

EN BANC

[G.R. No. 171548, February 22, 2008]

**PHILIPPINE DEPOSIT INSURANCE CORPORATION, Petitioner, vs.
COMMISSION ON AUDIT, Respondent.**

DECISION

TINGA, J.:

The Philippine Deposit Insurance Corporation (PDIC) seeks succor from the Court against an alleged infringement of its right to due process on account of Decision No. 2006-005^[1] of the Commission on Audit (COA or Commission) dated 19 January 2006 which denied its request to permit the condonation of an audit disallowance.

The following factual antecedents are undisputed:

The former Finance Secretary, Mr. Roberto de Ocampo, in his capacity as ex-officio Chairman of the Philippine Deposit Insurance Corporation (PDIC) Board for the years 1994-1996 received a total amount of P440,068.62 representing Business Policy Development and Enforcement Expenses (BPDEE) and Christmas gift checks. The Auditor thereat issued Notice of Disallowance No. 98-002 (94-96) dated February 17, 1997, disallowing in audit the payment of said expenses on the ground that it partook of the nature of additional compensation or remuneration in violation of the rule on multiple positions proscribed under Section 13, Article VII of the Philippine Constitution and Section 2(9), Republic Act No. 3591, as amended. PDIC sought reconsideration of the subject disallowance but the same was denied in COA Decision No. 2001-015 dated January 23, 2001 and COA Resolution No. 2002-215 dated September 24, 2002.

On appeal by the PDIC to the Supreme Court En Banc, the latter in its Resolutions dated November 12, 2002 and January 21, 2003, respectively, in GR No. 155317 entitled "Philippine Deposit Insurance Corporation (PDIC) v. Commission on Audit" affirmed with finality said COA decision and resolution. Apropos to the finality of the decision of the Supreme Court, the Final Order of Adjudication (FOA) was issued to PDIC for enforcement of the decision pursuant to Sections 1 to 4 Rule XII of the 1997 Revised Rules of Procedure and Item III.A.15 of COA Memorandum No. 2002-053 dated August 26, 2002. However, instead of complying with the Order, PDIC condoned the amount of P413,866.62 invoking its power to condone under Section 8, paragraph 12 of its charter.

On December 22, 2004, the Chairman, this Commission, referred the

matter to the Office of the Solicitor General (OSG) requesting assistance in the filing of appropriate action against PDIC officials for failure to comply with the FOA and the final decision of the Supreme Court on the appeal. In a letter dated January 31, 2005, the PDIC thru its counsels, seeks to have its right to appeal reinstated and sought reconsideration of the action taken in view of the fact that it did not allegedly receive any notice of disallowance of the condonation and that its management was deprived of its right to be heard as it was never provided a copy of the Resident Auditor's Memorandum dated May 14, 2004.^[2]

The COA ruled that PDIC cannot feign violation of its right to due process because it fully participated in the appeals process since the time the disbursements were disallowed. It cannot validly invoke its authority under its charter to condone the disallowance because the same had already been affirmed by the Supreme Court. To allow PDIC to condone the disallowance would be tantamount to sanctioning the indirect violation of the prohibition against double compensation and the final Supreme Court decision. Thus, COA denied PDIC's request to uphold the condonation and to recall COA's letter to the Office of the Solicitor General (OSG) requesting the latter's assistance in the judicial enforcement of the disallowance.

In its Memorandum^[3] dated 12 February 2007, PDIC claims that COA Decision No. 2006-005 was an arbitrary exercise of the Commission's discretion because it deprived PDIC of its right to be heard on the validity of the exercise of its right to condone a settled liability. The COA resident auditor allegedly failed to furnish it with notice of the Memorandum dated 14 May 2004 disallowing the condonation, and thereby deprived PDIC of its right to appeal from the disallowance as provided under the 1997 COA Revised Rules of Procedure (COA Rules).^[4]

The OSG, on behalf of the Commission, asserts in its Memorandum^[5] dated 20 February 2007 that PDIC's right to appeal from the Memorandum dated 14 May 2004 is already barred by *res judicata*. Inasmuch as the validity of the disallowance had already been affirmed by the Supreme Court, PDIC no longer had any recourse but to abide by the judgment. Allowing an appeal from the disallowance of the condonation would mean to delve into the validity of the disallowance of the disbursement once again. The Final Order of Adjudication dated October 7, 2003 was issued as a matter of course to execute the disallowance.

Moreover, the resident auditor was not under obligation to furnish PDIC with a copy of the Memorandum dated 14 May 2004 because the same did not contain any ruling or order but merely informed COA that PDIC condoned the disallowance and referred the matter to the Commission for appropriate action.

The Court is confronted with the question of first impression of whether the COA committed grave abuse of discretion when it disallowed the condonation of an audit disallowance.

There is no dispute that the disallowance of the amounts disbursed to former Finance Secretary Roberto De Ocampo had been affirmed by this Court in an *en banc* Resolution dated 12 November 2002 in

Philippine Deposit Insurance Corporation v. Commission on Audit^[6] and that such

affirmance had already attained finality.^[7] Being a final and executory judgment, there was nothing left to be done but to execute the decision in accordance with its terms.

It is a fundamental rule that when a judgment becomes final and executory it becomes immutable and unalterable, the prevailing party can have it executed as a matter of right, and the issuance of a writ of execution becomes a ministerial duty of the court. The writ of execution must conform to the judgment to be executed and adhere strictly to the very essential particulars.^[8]

Following this rule, PDIC should have reasonably expected that an order directing the payment or refund of the disallowed amount was forthcoming in accordance with the COA Rules as, in fact, a Final Order of Adjudication^[9] was issued on October 7, 2003.

Under Rule XII of the COA Rules, execution shall issue upon a decision that finally disposes of the case. The auditor is tasked to direct the persons liable to pay or refund the amount disallowed, failing which,

an auditor's order shall be issued directing the cashier, treasurer or disbursing officer to withhold the payment of any money due such persons.^[10] The final order of adjudication thus functions as the writ of execution in audit proceedings.

Notwithstanding the final order of adjudication, PDIC, invoking Sec. 8, par. 12^[11] of its charter, issued Resolution No. 2003-09-157 dated 6 April 2004, condoning the audit disallowance. The Memorandum dated 14 May 2004 of COA Supervising Auditor Virgie A. Paz came in the heels of PDIC Resolution No. 2003-09-157 and referred the condonation to COA's Legal and Administration Office for appropriate action in view of the supervising auditor's opinion that PDIC cannot condone an audit disallowance which had already been upheld by this Court.

The COA Chairman ultimately referred the matter to the OSG for the filing of the appropriate suit against responsible PDIC officials in accordance with the COA Rules.^[12]

The foregoing action taken by the COA was obviously merely an execution of the Court's final decision upholding the audit disallowance. In contrast, PDIC Resolution No. 2003-09-157 appears to have been borne out of a desire to get around the execution of the Supreme Court decision upholding the audit disallowance. This is evident from the language of the resolution which mentions that the PDIC "[B]oard noted that the Supreme Court denied PDIC's petition due to technical reasons and not on the merits."^[13]

Whatever may have been the reason for the dismissal of PDIC's petition, the fact remains that the decision upholding the audit disallowance had become final and executory. At the risk of sounding trite, the decision is now unalterable and immutable.^[14] It is no longer subject to any revision, modification or appeal.

PDIC, however, claims that it has the right to appeal the 14 May 2004 Memorandum of the supervising auditor under the COA Rules. It proceeds to cite Rule V thereof