

## **SECOND DIVISION**

**[ G.R. No. 156515, October 19, 2004 ]**

**CHINA BANKING CORPORATION, PETITIONER, VS. MARIANO M. BORROMEO, RESPONDENT.**

### **D E C I S I O N**

**CALLEJO, SR., J.:**

Before the Court is the petition for review on certiorari filed by China Banking Corporation seeking the reversal of the Decision<sup>[1]</sup> dated July 19, 2002 of the Court of Appeals in CA-G.R. SP No. 57365, remanding to the Labor Arbiter for further hearings the complaint for payment of separation pay, mid-year bonus, profit share and damages filed by respondent Mariano M. Borromeo against the petitioner Bank. Likewise, sought to be reversed is the appellate court's Resolution dated January 6, 2003, denying the petitioner Bank's motion for reconsideration.

The factual antecedents of the case are as follows:

Respondent Mariano M. Borromeo joined the petitioner Bank on June 1, 1989 as Manager assigned at the latter's Regional Office in Cebu City. He then had the rank of Manager Level I. Subsequently, the respondent was laterally transferred to Cagayan de Oro City as Branch Manager of the petitioner Bank's branch thereat.

For the years 1989 and 1990, the respondent received a "highly satisfactory" performance rating and was given the corresponding profit sharing/performance bonus. From 1991 up to 1995, he consistently received a "very good" performance rating for each of the said years and again received the corresponding profit sharing/performance bonus. Moreover, in 1992, he was promoted from Manager Level I to Manager Level II. In 1994, he was promoted to Senior Manager Level I. Then again, in 1995, he was promoted to Senior Manager Level II. Finally, in 1996, with a "highly satisfactory" performance rating, the respondent was promoted to the position of Assistant Vice-President, Branch Banking Group for the Mindanao area effective October 16, 1996. Each promotion had the corresponding increase in the respondent's salary as well as in the benefits he received from the petitioner Bank.

However, prior to his last promotion and then unknown to the petitioner Bank, the respondent, without authority from the Executive Committee or Board of Directors, approved several DAUD/BP accommodations amounting to P2,441,375 in favor of Joel Maniwan, with Edmundo Ramos as surety. DAUD/BP is the acronym for checks "Drawn Against Uncollected Deposits/Bills Purchased." Such checks, which are not sufficiently funded by cash, are generally not honored by banks. Further, a DAUD/BP accommodation is a credit accommodation granted to a few and select bank clients through the withdrawal of uncollected or uncleared check deposits from their current account. Under the petitioner Bank's standard operating procedures, DAUD/BP accommodations may be granted only by a bank officer upon express authority from

its Executive Committee or Board of Directors.

As a result of the DAUD/BP accommodations in favor of Maniwan, a total of ten out-of-town checks (7 PCIB checks and 3 UCPB checks) of various dates amounting to P2,441,375 were returned unpaid from September 20, 1996 to October 17, 1996. Each of the returned checks was stamped with the notation "Payment Stopped/Account Closed."

On October 8, 1996, the respondent wrote a Memorandum to the petitioner Bank's senior management requesting for the grant of a P2.4 million loan to Maniwan. The memorandum stated that the loan was "to regularize/liquidate subject's (referring to Maniwan) DAUD availments." It was only then that the petitioner Bank came to know of the DAUD/BP accommodations in favor of Maniwan. The petitioner Bank further learned that these DAUD/BP accommodations exceeded the limit granted to clients, were granted without proper prior approval and already past due. Acting on this information, Samuel L. Chiong, the petitioner Bank's First Vice- President and Head-Visayas Mindanao Division, in his Memorandum dated November 19, 1996 for the respondent, sought clarification from the latter on the following matters:

- 1) When DAUD/BP accommodations were allowed, what efforts, if any, were made to establish the identity and/or legitimacy of the alleged broker or drawers of the checks accommodated?
- 2) Did the branch follow and comply with operating procedure which require that all checks accommodated for DAUD/BP should be previously verified with the drawee bank and history if not outright balances determined if enough to cover the checks?
- 3) How did the accommodations reach P2,441,375.00 when our records indicate that the borrowers B/P-DAUD line is only for P500,000.00? When did the accommodations start exceeding the limit of P500,000.00 and under whose authority?
- 4) When did the accommodated checks start bouncing?
- 5) What is the status of these checks now and what has the branch done so far to protect/ensure collectibility of the returned checks?
- 6) What about client Joel Maniwan and surety Edmund Ramos, what steps have they done to pay the checks returned?<sup>[12]</sup>

In reply thereto, the respondent, in his Letter dated December 5, 1996, answered the foregoing queries in seriatim and explained, thus:

1. None
2. No
3. The accommodations reach P2.4 million upon the request of Mr. Edmund Ramos, surety, and this request was subsequently approved by undersigned. The excess accommodations started in

July '96 without higher management approval.

4. Checks started bouncing on September 20, 1996.
5. Checks have remained unpaid. The branch sent demand letters to Messrs. Maniwan and Ramos and referred the matter to our Legal Dept. for filing of appropriate legal action.
6. Mr. Maniwan, thru his lawyer, Atty. Oscar Musni has signified their intention to settle by Feb. 1997.

Justification for lapses committed (Item nos. 1 to 3).

The account was personally endorsed and referred to us by Mr. Edmund Ramos, Branch Manager of Metrobank, Divisoria Br., Cagayan de Oro City. In fact, the CASA account was opened jointly as &/or (Maniwan &/or Ramos). Mr. Ramos gave us his full assurance that the checks that we intend to purchase are the same drawee that Metrobank has been purchasing for the past one (1) year already. He even disclosed that these checks were verified by his own branch accountant and that Mr. Maniwan's loan account was being co-made by Mr. Elbert Tan Yao Tin, son of Jose Tan Yao Tin of CIFIC. To show his sincerity, Mr. Ramos signed as surety for Mr. Maniwan for P2.5MM. Corollary to this, Mr. Ramos applied for a loan with us mortgaging his house, lot and duplex with an estimated market value of P4.508MM. The branch, therefore, is not totally negligent as officer to officer bank checking was done. In fact, it is also for the very same reason that other banks granted DAUD to subject account and, likewise, the checks returned unpaid, namely:

Solidbank	P1.8 Million
Allied Bank	.8
Far East Bank	2.0
MBTC	5.0

The attached letter of Mr. Ramos dated 19 Nov. 1996 will speak for itself. Further to this, undersigned conferred with the acting BOH VSYap if these checks are legitimate 3rd party checks.

On the other hand, Atty. Musni continues to insist that Mr. Maniwan was gypped by a broker in the total amount of P10.00 Million.

Undersigned accepts full responsibility for committing an error in judgment, lapses in control and abuse of discretion by relying solely on the word, assurance, surety and REM of Mr. Edmund Ramos, a friend and a co-bank officer. I am now ready to face the consequence of my action.

[3]

In another Letter dated April 8, 1997, the respondent notified Chiong of his intention to resign from the petitioner Bank and apologized "for all the trouble I have caused because of the Maniwan case."<sup>[4]</sup> The respondent, however, vehemently denied benefiting therefrom. In his Letter dated April 30, 1997, the respondent formally tendered his irrevocable resignation effective May 31, 1997.<sup>[5]</sup>

In the Memorandum dated May 23, 1997 addressed to the respondent, Nancy D. Yang, the petitioner Bank's Senior Vice-President and Head-Branch Banking Group, informed the former that his approval of the DAUD/BP accommodations in favor of Maniwan without authority and/or approval of higher management violated the petitioner Bank's Code of Ethics. As such, he was directed to reconstitute the amount of P1,507,736.79 representing 90% of the total loss of P1,675,263.10 incurred by the petitioner Bank. However, in view of his resignation and considering the years of service in the petitioner Bank, the management earmarked only P836,637.08 from the respondent's total separation benefits or pay. The memorandum addressed to the respondent stated:

After a careful review and evaluation of the facts surrounding the above case, the following have been conclusively established:

1. The branch granted various BP/DAUD accommodations to clients Joel Maniwan/Edmundo Ramos in excess of approved lines through the following out-of-town checks which were returned for the reason "Payment Stopped/Account Closed":

1. PCIB Cebu Check No. 86256	P251,816.00
2. PCIB Cebu Check No. 86261	235,880.00
3. PCIB Cebu Check No. 8215	241,443.00
4. UCPB Tagbilaran Check No.	277,630.00
5. PCIB Bogo, Cebu Check No. 6117	267,418.00
6. UCPB Tagbilaran Check No. 216070	197,467.00
7. UCPB Tagbilaran Check No. 216073	263,920.00
8. PCIB Bogo, Cebu Check No. 6129	253,528.00
9. PCIB Bogo, Cebu Check No. 6122	198,615.00
10. PCIB Bogo, Cebu Check No. 6134	253,658.00

2. The foregoing checks were accommodated through your approval which was in excess of your authority.
3. The branch failed to follow the fundamental and basic procedures in handling BP/DAUD accommodations which made the accommodations basically flawed.
4. The accommodations were attended by lapses in control consisting of failure to report the exception and failure to cover the account of Joel Maniwan with the required Credit Line Agreement.

Since the foregoing were established by your own admissions in your letter explanation dated 5 December 1996, and the Audit Report and findings of the Region Head, Management finds your actions in violation

of the Bank's Code of Ethics:

Table 6.2., no. 1: Compliance with Standard Operating Procedures

- "Infraction of Bank procedures in handling any bank transactions or work assignment which results in a loss or probable loss."

Table 6.3., no. 6: Proper Conduct and Behavior -

"Willful misconduct in the performance of duty whether or not the bank suffers a loss," and/or

Table 6.5., no. 1: Work Responsibilities -

"Dereliction of duty whether or not the Bank suffers a loss," and/or

Table 6.6., no. 2: Authority and Subordination -

"Failure to carry out lawful orders or instructions of superiors."

Your approval of the accommodations in excess of your authority without prior authority and/or approval from higher management is a violation of the above cited Rules.

In view of these, you are directed to restitute the amount of P1,507,736.79 representing 90% of the total loss of P1,675,263.10 incurred by the Bank as your proportionate share. However, in light of your voluntary separation from the Bank effective May 31, 1997, in view of the years of service you have given to the Bank, management shall earmark and segregate only the amount of P836,637.08 from your total separation benefits/pay. The Bank further directs you to fully assist in the effort to collect from Joel Maniwan and Edmundo Ramos the sums due to the Bank.<sup>[6]</sup>

In the Letter dated May 26, 1997 addressed to the respondent, Remedios Cruz, petitioner Bank's Vice-President of the Human Resources Division, again informed him that the management would withhold the sum of P836,637.08 from his separation pay, mid-year bonus and profit sharing. The amount withheld represented his proportionate share in the accountability vis-à-vis the DAUD/BP accommodations in favor of Maniwan. The said amount would be released upon recovery of the sums demanded from Maniwan in Civil Case No. 97174 filed against him by the petitioner Bank with the Regional Trial Court in Cagayan de Oro City.

Consequently, the respondent, through counsel, made a demand on the petitioner Bank for the payment of his separation pay and other benefits. The petitioner Bank maintained its position to withhold the sum of P836,637.08. Thus, the respondent filed with the National Labor Relations Commission (NLRC), Regional Arbitration Branch No. 10, in Cagayan de Oro City, the complaint for payment of separation pay, mid-year bonus, profit share and damages against the petitioner Bank.

The parties submitted their respective position papers to the Labor Arbiter. Thereafter, the respondent filed a motion to set case for trial or hearing. Acting thereon, the Labor Arbiter, in the Order dated January 29, 1999, denied the same stating that:

... This Branch views that if complainant finds the necessity to controvert the allegations in the respondent's pleadings, then he may file a supplemental position paper and adduce thereto evidence and additional