager basis) in terms of recruiting in 2000 and, as of today, continues

to remain one of the laggards in this area.

While discussions, in general, were positive other than for certain comments from your end which were perceived to be uncalled for, it became clear that a one-on-one meeting with you was necessary to ensure that you and management, were on the same plane. As gleaned from some of your previous comments in prior meetings (both in group and one-on-one), it was not clear that we were proceeding in the same direction.

Kevin held subsequent series of meetings with you as a result, one of which I joined briefly. In those subsequent meetings you reiterated certain views, the validity of which we challenged and subsequently found as having no basis.

With such views coming from you, I was a bit concerned that the rest of the Metro North Managers may be a bit confused as to the directions the company was taking. For this reason, I sought a meeting with everyone in your management team, including you, to clear the air, so to speak.

This note is intended to confirm the items that were discussed at the said Metro North Region's Sales Managers meeting held at the 7/F Conference room last 18 October.

x x x x

Issue # 2: "Some Managers are unhappy with their earnings and would want to revert to the position of agents."

This is an often repeated issue you have raised with me and with Kevin. For this reason, I placed the issue on the table before the rest of your Region's Sales Managers to verify its validity. As you must have noted, no Sales Manager came forward on their own to confirm your statement and it took you to name Malou Samson as a source of the same, an allegation that Malou herself denied at our meeting and in your very presence.

This only confirms, Greg, that those prior comments have no solid basis at all. I now believe what I had thought all along, that these allegations were simply meant to muddle the issues surrounding the inability of your Region to meet its agency development objectives!

Issue # 3: "Sales Managers are doing what the company asks them to do but, in the process, they earn less."

x x x x

All the above notwithstanding, we had your own records checked and we found that you made a lot more money in the Year 2000 versus 1999. In addition, you also volunteered the information to Kevin when you said that you probably will make more money in the Year 2001 compared to Year 2000. Obviously, your above statement about making "less money" did not refer to you but the way you argued this point had us almost

believing that you were spouting the gospel of truth when you were not.  
x x x

x x x x

All of a sudden, Greg, I have become much more worried about your ability to lead this group towards the new direction that we have been discussing these past few weeks, *i.e.*, Manulife's goal to become a major agency-led distribution company in the Philippines. While as you claim, you have not stopped anyone from recruiting, I have never heard you proactively push for greater agency recruiting. You have not been proactive all these years when it comes to agency growth.

x x x x

I cannot afford to see a major region fail to deliver on its developmental goals next year and so, we are making the following changes in the interim:

1. You will hire at your expense a competent assistant who can unload you of much of the routine tasks which can be easily delegated. This assistant should be so chosen as to complement your skills and help you in the areas where you feel "may not be your cup of tea."

You have stated, if not implied, that your work as Regional Manager may be too taxing for you and for your health. The above could solve this problem.

x x x x

2. Effective immediately, Kevin and the rest of the Agency Operations will deal with the North Star Branch (NSB) in autonomous fashion. x x x

I have decided to make this change so as to reduce your span of control and allow you to concentrate more fully on overseeing the remaining groups under Metro North, your Central Unit and the rest of the Sales Managers in Metro North. I will hold you solely responsible for meeting the objectives of these remaining groups.

x x x x

The above changes can end at this point and they need not go any further. This, however, is entirely dependent upon you. But you have to understand that meeting corporate objectives by everyone is primary and will not be compromised. We are meeting tough challenges next year, and I would want everybody on board. Any resistance or holding back by anyone will be dealt with accordingly.<sup>[6]</sup>

Subsequently, de Dios wrote Tongko another letter, dated December 18, 2001, terminating Tongko's services:

It would appear, however, that despite the series of meetings and communications, both one-on-one meetings between yourself and SVP Kevin O'Connor, some of them with me, as well as group meetings with your Sales Managers, all these efforts have failed in helping you align your directions with Management's avowed agency growth policy.

X X X X

On account thereof, Management is exercising its prerogative under Section 14 of your Agents Contract as we are now issuing this **notice of termination of your Agency Agreement with us** effective fifteen days from the date of this letter.<sup>[7]</sup>

Tongko responded by filing an illegal dismissal complaint with the National Labor Relations Commission (NLRC) Arbitration Branch. He essentially alleged - *despite the clear terms of the letter terminating his Agency Agreement* - that he was Manulife's employee before he was illegally dismissed.<sup>[8]</sup>

Thus, the **threshold issue** is the existence of an employment relationship. A finding that none exists renders the question of illegal dismissal moot; a finding that an employment relationship exists, on the other hand, necessarily leads to the need to determine the validity of the termination of the relationship.

#### *A. Tongko's Case for Employment Relationship*

Tongko asserted that as Unit Manager, he was paid an annual over-rider not exceeding P50,000.00, regardless of production levels attained and exclusive of commissions and bonuses. He also claimed that as Regional Sales Manager, he was given a travel and entertainment allowance of P36,000.00 per year in addition to his overriding commissions; he was tasked with numerous administrative functions and supervisory authority over Manulife's employees, aside from merely selling policies and recruiting agents for Manulife; and he recommended and recruited insurance agents subject to vetting and approval by Manulife. He further alleges that he was assigned a definite place in the Manulife offices when he was not in the field - at the 3<sup>rd</sup> Floor, Manulife Center, 108 Tordesillas corner Gallardo Sts., Salcedo Village, Makati City - for which he never paid any rental. Manulife provided the office equipment he used, including tables, chairs, computers and printers (and even office stationery), and paid for the electricity, water and telephone bills. As Regional Sales Manager, Tongko additionally asserts that he was required to follow at least three codes of conduct.<sup>[9]</sup>

#### *B. Manulife's Case - Agency Relationship with Tongko*

Manulife argues that Tongko had no fixed wage or salary. Under the Agreement, Tongko was paid commissions of varying amounts, computed based on the premium paid in full and actually received by Manulife on policies obtained through an agent.