

SECOND DIVISION

[G.R. No. 136769, September 17, 2002]

**BAN HUA U. FLORES, PETITIONER, VS. OFFICE OF THE
OMBUDSMAN, AND ATTY. ENRIQUE L. FLORES, JR.,
RESPONDENTS.**

RESOLUTION

QUISUMBING, J.:

This petition for review assails the resolution^[1] dated September 11, 1996 of the Office of the Ombudsman in OMB-0-96-1175, dismissing the complaint against private respondent for violation of Article 204 of the Revised Penal Code^[2] and Section 3 (e) of R.A. 3019,^[3] and the order^[4] dated September 29, 1998 denying petitioner's motion for reconsideration.

The instant petition stemmed from a case docketed as SEC Case No. 03328 instituted by Johnny K.H. Uy with the Securities and Exchange Commission against petitioner Ban Hua Flores, among others, for accounting and turnover of corporate funds of UBS Marketing. Petitioner, instead of filing an answer, moved for the dismissal of the case on the ground of lack of jurisdiction. This was denied. Likewise denied was the appeal filed with the SEC *en banc*. Petitioner was declared in default upon motion by complainant Uy. Thereafter, Uy presented evidence *ex parte*. On May 3, 1995, herein respondent Hearing Officer Enrique L. Flores Jr. rendered a decision that reads:

WHEREFORE, considering the foregoing, judgment is hereby rendered as follows:

1. Commanding the respondents to produce and immediately turn over to petitioners the Books of Account of Soon Kee Commercial, Inc. and UBS Marketing Corporation from 1981 to 1987.
2. Commanding the respondents to immediately render a full and complete accounting of all the assets, properties and moneys and the receivable for both Soon Kee (from 1981-1991) and UBS (from 1981 to 1987) respectively.
3. Commanding the respondents to pay the petitioners ten percent (10%) of the entire actual income (from 1988 to 1993) of Soon Kee Commercial, Inc., in the amount of P13 Million as damages.
4. To grant and pay petitioners the amount of P48 Million equivalent to 31.183 percent of the actual income from (1981-1987).
5. Cancelling and annulling the Transfer Certificate of Titles in the name of Soon Kee Commercial, Inc., if any, the Certificate of Titles in the name of SK Realty, Inc., if any, and the Certificate of Titles in the name of New

Challenge Resources, Inc., if still there is, and all the properties belonging to and in the name of UBS; presently totalling (8) lots TCT NO. T-141057, TCT NO. T-141058, TCT NO. T-141059, TCT NO. T-141060, TCT NO. T-141061, TCT NO. T-141062, TCT NO. T-141063, TCT NO. T-141064 and reverting them back to UBS Marketing Corporation.

6. Ordering the respondents to return and/or execute the Deed of Conveyance of all the properties in the name of Soon Kee Commercial, Inc., SK Realty, Inc., New Challenge Resources, Inc. which was (sic) previously in the name of UBS in favor of the latter/Johnny KH Uy.

7. Ordering the respondents to pay the separation pay of Johnny KH Uy plus interest amounting to P946,455. 31.

8. Ordering the respondents to return/pay the petitioners contingency fund representing 31.183 % of P3M plus interest in the amount of P1,957,280.86.

9. Ordering the respondents to turn over to the petitioners the Nissan or Isuzu Truck in good condition or the value thereof in the amount of P500,000.00

10. Ordering respondent Ban Hua Flores to return to petitioner Johnny KH Uy the Hongkong property in Northpoint Metropole Flat 1121 previously owned by Johnny KH Uy.

11. Ordering respondents to pay P600,000.00 as attorney's fees.

12. Making the Writ of Preliminary Mandatory Injunction permanent.

SO ORDERED.^[5]

Petitioner Flores and company appealed to the SEC *en banc*, which reversed the decision except the order of accounting. Dissatisfied, petitioner filed a criminal complaint docketed as OMB-0-96-1175, with the Office of the Ombudsman accusing respondent Hearing Officer Enrique L. Flores, Jr. of rendering an unjust judgment under Article 204 of the Revised Penal Code and violating Section 3 (e) of R.A. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act. The Office of the Ombudsman dismissed the complaint for insufficiency of evidence, ratiocinating that:

Considering that in the case at bar, there is no showing that respondent rendered the Decision maliciously and deliberately to do an injustice to the complainant, and that he was actuated by hatred, envy, revenge, greed, or some other similar motives, the benefit of the doubt should be resolved in favor of the respondent - that the error was committed in good faith pursuant to the principle of regularity in the performance of official functions.

It is well settled that a judicial officer, when required to exercise his judgment or discretion, is not criminally liable for any error which he commits provided he acts in good faith.

While it is true that complainant had been inconvenienced because of the Decision of the respondent, such inconvenience did not amount to

causing undue injury under Section 3 (e) of R.A. 3019, not only because there is no showing of evident bad faith or inexcusable negligence but because the Decision was appealed to the SEC *EN BANC* which immediately corrected the errors, hence, said Decision did not become final and executory.^[6]

Petitioner moved for reconsideration but this was likewise denied in an order dated September 29, 1998. Hence, this petition where petitioner contends that public respondent committed grave abuse of discretion in dismissing the complaint.

According to petitioner, private respondent's decision cannot be considered made in good faith since the case did not involve a complex question of law but was a plain violation of simple rules of procedure. Further, contrary to the findings of the Office of the Ombudsman, petitioner and her family suffered undue injury as a result of the decision in SEC Case No. 03328, making respondent liable under Sec. 3 (e) of RA 3019.

Private respondent argues that he cannot be held guilty under Article 204 of the Revised Penal Code for it can only be committed by a judge. Further, he said that petitioner erred in thinking that an error in judgment can only be considered made in good faith if it involves complex questions of law. According to private respondent, he may have committed some procedural lapses, but these were not tantamount to malice or bad faith. This is supported by the fact that he based his decision on the overwhelming evidence, both testimonial and documentary, presented by the complainant in SEC Case No. 03328. Lastly, private respondent said that no undue injury was inflicted upon petitioner because of the timely decision of the SEC *en banc* reversing private respondent's decision except the order of accounting.

For its part, the Office of the Ombudsman argues that aside from petitioner's assertion that private respondent's acts are plain violation of simple rules of procedure which thus cannot be considered made in good faith, petitioner does not cite any new fact that warrants a conclusion that private respondent indeed acted with malice and bad faith. According to it, the Office of the Ombudsman has the discretion and competence to determine the sufficiency, in form and substance, of a complaint. It may dismiss the complaint if it finds the acts not illegal, unjust, improper or sufficient.^[7] Finally, the Office of the Ombudsman says that the instant petition must be dismissed because there is no final declaration of a competent court that the decision is manifestly unjust. Citing *In Re Joaquin T. Borromeo*, 241 SCRA 405, 458-465 (1995), the Ombudsman submits that unless there is a final, authoritative judicial declaration that the decision is unjust, no civil or criminal action against the judge should be entertained for want of an indispensable requisite.^[8]

The main issue for our resolution is whether the Office of the Ombudsman committed grave abuse of discretion in dismissing the complaint against private respondent for violation of Article 204 of the Revised Penal Code and Section 3 (e) of RA 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.

Before resolving the main issue, the nature of the instant petition emerged as a procedural concern that we need to address. The instant petition was captioned as a petition for review by certiorari under Rule 45 of the Rules of Court.^[9] However, the arguments raised refer to alleged grave abuse of discretion committed by the Office