

TWELFTH DIVISION

[CA-G.R. SP No. 134126, March 18, 2015]

**JONATHAN S. TACWIGAN, PETITIONER, VS. MARILYN B. PECUA,
RESPONDENT.**

D E C I S I O N

MACALINO, J:

This is a Petition for Review under Rule 43 of the Rules of Court which seeks to reverse and set aside Decision No. 130722^[1] dated 10 July 2013 ("assailed Decision") and Resolution No. 1400066^[2] dated 14 January 2014 ("assailed Resolution") of the Civil Service Commission in the case entitled "*TACWIGAN, Jonathan S., Re: Conduct Prejudicial to the Best Interest of the Service.*"

Factual and Procedural Antecedents of the Case^[3]

It appears that Respondent Marilyn B. Pecua ("Respondent") filed an Affidavit-Complaint^[4] against Petitioner Jonathan S. Tacwigan ("Petitioner"), a Fire Officer of the Bureau of Fire Protection-Tabuk City Fire Station, Kalinga. In her Affidavit-Complaint, Respondent alleged, among others, that on 20 January 2010, herein Petitioner went to FM Kids General Merchandise to inspect the same for the purpose of issuance of a Fire Safety Inspection Certificate. Said establishment is owned by Respondent. After the said inspection, Petitioner told Respondent and her husband that there is a need for them to have a fire extinguisher. Petitioner offered his services to procure the required fire extinguisher. Accordingly, Respondent and her husband ordered from Petitioner two (2) fire extinguishers amounting to PhP2,500.00 each and gave the latter PhP3,000.00 as initial payment. The following day, the Fire Safety Inspection Certificate^[5] of the said establishment was issued even without the fire extinguishers. On 24 January 2010, the balance was paid but Petitioner failed to deliver the two (2) fire extinguishers. Respondent thus reminded Petitioner to deliver the same to her as it was the start of Fire Prevention Month. As Petitioner ignored Respondent's demands, she was constrained to file an Affidavit-Complaint against the former.

Acting on Respondent's Affidavit-Complaint, the Civil Service Commission-Cordillera Administrative Region (CSC-CAR) issued a Show Cause Order^[6] dated 19 August 2010 directing Petitioner to submit his Comment. In compliance therewith, Petitioner filed his Comment^[7] dated 22 September 2010 denying the allegations and praying that the Affidavit-Complaint be dismissed for lack of merit.

The CSC-CAR, after finding the existence of a *prima facie* case against herein Petitioner for Willful Failure to Pay Just Debts, Conduct Prejudicial to the Best Interest of the Service and Violation of Section 52, A(9), Rule IV of the Uniform Rules of the Administrative Cases in the Civil Service, formally charged him and was

directed to file an Answer.^[8] The CSC-CAR found the following in support of the Formal Charge:

- “1. That on January 20, 2010, Jonathan S. Tacwigan, the herein respondent, went to FM Kids General Merchandise, the establishment of complainant Marilyn B. Pecua, to inspect the said establishment for the purpose of the issuance of a Fire Safety Inspection Certificate;
2. That after the said inspection, respondent told the complainant and her husband that there is a need for them to have a fire extinguisher and he offered his services to procure the required fire extinguisher;
3. Accordingly, complainant and her husband ordered from the herein respondent, two (2) fire extinguishers, each costing Two Thousand Five Hundred Pesos (P2,500.00), and the spouses gave the respondent Three Thousand Pesos (P3,000.00) as initial payment;
4. That on January 21, 2010, respondent went back and borrowed from the spouses (complainant and her husband) Ten Thousand Pesos (P10,000.00) which amount is to be used allegedly by his wife for eye check-up;
5. On the same day of January 21, 2010, the Fire Safety Inspection Certificate of the business establishment of complainant was issued even without the fire extinguishers;
6. That on February 24, 2010, the balance of Two Thousand Pesos (P2,000.00) for the fire extinguishers was paid, but to date, the two fire extinguishers were never delivered;
7. The respondent promised to pay the loaned amount of P10,000.00 in March 2010. However, said amount remained unpaid up to date;
8. Moreover, the respondent got from the FM Kids General Merchandise a domes (sic) tent worth Four Thousand Pesos (P4,000.00) which up to date remained unpaid;
9. That on May 24, 2010, two (2) demand letters were served to the respondent for the payment of the borrowed amount of Ten Thousand Pesos (P10,000.00), Four Thousand Pesos (P4,000.00) in payment of the domes (sic) tent and a demand for the delivery of the two (2) fire extinguishers or the reimbursement of the amount of Five Thousand Pesos (P5,000.00) which the complainant and her husband paid for the two fire extinguishers. However, despite said demands, herein respondent failed and refused to settle his obligations.”

In his Answer with Affirmative Defenses,^[9] Petitioner denied that he offered to purchase the fire extinguishers but claimed that Respondent requested help to procure the same. He also denied that he received PhP3,000.00 from Respondent as alleged initial payment of the fire extinguishers as well as the remaining balance of PhP2,000.00. Petitioner further denied that he borrowed PhP10,000.00 from Respondent. He however admitted that he conducted an inspection of FM Kids

General Merchandise to determine compliance with R.A. No. 9514^[10] and its Implementing Rules and Regulations for the issuance of a Fire Safety Inspection Certificate. On 21 January 2010, the Fire Safety Inspection Certificate was issued to the said establishment. Petitioner also contended that Respondent violated the rule on non-forum shopping by stating in the Certification that she had not commenced a similar complaint when it truth she filed a criminal complaint for estafa against Petitioner and his wife before the Provincial Prosecution Office in Tabuk, Kalinga.

After investigation, the CSC-CAR issued Decision No. CAR-12-068 DC^[11] dated 16 May 2012 finding Petitioner guilty of Conduct Prejudicial to the Best Interest of the Service and imposed upon him the penalty of suspension of nine (9) months without pay.

Petitioner moved for reconsideration^[12] but the same was denied in Resolution No. 12-018 DC^[13] dated July 18, 2012.

Aggrieved, Petitioner filed a Notice of Appeal and Memorandum of Appeal^[14] dated 19 September 2012 before CSC.

On 10 July 2013, CSC issued the assailed Decision dismissing the said appeal, to wit:

"WHEREFORE, the appeal of Jonathan S. Tacwigan is hereby **DISMISSED**. Accordingly, the Decision dated May 16, 2012 of the Civil Service Commission-Cordillera Administrative Region (CSC-CAR) finding him guilty of Conduct Prejudicial to the Best Interest of the Service and imposing upon him the penalty of nine (9) months suspension without pay is **AFFIRMED**.

On 14 January 2014, CSC rendered the assailed Resolution denying Petitioner's Motion for Reconsideration,^[15] the *fallo* of which reads:

"WHEREFORE, the motion for reconsideration of Jonathan S. Tacwigan is hereby **DENIED**. Accordingly, Civil Service Commission (CSC) Decision No. 13-0722 dated July 10, 2013 finding him guilty of Conduct Prejudicial to the Best Interest of the Service and imposing upon him the penalty of nine (9) months suspension without pay, **STANDS**.^[16]

Hence, Petitioner filed the instant Petition^[17] on 26 February 2014.

On 21 May 2014, Respondent filed her Comment (to the Petition for Review).^[18]

Thereafter, Petitioner filed his Memorandum^[19] on 21 October 2014 while Respondent filed her Memorandum^[20] on 17 November 2014.

In view of the submission of the parties' respective Memoranda, the instant case was deemed submitted for decision on 10 February 2015.^[21]

The Issues