

## SECOND DIVISION

[ G.R. No. 167622, November 07, 2008 ]

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

### D E C I S I O N

**VELASCO JR., J.:**

#### **The Case**

This Petition for Review on Certiorari under Rule 45 seeks the reversal of the March 29, 2005 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 88253, entitled *The Manufacturers Life Insurance Co. (Phils.), Inc. v. National Labor Relations Commission and Gregorio V. Tongko*. The assailed decision set aside the Decision dated September 27, 2004 and Resolution dated December 16, 2004 rendered by the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 040220-04.

#### **The Facts**

Manufacturers Life Insurance Co. (Phils.), Inc. (Manulife) is a domestic corporation engaged in life insurance business. Renato A. Vergel De Dios was, during the period material, its President and Chief Executive Officer. Gregorio V. Tongko started his professional relationship with Manulife on July 1, 1977 by virtue of a Career Agent's Agreement<sup>[2]</sup> (Agreement) he executed with Manulife.

In the Agreement, it is provided that:

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 or to 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. x x x

In 1983, Tongko was named as a Unit Manager in Manulife's Sales Agency Organization. In 1990, he became a Branch Manager. As the CA found, Tongko's gross earnings from his work at Manulife, consisting of commissions, persistency income, and management overrides, may be summarized as follows:

January to	- P 865,096.07
December 10, 2002	
2001	- 6,214,737.11
2000	- 8,003,180.38
1999	- 6,797,814.05
1998	- 4,805,166.34
1997	- 2,822,620.00 <sup>[3]</sup>

The problem started sometime in 2001, when Manulife instituted manpower development programs in the regional sales management level. Relative thereto, De Dios addressed a letter dated November 6, 2001<sup>[4]</sup> to Tongko regarding an October 18, 2001 Metro North Sales Managers Meeting. In the letter, De Dios stated:

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.

Subsequently, De Dios wrote Tongko another letter dated December 18, 2001,<sup>[5]</sup> terminating Tongko's services, thus:

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.

Therefrom, Tongko filed a Complaint dated November 25, 2002 with the NLRC against Manulife for illegal dismissal. The case, docketed as NLRC NCR Case No. 11-10330-02, was raffled to Labor Arbiter Marita V. Padolina.

In the Complaint, Tongko, in a bid to establish an employer-employee relationship, alleged that De Dios gave him specific directives on how to manage his area of responsibility in the latter's letter dated November 6, 2001. He further claimed that Manulife exercised control over him as follows:

Such control was certainly exercised by respondents over the herein complainant. It was Manulife who hired, promoted and gave various assignments to him. It was the company who set objectives as regards productions, recruitment, training programs and all activities pertaining to its business. Manulife prescribed a Code of Conduct which would govern in minute detail all aspects of the work to be undertaken by employees, including the sales process, the underwriting process, signatures, handling of money, policyholder service, confidentiality, legal and regulatory requirements and grounds for termination of employment. The letter of Mr. De Dios dated 06 November 2001 left no doubt as to who was in control. The subsequent termination letter dated 18 December 2001 again established in no uncertain terms the authority of the herein respondents to control the employees of Manulife. Plainly, the respondents wielded control not only as to the ends to be achieved but the ways and means of attaining such ends.<sup>[6]</sup>

Tongko bolstered his argument by citing *Insular Life Assurance Co., Ltd. v. NLRC (4<sup>th</sup> Division)*<sup>[7]</sup> and *Great Pacific Life Assurance Corporation v. NLRC*,<sup>[8]</sup> which Tongko claimed to be similar to the instant case.

Tongko further claimed that his dismissal was without basis and that he was not afforded due process. He also cited the Manulife Code of Conduct by which his actions were controlled by the company.

Manulife then filed a Position Paper with Motion to Dismiss dated February 27, 2003, <sup>[9]</sup> in which it alleged that Tongko is not its employee, and that it did not exercise "control" over him. Thus, Manulife claimed that the NLRC has no jurisdiction over the case.

In a Decision dated April 15, 2004, Labor Arbiter Marita V. Padolina dismissed the complaint for lack of an employer-employee relationship. Padolina found that applying the four-fold test in determining the existence of an employer-employee relationship, none was found in the instant case. The dispositive portion thereof states: