

THIRD DIVISION

[G.R. No. 178923, November 27, 2008]

OFFICE OF THE OMBUDSMAN, PETITIONER, VS. ROLANDO L. MAGNO AND THE COURT OF APPEALS (SPECIAL FORMER FIFTH DIVISION), RESPONDENTS.

D E C I S I O N

CHICO-NAZARIO, J.:

This is a Petition for *Certiorari* and Prohibition under Rule 65 of the Revised Rules of Court seeking to nullify and set aside the Decision^[1] dated 7 November 2006 and Resolution^[2] dated 14 June 2007 of the Court of Appeals in CA-G.R. SP No. 91080 entitled, *Rolando L. Magno v. Lizabeth Carreon*. The Court of Appeals reversed the Decision promulgated on 3 June 2005^[3] and Order issued 22 August 2005^[4] of the Office of the Ombudsman (Ombudsman) in OMB-ADM-0-00-0148 and denied the Omnibus Motion to Intervene and for Reconsideration of the Ombudsman in CA-G.R. SP No. 91080. The Ombudsman, in OMB-ADM-0-00-0148, dismissed from service private respondent Rolando L. Magno (Magno), Schools Division Superintendent of the Department of Education, Parañaque City Division, and Co-Chairman of the Parañaque City School Board (PCSB), for Grave Misconduct.

The following are the factual antecedents:

Lizabeth Carreon (Carreon) - alleging to be the legal representative of Kejo Educational System, Merylvyn Publishing House, and Southern Christian Commercial which were distributors and suppliers of textbooks to public schools in Metro Manila - filed a complaint-affidavit^[5] on 10 February 2000 before the Ombudsman against Magno and other officials of Parañaque City, particularly: Joey P. Marquez (Marquez), City Mayor and Chairman of the PCSB; Silvestre A. de Leon (de Leon), City Treasurer; Flocerfida Babida (Babida), City Budget Officer; Mar Jimenez (Jimenez), Executive Assistant to the City Mayor; and Antonette Antonio (Antonio), Assistant to the City Mayor (hereinafter collectively referred to as Magno, *et al.*). Carreon charged Magno, *et al.* with violation of Section 3, paragraphs (e) and (f) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, for allegedly having failed to pay the purchase price of books ordered and delivered to the different public schools in Parañaque City.^[6]

Carreon averred that sometime in the first quarter of 1998, she was approached by a close family friend, Noli Aldip (Aldip), who also happened to be a friend of Marquez. Aldip introduced her to Jimenez and Antonio; the two, in turn, introduced her to Magno. Immediately after their meeting, Jimenez and Antonio proposed to Carreon that if the companies she represented, *i.e.*, Kejo Educational System, Merylvyn Publishing House, and Southern Christian Commercial, were willing to do business with PCSB, they could facilitate, through the Office of the City Mayor, book

purchases for Parañaque City public schools. Magno, for his part, assured Carreon that he, Jimenez, and Antonio, could arrange the passage of the required PCSB Resolutions for said business transaction.

Carreon claimed that Jimenez and Antonio informed her that they had the go-signal of the City Mayor for the book purchases. Subsequently, she learned through Magno, Jimenez, and Antonio that the PCSB had already passed the following Resolutions in July 1998:

Resolution No.	Purpose	Amount
25	For 500 copies of Diksyonaryong Pilipino	P1,122,250.00
26	For 500 copies of Oxford Dictionary	1,247,500.00
28	For DECS Basic Textbooks in Grade II	2,021,250.00
29	For DECS Basic Textbooks	2,021,250.00
TOTAL		6,412,250.00

Four months after, in November 1998, Carreon said that Magno, Jimenez, and Antonio notified her that the funding for the dictionary and textbook purchases had been arranged and, in fact, some of the necessary documents were already signed. Carreon was provided by Magno, Jimenez, and Antonio with copies of Requests for Allocation of Allotment (ROAs) and Disbursement Vouchers (DVs) signed by Magno; Purchase Requests (PRs) No. 0001391, No. 0001387, No. 0001388 and No. 0001390, signed by Marquez and Magno; as well as Purchase Orders (POs) for individual requests signed by Marquez and the Parañaque Purchasing Officer. Magno, Jimenez, and Antonio then advised Carreon to start making deliveries of the dictionaries and textbooks.

Allegedly relying on the representations of Magno, Jimenez, and Antonio, Carreon caused the deliveries of the dictionaries and textbooks, amounting to P6,412,201.91, to the PCSB, evidenced by delivery receipts dated 14, 21, and 22 December 1998,^[7] signed by Teresita G. Diocadiz, Supply Officer of the PCSB. According to the Supplies and Materials Distribution Sheet, the dictionaries and textbooks were distributed to the various Parañaque public schools on 2 February 1999 by the officials of the PCSB, particularly Marquez and Magno.^[8]

According to Carreon, she was assured several times that payments for the said dictionaries and textbooks would be released soon. On 17 January 2000, Carreon sent a demand letter to Marquez. For the first time, however, Marquez questioned the authenticity of his signatures on the PRs and POs for the dictionaries and textbooks.

Carreon asserted that the actions of Magno, *et al.* before, during, and subsequent to the delivery of the dictionaries and textbooks were done in evident bad faith and manifest evil design; and that the non-payment of said books caused her undue injury, in violation of Sections 3(e) and (f) of Republic Act No. 3019.

Carreon's complaint-affidavit gave rise to two separate proceedings before the Ombudsman: a criminal investigation, docketed as **OMB-0-00-0350**; and an

administrative investigation, docketed as **OMB-ADM-0-00-0148**. The administrative charges against Magno, *et al.* were particularly for Misconduct and Oppression.

Apparently in negotiations for the amicable settlement of her claims, Carreon filed a Manifestation in OMB-0-00-0350 dated September 2000 before the Evaluation and Preliminary Investigation Bureau of the Office of the Ombudsman withdrawing her complaint-affidavit, without prejudice to its re-filing in case the parties fail to reach an agreement.^[9]

On 16 January 2001, finding enough basis to proceed with the administrative investigation of the case, the Director of the Administrative Investigation Bureau (AIB) of the Office of the Ombudsman issued an Order to proceed with the investigation on the administrative liability of Magno, *et al.* in OMB-ADM-0-00-0148, it appearing that the complaint was sufficient in form and substance. Magno, *et al.* were directed to file their counter-affidavits.^[10]

In a letter^[11] dated 28 March 2001 and addressed to the AIB Director, Magno, *et al.* (except Antonio), authorized Atty. Leo Luis Mendoza (Atty. Mendoza) to appear on their behalf in the preliminary conference on OMB-ADM-0-00-0148 and to present and submit the necessary documents/affidavits as may be required by law and/or the AIB.

On 16 April 2001, Atty. Mendoza filed a Manifestation^[12] on behalf of Magno, *et al.* (except Antonio), adopting in OMB-ADM-0-00-0148 the Joint Counter-Affidavit already submitted in the criminal proceedings in OMB-0-00-0350.^[13] In said Joint Counter-Affidavit, filed on 3 April 2000 by Magno, *et al.* (except Antonio) in OMB-0-00-0350, but which did not bear Magno's signature, it was asserted that the supposed contracts for the book purchases were null and void because the Board Resolutions approving the same were invalid and could not legally bind the city and its funds, given that the signatures of Marquez thereon were allegedly forged. It was further contended therein that the contracts for the book purchases violated existing law and rules and regulations regarding government contracts, since there was an absence of (1) public bidding, as mandated by Sections 356 and 366 of the Local Government Code; (2) a certification issued by Marquez, as PCSB Chairman, on the need for the dictionaries and textbooks purchased and where these were to be used; (3) a certification by the local budget officer, accountant, and treasurer, showing that an appropriation for the book purchases existed, that the estimated amount for the same had been obligated, and that the funds were available for the purpose, as required by Section 360 of the Local Government Code; and (4) Disbursement Vouchers properly issued and signed by the authorized public officials. The Joint Counter-Affidavit raised as additional ground for dismissal of the complaint-affidavit Carreon's lack of legal capacity to sue and lack of cause of action against the Parañaque City officials for failure to show any documentary proof that she was indeed the legal representative of the book distributors and suppliers. Hence, it was argued in the Joint Counter-Affidavit that Carreon delivered the books at her own risk and must bear the loss for the non-payment thereof. The same Joint Counter-Affidavit also presented the defenses for each of the Parañaque official involved. For Magno, in particular, it was admitted therein that he signed the ROAs and PRs for the books supplied by Kejo Educational System, Merylvyn Publishing House, and Southern Christian Commercial, but it was done in good faith and simply

in compliance with his duty as the requesting or requisitioning official for PCSB. And, it was denied in the Joint Counter-Affidavit that Magno dealt with Carreon regarding these purchases.^[14]

In the meantime, separate *Ex-Parte* Manifestations^[15] were filed by Kejo Educational System,^[16] Merylvín Publishing House,^[17] and Southern Christian Commercial,^[18] disclaiming the authority of Carreon to file with the Ombudsman the complaint-affidavit against Magno, *et al.* on their behalf.

After holding a preliminary conference, the Ombudsman issued on 23 November 2001 an Order submitting OMB-ADM-0-00-0148 for decision.

The Office of the Ombudsman rendered its Decision in OMB-ADM-0-00-0148 on 3 June 2005 holding only Magno and Jimenez guilty of Grave Misconduct and dismissing them from service. The dispositive portion of the said Decision reads:

WHEREFORE, premises considered, this Office rules and so holds that:

1. Respondent ROLANDO L. MAGNO is hereby FOUND GUILTY of the offense of GRAVE MISCONDUCT, and for which he is hereby meted the penalty of DISMISSAL FROM THE SERVICE WITH ALL ITS ACCESSORY PENALTIES, pursuant to Section 52(A-3), Rule IV, Uniform Rules on Administrative Cases in the Civil Service;
2. Respondent MARIO "MAR" L. JIMENEZ is hereby found guilty of GRAVE MISCONDUCT and for which he is hereby meted the penalty of DISMISSAL FROM THE SERVICE WITH ALL ITS ACCESSORY PENALTIES, pursuant to Section 52(A-3), Rule IV, Uniform Rules on Administrative Cases in the Civil Service. In view, however, of recent developments which now preclude this Office from dismissing him from office, it is (sic) hereby ordered the forfeiture of his retirement benefits and his perpetual disqualification for reemployment in the government service;
3. Respondents FLORCEFIDA M. BABIDA and SILVESTRE A. DE LEON are hereby ABSOLVED of the instant charge; and
4. For having been rendered moot and academic, the instant case against respondents JOEY P. MARQUEZ and ANTONETTE ANTONIO is hereby DISMISSED.^[19]

Magno filed with the Ombudsman a Motion for Reconsideration of the afore-quoted Decision. He alleged in his Motion that he was not a signatory to the Joint Counter-Affidavit submitted on 3 April 2000 in OMB-0-00-0350 and adopted in OMB-ADM-0-00-0148; consequently, he argued that he "can not be adversely affected by whatever unfavorable allegations contained therein regarding the refusal of [the other Parañaque City officials] to pay Carreon due to lack of funds."^[20] The 3 June 2005 Decision of the Ombudsman in OMB-ADM-0-00-0148, which adjudged Magno guilty of Grave Misconduct based on the Joint Counter-Affidavit which he did not execute, was clearly erroneous. Contrary to the allegations in the said Joint Counter-Affidavit, Magno did not deny signing the ROAs and the PRs for the book purchases

but explained that it was only an initial step for the purchase of the dictionaries and textbooks, and was proper and legal since it was part of his official functions and duties. Moreover, to negate the claim of injury, Magno attached a certification^[21] dated 15 August 2003, issued by the current Parañaque City Treasurer showing that payment for the dictionaries and textbooks were already received by Kejo Educational System,^[22] Merylvyn Publishing House^[23] and Southern Christian Commercial.^[24]

The Ombudsman, in its Order issued on 22 August 2005, denied Magno's Motion for Reconsideration and affirmed its Decision of 3 June 2005.

Magno elevated his case to the Court of Appeals via a Petition for Review on *Certiorari* under Rule 43 of the Rules of Court, where it was docketed as CA-G.R. SP No. 91080. Magno grounded his appeal on the following arguments: that Carreon had no legal standing to institute the administrative case against him; that he signed the ROAs and PRs for the book purchases as part of his official duties, and that, even then, the said documents had no bearing unless approved by the appropriate officials of the Parañaque City government; and that since he was administratively charged only with Misconduct and Oppression for his supposed violation of Sections 3(e) and (f) of Republic Act No. 3019, he could not be found guilty of Grave Misconduct without violating his right to due process.

The Court of Appeals issued on 1 March 2006 a preliminary injunction to enjoin the implementation of the 3 June 2005 Decision of the Ombudsman in OMB-ADM-0-00-0148 dismissing Magno from service. Upon Carreon's failure to file a Comment on Magno's Petition in CA-G.R. SP No. 91080 as directed, the appellate court submitted the case for decision.

On 7 November 2006, the Court of Appeals reversed the Ombudsman and dismissed the administrative charges against Magno, ratiocinating that:

The Office of the Ombudsman erred in finding [Magno] guilty of grave misconduct. [Magno] was charged with violation of Section 3 (e) and (f), R.A. 3019. He was not charged with grave misconduct, as to put him on notice that he stands accused of misconduct coupled with any of the elements of corruption, willful intent to violate the law or established rules. Therefore, he was not afforded the opportunity to rebut the elements of corruption, willful intent to violate the law, or flagrant disregard of established rules in grave misconduct, in violation of his constitutional right to be informed of the charges against him.^[25]

On 24 November 2006, the Ombudsman filed with the Court of Appeals an Omnibus Motion to Intervene and for Reconsideration^[26] of the appellate court's Decision in CA-G.R. SP No. 91080. The Ombudsman justified its move to intervene by reasoning that CA-G.R. SP No. 91080 concerned a decision rendered by the Ombudsman pursuant to its function as the disciplinary authority over public officials and employees. Its 3 June 2005 Decision in OMB-ADM-0-00-0148 finding Magno administratively liable for Grave Misconduct was based on substantial evidence. It did not violate due process, as due process never required the Ombudsman to limit its findings to the designation of the offense in the complaint.