

FIRST DIVISION

[CA-G.R. SP No. 132170, November 19, 2014]

ROLANDO M. BANDILLA, JR., PETITIONER, VS. OFFICE OF THE OMBUDSMAN AND EMMA C.L. LIN, RESPONDENTS.

DECISION

BRUSELAS, JR. J.:

Before us is a petition for review under Rule 43 which seeks to reverse and set aside the *Decision*^[1] and *Order*^[2] of the public respondent Office of the Ombudsman ("**Ombudsman**"), Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices, in action for violation of Republic Act (RA) No. 6713, otherwise known as the *Code of Conduct and Ethical Standards for Public Officials and Employees*, the dispositive portion of which reads:

"**WHEREFORE**, premises considered, there being substantial evidence, respondents **F/CSUPT ROLANDO M. BANDILLA, JR.** and **F/CINSP JHUFEL M. BRAÑANOLA**, are hereby found **GUILTY** of **Conduct Prejudicial To The Best Interest of the Service**, and meted the penalty of **SUSPENSION** from office without pay for a period of NINE (9) MONTHS, there being no attending mitigating or aggravating circumstances present, in accordance with CSC Resolution No. 991936, otherwise known as the Uniform Rules on Administrative Cases in the Civil Service, in relation to the Rules of Procedure of the Office of the Ombudsman (Administrative Order No. 7, as amended by Administrative Order No. 17, dated 07 September 2003).

Let the Honorable Secretary, Department of Interior and Local Government (DILG), be furnished with this Decision, for immediate appropriate action and implementation.

SO ORDERED."^[3]

xxx xxx xxx

"WHEREFORE, premises considered, it is respectfully recommended that the Motion for Reconsideration filed by respondents-movants F/CSUPT Rolando Bandilla and F/CINSP Jhufel M. Brananola, be **DENIED**. Accordingly, the Decision dated 15 September 2011 bearing upon the above-captioned administrative case is **AFFIRMED**.

SO RESOLVED."^[4]

The antecedent facts of the case are as follows:

The petition stemmed from a complaint-affidavit^[5] filed by Emma C.L. Lin ("**Lin**") against F/CSupt. Rolando M. Bandilla, Jr. ("**Bandilla**") and F/CInsp. Jhufel M. Brañanola ("**Brañanola**"), Acting Chief and Chief of the Intelligence and Investigation Division (**IID**) of the Bureau of Fire Protection (**BFP**), respectively, for the Violation of Section 3 (a), (e) and (i)^[6] of Republic Act (RA) No. 3019, as amended, otherwise known as the *Anti-Graft and Corrupt Practices Act*. In the said complaint-affidavit, Lin also sought the administrative indictment of Bandilla and Brañanola, thus, they were also charged with the administrative offenses of Violation of RA 6713 and Misconduct.

Petitioner Lin alleged that she was doing business under the name and style of State Security Agency and owned the clustered warehouse buildings located at No. 639 Banga 1st Cabyawan, Plaridel, Bulacan ("*subject property*"). The warehouse buildings were leased to three (3) different companies, namely: Alpha Plus International Enterprises Corporation, Darlie Trading Corporation and Marubishi Manufacturing Industries, Incorporated.

On February 24, 2008, at around 3:00 AM, a fire broke out within the subject property. The fire incident, which reached 4th Alarm fire status, was declared officially "*Fire Out*" at around 7:00 AM of the same day. The subject property was destroyed by fire, including all other properties found therein. Investigation of the said fire incident followed in order to determine the cause of the fire.

On April 3, 2008, the Final Investigation Report^[7] ("1st report") regarding the fire incident on the subject property was issued, which was prepared and signed by SPO4 Dante I. Navea ("**Navea**") and Insp. Romeo A. Pepito, Jr. ("**Pepito**") Senior Fire Arson Investigator and Chief, respectively of the Fire Arson Investigation Section, IID BFP NHQ. In the findings of the said report, it was determined that the "*fire incident was accidental in nature*", and that the cause of the fire can be attributed to electrical ignition primarily due to grounding. It was consequently recommended that the "*...case be considered closed/solved for being accidental in nature, without prejudice to reinvestigation by this office if certainty warrants. Issuance of Fire Clearance Certification to the fire victims xxx is deemed in order...*"

^[8] Lin thus filed for and was later issued a *Fire Clearance Certification*^[9] on April 8, 2008 signed by Director Enrique C. Linsangan.

The subject property being insured under Fire Policy No. F-2008-200700519 in the amount of Fifty-Six Million Pesos (P 56M) and Fire Policy No. F-2008-200700518 in the amount of Two Million Pesos (P2M), both under Malayan Insurance Company Incorporated ("**Malayan**"), Lin, thus, filed her claim for indemnity. The insurance claim made by Lin, however, was denied by Malayan, prompting the former to request for the assistance of the Insurance Commission (**IC**) regarding her claims against the insurance company.^[10]

For its part, Malayan wrote a letter^[11] to BFP dated March 23, 2009, requesting for a re-investigation of the fire incident. In the said letter, Malayan represented that it is the insurer of the subject property gutted by fire.

On April 20, 2009, petitioner Bandilla issued Bureau Order No. OTH-2009-081,^[12] which directed the composition of the Panel of Arson Investigators tasked to conduct a re-investigation of the fire incident which occurred on the subject property. The panel was composed of Brañanola as team leader and SFO2 Felix B. Romero and SFO2 Vivencio M. Talle, Jr. as members. Such order was amended the next day, April 21, 2009, substituting SFO2 Romero with SFO1 Rogelio T. Baran (**1st Panel**).

On May 14, 2009, the 1st panel submitted its Re-investigation Report^[13] ("*2nd Report*"), which recommended to the Acting Chief, BFP that the findings of the BFP as stated in its 1st Report and Fire *Clearance Certification* be not disturbed considering the absence of newly discovered evidence. The 2nd report was duly approved and signed by respondent Bandilla.

The IC, on the other hand, who was conducting its own investigation regarding matters with respect to the insurance claims of complainant, received a copy of the 2nd Report on May 29, 2009. Subsequently, on June 11, 2009, Insurance Commissioner Eduardo Malinis sent a letter^[14] to the President of Malayan, recommending that the company should reconsider its denial of the insurance claim of complainant Lin against it. This prompted Malayan to request for a reconsideration by BFP of its 2nd report *via* its letter dated July 2, 2009.^[15]

On July 27, 2009, the 2nd Panel submitted its Re-evaluation Report^[16] ("*3rd Report*"), which recommended to the Acting Chief, BFP, "*to consider and declare fire incident that gutted the clustered warehouse buildings xxx to be UNDETERMINED*", considering the contradicting findings of the BFP and the forensic report conducted by Malayan. The 3rd report was duly approved and signed by Bandilla.^[17]

Aggrieved, Lin, through her counsel, wrote a letter-request to the National Bureau of Investigation "*to investigate the alleged irregularities in the issuance of the 3rd Report.*" On the basis of its own investigation of the alleged irregularities of the 3rd Report, Roel Jovenir ("**Jovenir**") of the Anti-Fraud and Computer Crimes Division of the NBI prepared a Progress Report,^[18] wherein it was found that "*by their collective acts of defrauding the fire victims, an inference can be drawn that BANDILLA, NAVEA, PEPITO, FIGURASIN AND BRAÑANOLA acted in conspiracy with each other in order to create doubt on the findings of BFP.*" In the same report, Jovenir pertinently stated that he "*will invite F/CSUPT BANDILLA to his command to shed light on the above subject matter.*"^[19]

In her *Complaint-Affidavit*, *Position Paper* and *Manifestation*, Lin alleged that she was defrauded of her just monetary insurance claims against Malayan through the sinister acts of Bandilla and Brañanola. The acts that she alleged to be prejudicial to her are:

1. The act of Brañanola of offering substantial amounts of money to Figurasin, Pepito and Navea to create a doubt as to their earlier finding that the fire was accidental in nature.

2. The issuance by Bandilla of the Memorandum dated July 3, 2009 for the Re-evaluation of the fire incident which occurred in the subject property; that Bandilla used his official position to whimsically and arbitrarily accede to the request of Malayan to re-evaluate the 2nd Report despite strong opposition on the part of Lin; and that clearly, the only purpose of this reevaluation was to create doubts on the previous findings of BFP to make it appear that the cause of the fire was not accidental in nature.

3. The irregularities and anomalies that attended the issuance of the 3rd Report; that Figurasin, Pepito and Navea succumbed to the pressure exerted by Brañanola by signing such report which showed a change of findings of the BFP as to the cause of the fire from "accidental" to "undetermined"; that verily, the act of Bandilla in approving such report was prejudicial to Lin.

Significantly, Lin alleged that *"prior to the release of the 2nd Report, her counsel got hold of three duly notarized Affidavits xxx executed by Figurasin, Pepito and Navea wherein they categorically declared and admitted that they were offered substantial amount of money by Brañanola in order to re-open the fire investigation and create doubt as to the initial findings of the BFP that the fire was accidental in nature."*^[20]

In their respective *Counter-Affidavit* and *Position Paper* filed before the Ombudsman, both Bandilla and Brañanola, in essence, were in unison in vehemently denying the wrongful acts imputed against them for being baseless, having no basis in fact and in law. Both of them alleged that their acts were performed regularly and invoked the presumption of regularity in the performance of official functions. Both likewise alleged in their respective compliances that on December 10, 2009, Bureau Order No. COM-2009-077 was issued, creating an Independent Body/Committee for the purpose of resolving with finality the fire incident which occurred on the subject property.

For his part, Bandilla raised the defense that he had not been invited by the NBI to present his side, thus the Progress Report should not have included him in its conclusion that he acted in conspiracy with the other officers. In addition, he alleged that in the Affidavits executed by Pepito, Figurasin and Navea, all dated April 28, 2009, *"nowhere in the four corners of these Affidavits xxx can the name and/or identity of Bandilla be found as among those who were allegedly present when the supposed offers of money were allegedly made"*, that such affidavits do not have a bearing against him, thus, he should not have been included in the complaint.

On the other hand, Brañanola interposed the defense that on February 4, 2010, Pepito, Figurasin and Navea executed affidavits rectifying and retracting the allegations in their affidavits which were in the possession of Lin.

The Ombudsman thereafter rendered the assailed decision against the BFP officers. Petitioner Bandilla and Brañanola filed their *Motion for Reconsideration* but it was denied *via* the assailed Order.

Hence, this petition filed by Bandilla.

Petitioner Bandilla submits the following issues in support of his petition:

"I.

WHETHER OR NOT THE PETITIONER WAS AFFORDED DUE PROCESS IN THE PROCEEDINGS IN THE OFFICE OF THE OMBUDSMAN;

II.

WHETHER OR NOT THE FINAL INVESTIGATION REPORT DATED 3 APRIL 2008 (1st Report), RE-INVESTIGATION REPORT DATED 14 MAY 2009 (2nd Report) WERE ISSUED WITH FINALITY;

III.

WHETHER OR NOT THERE IS SUBSTANTIAL EVIDENCE TO HOLD THE PETITIONER ADMINISTRATIVELY LIABLE FOR CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; and

IV.

WHETHER OR NOT MITIGATING CIRCUMSTANCES FAVORING THE PETITIONER WERE PRESENT."

We fail to find merit in the petition.

Bandilla maintains that he was denied due process in the proceedings before the Ombudsman because he was not informed that he was also the subject of an administrative complaint for violation of RA 6713. According to him, he was required to answer for an alleged violation of RA 6713, with no specific provision, when the same was not even mentioned, alleged or adverted to in the complaint-affidavit which merely mentioned violation of RA 3019. He was likewise found guilty of *Conduct Prejudicial to the Best Interest of the Service*, an administrative offense punishable under another law, more particularly Section 46, (b) (27) Book V of Executive Order (EO) No. 292, otherwise known as the Administrative Code of 1987, as amended, which was not also alleged in the said complaint-affidavit. He thus claims a clear transgression of his right to be informed of the specific nature and cause of the supposed administrative accusations against him.

The records of the case, however, show that petitioner Bandilla, together with Brañanola, were able to file their respective counter-affidavits and position papers wherein they had interposed their defenses to the formal charges against them, for both violation of RA 3019 and RA 6713. Bandilla was shown to have filed a *Motion for Reconsideration* of the assailed decision as well as an *Urgent Motion for Early Resolution* and *Manifestation*. Hence, Bandilla's protestations that he had been deprived of due process must necessarily fail.

We must remember that due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process.^[21] Due process is simply having the opportunity to explain one's side, or an opportunity to seek a reconsideration of the