

SPECIAL THIRTEENTH DIVISION

[CA-G.R. SP NO. 132007, April 23, 2014]

DOMINADOR B. ANDRES, PETITIONER, VS. MARJORIE P. ESCORIAL, RESPONDENT.

D E C I S I O N

DIMAAMPAO, J.:

This Petition for Review^[1] impugns the Joint Resolution^[2] dated 29 April 2013 and Order^[3] dated 31 July 2013 of the Office of the Ombudsman in OMB-C-A-10-0148-C and OMB-C-C-10-0139-C. The former found probable cause to prosecute petitioner Dominador Andres (Andres) for the crime of Estafa under Paragraph 2(a), Article 315 of the Revised Penal Code and adjudged him guilty of Grave Misconduct while the latter denied the *Consolidated Motion for Reconsideration* thereof.

Given that the repugned judgments delve into the administrative culpability and the finding of probable cause for the crime of Estafa against petitioner, this *Petition* probes only into the administrative case docketed as OMB-C-A-10-0148-C.

The records disclose that Andres served as Assistant Secretary for Field Operations of the Department of Agrarian Reform (DAR) before his retirement in 2011.^[4] He rose from the ranks and was in public service for almost three decades.

Respondent Marjorie Escorial (Escorial) is the Marketing Director of Isla Security Agency (Isla Security), an entity offering security services to its clientele. She was tasked to scout for prospective clients for Isla Security.

The inculpatory averments in Escorial's *Affidavit of Complaint*^[5] narrated that sometime in February 2009, she was in the office of the Department of Public Works and Highways (DPWH), Manila, when she met Milagrina Birosel (Birosel). The latter informed her that the DAR was accepting bidders for security services. Birosel assured Escorial that Andres was her relative and that he would facilitate the grant of the bid in favor of Isla Security inasmuch as then DAR Secretary Nasser Pangandaman could not refuse anything that Andres asked.

Birosel then accompanied Escorial to visit the office of Andres. When Andres learned that Escorial wanted to join the bid, he instructed her to pay for the Bidder's Form. Andres then supposedly asked Escorial: "Ano ba ang capacity ninyo?"^[6] As Escorial failed to understand what was meant by this, Andres allegedly retorted: "Alam mo na yon," and made a money sign with his hand. Escorial replied: "No problem, sir."^[7]

Eventually, Escorial went back to Andres who informed her that he needed P210,000.00 as initial payment. Andres instructed that the money be given to

Birosel. The transaction was evinced by the Payment Order of Isla Security dated 4 March 2009.^[8]

Escorial consistently checked the status of the bid filed by Isla Security. To her consternation, she received a Notice of *Disqualification* on the ground that the bid of Isla Security did not comply with the required salary rate to be given to each security guard.^[9] Escorial forthwith confronted Andres who advised her to file a request for reconsideration.^[10]

Thereupon, on 18 April 2009, Andres allegedly called Escorial inviting Birosel and her to his office for a meeting. He guaranteed her that the Contract for Security Services was being drafted: "*Wala naman talaga bidding pag security guard Bidding bidingnan lang yan.*"^[11] Andres then asked for another P500,000.00 claiming that he would be giving the money to then DAR Undersecretary Narciso Nieto who would be the one to award the bid contract to Isla Security.

Escorial once more went to the office of Andres carrying P400,000.00 with her. Before releasing the money, she asked for a guaranty that the *Contract* would be given to Isla Security. Andres posthaste issued his personal check payable to cash in the same amount as that he received. He assured Escorial that if the *Contract* would not be awarded to Isla Security, she could deposit the check to recoup her losses.

As it happened, the bid contract for security services was not awarded to Isla Security. Escorial deposited the check which was later dishonored for insufficiency of funds.^[12] This prompted Escorial to file an administrative case against Andres for dishonesty and grave misconduct, likewise a criminal case for perjury and estafa.^[13]

Andres, for his part, denied the accusations hurled against him. He propounded that he never received the P210,000.00 alleged bribe, as this was received by Birosel. As for the issuance of the check for P400,000.00, he insisted that it was meant to help Birosel who was in financial woes. Birosel happened to be the sister-in-law of DAR Director Wilfredo Leano, his close friend. Andres was surprised as to how the check landed in the hands of Escorial.

When Andres confronted Birosel, she admitted that she was working as a Marketing Representative of Isla Security, and that she owed the agency P550,000.00. She spent for her personal use the said amount entrusted to her by Escorial which was meant to facilitate the award of the bid contract with DAR. To assuage Escorial, Birosel turned over the check issued to her by Andres. In time, Birosel fully paid her obligation but Escorial refused to release the check insisting that she still owed interests. This was how Andres got embroiled in the controversy. Birosel confirmed this version in her *Sworn Statement*.^[14]

Andres further claimed he was in no position to exert influence or control over the bidding process as he was not a member of the Bids and Awards Committee or the concerned Technical Working Group. By the time Escorial and Birosel approached him, Isla Security was already disqualified from participating in the bidding. He then advised Escorial to follow the bidding process. He theorized that it was downright absurd for him to issue his personal check to guarantee a bribe.^[15]

Assaying the disparate stances of the parties, the Office of the Ombudsman rendered the assailed Joint Resolution, thusly—

“**WHEREFORE**, this Office finds probable cause to prosecute (petitioner) DOMINADOR B. ANDRES for the crime of Estafa under paragraph 2(a) of Article 315 of the Revised Penal Code.

Accordingly, let an Information be FILED before the Sandiganbayan for ONE count of the crime of Estafa under paragraph 2(a) of Article 315 of the Revised Penal Code.

FURTHER, there being substantial evidence, respondent is found guilty of Grave Misconduct which is punishable by dismissal. He having retired, he is meted the penalty of FINE equivalent to one year's salary as well as cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification from holding public office.

SO ORDERED.”^[16]

Andres moved for reconsideration but failed to attain favorable relief as this was denied through the oppugned *Order*.

He took issue with the administrative finding of guilt for grave misconduct anchored on the following grounds:

I

THE HONORABLE OMBUDSMAN COMMITTED A GRAVE AND REVERSIBLE ERROR TANTAMOUNT TO GRAVE ABUSE OF DISCRETION IN NOT DISMISSING THE CASE AGAINST THE PETITIONER.

II

THE HONORABLE OMBUDSMAN COMMITTED A GRAVE ERROR IN FAULTING THE PETITIONER FOR NOT FURTHER EXPLAINING WHY THE CHECK HE ISSUED WAS IN THE POSSESSION OF THE RESPONDENT.

III

THE HONORABLE OMBUDSMAN SHOULD NOT HAVE DISMISSED PETITIONER'S VERSION OF THE FACTS AS “ONE FOR THE BOOKS” AND BELIEVED THE RESPONDENT'S STORY HOOK(,) LINE(,) AND SINKER.

IV

PETITIONER IS NOT LIABLE FOR GRAVE MISCONDUCT

The Petition is bereft of merit.

We shall traverse the issues in one fell swoop. The pressing issue before Us is whether or not Andres (now, petitioner) is guilty of grave misconduct.