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THIRD DIVISION

[G.R. No. 199625. June 6, 2018]

JEROME R. CANLAS, *petitioner, vs.* **GONZALO BENJAMIN A. BONGOLAN, ELMER NONNATUS A. CADANO, MELINDA M. ADRIANO, RAFAEL P. DELOS SANTOS, CORAZON G. CORPUZ, DANILO C. JAVIER, and JIMMY B. SARONA,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; THE POWER OF THE OMBUDSMAN TO ACT ON AN ADMINISTRATIVE COMPLAINT BY A PERSON WITHOUT ANY PERSONAL INTEREST IN THE CASE IS DISCRETIONARY.— The Ombudsman was given the power to evaluate an administrative complaint even though the complainant does not have a personal interest in the case. Under Article XI, Section 12 of the 1987 Constitution, the Ombudsman has the power to act on any complaint against those in public service x x x. In line with this constitutional mandate, Section 15(1) of Republic Act No. 6770 states [that] x x x no matter the identity of the complainant, the Ombudsman may act on the matter. Moreover, it may, on its own, inquire into illegal acts of public officials, which may be discovered from any source. For administrative complaints, x x x [h]owever, if the "the complainant has no sufficient personal interest in the subject matter of the grievance," the Ombudsman may choose *not* to investigate the administrative act complained of. x x x Section 20 of Republic Act No. 6770 uses the word "may" which signifies that it is permissive and not imperative. The power of the Ombudsman to act on an administrative complaint by a person without any personal interest in the case is, thus, discretionary. x x x Thus, the Ombudsman may prosecute or investigate the complaint with or without the complainant's personal interest in the outcome of the case. x x x The Ombudsman's power stems from its role as the "protector of the people," constitutionally vested with a duty to enforce laws against graft

Supreme Court E-Library

and corrupt practices committed by public officials and employees.

2. **ID.; ID.; ID.; THE FILING OF CASES TO THE OMBUDSMAN AGAINST PUBLIC OFFICERS BY ANY COMPLAINANT IS ALLOWED TO UPHOLD THE PRINCIPLE THAT PUBLIC OFFICE IS A PUBLIC TRUST.—** The State interest being upheld here is the principle that public office is a public trust. Public officers and employees are given duties and powers pertinent to sovereignty, which they hold in trust for, and exercise in behalf of, the public. Thus, they are expected to uphold public interests. As such, they are held to higher standards not usually required of ordinary citizens to keep the faith of the people in the State. That is why in case of administrative offenses, it is the character of the public officers or employees that is looked into. The objective is not so much as to penalize an erring officer or employee, but to improve public service and preserve the trust and confidence of the people in our government. Thus, the law allows the filing of cases to the Ombudsman against public officers by any complainant. The Ombudsman is a tool to maintain this faith. However, this particular State interest must also be balanced with two (2) other State interests, which arise after the filing of a case against a public officer or employee: (i) the State interest in affording due process to all persons; and (ii) the State interest in assuring efficiency of government functions, particularly through the protection of its officers from harassment.

3. **ID.; ID.; ID.; FINALITY AND EXECUTION OF DECISION; THE OMBUDSMAN'S DECISION MAY NOT BE APPEALED IF IT DISMISSES THE COMPLAINT OR IMPOSES THE PENALTY OF PUBLIC CENSURE OR REPRIMAND, SUSPENSION OF NOT MORE THAN ONE MONTH, OR A FINE EQUIVALENT TO ONE MONTH SALARY.—** While public office is a public trust, public officers must not be exposed to continued and persistent lawsuits that can derail their ability to discharge their duties once it has been found that there is no substantial evidence of their guilt. The effective administration of the State's policies is of paramount importance, which should not be hampered by time-consuming, baseless, and repetitive suits. Thus, if there is a clear finding, supported by substantial evidence, that the public officer is

not guilty of the charges, this finding must be given great weight and must be respected. Therefore, not all may appeal to question a decision of the Ombudsman. In administrative cases filed under the Civil Service Law, an allowed appeal may only be brought by the party adversely affected by the decision. x x x Thus, the Ombudsman's decision may not be appealed if it dismisses the complaint or imposes the penalty of public censure or reprimand, suspension of not more than one (1) month, or a fine equivalent to one (1)-month salary. Otherwise, it may be appealed to the Court of Appeals under the requirements and conditions set forth in Rule 43 of the Rules of Court. x x x In the case at bar, the Office of the Ombudsman's October 12, 2010 Decision exonerated respondents. Thus, Canlas has no right to appeal this Decision. He has no other recourse. "The right to appeal is a mere statutory privilege and may be exercised only in the manner prescribed by, and in accordance with, the provisions of law. There must then be a law expressly granting such right." x x x [I]n determining whether the Office of the Ombudsman's October 12, 2010 Decision is appealable, the deciding factor is the *penalty imposed by the Ombudsman in the decision itself*. It is not determined by the penalty imposed for the offense as provided under the law. Thus, even if grave misconduct is punishable by dismissal under the rules, it is the decision that determines whether it is appealable or unappealable to the higher courts. If the Ombudsman finds that respondents are not guilty and imposes no penalty, the decision is unappealable.

4. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; PARTIES IN INTEREST; A REAL PARTY IN INTEREST IS ONE WHO IS ENTITLED TO THE RELIEF PRAYED FOR, OR ONE WHO WILL BENEFIT OR BE INJURED BY THE RESULTS OF THE SUIT.— Considering there is no law allowing Canlas to appeal, he has no right to appeal. This absence of a right to appeal affects Canlas' legal standing in this case. He is not a party entitled to the relief prayed for, or one who will benefit or be injured by the results of the suit. *Locus standi* is "a right of appearance in a court of justice . . . on a given question." In civil, criminal, and administrative cases, standing is governed by Rule 3, Section 2 of the Rules of Court x x x. Standing depends

Supreme Court E-Library

on a party's right to the relief prayed for. This party must be entitled to the relief before he or she may file a suit. The party affected by the judgment in the suit or entitled to the relief prayed for must pursue the action.

5. ID.; ID.; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45; QUESTIONS OF FACT CANNOT BE RAISED THEREIN.— Canlas is raising a question of fact, which is not proper in a Rule 45 Petition. Only questions of law may be raised in a petition for review under Rule 45. Questions of fact will not be entertained by this Court, as it is not its function to analyze and weigh evidence all over again. x x x Canlas is bringing into issue the correct fair market value of the properties, which is a question of fact. It requires the examination and the weighing of evidence to determine the value of the properties. Such a question cannot be raised in a Petition for Review on Certiorari under Rule 45. This Court has laid down exceptions to this rule x x x. However, for this Court to take cognizance of Canlas' Petition, he must prove, not merely assert, that any of x x x [the] exceptions is present in this case. He has the burden to show that a re-examination of facts is needed. Absent this proof, this Court will not entertain factual issues.

6. ID.; ID.; ID.; WHEN THE OMBUDSMAN'S FINDINGS ARE SUPPORTED BY SUBSTANTIAL EVIDENCE AND AFFIRMED BY THE COURT OF APPEALS, THE SUPREME COURT NEED NOT REVIEW OR REEVALUATE THE EVIDENCE.— [T]he Ombudsman's factual findings are binding and conclusive when supported by substantial evidence x x x [, pursuant to] Republic Act No. 6770 x x x. The Ombudsman's factual findings are accorded great weight and respect. x x x This rule applies even more so when the findings are affirmed by the Court of Appeals. x x x Thus, if the Ombudsman's findings are supported by substantial evidence and affirmed by the Court of Appeals, this Court need not review or reevaluate the evidence.

7. MERCANTILE LAW; CORPORATION LAW; CORPORATION CODE; CORPORATIONS; BOARD OF DIRECTORS; EXERCISES ALL THE CORPORATION'S POWERS, CONDUCTS ALL ITS BUSINESS, AND CONTROLS ALL ITS PROPERTIES.— Home Guaranty is

Supreme Court E-Library

governed by its Board of Directors, which directs, controls, and manages its activities. The decisions of the Board of Directors are arrived at by a majority vote of its members. x x x It is even the Board of Directors that approves the standard terms and conditions in a Contract of Guaranty to be executed by Home Guaranty x x x. Thus, it was the Board of Directors that had the power to decide whether the properties were to be sold and at what price. As a government-owned and -controlled corporation, Home Guaranty is also governed by Republic Act No. 10149. Under Section 30 of Republic Act No. 10149, the Corporation Code applies suppletorily to government-owned and -controlled corporations x x x. Section 23 of the Corporation Code necessarily applies. It provides that the Board of Directors of a corporation exercises all the corporation's powers, conducts all its business, and controls all its properties. Thus, it is Home Guaranty's Board of Directors that is primarily responsible for the sale.

8. **ID.; ID.; ID.; ID.; SEPARATE JURIDICAL PERSONALITY; CANNOT BE INVOKED WHEN USED TO DEFEAT PUBLIC CONVENIENCE, JUSTIFY WRONG, PROTECT FRAUD, OR DEFEND A CRIME.—** Officers who supervise and manage the corporation's affairs, such that they are responsible for the commission of the offense, cannot escape criminal or administrative liability by invoking the separate and distinct personality of the corporation. The party who will be meted the penalty is the public officer or employee who is guilty of the administrative offense. This is consistent with the principle that when the separate juridical personality of a corporation is used "to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons."

9. **CRIMINAL LAW; VIOLATION OF REPUBLIC ACT NO. 3019, SECTION 3; CORRUPT PRACTICES OF PUBLIC OFFICERS; WHETHER OR NOT A PERSON IS A DIRECTOR OR AN OFFICER OF A CORPORATION, SO LONG AS HE IS THE PARTY RESPONSIBLE FOR THE OFFENSE, HE IS THE PARTY OUGHT TO BE CHARGED.—** [I]n Republic Act No. 3019, it is clear that the party that is penalized is the *public officer* who commits any of the corrupt practices enumerated under Section 3. A "public

Supreme Court E-Library

officer" includes "elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt service receiving compensation, even nominal, from the government." In this particular case, the offense charged is against *public officers* who, on behalf of the government, allegedly entered into a contract or transaction manifestly and grossly disadvantageous to the government. Thus, it does not distinguish whether the public officer is a director or a mere employee. x x x Clearly, whether or not a person is a director or an officer of a corporation, so long as he or she is the party responsible for the offense, he or she is the party that ought to be charged.

10. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; GRAVE MISCONDUCT; CHARACTERIZED BY THE ELEMENT OF CORRUPTION AND A CLEAR INTENT TO FLAGRANTLY DISREGARD AN ESTABLISHED RULE OR VIOLATE THE LAW.— "Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer." To be considered grave misconduct, the transgression must have been committed in bad faith. Malice is a necessary element in the offense of grave misconduct. x x x It is the element of corruption and a clear intent to flagrantly disregard an established rule or violate the law that characterizes grave misconduct. If there are no ill or selfish motives, the act cannot qualify as grave misconduct. These elements must be proven by substantial evidence.

11. CRIMINAL LAW; VIOLATION OF REPUBLIC ACT NO. 3019, SECTION 3; CORRUPT PRACTICES OF PUBLIC OFFICERS; TO BE FOUND GUILTY THEREOF, THE LAW REQUIRES THAT THE CONTRACT MUST BE GROSSLY AND MANIFESTLY DISADVANTAGEOUS TO THE GOVERNMENT OR THAT IT BE ENTERED INTO WITH MALICE.— This Court x x x rules that respondents cannot be held liable under Section 3(g) of Republic Act No. 3019 x x x. In *Froilan v. Sandiganbayan*, this Court enumerated the elements of the offense as follows: "(a) that the accused is a public officer; (b) that he [or she] entered into a contract or transaction on behalf of the government; and (c) that such contract

or transaction is grossly and manifestly disadvantageous to the government." In the case at bar, respondents held a public bidding twice before it agreed to the bid price of Wong. The price falls within the amount that it is authorized to sell. They also sought the clearance of the Office of the Government Corporate Counsel before pushing through with the sale. Their acts show that they exercised due diligence and sound business judgment before executing the sale. There is likewise no showing that they violated any rule or process in granting the sale of the properties to Wong. And although it is not an element to the offense, the sale does not seem to be tainted with any partiality, bad faith, or negligence. The law requires that the contract must be grossly and manifestly disadvantageous to the government or that it be entered into with malice. It does not find guilt on the mere entering of a contract by mistake. Thus, it cannot be said that the contract was grossly disadvantageous to the government.

APPEARANCES OF COUNSEL

Ponce Enrile Reyes & Manalastas Law Office for petitioner.

Elmer Nonnatus Adan Cadano for himself & Melinda M. Adriano, *et al.*

Kapunan Imperial Panaguiton & Bongolan for Gonzalo Benjamin Bongolan.

Danilo C. Javier for himself & Rafael P. Delos Santos.

D E C I S I O N

LEONEN, *J.*:

The exoneration of public officers by the Ombudsman in a charge alleging grave misconduct and a violation of Republic Act No. 3019, Section 3(g) is generally unappealable. Furthermore, any appeal to the Supreme Court from such a case cannot be initiated by one who does not stand to be benefited or injured by the results of the suit.

This resolves a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court, assailing the Court of Appeals August 11,

[1] *Rollo*, pp. 8-28.

Supreme Court E-Library

2011 Decision[2] and November 29, 2011 Resolution[3] in CA-G.R. SP No. 119352. The assailed Decision affirmed the Office of the Ombudsman's October 12, 2010 Decision,[4] which dismissed the administrative complaint[5] for grave misconduct and violation of Section 3(g) of Republic Act No. 3019 filed by Jerome R. Canlas (Canlas). The assailed Resolution denied[6] Canlas' Motion for Reconsideration.[7]

On March 19, 1993, the National Housing Authority and R-II Builders, Inc. (R-II) executed a Joint Venture Agreement to implement the Smokey Mountain Development and Reclamation Project (the Project), with the former as government implementing agency and the latter as developer.[8]

The Project sought to convert the former Smokey Mountain Dumpsite into habitable housing with commercial and industrial development and to reclaim the property adjacent to Smokey Mountain as its enabling component.[9] The Manila Harbour

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[2] *Id*. at 30-54. The Decision was penned by Associate Justice Amy C. Lazaro-Javier and concurred in by Associate Justices Rebecca De Guia-Salvador and Sesinando E. Villon of the Fifth Division, Court of Appeals, Manila.

[3] *Id*. at 56-58. The Resolution was penned by Associate Justice Amy C. Lazaro-Javier and concurred in by Associate Justices Rebecca De Guia-Salvador and Sesinando E. Villon of the Former Fifth Division, Court of Appeals, Manila.

[4] *Id*. at 91-113. The Decision, docketed as OMB-C-A-09-0634-K, was signed by Graft Investigation & Prosecution Officer II Francisca A. Maullon-Serfino, reviewed by GIPO III, Acting Director, PIAB-C Aleu A. Amante, recommended for approval by Acting Assistant Ombudsman, PAMO Mary Susan S. Guillermo, and approved by Ombudsman Ma. Merceditas N. Gutierrez.

[5] *Id*. at 129-134.

[6] *Id*. at 58.

[7] *Id*. at 60-71.

[8] *Id*. at 34.

[9] *Id*. at 35.

Centre Port Terminal, Inc. (Harbour Centre) is covered by the Project.[10]

Aside from being the developer, R-II was also responsible for sourcing the funding for the Project's Phase 1 through securitization, or the issuance of secured instruments backed by assets. To support the Project's securitization and to make the security instruments more appealing to investors, National Housing Authority and R-II engaged Home Guaranty Corporation (Home Guaranty) to act as guarantor.[11]

Home Guaranty is a government-owned and -controlled corporation duly organized and existing by virtue of Republic Act No. 8763. It is mandated to guarantee payment of "all forms of mortgages, loans and other forms of credit facilities and receivables arising from financial contracts exclusively for residential purposes and the necessary support facilities."[12] Republic Act No. 8763 provides that Home Guaranty is governed by its Board of Directors, which directs, controls and manages its activities.[13]

On September 26, 1994, National Housing Authority, R-II, Home Guaranty, and the Philippine National Bank entered into the Smokey Mountain Asset Pool Formation Trust Agreement (Trust Agreement),[14] which provided for the mechanics to implement the Joint Venture Agreement. The Trust Agreement was amended many times until June 9, 2000.[15]

In the Trust Agreement, the parties agreed to employ the "asset-backed securitization method" to finance the Project.[16]

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[10] *Id*. at 31.

[11] *Id*. at 35.

[12] Rep. Act No. 8763, Chap. II, Sec. 5(b).

[13] Rep. Act No. 8763, Sec. 8.

[14] *Rollo*, pp. 235-262. Re-stated Smokey Mountain Asset Pool Formation Trust Agreement.

[15] *Id.* at 35.

[16] *Id*.

Supreme Court E-Library

Under this method, Philippine National Bank, as the trustee of the asset pool, would issue to investors Regular Smokey Mountain Asset Pool Participation Certificates (Participation Certificates). These Participation Certificates were subject to government redemption and interest, and were guaranteed by Home Guaranty.[17] The assets in the asset pool were used as securities for the Participation Certificates.[18]

On the same day they executed the Trust Agreement, the parties also executed a Contract of Guaranty.[19] Under the Contract of Guaranty, the trustee of the asset pool was authorized to execute a Deed of Assignment and Conveyance of the entire asset pool in favor of Home Guaranty should the latter be called to pay the total outstanding value of the matured Participation Certificates.[20]

On October 24, 2002, the Participation Certificates matured. At this point, Planters Development Bank (Planters Bank) had become the trustee.[21]

Because of the asset pool's inability to pay for the Participation Certificates, Planters Bank called on Home Guaranty's guaranty.[22]

On February 6, 2003, Home Guaranty's Board of Directors approved the call. R-II did not object to it.[23]

Thus, on July 30, 2004,[24] Planters Bank transferred the entire asset pool properties to Home Guaranty through a Deed of Assignment and Conveyance.[25]

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[17] *Id*.

[18] *Id*. at 34; *rollo*, p. 836, Cadano, Adriano, Corpuz, and Sarona's Memorandum.

[19] *Id*. at 263-268.

[20] *Id*. at 35-36.

[21] *Id*. at 36.

[22] *Id*.

[23] *Id*.

[24] *Id*.

[25] *Id*. at 271–273.

Supreme Court E-Library

To recover its exposure, Home Guaranty published a Notice of Sale[26] on July 21, 2006 in the Philippine Daily Inquirer, seeking to sell the properties in the asset pool.[27]

In response to this Notice of Sale, Alfred Wong King Wai (Wong) proposed to purchase two (2) lots in the asset pool located in Manila Harbour Centre, covered by Transfer Certificate of Title (TCT) Nos. 233421 and 233422 with a combined area of 28,926 square meters.[28]

Wong offered to pay ₱14,000.00 per square meter. However, this price was reduced to ₱13,300.00 per square meter because Home Guaranty allowed a 5% cash discount as an incentive for spot cash purchases.[29]

Home Guaranty's Board of Directors deferred action on Wong's proposal. It again published another Notice of Sale on October 22, 2006.[30] However, no one else came forward with a proposal. [31]

Home Guaranty referred Wong's proposal for review to the Office of the Government Corporate Counsel, which gave a favorable opinion.[32]

Thus, on July 21, 2008, Home Guaranty sold[33] the lots to Wong for ₱384,715,800.00, or ₱13,300.00 per square meter.[34] Wong

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[26] *Id*. at 274.

[27] *Id*. at 36.

[28] *Id*. at 31 and 36.

[29] *Id*. at 36-37; *rollo*, p. 334, Office Order No. 066, Series of 2004, or its Revised Disposition Guidelines. *See rollo*, pp. 661-662 where the Office of the Ombudsman's October 12, 2010 Resolution found that 5% discount was given by Home Guaranty for spot cash transactions but this could reach up to 15%.

[30] *Id*. at 275.

[31] *Id*. at 37.

[32] *Id*.

[33] *Id*. at 135-138.

[34] *Id*. at 661-662.

Supreme Court E-Library

designated La Paz Milling Corporation (La Paz) as his agent.[35] TCT Nos. 283618 and 283619 were issued in place of TCT Nos. 233421 and 233422, respectively.[36]

On October 16, 2009, Canlas filed a Complaint-Affidavit[37] before the Office of the Ombudsman against Home Guaranty's officers, namely, President Gonzalo Benjamin A. Bongolan (Bongolan), Executive Vice President Elmer Nonnatus A. Cadano (Cadano), Vice President of Guaranty Melinda M. Adriano (Adriano), Vice President of Asset Management Rafael P. Delos Santos (Delos Santos), Vice President of Corporate Services Corazon G. Corpuz (Corpuz), Vice President of Legal Danilo C. Javier (Javier), and Vice President of Management Services Jimmy B. Sarona (Sarona) (collectively Home Guaranty Officers).[38]

Canlas claimed that the Home Guaranty Officers were guilty of grave misconduct and of entering into a contract grossly disadvantageous to the government under Section 3(g) of Republic Act No. 3019.[39] He alleged that the lots were sold below their actual or appraised fair market value,[40] and that the government suffered damages in the amount ranging from ₱121,489,200.00 to ₱309,508,200.00.[41]

Canlas compared the purchase price of the sold lots to the prices of other properties in the same area.[42] He alleged that in 1999, Philippine National Bank sold an adjoining ₱20,000-square-meter lot for ₱440,000,000.00, or for ₱22,000.00 per square

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[35] *Id*. at 31 and 37.

[36] *Id*. at 926-929.

[37] *Id*. at 129-134.

[38] *Id*. at 65, Complaint-Affidavit.

[39] *Id*. at 33 and 133.

[40] *Id*. at 32 and 132.

[41] *Id*. at 33 and 132.

[42] *Id*. at 32-33.

meter. Based on this, the sold lots allegedly should have been worth at least ₱636,372,000.00 as of January 1999.[43]

Canlas also cited that in 2001, National Housing Authority sold an adjoining ₱15,000-square-meter lot for ₱262,500,000.00, or for ₱17,500.00 per square meter.[44] Based on this, Canlas asserted that the sold lots should have been worth at least ₱506,205,000.00 as of August 2001.[45]

Canlas emphasized that in 2009, Planters Bank offered to sell three (3) adjacent lots for ₱20,000.00 per square meter.[46]

Moreover, Canlas presented an Appraisal Report[47] dated July 2008 prepared by EValue Philippines, Inc. (EValue), which concluded that four (4) adjoining lots inside Harbour Centre had a fair market value of ₱24,000.00 per square meter.[48] Based on this, he asserted that the sold lots should have been worth at least ₱694,224,000.00.[49]

Canlas claimed that these prices were substantially higher than the purchase price of ₱384,715,800.00. [50]

In determining responsibility, Canlas asserted that the Home Guaranty Officers should be particularly liable. Bongolan allegedly "arranged, facilitated, authorized, and approved the execution of the [D]eed of [S]ale."[51] Javier and Delos Santos signed the Deed of Sale for and in behalf of Home Guaranty. The rest of the Home Guaranty Officers facilitated the execution.[52]

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[43] *Id*. at 32.

[44] *Id*.

[45] *Id*.

[46] *Id*.

[47] *Id*. at 164-197.

[48] *Id*. at 32-33. The CA Decision referred to EValue as EValue Plus, Inc. instead of EValue Philippines, Inc.

[49] *Id*. at 12-13.

[50] *Id*. at 32-33.

[51] *Id*. at 31.

[52] *Id*. at 31-32.

Supreme Court E-Library

On the other hand, the Home Guaranty Officers, in their respective counter-affidavits, argued that Home Guaranty acted within its mandate to guaranty loans and investment projects related to housing.[53] They explained that when Home Guaranty acquired the asset backing or collateral of the loan, it disposed of it to recover its payment, replenish its funds, and maintain its financial stability.[54]

The Home Guaranty Officers contended that the disposition of these properties was covered by Home Guaranty's Office Order No. 66,[55] or the Revised Disposition Guidelines (Disposition Guidelines).[56] They argued that they followed the Disposition Guidelines when they published the Notice of Sale twice.[57] They also sought the favorable opinion of the Office of the Government Corporate Counsel before executing the sale.[58]

They asserted that the sale was not grossly disadvantageous to the government because the purchase price exceeded the latest zonal valuation of the property, which was ₱9,750.00 per square meter.[59] The purchase price also allegedly exceeded its Minimum Disposition Value under the Effective Return Method and the Severity of Loss Method, which was the benchmark used by Home Guaranty under the Disposition Guidelines.[60]

Corpuz, Sarona, and Adriano also compared the sale price to other sales in the Manila Harbour Centre area and argued that the purchase price was at par with or was even higher than other sales. Other sales allegedly sold properties for ₱6,072.44

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[53] *Id*. at 33.

[54] *Id*. at 33-34.

[55] *Id*. at 332-342.

[56] *Id*. at 99.

[57] *Id*. at 100.

[58] *Id*.

[59] *Id*. at 101-103.

[60] *Id*.

per square meter in 2002, ₱6,000.00 per square meter in 2004, and ₱8,000.00 per square meter in 2007. They pointed out that the property sold at ₱8,000.00 per square meter was bought for a price of ₱16,450.00 per square meter in 1997. They insisted that the offer to sell at ₱20,000.00 per square meter cited by Canlas was merely an asking price which was still subject to negotiations. They further claimed that the Appraisal Report by EValue was not sufficient basis for the purchase price because it was based on asking prices, interviews, or consensus which were unsubstantiated opinions, unsupported by documents.[61]

Corpuz, Sarona, and Adriano further pointed out that Canlas was an officer of R-II and Harbour Centre, which had been filing unfounded cases against Home Guaranty to prevent it from recovering its exposure.[62]

Javier and Delos Santos argued that Home Guaranty was fortunate enough to have sold the properties despite lack of interested buyers, Harbour Centre's illegal stocking of iron and coal piles in the area, and R-II's failure to deliver road concreting and complete electrical facilities. They also showed that Harbour Centre offered to purchase the property for only ₱12,000.00 per square meter.[63]

For their individual defenses, Bongolan argued that he was not a signatory to the sale.[64] Cadano argued that he did not participate in the sale because he only joined Home Guaranty on September 1, 2008, which was after the sale's execution on July 21, 2008.[65] Corpuz, Sarona, and Adriano asserted that the sale was a corporate act and that they had no authority to bind Home Guaranty.[66] Javier and Delos Santos contended that although they signed the Deed of Sale, they did so pursuant to

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[61] *Id*. at 103-105.

[62] *Id*. at 105-106.

[63] *Id*. at 106-107.

[64] *Id*. at 100.

[65] *Id*. at 102.

[66] *Id*. at 103.

Supreme Court E-Library

Home Guaranty's Board of Directors' Resolution No. 55-2006, which authorized them to sign the document in case of the absence of Home Guaranty's President.[67]

In the Office of the Ombudsman's October 12, 2010 Decision,[68] the complaint was dismissed for lack of proof that the questioned transaction was disadvantageous to the government. It found that the Home Guaranty Officers were not directly responsible for the sale, as it was the Board of Directors that was liable.[69] It noted that there was no evidence showing that any other offer was made for the purchase of the properties.[70] Thus, the fair market value of the adjacent properties alleged by Canlas was merely speculative.[71]

Canlas elevated the matter to the Court of Appeals[72] after the Office of the Ombudsman denied his Motion for Reconsideration[73] in its December 29, 2010 Order.[74]

In its August 11, 2011 Decision,[75] the Court of Appeals affirmed the finding of the Office of the Ombudsman and dismissed the appeal.

The Court of Appeals found that it was Home Guaranty's Board of Directors, which approved the sale. Thus, the Home Guaranty Officers were duty bound to implement and execute this action. It also ruled that Home Guaranty was a juridical entity with a legal personality separate and distinct from those acting on its behalf.[76]

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[67] *Id*. at 107.

[68] *Id*. at 91-113.

[69] *Id*. at 110.

[70] *Id*. at 112.

[71] *Id*. at 111.

[72] *Id*. at 73-90.

[73] *Id*. at 120-128.

[74] *Id*. at 114-119.

[75] *Id*. at 30-54.

[76] *Id*. at 42-43.

Supreme Court E-Library

The Court of Appeals also noted that two (2) notices of sale were published. Only Wong made an offer after the first notice. No similar offer was made after the second notice. Home Guaranty then referred the matter to the Office of the Government Corporate Counsel and only after the latter allowed the sale to Wong did Home Guaranty approve the proposal.[77]

It also noted that the latest zonal value of the lots was only ₱9,750.00 per square meter, and were worth ₱11,668.49 per square meter using the Net Effective Return Method and ₱5,273.76 using the Severity of Loss Method.[78]

It also ruled that there was no evidence showing that Home Guaranty was impelled by bad faith when it agreed to the proposed purchase price.[79] Likewise, it held that "[c]ourts cannot interfere with executive or legislative discretion exercised within constitutional limits."[80]

It also found that Canlas was a stranger to the contract and had no right to dictate the parameters under which the contracting parties may determine price.[81]

Thus, the Court of Appeals denied Canlas' appeal and thereafter, his Motion for Reconsideration[82] in its November 29, 2011 Resolution.[83]

Canlas then filed this Petition before this Court on February 8, 2012.[84]

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[77] *Id*. at 47.

[78] *Id*. at 47.

[79] *Id*. at 48.

[80] *Id*. at 52.

[81] *Id*. at 53.

[82] *Id*. at 60-71.

[83] *Id*. at 56-58.

[84] *Id*. at 8.

Supreme Court E-Library

Canlas reiterates his claim that the purchase price of ₱384,715,800.00 was significantly below the properties' fair market value, which allegedly amounted to around ₱506,205,000.00 to ₱694,224,000.00. He again uses as basis the purchase prices in the years 1999 and 2001 of adjacent properties, the current sale offers, and the independent appraisal of EValue.[85]

Canlas insists that the contract was grossly disadvantageous to the government considering that the government suffered damages in at least ₱121,489,200.00 to ₱309,508,200.00.[86] He argues that the Bureau of Internal Revenue's zonal valuation is not the proper basis to determine the properties' fair market value.[87]

He further argues that respondents' lack of bad faith, malice, or profit is immaterial to prove a violation under Section 3(g) of Republic Act No. 3019.[88]

Canlas further insists that respondents are guilty of misconduct as they admitted to directly participating in the implementation and execution of the sale on behalf of Home Guaranty, despite knowing that it was grossly disadvantageous to the government.[89]

Canlas further claims that although a corporation has a separate and distinct personality from its stockholders, directors, and officers, those who participated in the commission of the corporation's crime may be held liable for the crime.[90]

Respondents filed their Comments.[91]

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[85] *Id*. at 11-13.

[86] *Id*. at 17.

[87] *Id*. at 18.

[88] *Id*. at 20.

[89] *Id*. at 22-23.

[90] *Id*. at 24.

[91] *Id*. at 604-625. Adriano, Cadano, Corpuz, and Sarona's Comment/Opposition; *rollo*, pp. 626-652, Bongolan's Comment; *rollo*, pp. 684-725, Javier and Santos' Comment.

Supreme Court E-Library

They question the standing of Canlas to file the Petition.[92] They emphasize that the decision of the Ombudsman is unappealable as exoneration is included under Section 27 of Republic Act No. 6770 and Rule III, Section 7 of Administrative Order No. 07, as amended by Administrative Order No. 17-03.[93]

They further argue that the purchase price was reasonable and the contract was not grossly disadvantageous to the government.[94] They insist that the government did not suffer any loss in the sale of the properties.[95]

The also allege that the sale was within the powers of Home Guaranty and that it was necessary to maintain its financial stability.[96] They aver that since Home Guaranty had the authority to sell the properties to recover its guaranty exposure, it had the discretion to determine whether or not the proposed purchase price was fair and reasonable.[97] It follows then that courts cannot interfere with the discretion of other branches of government exercised within constitutional limits.[98]

Respondents further assert that the sale enjoys the presumption of regularity and that Canlas failed to rebut this presumption.[99] They point out that the acts of the Board of Directors are presumed regular as the directors were appointed by the President of the Philippines, and they act as the latter's alter ego.[100]

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[92] *Id*. at 869-870.

[93] *Id*. at 866-868.

[94] *Id*. at 817, Bongolan's Memorandum; *rollo*, p. 830, Cadano, Adriano, Corpuz, and Sarona's Memorandum; *rollo*, p. 877, Javier and Delos Santos' Memorandum.

[95] *Id*. at 818, Bongolan's Memorandum.

[96] *Id*. at 881, Javier and Delos Santos' Memorandum; *rollo*, pp. 836-837, Cadano, Adriano, Corpuz, and Sarona's Memorandum.

[97] *Id*. at 832, Cadano, Adriano, Corpuz, and Sarona's Memorandum.

[98] *Id*. at 833-834, Cadano, Adriano, Corpuz, and Sarona's Memorandum.

[99] *Id*. at 833, Cadano, Adriano, Corpuz, and Sarona's Memorandum; *rollo*, p. 872, Javier and Delos Santos' Memorandum.

[100] *Id*. at 872, Javier and Delos Santos' Memorandum.

Supreme Court E-Library

In any case, the sale was an act of Home Guaranty's Board of Directors.[101] Respondents merely implemented and acted in accordance with a lawful directive of the Board of Directors.[102]

Furthermore, they assert that the procedure they followed in selling the properties was in accordance with Home Guaranty's mandate, function, and the requirements of due diligence.[103]

They also insist that they cannot be held liable for gross misconduct as Canlas failed to prove their bad faith.[104]

They further claim that the suit is a harassment suit at the instance of R-II, which has been filing cases to protect its interest in the asset pool and in the sold properties.[105]

Canlas filed a Consolidated Reply.[106]

Thereafter, the parties submitted their respective Memoranda.[107]

For resolution are the following issues:

First, whether or not Jerome R. Canlas has the legal standing to file the administrative case;

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[101] *Id*. at 817, Bongolan's Memorandum.

[102] *Id*. at 821, Bongolan's Memorandum; *rollo*, pp. 837-838, Cadano, Adriano, Corpuz, and Sarona's Memorandum; *rollo*, pp. 873-874, Javier and Delos Santos' Memorandum.

[103] *Id*. at 820, Bongolan's Memorandum; *rollo*, p. 835, Cadano, Adriano, Corpuz, and Sarona's Memorandum; *rollo*, p. 885, Javier and Delos Santos' Memorandum.

[104] *Id*. at 832, Cadano, Adriano, Corpuz, and Sarona's Memorandum; *rollo*, p. 821, Bongolan's Memorandum; *rollo*, p. 876, Javier and Delos Santos' Memorandum.

[105] *Id*. at 822, Bongolan's Memorandum; *rollo*, p. 843, Cadano, Adriano, Corpuz, and Sarona's Memorandum; *rollo*, p. 886, Javier and Delos Santos' Memorandum.

[106] *Id*. at 782-793, Canlas' Consolidated Reply.

[107] *Id*. at 802-825, Bongolan's Memorandum; *rollo,* pp. 826-848, Cadano, Adriano, Corpuz, and Sarona's Memorandum; *rollo,* pp. 849-889, Javier and Delos Santos' Memorandum; *rollo,* pp. 949-869, Canlas' Memorandum.

Second, whether or not the Office of the Ombudsman's October 12, 2010 Decision dismissing the complaint is appealable;

Third, whether or not the purchase price for the sale is unreasonable;

Fourth, whether or not the Home Guaranty Corporation Officers are the proper parties charged with the offense;

Fifth, whether or not the Home Guaranty Corporation Officers can be administratively liable for grave misconduct; and

Finally, whether or not the contract of sale is grossly disadvantageous to the government.

I

Respondents Javier and Delos Santos argue that Canlas does not have the standing to pursue the case as he does not stand to be adversely affected by the Office of the Ombudsman's October 12, 2010 Decision. Canlas is allegedly not a party to the sale and is just a mere witness to an alleged offense against the government. They insist that only the involved government agency has the standing to appeal the Ombudsman's decision.[108]

They further emphasize that while Canlas belatedly admitted that he is an officer of R-II and Harbour Centre, these two (2) corporations are not parties to the proceedings, and Canlas did not present any authority from these corporations to file the complaint. Moreover, these corporations are barred by *res judicata* from questioning the sale as an indirect contempt proceeding, in which the sale was already questioned and in which the properties' restoration in the asset pool had been prayed for, had already been ruled upon.[109]

They also assert that the companies wherein Canlas is an officer did not participate in the public sale. Thus, they cannot collaterally attack it.[110]

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[108] *Id*. at 869.

[109] *Id*. at 870.

[110] *Id*. at 873.

Supreme Court E-Library

On the other hand, Canlas argues that he has legal standing to file the Petition.[111] He admits that he is R-II's Vice President for Legal, and Harbour Centre's Corporate Secretary. Both corporations are holders of subordinated Participation Certificates and are the administrators or property managers of Harbour Centre pursuant to the Trust Agreement. Thus, they both have an interest in the Smokey Mountain Asset Pool and are allegedly injured by the illegal sale. Canlas insists that he stands to be benefited or injured by the judgment in this case.[112]

Canlas does not have the standing to appeal this case.

The Ombudsman was given the power to evaluate an administrative complaint even though the complainant does not have a personal interest in the case.[113]

Under Article XI, Section 12 of the 1987 Constitution, the Ombudsman has the power to act on any complaint against those in public service:

> Section 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

In line with this constitutional mandate, Section 15(1) of Republic Act No. 6770 states:

> Section 15. *Powers, Functions and Duties.* — The Office of the Ombudsman shall have the following powers, functions and duties:
>
> (1) Investigate and prosecute **on its own or on complaint by any person**, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal,

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[111] *Id*. at 956-957.

[112] *Id*. at 957.

[113] *Bueno v. Office of the Ombudsman*, 743 Phil. 313, 330 (2014) [Per *J*. Villarama, Jr., Third Division]; See also *Baltazar v. Mariano*, 539 Phil. 131, 140 (2006) [Per *J*. Velasco, Third Division].

Supreme Court E-Library

> unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the *Sandiganbayan* and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases[.] (Emphasis supplied)

Thus, no matter the identity of the complainant, the Ombudsman may act on the matter. Moreover, it may, on its own, inquire into illegal acts of public officials, which may be discovered from any source.[114]

For administrative complaints, the following are the cases which the Ombudsman is bound to act on:

Section 19. *Administrative Complaints*. — The Ombudsman shall act on all complaints relating, but not limited to acts or omissions which:

(1) Are contrary to law or regulation;

(2) Are unreasonable, unfair, oppressive or discriminatory;

(3) Are inconsistent with the general course of an agency's functions, though in accordance with law;

(4) Proceed from a mistake of law or an arbitrary ascertainment of facts;

(5) Are in the exercise of discretionary powers but for an improper purpose; or

(6) Are otherwise irregular, immoral or devoid of justification.[115]

However, if the "the complainant has no sufficient personal interest in the subject matter of the grievance," the Ombudsman may choose *not* to investigate the administrative act complained of. [116] Section 20 of Republic Act No. 6770 provides:

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[114] *Id*. at 326-327.

[115] Rep. Act No. 6770, Sec. 19.

[116] *Bueno v. Office of the Ombudsman*, 743 Phil. 313, 330 (2014) [Per *J.* Villarama, Jr., Third Division].

Supreme Court E-Library

Section 20. *Exceptions*. — The Office of the Ombudsman may not conduct the necessary investigation of any administrative act or omission complained of if it believes that:

(1) The complainant has an adequate remedy in another judicial or quasi-judicial body;

(2) The complaint pertains to a matter outside the jurisdiction of the Office of the Ombudsman;

(3) The complaint is trivial, frivolous, vexatious or made in bad faith;

(4) The complainant has no sufficient personal interest in the subject matter of the grievance; or

(5) The complaint was filed after one (1) year from the occurrence of the act or omission complained of. (Emphasis supplied)

Section 20 of Republic Act No. 6770 uses the word "may" which signifies that it is permissive and not imperative. The power of the Ombudsman to act on an administrative complaint by a person without any personal interest in the case is, thus, discretionary.[117]

In *Bueno v. Office of the Ombudsman*:[118]

Petitioners are mistaken in asserting that Section 20 (4) is a bar to the Ombudsman's investigation into their acts or omissions in the case of Ranchez based on the supposed lack of personal interest on the part of private respondents who are the complainants in OMB-C-A-0065-B.

In *Office of the Ombudsman v. Court of Appeals,* the Court noted that Section 20 of RA 6770 has been clarified by Administrative Order No. 17 (AO 17), which amended Administrative Order No. 07 (AO 07), otherwise known as the Rules of Procedure of the Office of the Ombudsman. Section 4, Rule III of the amended Rules of Procedure of the Office of the Ombudsman, reads:

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[117] *Id*. at 331.

[118] 743 Phil. 313 (2014) [Per *J.* Villarama, Jr., Third Division].

> Section 4. Evaluation. — Upon receipt of the **complaint**, the same shall be evaluated to determine whether the same **may be**:
>
> **a) dismissed outright for <u>any grounds stated under Section 20</u> of Republic Act No. 6770, provided, however, that <u>the dismissal thereof is not mandatory and shall be discretionary</u> on the part of the Ombudsman or the Deputy Ombudsman concerned;**
>
> b) treated as a grievance/request for assistance which may be referred to the Public Assistance Bureau, this Office, for appropriate action under Section 2, Rule IV of this Rules;
>
> c) referred to other disciplinary authorities under paragraph 2, Section 23, R.A. 6770 for the taking of appropriate administrative proceedings;
>
> d) referred to the appropriate office/agency or official for the conduct of further fact-finding investigation; or
>
> e) docketed as an administrative case for the purpose of administrative adjudication by the Office of the Ombudsman. (Emphasis in the original; underscoring supplied.)

Thus, even if the ground raised is the supposed lack of sufficient personal interest of complainants in the subject matter of the grievance under Section 20 (4), the dismissal on that ground is not mandatory and is discretionary on the part of the Ombudsman or Deputy Ombudsman evaluating the administrative complaint.[119] (Citations omitted)

Thus, the Ombudsman may prosecute or investigate the complaint with or without the complainant's personal interest in the outcome of the case.

There is clearly no question on the legal standing of private respondents to file the administrative complaint against petitioners before the Ombudsman. Indeed, the Office of the Ombudsman is mandated to "investigate and prosecute on its own or **on complaint by any person**, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal,

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[119] *Id*. at 325-326.

Supreme Court E-Library

unjust, improper or inefficient." The Ombudsman can act on anonymous complaints and *motu proprio* inquire into alleged improper official acts or omissions from whatever source, *e.g.*, a newspaper. Thus, any complainant may be entertained by the Ombudsman for the latter to initiate an inquiry and investigation for alleged irregularities.[120] (Emphasis in the original, citation omitted)

The Ombudsman's power stems from its role as the "protector of the people," constitutionally vested with a duty to enforce laws against graft and corrupt practices committed by public officials and employees. In *Uy v. Sandiganbayan*:[121]

In September 1989, Congress passed RA 6770 providing for the functional and structural organization of the Office of the Ombudsman. As in the previous laws on the Ombudsman, RA 6770 gave the present Ombudsman not only the duty to receive and relay the people's grievances, but also the duty to investigate and prosecute for and in their behalf, civil, criminal and administrative offenses committed by government officers and employees as embodied in Sections 15 and 11 of the law.

Clearly, the Philippine Ombudsman departs from the classical Ombudsman model whose function is merely to receive and process the people's complaints against corrupt and abusive government personnel. The Philippine Ombudsman, as protector of the people, is armed with the power to prosecute erring public officers and employees, giving him an active role in the enforcement of laws on anti-graft and corrupt practices and such other offenses that may be committed by such officers and employees. The legislature has vested him with broad powers to enable him to implement his own actions.[122]

The State interest being upheld here is the principle that public office is a public trust.[123] Public officers and employees are

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[120] *Id*. at 327.

[121] 407 Phil. 154 (2001) [Per *J*. Puno, *En Banc*].

[122] *Id*. at 172.

[123] CONST., Art. XI, Sec. 1 provides:

Section 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.

given duties and powers pertinent to sovereignty, which they hold in trust for, and exercise in behalf of, the public.[124] Thus, they are expected to uphold public interests. As such, they are held to higher standards not usually required of ordinary citizens to keep the faith of the people in the State.

That is why in case of administrative offenses, it is the character of the public officers or employees that is looked into. The objective is not so much as to penalize an erring officer or employee, but to improve public service and preserve the trust and confidence of the people in our government.[125]

Thus, the law allows the filing of cases to the Ombudsman against public officers by any complainant. The Ombudsman is a tool to maintain this faith.

However, this particular State interest must also be balanced with two (2) other State interests, which arise after the filing of a case against a public officer or employee: (i) the State interest in affording due process to all persons; and (ii) the State interest in assuring efficiency of government functions, particularly through the protection of its officers from harassment.

While public office is a public trust, public officers must not be exposed to continued and persistent lawsuits that can derail their ability to discharge their duties once it has been found that there is no substantial evidence of their guilt. The effective administration of the State's policies is of paramount importance, which should not be hampered by time-consuming, baseless, and repetitive suits. Thus, if there is a clear finding, supported by substantial evidence, that the public officer is not guilty of the charges, this finding must be given great weight and must be respected.

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[124] *Torredes v. Villamor,* 586 Phil. 424, 431 (2008) [Per *J.* Nachura, Third Division].

[125] *Office of the Ombudsman v. De Sahagun,* 584 Phil.119, 126 (2008) [Per *J.* Austria-Martinez, Third Division].

Supreme Court E-Library

Therefore, not all may appeal to question a decision of the Ombudsman.[126]

In administrative cases filed under the Civil Service Law, an allowed appeal may only be brought by the party adversely affected by the decision.[127]

For administrative cases filed with the Ombudsman, Rule III of Administrative Order No. 07, as amended, states:[128]

> Section 7. *Finality and Execution of Decision. — Where the respondent is absolved of the charge*, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, *the decision shall be final, executory and unappealable.* In all other cases, the decision may be *appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court*, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration.
>
> An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive

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[126] *Baltazar v. Mariano,* 539 Phil. 131, 140 (2006) [Per *J.* Velasco, Third Division].

[127] Pres. Decree No. 807, Secs. 37 and 39 state:

> Section 37. *Disciplinary Jurisdiction*. — (a) The Commission shall decide upon appeal all administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty days, or fine in an amount exceeding thirty days' salary, demotion in rank or salary or transfer, removal or dismissal from Office. . . .
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> . . . . . .
>
> Section 39. *Appeals*. — (a) Appeals, where allowable, **shall be made by the party adversely affected by the decision** within fifteen days from receipt of the decision unless a petition for reconsideration is seasonably filed, which petition shall be filed within fifteen days. . . . (Emphasis supplied)

See also Office of the Ombudsman v. Gutierrez, G.R. No. 189100, June 21, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/june2017/189100.pdf> [Per *J.* Velasco, Third Division].

[128] OMB Adm. Order No. 17-03 (2003).

suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.

A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be a ground for disciplinary action against said officer. (Emphasis supplied)

Thus, the Ombudsman's decision may not be appealed if it dismisses the complaint or imposes the penalty of public censure or reprimand, suspension of not more than one (1) month, or a fine equivalent to one (1)-month salary. Otherwise, it may be appealed to the Court of Appeals under the requirements and conditions set forth in Rule 43 of the Rules of Court.

In *Cobarde-Gamallo v. Escandor*,[129] this Court identified two (2) types of decisions by the Ombudsman in administrative cases—appealable and unappealable:

It can be gleaned from the afore-quoted provision that the OMB's decisions in administrative cases may either be unappealable or appealable. The unappealable decisions are final and executory, to wit: (1) respondent is absolved of the charge; (2) the penalty imposed is public censure or reprimand; (3) suspension of not more than one month; and (4) a fine equivalent to one month's salary. The appealable decisions, on the other hand, are those falling outside the aforesaid enumeration, and may be appealed to the CA under Rule 43 of the Rules of Court, within 15 days from receipt of the written notice of the decision or order denying the motion for reconsideration. . . .[130] (Citation omitted)

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[129] *Cobarde-Gamallo v. Escandor,* G.R. Nos. 184464 & 184469, June 21, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/june2017/184464.pdf> [Per *J.* Velasco, Jr., Third Division]

[130] *Id*. at 4-5.

Supreme Court E-Library

In *Dagan v. Office of the Ombudsman*,[131] this Court further elucidated that when the Ombudsman has exonerated the defendant, its decision is unappealable.

> Section 27 of Republic Act No. 6770 or otherwise known as "The Ombudsman Act of 1989," provides:
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> . . . . . .
>
> The above-quoted provision logically implies that where the respondent is absolved of the charge, the decision shall be final and unappealable. Although the provision does not mention absolution, it can be inferred that since decisions imposing light penalties are final and unappealable, with greater reason should decisions absolving the respondent of the charge be final and unappealable.
>
> This inference is validated by Section 7, Rule III of Administrative Order No. 07, series of 1990 (otherwise known as the Rules of Procedure of the Office of the Ombudsman), to wit:
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> . . . . . .
>
> It was thus clarified that there are two instances where a decision, resolution or order of the Ombudsman arising from an administrative case becomes final and unappealable: (1) where the respondent is absolved of the charge; and (2) in case of conviction, where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one[-]month salary.
>
> In the instant case, the respondents were absolved of the charges against them by the Office of the Ombudsman. Such decision is final and unappealable.[132] (Citations omitted)

Reyes, Jr. v. Belisario[133] explained that a complainant loses his or her right to appeal once respondent becomes absolved:

> The clear import of Section 7, Rule III of the Ombudsman Rules is to *deny the complainant in an administrative complaint the right to appeal where the Ombudsman has exonerated the respondent of the administrative charge, as in this case.* The complainant, therefore,

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[131] 721 Phil. 400 (2013) [Per *J.* Perez, *En Banc*].

[132] *Id.* at 409-411.

[133] 612 Phil. 936 (2009) [Per *J.* Brion, Second Division].

is not entitled to any corrective recourse, whether by motion for reconsideration in the Office of the Ombudsman, or by appeal to the courts, to effect a reversal of the exoneration. Only the respondent is granted the right to appeal but only in case he is found liable and the penalty imposed is higher than public censure, reprimand, one-month suspension or a fine equivalent to one[-]month salary.[134] (Emphasis supplied)

In the case at bar, the Office of the Ombudsman's October 12, 2010 Decision exonerated respondents. Thus, Canlas has no right to appeal this Decision. He has no other recourse. "The right to appeal is a mere statutory privilege and may be exercised only in the manner prescribed by, and in accordance with, the provisions of law. There must then be a law expressly granting such right."[135]

Considering there is no law allowing Canlas to appeal, he has no right to appeal.

This absence of a right to appeal affects Canlas' legal standing in this case. He is not a party entitled to the relief prayed for, or one who will benefit or be injured by the results of the suit.

Locus standi is "a right of appearance in a court of justice . . . on a given question."[136] In civil, criminal, and administrative cases, standing is governed by Rule 3, Section 2 of the Rules of Court, which states:

Section 2. *Parties in interest*. — A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

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[134] *Id*. at 954.

[135] *Macalalag v. Ombudsman,* 468 Phil. 918, 924 (2004) [Per *J.* Vitug, Third Division].

[136] *Baltazar v. Mariano,* 539 Phil. 131, 139 (2006) [Per. *J.* Velasco, Third Division].

Supreme Court E-Library

Standing depends on a party's right to the relief prayed for. This party must be entitled to the relief before he or she may file a suit. The party affected by the judgment in the suit or entitled to the relief prayed for must pursue the action.[137]

In *Baltazar v. Mariano,*[138] this Court ruled that a party who files a criminal case before the Ombudsman but has no interest in it has no standing to pursue a petition before this Court:

> In the case at bar which involves a criminal proceeding stemming from a civil (agrarian) case, it is clear that petitioner is not a real party in interest. Except being the complainant, the records show that petitioner is a stranger to the agrarian case. . . .
>
> Petitioner asserts that he is duly authorized by Faustino Mercado to institute the suit and presented a Special Power of Attorney (SPA) from Faustino Mercado. However, such SPA is unavailing for petitioner. For one, petitioner's principal, Faustino Mercado, is an agent himself and as such cannot further delegate his agency to another. Otherwise put, an agent cannot delegate to another the same agency. . . . For another, a re-delegation of the agency would be detrimental to the principal as the second agent has no privity of contract with the former. In the instant case, petitioner has no privity of contract with Paciencia Regala, owner of the fishpond and principal of Faustino Mercado.
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> . . . . . .
>
> Clearly, petitioner is neither a real party in interest with regard to the agrarian case, nor is he a real party in interest in the criminal proceedings conducted by the Ombudsman as elevated to the Sandiganbayan. He is not a party who will be benefited or injured by the results of both cases.
>
> . . . . . .
>
> Petitioner only surfaced in November 1994 as complainant before the Ombudsman. Aside from that, not being an agent of the parties in the agrarian case, he has no *locus standi* to pursue this petition.

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[137] *Id*. at 140-141.

[138] 539 Phil. 131 (2006) [Per. *J*. Velasco, Third Division].

Supreme Court E-Library

He cannot be likened to an injured private complainant in a criminal complaint who has direct interest in the outcome of the criminal case.

More so, we note that the petition is not pursued as a public suit with petitioner asserting a "public right" in assailing an allegedly illegal official action, and doing so as a representative of the general public. He is pursuing the instant case as an agent of an ineffective agency.

. . . . . .

Even if we consider the instant petition as a public suit, where we may consider petitioner suing as a "stranger," or in the category of a "citizen," or "taxpayer," still petitioner has not adequately shown that he is entitled to seek judicial protection. In other words, petitioner has not made out a sufficient interest in the vindication of the public order and the securing of relief as a "citizen" or "taxpayer"; more so when there is no showing that he was injured by the dismissal of the criminal complaint before the Sandiganbayan.[139]

In the case at bar, Canlas filed the administrative case in his personal capacity. His Complaint-Affidavit stated:

I, JEROME R. CANLAS, of legal age, married, and with address at R-II Bldg., 136 Malakas St., Diliman, Quezon City, after having been sworn in accordance with law, hereby depose and state:[140]

There is no showing that Canlas filed the instant case as an authorized representative of R-II or Harbour Centre, or that he was authorized by these two (2) entities to file the instant case. He only admitted that he was connected to these two (2) entities in his Consolidated Reply dated September 28, 2012[141] and in his Memorandum dated May 30, 2013,[142] after respondents had pointed out this circumstance.

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[139] *Id*. at 141-143.

[140] *Rollo*, p. 129.

[141] *Id*. at 784.

[142] *Id*. at 957.

Supreme Court E-Library

In his personal capacity, there is no showing that he stands to be benefited or injured by the finding of guilt of respondents. He is not a party to the Trust Agreement or the Contract of Guaranty. Neither did he allege that he invested in the Project nor was he a holder of any Participation Certificate. He did not claim to own any of the properties in the asset pool, or to have any claim in the properties covered by the contract of sale between Home Guaranty and Wong.

Thus, Canlas has no standing to file the instant appeal.

II

Assuming Canlas has the legal standing to question the ruling of the Ombudsman, he may only do so if the Ombudsman acted with grave abuse of discretion amounting to lack or excess of jurisdiction. Generally, a decision by the Ombudsman absolving respondents is unappealable. However, if it is shown that the Ombudsman acted with grave abuse of discretion, then the complainant may file a Rule 65 Petition with the proper court. In *Dagan v. Office of the Ombudsman*:[143]

> However, petitioner is not left without any remedy. In *Republic v. Francisco*, we ruled that decisions of administrative or quasi-administrative agencies which are declared by law final and unappealable are subject to judicial review if they fail the test of arbitrariness, or upon proof of gross abuse of discretion, fraud or error of law. When such administrative or quasi-judicial bodies grossly misappreciate evidence of such nature as to compel a contrary conclusion, the Court will not hesitate to reverse the factual findings. *Thus, the decision of the Ombudsman may be reviewed, modified or reversed via petition for certiorari under Rule 65 of the Rules of Court, on a finding that it had no jurisdiction over the complaint, or of grave abuse of discretion amounting to excess or lack of jurisdiction.*
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> . . . . . .
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> Basic is the rule that the findings of fact of the Office of the Ombudsman are conclusive when supported by substantial evidence and are accorded due respect and weight, especially when, as in this

[143] 721 Phil. 400 (2013) [Per *J.* Perez, *En Banc*].

case, they are affirmed by the Court of Appeals. It is only when there is grave abuse of discretion by the Ombudsman that a review of factual findings may aptly be made. In reviewing administrative decisions, it is beyond the province of this Court to weigh the conflicting evidence, determine the credibility of witnesses, or otherwise substitute its judgment for that of the administrative agency with respect to the sufficiency of evidence. It is not the function of this Court to analyze and weigh the parties' evidence all over again except when there is serious ground to believe that a possible miscarriage of justice would thereby result.

Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner — which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law — in order to exceptionally warrant judicial intervention.[144] (Citations omitted)

It is incumbent upon Canlas to prove that the Ombudsman gravely abused her discretion such that she acted whimsically, arbitrarily, or grossly as to amount to a refusal to perform her duty.

However, Canlas did not argue that the Ombudsman committed grave abuse of discretion in the case at bar. What Canlas contends is that the Office of the Ombudsman's October 12, 2010 Decision is still appealable because respondents are being accused of an offense penalized with dismissal from service.[145]

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[144] *Id*. at 411-414.

[145] *Rollo*, p. 955. Section 46 of the Revised Uniform Rules on Administrative Cases in the Civil Service, CSC Resolution No. 1101502 states:

Section 46. *Classification of Offenses*. — Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.

A. The following grave offenses shall be punishable by dismissal from the service:

. . . . . .

3. Grave Misconduct[.]

Supreme Court E-Library

However, in determining whether the Office of the Ombudsman's October 12, 2010 Decision is appealable, the deciding factor is the *penalty imposed by the Ombudsman in the decision itself*. It is not determined by the penalty imposed for the offense as provided under the law.

Thus, even if grave misconduct is punishable by dismissal under the rules, it is the decision that determines whether it is appealable or unappealable to the higher courts. If the Ombudsman finds that respondents are not guilty and imposes no penalty, the decision is unappealable.

Respondents were absolved by the Ombudsman from Canlas' administrative charges. Thus, this finding is unappealable.

III

Canlas maintains that the selling price of the properties was way below their actual fair market value based on 1999 and 2001 purchase prices, current sale offers, and independent appraisals of adjoining properties.[146] He claims that the fair market value of the lots amounted from ₱506,2015,000.00 to ₱694,224,000.00. However, the properties were priced only at ₱384,715,800.00.[147]

He insists that the government suffered damages amounting to the difference between the market value of the property and the purchase price. Thus, the damages caused to the government ranged from ₱121,489,200.00 to ₱309,508,200.00.[148]

Canlas argues that the Bureau of Internal Revenue zonal valuation cannot be the basis to determine the properties' fair market value. The Bureau of Internal Revenue zonal valuations are allegedly computed for taxation purposes and are only an indication of a property's fair market value, not the fair market value itself. It is also usually lower than the properties' current fair market value and is used as the government's standard for

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[146] *Rollo*, p. 952.

[147] *Id*. at 952-954 and 958.

[148] *Id*.

the purchase of properties, but not for their sale. He asserts that there is no law that provides that the Bureau of Internal Revenue zonal valuation ought to be used as a standard for its sale. He insists that other factors must be considered in determining the fair market value, such as cost of acquisition, value of similar properties, location, size, and shape of the properties.[149]

Canlas asserts that respondents' allegation that the prices of properties in the area have gone down is self-serving and lacks credibility.[150]

On the other hand, respondents argue that the purchase price is reasonable.[151] They insist that the government did not suffer any loss in the sale of the properties.[152]

They assert that the purchase price of ₱13,300.00 per square meter is way above the properties' Bureau of Internal Revenue zonal valuation of ₱9,750.00.[153]

Respondent Bongolan avers that under the National Internal Revenue Code, the Bureau of Internal Revenue zonal valuation is the government's standard to determine the reasonableness of the price of the properties or their fair market value. It is the benchmark to determine just compensation when the government acquires private property for infrastructure projects.[154]

They also compare the purchase price to other standards. Bolongan alleges that the price of ₱13,300.00 per square meter is higher than the Minimum Disposition Value of the properties, as computed using the two (2) formulas provided under Home Guaranty's Disposition Guidelines. Under the Net Effective Return Method formula, the minimum disposition value of the

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[149] *Id*. at 959.

[150] *Id*. at 960.

[151] *Id*. at 817, 830, and 877.

[152] *Id*. at 818.

[153] *Id*. at 818 and 877.

[154] *Id*. at 818.

Supreme Court E-Library

properties amounts only to ₱11,668.49 per square meter. Under the Severity of Loss Method formula, it amounts only to ₱5,273.76 per square meter.[155]

The purchase price also allegedly exceeds the book value of the properties, which amounts to ₱10,971.29 per square meter.[156] It is also higher than the market value determined by the City Assessor of the City of Manila.[157]

Respondents illustrate that the purchase price is higher or at least equal to the 2006 and 2009 purchase price of other lots located in the vicinity.[158]

Respondents argue that Canlas failed to substantiate his charges. They maintain that Canlas compared the purchase price to the properties' purchase price in 1999-2001, a different time period.[159] They also hold that the appraisal of the properties' market value by EValue was based on mere offers to sell and price listings.[160] They likewise emphasize that even Harbour Centre offered to buy the properties for only ₱12,000.00 per square meter.[161]

They claim that there was a downward trend in the value of the properties in the area, in light of the 1997 Asian financial crisis.[162]

The properties also allegedly had no other interested buyers and Home Guaranty was lucky enough to have sold them.[163]

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[155] *Id*.

[156] *Id*. *citing* OXFORD DICTIONARY OF BUSINESS 63 (2nd ed. 1996), Bongolan defined book value as "the value of an asset as recorded in the books of account of an organization." It is the "historical cost of the asset reduced by amounts written off for depreciation."

[157] *Id*. at 877.

[158] *Id*. at 819, 832, and 878.

[159] *Id*. at 832 and 879-880.

[160] *Id*. at 879-880.

[161] *Id*. at 833 and 878.

[162] *Id*. at 878.

[163] *Id*. at 877.

Respondents Javier and Delos Santos also aver that the properties' price was affected because Harbour Centre was illegally occupying the properties by stocking the area with iron and coal piles. Furthermore, the sold properties had incomplete road concreting and electrical facilities, and flooding due to poor drainage systems because R-II failed to deliver these basic utilities.[164] They further state that the assets are encumbered with insufficient documentation, and are under litigation or are troubled with illegal occupants, unpaid contractors and landowners, and other third party claims.[165]

Respondents Javier and Delos Santos invoke that Home Guaranty had to sell the properties as soon as possible as it had a cash position of only ₱379,000,000.00 but was already obliged to pay for ₱12,650,000,000.00 of guaranty claims in June 2001. They claim that the slump in the real estate industry and a decline of the shelter industry's revenue before 2001 caused it to dispose of its assets at a slow rate from 1999 to 2006.[166] They assert that the national government's equity infusion is still insufficient to maintain Home Guaranty's liquidity and the viability of its operations.[167]

In its August 11, 2011 Decision, the Court of Appeals ruled in favor of respondents. It found that the purchase price of ₱13,300.00 was reasonable considering that the Bureau of Internal Revenue zonal value of the lots is only ₱9,750.00 per square meter, and are worth ₱11,668.49 per square meter using the Net Effective Return Method and ₱5,273.76 using the Severity of Loss Method. It also ruled that there is no law prohibiting the parties from using the Bureau of Internal Revenue zonal value as its reference for the purchase price. It found that there was no fixed standard in determining fair market value, and Home Guaranty, as the seller, had the discretion to determine what it deemed as a reasonable price under the circumstances.[168]

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[164] *Id*. at 878-879.

[165] *Id*. at 882.

[166] *Id*.

[167] *Id*. at 883.

[168] *Id*. at 47-48.

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This Court affirms the ruling of the Court of Appeals.

III.A

First, Canlas is raising a question of fact, which is not proper in a Rule 45 Petition. Only questions of law may be raised in a petition for review under Rule 45. Questions of fact will not be entertained by this Court, as it is not its function to analyze and weigh evidence all over again.[169] In *Pascual v. Burgos*:[170]

> Review of appeals filed before this court is "not a matter of right, but of sound judicial discretion[.]" This court's action is discretionary. Petitions filed "will be granted only when there are special and important reasons[.]" . . .
>
> The Rules of Court require that only questions of law should be raised in petitions filed under Rule 45. This court is not a trier of facts. It will not entertain questions of fact as the factual findings of the appellate courts are "final, binding[,] or conclusive on the parties and upon this [c]ourt" when supported by substantial evidence. Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this court.
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> . . . . . .
>
> A question of fact requires this court to review the truthfulness or falsity of the allegations of the parties. This review includes assessment of the "probative value of the evidence presented." There is also a question of fact when the issue presented before this court is the correctness of the lower courts' appreciation of the evidence presented by the parties.[171] (Citations omitted)

In this case, Canlas is bringing into issue the correct fair market value of the properties, which is a question of fact. It requires the examination and the weighing of evidence to determine the value of the properties. Such a question cannot be raised in a Petition for Review on Certiorari under Rule 45.

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[169] *Miro v. Vda. de Erederos*, 721 Phil. 772, 785-787 (2013) [Per *J.* Brion, Second Division].

[170] 776 Phil. 167 (2016) [Per *J.* Leonen, Second Division].

[171] *Id*. at 181-183.

This Court has laid down exceptions to this rule as follows:

(1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) The findings of the Court of Appeals are contrary to those of the trial court; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and (10) The finding of fact of the Court of Appeals is premised on the supposed absence of evidence and is contradicted by the evidence on record.[172] (Citation omitted)

However, for this Court to take cognizance of Canlas' Petition, he must prove, not merely assert, that any of these exceptions is present in this case. He has the burden to show that a re-examination of facts is needed.[173] Absent this proof, this Court will not entertain factual issues.

III.B

Second, the Ombudsman's factual findings are binding and conclusive when supported by substantial evidence. Under Republic Act No. 6770:

Section 27. *Effectivity and Finality of Decisions*. — . . .

Findings of fact by the Officer of the Ombudsman when supported by substantial evidence are conclusive. Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one (1) month's salary shall be final and unappealable. . . . (Emphasis supplied)

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[172] *Id*. at 182-183.

[173] *Id*.

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The Ombudsman's factual findings are accorded great weight and respect.[174] In *Ombudsman-Mindanao v. Ibrahim*: [175]

> The general rule is that the findings of fact of the Office of the Ombudsman are conclusive when supported by substantial evidence. The factual findings of the Office of the Ombudsman are generally accorded with great weight and respect, if not finality by the courts, due to its special knowledge and expertise on matters within its jurisdiction.[176] (Citations omitted)

This rule applies even more so when the findings are affirmed by the Court of Appeals. In *Office of the Ombudsman v. Espina*:[177]

> [A]s a general rule, factual findings of the Ombudsman are conclusive when supported by substantial evidence and are accorded due respect and weight, *especially when affirmed by the CA*. In this case, except as to the legal conclusion on what administrative offense was committed by Espina, the Ombudsman and the CA both found that Espina signed the IRFs even if there were actually no tires delivered to the PNP and no repair and refurbishment works performed on the LAVs. Accordingly, these findings of fact are conclusive and binding and shall no longer be delved into, and this Court shall confine itself to the determination of the proper administrative offense chargeable against Espina and the appropriate penalty therefor.[178] (Emphasis supplied, citation omitted)

Thus, if the Ombudsman's findings are supported by substantial evidence and affirmed by the Court of Appeals, this Court need not review or reevaluate the evidence.

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[174] *Ombudsman-Mindanao v. Ibrahim*, G.R. No. 211290, June 1, 2016, 792 SCRA 94, 108 [Per *J*. Carpio, Second Division].

[175] G.R. No. 211290, June 1, 2016, 792 SCRA 94 [Per *J*. Carpio, Second Division].

[176] *Id*. at 108.

[177] G.R. No. 213500, March 15, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/march2017/213500.pdf> [*Per Curiam*, First Division].

[178] *Id*. at 5-6.

Supreme Court E-Library

In this case, Canlas failed to show that the Ombudsman's findings, which were affirmed categorically by the Court of Appeals, were not supported by substantial evidence.

The Ombudsman found that the properties were sold for a price higher than the Bureau of Internal Revenue zonal valuation and the minimal disposition values of the properties using the formulas for the Net Effective Return Method and the Severity of Loss Method as provided for under the Disposition Guidelines.[179] This finding was affirmed by the Court of Appeals.[180]

The Ombudsman noted Canlas' contention that the adjacent properties were sold at higher prices a few years before the subject sale. However, she did not find it persuasive as it did not show that the properties had the same features in terms of size, shape, frontage, and configuration.[181] She also found that Canlas failed to present evidence that the properties could have been sold at a higher price considering that no other offer was made after being advertised for sale twice.[182]

Canlas failed to present any evidence to overturn these findings. Thus, this Court affirms the Court of Appeals.

III.C

It must further be noted that Home Guaranty is authorized to dispose of the sold properties. The functions and powers of Home Guaranty are created in light of the State's policy of strengthening and supporting housing production and finance, and making decent housing available and affordable nationwide.[183]

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[179] *Rollo*, pp. 110-111.

[180] *Id*. at 47.

[181] *Id*. at 111.

[182] *Id*. at 112.

[183] Rep. Act No. 8763, Sec. 2 provides:

Section 2. Declaration of Policy. — It is hereby declared the policy of the State to undertake, in cooperation with the private sector, a continuing nationwide housing program which will make available at affordable cost decent housing.

Supreme Court E-Library

As part of its corporate powers and functions, Home Guaranty is given the power:

Section 5. Corporate Powers and Functions.

. . . . . .

(b) To guaranty the payment in favor of any natural or juridical person, of any and all forms of mortgages, loans and other forms of credit facilities and receivables arising from financial contracts exclusively for residential purposes and the necessary support facilities thereto;

. . . . . .

(i) To acquire, purchase, own, hold, manage, administer, operate, develop, lease, pledge, mortgage, exchange, sell, transfer or otherwise dispose of, in any manner permitted by law, real and personal property with every kind and description, monies and funds, or any interests therein as may be necessary to carry out the purposes and objectives of the Corporation; and

(j) To do any and all acts and things and to exercise all powers which may be necessary or convenient to the accomplishment or furtherance of its purposes and objectives, or which a natural person can do and exercise and which may now be or hereafter be authorized by law.[184]

Moreover, Home Guaranty has the prerogative to manage its declining cash flow through the disposition of its assets at the soonest and most profitable times given the circumstances. Courts cannot second-guess purely business decisions when the dilemma is clearly proven.

Thus, Home Guaranty was authorized to acquire the sold properties and to dispose of them in accordance with what was necessary for it to fulfill its purpose and objectives.

In recognition of the role of housing as catalyst of economic growth and development, it is hereby declared a state policy to strengthen, promote and support the component activities of housing production and finance.

[184] Rep. Act No. 8763, Sec. 5.

IV

In executing the sale, Canlas seeks to hold respondents guilty of the charged offenses.[185]

He argues that respondents, except Cadano, have admitted that they participated in the contract of sale's execution, showing that there was grave misconduct and a willful intent to violate Section 3(g) of Republic Act No. 3019.[186]

Bongolan allegedly admitted that he executed the Board of Directors' policies as Home Guaranty's President. Javier and Delos Santos admitted to signing the contract. The others admitted that they were part of the Executive Committee that recommended the contract to the Board of Directors and the President for approval.[187]

Canlas points out that obedience to an officer's superiors only extends to orders which are lawful or are for a lawful purpose. Officers cannot evade liability if they committed an unlawful act on the order of their superiors.[188]

Canlas also asserts that respondents cannot be exempted from criminal or administrative liability even if Home Guaranty has a separate and distinct personality from its stockholders, directors, and officers. Officers and agents who participated in the criminal act or an administrative offense of a corporation are liable.[189]

Respondents, on the other hand, argue that it is the Board of Directors that is responsible for the sale.

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[185] *Rollo*, p. 962. Canlas claims that this is shown by "a) the Deeds of Absolute Sale dated 11 January 1999 and 28 August 2001; b) Letter of Planters Bank to Mr. Romero dated 21 May 2009; c) Appraisal Report dated July 2008; as well as the admissions of respondents in their respective counter-affidavits[.]"

[186] *Id*.

[187] *Id*.

[188] *Id*. at 963.

[189] *Id*. at 964.

Supreme Court E-Library

They argue that the power to approve the sale and to manage Home Guaranty is with the Board of Directors.[190] It was the Board of Directors that decided to sell the properties[191] and fix the price. [192]

Moreover, Canlas allegedly failed to prove their participation by clear and convincing evidence.[193] Bongolan argues that Canlas failed to prove his specific participation in the sale. He did not sign the document. He merely executed policies and directives of the Board of Directors, and did not participate in its approval.[194] He points out that he could not have approved the contract by himself.[195]

Respondents Cadano, Adriano, Corpuz, and Sarona assert that they did not participate in the contract's execution despite their membership in the Executive Committee. They were not part of the Board of Directors or were in a position to bind Home Guaranty, and they did not sign the document.[196] Cadano was not even appointed until September 1, 2008, more than a month after the execution of the contract on July 21, 2008.[197]

Respondents Javier and Delos Santos admit that they signed the Deed of Absolute Sale. However, they argue that they signed it pursuant to a resolution and office order issued by its Board of Directors, designating them as signatories, in case of the absence of Home Guaranty's President. They did not sign it as an exercise of their own discretion. They did it as part of their duties based on valid instructions.[198]

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[190] *Id*. at 817.

[191] *Id*. at 837-838.

[192] *Id*. at 874.

[193] *Id*. at 816 and 840.

[194] *Id*. at 816.

[195] *Id*. at 817.

[196] *Id*. at 837-838.

[197] *Id*. at 102.

[198] *Id*. at 873-875.

Supreme Court E-Library

This Court rules that respondents are not solely responsible for the sale.

Home Guaranty is governed by its Board of Directors, which directs, controls, and manages its activities. The decisions of the Board of Directors are arrived at by a majority vote of its members.[199]

Under Home Guaranty's Charter, the Board of Directors has the power to:[200]

> Section 9. Powers, Functions and Duties of the Board of Directors. — The Board shall have the following powers, functions and duties:
>
> . . . . . .
>
> (b) To direct the management, operations and administration of the Corporation;
>
> (c) To authorize such expenditures by the Corporation as are in the interest of the effective administration and operations of the Corporation;
>
> (d) To formulate, revise or adjust periodically all policies, plans and projects, and to promulgate the necessary rules and regulations and manuals of procedures for the effective implementation of the provisions of this Act, in any event to conform to the prevailing economic and financial conditions: *Provided*, That anything contained herein to the contrary notwithstanding, all such policies, rules and regulations, manuals of procedures, on ceilings and limitations shall be subject to the concurrence of the Monetary Board of the *Bangko Sentral ng Pilipinas*;
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> . . . . . .
>
> (f) To exercise such other powers as may be necessary and proper for the effective enforcement of this Act and to accomplish the purposes for which the Corporation was organized; and to do and perform

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[199] Rep. Act No. 8763, Sec. 8.

[200] Rep. Act No. 8763, Sec. 9. Powers, Functions and Duties of the Board of Directors. Rules and Regulations Implementing Republic Act No. 8763, IRR of RA 8763, October 13, 2000, Article 11.

Supreme Court E-Library

any and all acts and deeds as are necessary and incidental to the attainment of the purposes of the Corporation.

It is even the Board of Directors that approves the standard terms and conditions in a Contract of Guaranty to be executed by Home Guaranty:

> Article 50. *Execution of Contract of Guaranty.* — The Contract of Guaranty shall be executed subject to the standard terms and conditions as approved by the Board of Directors of the Corporation.[201]

Thus, it was the Board of Directors that had the power to decide whether the properties were to be sold and at what price.

As a government-owned and -controlled corporation, Home Guaranty is also governed by Republic Act No. 10149.[202] Under Section 30 of Republic Act No. 10149, the Corporation Code applies suppletorily to government-owned and -controlled corporations:

> Section 30. *Suppletory Application of The Corporation Code and Charters of the GOCCs.* — The provisions of "The Corporation Code of the Philippines" and the provisions of the charters of the relevant GOCC, insofar as they are not inconsistent with the provisions of this Act, shall apply suppletorily to GOCCs.

Section 23 of the Corporation Code necessarily applies. It provides that the Board of Directors of a corporation exercises all the corporation's powers, conducts all its business, and controls all its properties.

Thus, it is Home Guaranty's Board of Directors that is primarily responsible for the sale.

Nonetheless, Canlas is correct that a corporation's officers cannot hide behind the separate personality of the corporation, or that of its directors and stockholders, to avoid liability for offenses they participated in.[203]

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[201] IRR of Rep. Act No. 8763 (2000).

[202] Also known as GOCC Governance Act of 2011.

[203] *Rollo*, p. 840.

Officers who supervise and manage the corporation's affairs, such that they are responsible for the commission of the offense, cannot escape criminal or administrative liability by invoking the separate and distinct personality of the corporation. The party who will be meted the penalty is the public officer or employee who is guilty of the administrative offense.

This is consistent with the principle that when the separate juridical personality of a corporation is used "to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons."[204]

Thus, in Republic Act No. 3019, it is clear that the party that is penalized is the *public officer* who commits any of the corrupt practices enumerated under Section 3. A "public officer" includes "elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt service receiving compensation, even nominal, from the government."[205] In this particular case, the offense charged is against *public officers* who, on behalf of the government, allegedly entered into a contract or transaction manifestly and grossly disadvantageous to the government.[206] Thus, it does not distinguish whether the public officer is a director or a mere employee.

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[204] *Granada v. People,* G.R. Nos. 184092, 186084, 186272, 186488 & 186570, February 22, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/february2017/184092.pdf> 25 [Per *J.* Leonen, Second Division].

[205] Rep. Act No. 3019, Sec. 2(b).

[206] Rep. Act No. 3019, Sec. 3 provides:

Section 3. Corrupt practices of public officers. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

. . . . . .

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

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In *Dans, Jr. v. People*,[207] Imelda Marcos and Jose P. Dans, Jr., who were then Minister of Human Settlements and Transportation and Communications Minister, respectively, were charged and found guilty of violation of Section 3(g) of Republic Act No. 3019. They were found to have signed disadvantageous contracts on behalf of both the Light Rail Transit Authority, as its *ex-oficio* Chairman and *ex-oficio* Vice-Chairman, and the Philippine General Hospital Foundation, Inc., as its Chairman and Director of the Board of Trustees.

In *Office of the Ombudsman v. De Guzman,*[208] it was the acting Postmaster General who was found guilty of gross neglect of duty for executing a contract with a corporation without securing the approval of the Board of Directors, and without ensuring that the Philippine Postal Corporation's procurement of services would be done through the proper procedures and at the most advantageous price.

Clearly, whether or not a person is a director or an officer of a corporation, so long as he or she is the party responsible for the offense, he or she is the party that ought to be charged.

Thus, while the Board of Directors is primarily responsible for the sale, respondents may still be held liable for offenses if they knowingly entered into, facilitated, or participated in their execution and ensured their implementation.

V

Nonetheless, this Court rules that respondents cannot be held liable for grave misconduct.

"Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer."[209] To be considered grave

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[207] 349 Phil. 434 (1998) [Per *J.* Romero, Third Division].

[208] *Office of the Ombudsman v. De Guzman,* G.R. No. 197886, October 4, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/february2017/184092.pdf> [Per *J.* Leonen, Third Division].

[209] *Office of the Ombudsman v. Faller,* G.R. No. 215994, June 6, 2016, 792 SCRA 361, 371 [Per *J.* Perlas-Bernabe, First Division].

Supreme Court E-Library

misconduct, the transgression must have been committed in bad faith. Malice is a necessary element in the offense of grave misconduct.[210]

In *Office of the Ombudsman v. Espina*:[211]

> Misconduct generally means wrongful, improper or unlawful conduct motivated by a premeditated, obstinate or intentional purpose. It is intentional wrongdoing or deliberate violation of a rule of law or standard of behavior and to constitute an administrative offense, the misconduct should relate to or be connected with the performance of the official functions and duties of a public officer. It is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer.
>
> There are two (2) types of misconduct, namely: grave misconduct and simple misconduct. In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule must be manifest. Without any of these elements, the transgression of an established rule is properly characterized as simple misconduct only.[212] (Citations omitted)

It is the element of corruption and a clear intent to flagrantly disregard an established rule or violate the law that characterizes grave misconduct.[213] If there are no ill or selfish motives, the act cannot qualify as grave misconduct.[214]

These elements must be proven by substantial evidence.[215]

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[210] *Id*.

[211] G.R. No. 213500, March 15, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/march2017/213500.pdf> [*Per Curiam*, First Division].

[212] *Id*. at 6.

[213] *Landrito v. Civil Service Commission*, 295 Phil. 638, 642 (1993) [Per *J*. Quiason, *En Banc*].

[214] *Faeldonea v. Civil Service Commission*, 435 Phil. 410, 415-416 (2002) [Per *J*. Kapunan, *En Banc*].

[215] *Office of the Ombudsman v. Faller,* G.R. No. 215994, June 6, 2016, 792 SCRA 361, 371 [Per *J*. Perlas-Bernabe, First Division].

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Canlas failed to prove respondents' misconduct, let alone their bad faith.[216]

Canlas did not allege or substantiate any claim that respondents granted any favor to or relaxed any regulation for any person deliberately. He did not present any evidence that respondents committed any unlawful act intentionally, or any act with gross negligence. There is no showing that the sale was for their personal gain or for any pecuniary advantage, or that they entered into the sale to prejudice Home Guaranty.[217]

Considering that the sale was not tainted with bad faith, respondents cannot be held liable for grave misconduct.

VI

This Court likewise rules that respondents cannot be held liable under Section 3(g) of Republic Act No. 3019, which states:

> Section 3. *Corrupt practices of public officers*. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
>
> . . . .
>
> (g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

In *Froilan v. Sandiganbayan,*[218] this Court enumerated the elements of the offense as follows:

> (a) that the accused is a public officer;
>
> (b) that he [or she] entered into a contract or transaction on behalf of the government; and

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[216] *Rollo*, pp. 821, 832, and 875.

[217] *Id*. at 875.

[218] 385 Phil. 32 (2000) [Per *J.* Ynares-Santiago, First Division].

(c) that such contract or transaction is grossly and manifestly disadvantageous to the government.[219]

In the case at bar, respondents held a public bidding twice before it agreed to the bid price of Wong. The price falls within the amount that it is authorized to sell. They also sought the clearance of the Office of the Government Corporate Counsel before pushing through with the sale. Their acts show that they exercised due diligence and sound business judgment before executing the sale. There is likewise no showing that they violated any rule or process in granting the sale of the properties to Wong. And although it is not an element to the offense, the sale does not seem to be tainted with any partiality, bad faith, or negligence.

The law requires that the contract must be grossly and manifestly disadvantageous to the government or that it be entered into with malice. It does not find guilt on the mere entering of a contract by mistake.

Thus, it cannot be said that the contract was grossly disadvantageous to the government.

WHEREFORE, the petition is **DENIED**. The Court of Appeals August 11, 2011 Decision and November 29, 2011 Resolution in CA-G.R. SP No. 119352 are **AFFIRMED.**

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin, Martires,* and *Gesmundo, JJ.,* concur.

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[219] *Id*. at 44.