

## THIRD DIVISION

[ G.R. No. 149335, July 01, 2003 ]

**EDILLO C. MONTEMAYOR, PETITIONER, VS. LUIS BUNDALIAN, RONALDO B. ZAMORA, EXECUTIVE SECRETARY, OFFICE OF THE PRESIDENT, AND GREGORIO R. VIGILAR, SECRETARY, DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH), RESPONDENTS.**

### D E C I S I O N

**PUNO, J.:**

In this petition for review on *certiorari*, petitioner **EDILLO C. MONTEMAYOR** assails the Decision of the Court of Appeals, dated April 18, 2001, affirming the decision of the Office of the President in Administrative Order No. 12 ordering petitioner's dismissal as Regional Director of the Department of Public Works and Highways (DPWH) for unexplained wealth.

Petitioner's dismissal originated from an unverified letter-complaint, dated July 15, 1995, addressed by private respondent **LUIS BUNDALIAN** to the Philippine Consulate General in San Francisco, California, U.S.A. Private respondent accused petitioner, then OIC-Regional Director, Region III, of the DPWH, of accumulating unexplained wealth, in violation of Section 8 of Republic Act No. 3019. Private respondent charged that in 1993, petitioner and his wife purchased a house and lot at 907 North Bel Aire Drive, Burbank, Los Angeles, California, making a down payment of US\$100,000.00. He further alleged that petitioner's in-laws who were living in California had a poor credit standing due to a number of debts and they could not have purchased such an expensive property for petitioner and his wife. Private respondent accused petitioner of amassing wealth from *lahar* funds and other public works projects.

Private respondent attached to his letter-complaint the following documents:

- a) a copy of a Grant Deed, dated May 27, 1993, where spouses David and Judith Tedesco granted the subject property to petitioner and his wife;
- b) a copy of the Special Power of Attorney (SPA) executed by petitioner and his wife in California appointing petitioner's sister-in-law Estela D. Fajardo as their attorney-in-fact, to negotiate and execute all documents and requirements to complete the purchase of the subject property; and,
- c) an excerpt from the newspaper column of Lito A. Catapusan in the Manila Bulletin, entitled "Beatwatch," where it was reported that a low-ranking, multimillionaire DPWH employee, traveled to Europe and the U.S. with his family, purchased an expensive house in California,

appointed a woman through an SPA to manage the subject property and had hidden and unexplained wealth in the Philippines and in the U.S.

Accordingly, the letter-complaint and its attached documents were indorsed by the Philippine Consulate General of San Francisco, California, to the Philippine Commission Against Graft and Corruption (PCAGC)<sup>[1]</sup> for investigation. Petitioner, represented by counsel, submitted his counter-affidavit before the PCAGC alleging that the real owner of the subject property was his sister-in-law Estela Fajardo. Petitioner explained that in view of the unstable condition of government service in 1991, his wife inquired from her family in the U.S. about their possible emigration to the States. They were advised by an immigration lawyer that it would be an advantage if they had real property in the U.S. Fajardo intimated to them that she was interested in buying a house and lot in Burbank, California, but could not do so at that time as there was a provision in her mortgage contract prohibiting her to purchase another property pending full payment of a real estate she earlier acquired in Palmdale, Los Angeles. Fajardo offered to buy the Burbank property and put the title in the names of petitioner and his wife to support their emigration plans and to enable her at the same time to circumvent the prohibition in her mortgage contract.

Petitioner likewise pointed out that the charge against him was the subject of similar cases filed before the Ombudsman.<sup>[2]</sup> He attached to his counter-affidavit the Consolidated Investigation Report<sup>[3]</sup> of the Ombudsman dismissing similar charges for insufficiency of evidence.

From May 29, 1996 until March 13, 1997, the PCAGC conducted its own investigation of the complaint. While petitioner participated in the proceedings and submitted various pleadings and documents through his counsel, private respondent-complainant could not be located as his Philippine address could not be ascertained. In the course of the investigation, the PCAGC repeatedly required petitioner to submit his Statement of Assets, Liabilities and Net Worth (SALN), Income Tax Returns (ITRs) and Personal Data Sheet. Petitioner ignored these directives and submitted only his Service Record. He likewise adduced in evidence the checks allegedly issued by his sister-in-law to pay for the house and lot in Burbank, California. When the PCAGC requested the Deputy Ombudsman for Luzon to furnish it with copies of petitioner's SALN from 1992-1994, it was informed that petitioner failed to file his SALN for those years.

After the investigation, the PCAGC, in its Report to the Office of the President, made the following findings: Petitioner purchased a house and lot in Burbank, California, for US\$195,000.00 (or P3.9M at the exchange rate prevailing in 1993). The sale was evidenced by a Grant Deed. The PCAGC concluded that the petitioner could not have been able to afford to buy the property on his annual income of P168,648.00 in 1993 as appearing on his Service Record. It likewise found petitioner's explanation as unusual, largely unsubstantiated, unbelievable and self-serving. The PCAGC noted that instead of adducing evidence, petitioner's counsel exerted more effort in filing pleadings and motion to dismiss on the ground of forum shopping. It also took against petitioner his refusal to submit his SALN and ITR despite the undertaking made by his counsel which raised the presumption that evidence willfully suppressed would be adverse if produced. The PCAGC concluded that as petitioner's acquisition of the subject property was manifestly out of proportion to his salary, it has been unlawfully acquired. Thus, it recommended petitioner's dismissal from service

pursuant to Section 8 of R.A. No. 3019.

On August 24, 1998, the Office of the President, concurring with the findings and adopting the recommendation of the PCAGC, issued Administrative Order No. 12,<sup>[4]</sup> ordering petitioner's dismissal from service with forfeiture of all government benefits.

Petitioner's Motion for Reconsideration was denied. His appeal to the Court of Appeals was likewise dismissed.<sup>[5]</sup>

Hence, this petition for review where petitioner raises the following issues for resolution: **first**, whether he was denied due process in the investigation before the PCAGC; **second**, whether his guilt was proved by substantial evidence; and, **third**, whether the earlier dismissal of similar cases before the Ombudsman rendered the administrative case before the PCAGC moot and academic.

On the issue of due process, petitioner submits that the PCAGC committed infractions of the cardinal rules of administrative due process when it relied on Bundalian's unverified letter-complaint. He gripes that his counter-affidavit should have been given more weight as the unverified complaint constitutes hearsay evidence. Moreover, petitioner insists that in ruling against him, the PCAGC failed to respect his right to confront and cross-examine the complainant as the latter never appeared in any of the hearings before the PCAGC nor did he send a representative therein.

We find no merit in his contentions. The essence of due process in administrative proceedings is the opportunity to explain one's side or seek a reconsideration of the action or ruling complained of. As long as the parties are given the opportunity to be heard before judgment is rendered, the demands of due process are sufficiently met.<sup>[6]</sup> In the case at bar, the PCAGC exerted efforts to notify the complainant of the proceedings but his Philippine residence could not be located.<sup>[7]</sup> Be that as it may, petitioner cannot argue that he was deprived of due process because he failed to confront and cross-examine the complainant. Petitioner voluntarily submitted to the jurisdiction of the PCAGC by participating in the proceedings before it. He was duly represented by counsel. He filed his counter-affidavit, submitted documentary evidence, attended the hearings, moved for a reconsideration of Administrative Order No. 12 issued by the President and eventually filed his appeal before the Court of Appeals. His active participation in every step of the investigation effectively removed any badge of procedural deficiency, if there was any, and satisfied the due process requirement. He cannot now be allowed to challenge the procedure adopted by the PCAGC in the investigation.<sup>[8]</sup>

Neither can we sustain petitioner's contention that the charge against him was unsupported by substantial evidence as it was contained in an unverified complaint. The lack of verification of the administrative complaint and the non-appearance of the complainant at the investigation did not divest the PCAGC of its authority to investigate the charge of unexplained wealth. Under Section 3 of Executive Order No. 151 creating the PCAGC, complaints involving graft and corruption may be filed before it **in any form or manner** against presidential appointees in the executive department. Indeed, it is not totally uncommon that a government agency is given a wide latitude in the scope and exercise of its investigative powers. The Ombudsman,