



Republic of the Philippines

Supreme Court

Manila

FIRST DIVISION

ERNESTO A. FAJARDO,

Petitioner.

G.R. No. 173268

Present:

- versus -

LEONARDO-DE CASTRO,*

Acting Chairperson,

DEL CASTILLO,

VILLARAMA, JR.,

REYES, and**

PERLAS-BERNABE,* JJ.**

**OFFICE OF THE OMBUDSMAN,
NATIONAL BUREAU OF
INVESTIGATION AND
BUREAU OF CUSTOMS,**

Respondents.

Promulgated:

23 AUG 2012

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DECISION

DEL CASTILLO, J.:

Under the “threefold liability rule,” any act or omission of any public official or employee can result in criminal, civil, or administrative liability, each of which is independent of the other.¹

This Petition for Review on *Certiorari*² under Rule 45 of the Rules of Court assails the Decision³ dated April 27, 2006 and the Resolution⁴ dated June 28, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 91021. *Mem*

¹ Per Special Order No. 1226 dated May 30, 2012.

² Per Raffle dated August 6, 2012.

³ Per Special Order No. 1227 dated May 30, 2012.

⁴ *Regidor, Jr. v. People*, G.R. Nos. 166086-92, February 13, 2009, 579 SCRA 244, 268.

⁵ *Rollo*, pp. 11-581 with Annexes “A” to “V” inclusive.

⁶ Id. at 58-67; penned by Associate Justice Renato C. Dacudao and concurred in by Associate Justices Lucas P. Bersamin (now a member of this Court) and Magdangal M. De Leon.

⁷ Id. at 69.

Factual Antecedents

Petitioner Ernesto A. Fajardo was employed by respondent Bureau of Customs (BOC) as a Clerk I from February 26, 1982 to February 29, 1988 and as a Clerk II from March 1, 1988.⁵ However, due to the exigency of the service, he was designated as a Special Collecting Officer at the Ninoy Aquino International Airport (NAIA) Customs House, Collection Division, Pasay City.⁶

In May 2002, Nancy Marco (Marco), a Commission on Audit (COA) State Auditor detailed at the NAIA Customs House,⁷ was directed by her superior, Auditor Melinda Vega-Fria, to conduct a post audit of the abstract of collection of all collecting officers of the NAIA Customs House.⁸ In the course of her audit, State Auditor Marco noticed that in petitioner's daily abstract of collection dated August 16, 2002, he received checks in the amounts of ₱295,000.00, ₱247,000.00, ₱122,000.00, ₱108,000.00 and ₱105,000.00.⁹ To verify whether it was possible for him to receive such amounts in one day, a daily analysis of the sales of accountable forms with the corresponding documentary stamps was made.¹⁰

In the Audit Observation Memorandum (AOM No. 2002-008)¹¹ dated November 26, 2002, State Auditor Prudencia S. Bautista (Bautista) reported that petitioner has an unremitted collection from sales of accountable forms with money value and stamps in the amount of ₱20,118,355.00 for the period January 2002 to October 2002.¹² Upon further investigation by State Auditor Marco, it was discovered that based on the analysis of the monthly sales of accountable forms and stamps, petitioner failed to remit the total amount of ₱53,214,258.00¹³

⁵ See Affidavit of Gladys D. Fontanilla, HRMO III, Bureau of Customs, id. at 99-100.

⁶ See MIA (Manila International Airport) Customs Personnel Order No. 17-82 dated April 26, 1982, id. at 103.

⁷ Id. at 185-186.

⁸ Id. at 62.

⁹ Id. at 528.

¹⁰ Id.

¹¹ Id. at 80.

¹² Id. at 526.

¹³ Amount was later corrected in the COA Final Audit report to ₱53,658,371.00 or an increase of ₱444,113; id. at 537.

from January 2000 to October 2002.¹⁴

On January 6, 2003, Customs Commissioner Antonio M. Bernardo requested respondent National Bureau of Investigation-National Capital Region (NBI-NCR) to conduct an investigation on the reported misappropriation of public funds committed by petitioner.¹⁵

On January 8, 2003, the resident auditors of NAIA Customs House, namely: Marco, Bautista, and Filomena Tolorio, executed separate “*Sinumpaang Salaysay*”¹⁶ at the NBI. They stated under oath that based on the Analysis of the Monthly Sales of Accountable Forms and Stamps for the years 2000¹⁷ and 2001,¹⁸ and the period January 1, 2002 to October 31, 2002,¹⁹ and the Summary of Analysis of Sale of Stamps and Accountable Forms for the period January 2000 to October 2002,²⁰ petitioner failed to remit the total amount of ₱53,214,258.00.²¹

Thereafter, on January 10, 2003, an Information for violation of Republic Act (RA) No. 7080 (Plunder) was filed against petitioner.²² The case was raffled to Branch 119 of the Regional Trial Court (RTC) of Pasay City and docketed as Criminal Case No. 03-0043.²³

On February 8, 2003, Customs District Collector Celso P. Templo demanded from petitioner the unremitted collection but the latter failed to return the money and duly account for the same.²⁴

Finding sufficient basis to commence an administrative investigation, Mary

¹⁴ Id. at 526.

¹⁵ Id.

¹⁶ Id. at 70-75.

¹⁷ Id. at 76.

¹⁸ Id. at 77.

¹⁹ Id. at 78.

²⁰ Id. at 79.

²¹ Corrected as ₱53,658,371.00; id at 537.

²² Id. at 630.

²³ Id.

²⁴ Id. at 527.

Susan S. Guillermo, the Director of the Administrative Adjudication Bureau of the Office of the Ombudsman, in an Order²⁵ dated February 11, 2003, directed petitioner to file his counter-affidavit.

On May 19, 2003, petitioner filed his Counter-Affidavit²⁶ categorically denying the accusation hurled against him. He claimed that there was no under remittance on his part because the sale of BOC forms does not automatically result in the sale of documentary stamps from the Documentary Stamp Metering Machine.²⁷ He likewise assailed the validity of the AOM No. 2002-008 on the ground that it was not referred to the COA Legal and Adjudication Office as mandated by Section 1, subsection 2 of the General Guidelines of COA Memorandum No. 2002-053 dated August 26, 2003.²⁸

Ruling of the Ombudsman

On May 3, 2005, the Ombudsman rendered a Decision²⁹ finding petitioner guilty of dishonesty and grave misconduct.³⁰ Pertinent portions of the Decision read:

The bulk of the evidence presented supports the finding that indeed respondent failed to remit the collection from the sales of accountable forms with money value and of documentary stamps of the Ninoy Aquino International Airport Custom House for the years 2000 and 2001 and from January 01 to October 31, 2002 in the total sum of FIFTY THREE MILLION SIX HUNDRED FIFTY EIGHT THOUSAND THREE HUNDRED SEVENTY-ONE PESOS (₱53,658,371.00) despite demand on February 8, 2003 by the Custom[s] District Collector Celso P. Templo for him to return the same.

²⁵ Id. at 81.

²⁶ Id. at 83-94.

²⁷ Id. at 528-530.

²⁸ Id. at 530-531.

²⁹ Id. at 525-543; penned by the Investigating Panel composed of Graft Investigation & Prosecution Officer II (Chairman) Joseph L. Licudan, Graft Investigation & Prosecution Officer I (Member) Cherry T. Bautista-Bolo, and Graft Investigation & Prosecution Officer I (Member) Genielyn S. Nataño; reviewed by OIC-Director, PIAB-C Aleu A. Amante; recommended for approval by the Assistant Ombudsman, PAMO Pelagio S. Apostol; and approved by Tanodbayan (Ombudsman) Simeon V. Marcelo.

³⁰ Id. at 542.

The above-mentioned unremitted amount was discovered after representatives from the COA-NAIA Customhouse discovered discrepancies in the collections and remittances of respondent Fajardo during the period covering January 1, 2002 to October 30, 2002 amounting to ₱20,118,355.00 which was initially communicated to District Collector Celso Templo through an Audit Observation Memorandum No. 2002-008 dated November 26, 2002. This leads to a further investigation resulting to the analysis of Monthly Sales of Accountable Forms and Stamps prepared by the COA State Auditors covering the period January 1, 2000 to October 30, 2002, which showed that the total amount of unremitted collections for the sale of accountable forms with money value and customs documentary and BIR stamps amounted to ₱53,658,371.00.

The following table shows a comparison of collections and remittances per report of Mr. Ernesto Fajardo and per audit by the team for the period January 2000 to October 30, 2002. As per audit report, the total amount of collections is ₱440,623,111.00, whereas respondent's report disclosed total collections in the amount of ₱387,913,381.00.

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The above-cited comparison focused on the examination and verification of documents covering collections and remittances of Fajardo. The documents composed of liquidated and unliquidated entries coming from the following offices:

- 1) *Liquidation and Billing Division – which has the function of verifying, reviewing and checking computation of formal entries;*
- 2) *Cashiers – [who submit] to COA all informal entries after they have collected customs duties, taxes and other charges for the imported good; and also the Bonds Division and Office of the Deputy Collector for Operations which also have custody of various forms without money value such as bonds, clearances, etc., where Customs Documentary Stamps (CDS) [are] required by regulations to be affixed. The audit likewise concentrated on Confirmation with from Brokers regarding the sale of CDS.*

In fact, confirmation letters were sent to 212 [b]rokers who purchased BOC Accountable Forms from NAIA for the period January 2000 to October 2002. Selection was based on the volume of purchases made by the brokers. The selected brokers had the highest number of purchases of BOC Accountable Forms with money value requiring payment of CDS.

From the existing procedural flowchart of the Collection Division, NAIA [Customs House], it appeared that the Collection Division has a Section in charge [of] the sale of BOC Forms and CDS. Per Organizational Chart of the Collection Division, Mr. Fajardo is the Collecting Officer assigned to perform such function. The organizational chart also shows that there are three (3) other personnel [under] Fajardo's supervision such as the BC Forms Clerk, CDS Clerk and the one in charge [of] the sale of BC Forms with CDS at Pair Cargo, a Customs Bonded Warehouse. The Flow Chart of Accountable Forms submitted by the Collection Division shows that it is the Collecting Officer (Fajardo) who is authorized to accept payment for the sale of Forms and CDS. The assigned Clerk assists him in the stamping on the forms of the required CDS, but returns the same to the Collecting Officer already stamped for release to the [b]rokers.

The Collecting Officer thereafter prepares Report of Collections and deposit[s] collections to the LBP. He also records transactions in his official cash book where he tallies his collections with the remittances made for the day.

This flow of transactions is also supported by the Sworn Statements executed by Mr. Pica and Ms. Caber who attested that they assisted Fajardo in the performance of his functions. Ms. Caber stamps the forms with required CDS using the franking machine while Mr. Pica has the following duties, among others:

- 1) Checks correctness of RIV of forms requisitions;*
- 2) Checks serial number of entries to be sold for the day;*
- 3) Assists in the issuance of OR and having it signed by Mr. Fajardo as Collecting Officer.*

Both of them further attested that payments are personally received by Fajardo. There are times, however, that they receive the payment but turn the same over to Fajardo.

Since Fajardo is the only Collecting Officer authorized to receive payment from the Sale of BOC Forms and CDS at the Collection Division, NAIA [Customs House], he is accountable for all the collections from the sale by NAIA [Customs House] of Bureau of Customs Accountable Forms and Customs Documentary and BIR Stamps (CDS).

To explain how that total aggregate amount was arrived at, COA State Auditor Nancy Marco said that from her Analysis on the Monthly Sales of Accountable Forms and Stamps of respondent for the period January 1, 2002 to October 31, 2002, said respondent was able to sell accountable forms with money value and stamps in the sum of ₱157,612,585.00 but remitted only ₱137,494,230.00 to the LandBank, NAIA Customs. On January 2001 – December 2001, respondent sold forms and stamps in the sum of ₱237,905,834.00 but remitted only ₱123,753,065.00. For the year 2000 said respondent sold the same forms and stamps in the sum of ₱145,320,000.00 but remitted only ₱126,666,186.00. From her summary, the total forms and stamps which respondent sold for said period was in the total sum of ₱441,127,739.00. However, respondent remitted only the sum of ₱389,913,481.00. Therefor[e], the total sum which respondent failed to remit amounted to ₱53,214,258.00.00, which was later on corrected in the COA final audit report [to] ₱53,658,371.00 or an increase of ₱44,113.00.

A review of the above analysis initiated by COA State Auditors [Filomena Bascon] Tolorio and Prudencia S. Bautista, confirmed the [foregoing] findings.

The investigating panel is, therefore, of the view that respondent ERNESTO A. FAJARDO, being a special collecting officer of the NAIA Custom[s] House, is duty bound to remit collections of payments from the sale of Bureau of Customs (BOC) accountable forms with money value as well as Customs Documentary Stamps, to the Government via Landbank, the government's authorized depository bank. Respondent's failure to remit the amount he collected constitutes Dishonesty and Grave Misconduct.

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FOREGOING CONSIDERED, pursuant to Section 52 (A-1) and (A-3), Rule IV of the Uniform Rules on Administrative Cases (CSC Resolution No. 991936), dated August 31, 1999, respondent ERNESTO A. FAJARDO is hereby found guilty of DISHONESTY and GRAVE MISCONDUCT and is meted the corresponding penalty of DISMISSAL FROM THE SERVICE including all its accessory penalties and without prejudice to criminal prosecution.

SO ORDERED.³¹

Petitioner moved for reconsideration³² which was denied in an Order³³ dated July 22, 2005, the dispositive portion of which reads:

PREMISES CONSIDERED, the instant motion for reconsideration is hereby **DENIED** and the DECISION dated 03 May 2005, is hereby **AFFIRMED** with finality.

The Honorable **ALEXANDER M. AREVALO**, Commissioner, Bureau of Customs, is hereby directed to implement the Decision dated 03 May 2005, with the request to promptly submit to this Office, thru the Preliminary Investigation and Administrative Adjudication Bureau – C, 4th Floor, Ombudsman Bldg., Agham Road, Government Center, North Triangle, Diliman, Quezon City, a Compliance Report thereof, indicating therein the subject OMB case number.

Compliance is respectfully enjoined consistent with Section 15 (3) of Republic Act No. 6770 (Ombudsman Act of 1989).

SO ORDERED.³⁴

Ruling of the Court of Appeals

Unfazed, petitioner elevated the case to the CA.

On April 27, 2006, the CA affirmed the dismissal of petitioner. The CA found substantial evidence to support the Ombudsman's finding that petitioner is guilty of dishonesty and grave misconduct.³⁵ It brushed aside petitioner's

³¹ Id. at 531-542.

³² Id. at 544-551.

³³ Id. at 554-559.

³⁴ Id. at 558.

³⁵ Id. at 62.

allegation that the report on the results of the audit was not lawfully introduced into the records of the case since no evidence was presented to substantiate such allegation.³⁶ It likewise rejected petitioner's contention that the Ombudsman only has recommendatory powers, and thus, affirmed the power of the Ombudsman to remove erring public officials or employees.³⁷ The *fallo* of the CA Decision³⁸ reads:

UPON THE VIEW WE TAKE OF THIS CASE, THUS, the petition for review on certiorari is hereby **DISMISSED** for lack of merit. Costs against petitioner.

SO ORDERED.³⁹

Petitioner sought reconsideration⁴⁰ but the same was unavailing.⁴¹

Issues

Hence, this petition raising the following issues:

A.

Whether x x x competent evidence was presented before the Office of the Ombudsman to establish dishonesty and grave misconduct on the part of [petitioner].

B.

Whether x x x the [CA] committed grave abuse of discretion in failing to consider and appreciate the following vital evidences [sic]:

1. At the Collecting Division of NAIA Customs House, there is only one documentary stamp metered machine.
2. That documentary stamps are sold at the NAIA Customs House only thru the use of this metered machine.
3. In Marco's own analysis x x x, the proceeds from the actual sale of documentary stamps per metered machine for the period from January 1, 2000 to October 30, 2002 were all remitted and accounted for by [petitioner].

³⁶ Id. at 65.

³⁷ Id. at 65-67.

³⁸ Id. at 58-67.

³⁹ Id. at 67.

⁴⁰ Id. at 560-570.

⁴¹ Id. at 69.

4. The testimony of Nancy Marco on the safeguards used to protect the integrity or reliability of the metered machine.
5. Nancy Marco is not an expert when she testified.
6. The repeated admissions of Nancy Marco that her “Audit” sales can not be possible for the load on the machine per month was less than her monthly “audit” sale.

C.

Whether x x x the [CA] committed grave abuse of discretion in failing to consider and appreciate the findings of the trial court in the related criminal case that the evidence of guilt against [petitioner] was wanting and that there was no direct evidence to [prove] that [petitioner] malversed and/or amassed government funds.

D.

Whether x x x the [CA] committed grave abuse of discretion in relying on documents which were not introduced or offered in evidence before the Office of the Ombudsman.

E.

Whether x x x the Ombudsman can directly dismiss petitioner from government service.⁴²

Petitioner’s Arguments

Insisting on his innocence, petitioner claims that no competent evidence was presented before the Ombudsman to show that he is guilty of dishonesty and grave misconduct.⁴³ He asserts that the audit report of State Auditor Marco has no evidentiary weight as the figures stated therein are mere speculations.⁴⁴ He likewise contends that the CA and the Ombudsman erred in relying on the report on the results of the audit, which was never formally submitted as evidence during the proceedings before the Ombudsman.⁴⁵ Instead, they should have considered the finding of the RTC in the related criminal case that the evidence of guilt against petitioner is wanting.⁴⁶ He points out that when State Auditor Marco was cross-examined during the bail hearing in the criminal case filed against him, she allegedly admitted that it was not possible for him to have sold more than the

⁴² Id. at 635-636.

⁴³ Id. at 637.

⁴⁴ Id. at 637-638.

⁴⁵ Id. at 662-664.

⁴⁶ Id. at 661-662.

amount loaded in the machine since there is only one metered machine at the Collecting Division of the NAIA Customs House.⁴⁷ Lastly, petitioner contends that the Office of the Ombudsman only has the power to recommend the removal of a public official.⁴⁸

Respondents' Arguments

The Solicitor General, as counsel for respondents, maintains that the CA and the Ombudsman correctly found petitioner guilty of dishonesty and grave misconduct as there is substantial evidence to support such finding.⁴⁹ Moreover, contrary to the view of petitioner, the Ombudsman has the power to remove an erring public official or employee.⁵⁰

Our Ruling

The petition lacks merit.

At the outset, it must be emphasized that questions of fact may not be the subject of an appeal by *certiorari* under Rule 45 of the 1997 Rules of Court as the Supreme Court is not a trier of facts.⁵¹ As a rule, findings of fact of the Ombudsman, when affirmed by the CA, are conclusive and binding upon this Court, unless there is grave abuse of discretion on the part of the Ombudsman.⁵² In this case, there is none.

Presumption of regularity was not overturned.

Petitioner imputes irregularities in the proceedings before the Ombudsman.

⁴⁷ Id. at 637-661.

⁴⁸ Id. at 664-665

⁴⁹ Id. at 674-680.

⁵⁰ Id. at 680-686.

⁵¹ *Medina v. Commission on Audit (COA)*, G.R. No. 176478, February 4, 2008, 543 SCRA 684, 698.

⁵² *Tolentino v. Loyola*, G.R. No. 153809, July 27, 2011, 654 SCRA 420, 434.

He claims that the CA and the Ombudsman should not have relied on the report on the results of the audit because it was not lawfully introduced or offered in evidence before the Office of the Ombudsman.⁵³ Such allegation deserves scant consideration. No evidence was presented by petitioner to prove such allegation. As we have often said, in the absence of clear and convincing proof to the contrary, public officers or employees are presumed to have performed their official duties regularly, properly and lawfully.⁵⁴

Besides, the report on the results of the audit was not the sole basis for his dismissal from public service. Affidavits and testimonies of witnesses taken during the bail hearing in the criminal case were also submitted as evidence in the administrative case to prove the charges against him.⁵⁵ In fact, the final report merely confirmed the contents of the audit report of State Auditor Marco as pointed out by Assistant Ombudsman Pelagio S. Apostol in his marginal note in the Order dated July 22, 2005, which reads:

The findings of discrepancies as contained in the audit observation memorandum prepared by State Auditor Nancy Marco was already verified and validated per COA final audit report which was indubitably considered in the drafting of the questioned Decision.⁵⁶

There is substantial evidence to support the finding that petitioner is guilty of dishonesty and grave misconduct.

The audit report of State Auditor Marco revealed that petitioner's remittance fell short of ₱53,658,371.00.⁵⁷ Said figure was arrived at by deducting the total amount remitted by petitioner from the total "audit sales" of all the accountable forms. The "audit sales" of each accountable form was computed by dividing the total sale of each form by the price of the form multiplied by the

⁵³ *Rollo*, p. 662.

⁵⁴ *Buklod nang Magbubukid sa Lupaing Ramos, Inc. v. E.M. Ramos and Sons, Inc.*, G.R. Nos. 131481 & 131624, March 16, 2011, 645 SCRA 401, 440.

⁵⁵ *Rollo*, p. 527.

⁵⁶ *Id.* at 559.

⁵⁷ *Id.* at 79.

corresponding amount of the documentary stamps.⁵⁸ The computations were made in accordance with Customs Memorandum Order (CMO) No. 19-77⁵⁹ dated April 14, 1977 which provides that:

In order to simplify the processing of entry papers and other customs documents, it is directed that **metered customs documentary stamps be impressed beforehand and the amount thereof added to the cost of the documents when sold.** x x x (Emphasis supplied.)

Thus, contrary to the view of petitioner, the “audit sales” are not based on mere speculations but are based on CMO No. 19-77. In fact, during the initial audit, petitioner and his staff confirmed that “accountable forms, namely: BC 236, BC 177, BC 199, BC 43 and BC 242 are always sold with documentary stamps.”⁶⁰

To disprove the correctness of the “audit sales,” petitioner harps on the fact that the amount loaded on the machine per month was less than the monthly “audit sales” of State Auditor Marco. He insists that this proves that there was no under remittance on his part. We do not agree. The mere fact that the load in the machine is less than the “audit sale” does not prove his innocence. Rather, it only means that either petitioner sold the accountable forms without the corresponding documentary stamp, which is a clear violation of CMO No. 19-77, or that he used another machine, not authorized by his office, as theorized by State Auditor Marco.⁶¹

To us, the discrepancy between the “audit sales” and the actual amount remitted by petitioner is sufficient evidence of dishonesty and grave misconduct warranting his dismissal from public service. We need not belabor the point that

⁵⁸ Id. at 471; TSN, November 20, 2003, p. 10 (Re-direct Examination of Nancy Marco in Crim. Case No. 03-0049).

⁵⁹ Subject: The Sale of Metered Customs Documentary Stamps.

⁶⁰ *Rollo*, pp. 80 and 226-228; TSN, September 9, 2003, p. 13-15 (Direct Examination of Nancy Marco in Crim. Case No. 03-0049).

⁶¹ Id. at 470; TSN, November 20, 2003, p. 9 (Re-Direct Examination of Nancy Marco in Crim. Case No. 03-0049).

unlike in a criminal case where proof beyond reasonable doubt is required, administrative proceedings only require substantial evidence or “such relevant evidence as a reasonable mind may accept as adequate to support a conclusion.”⁶²

Neither do we find any grave abuse of discretion on the part of the CA in not considering the finding of the RTC “that the evidence of guilt of [petitioner] is not strong.”⁶³ To begin with, the Order⁶⁴ dated January 6, 2004, granting petitioner’s application for bail, was not attached to the Petition⁶⁵ he filed with the CA, nor was it submitted as evidence before the Ombudsman.⁶⁶ It is likewise significant to mention that the said Order merely resolved petitioner’s entitlement to bail. More important, the Ombudsman and the CA are not bound by the RTC’s finding because as a rule, administrative cases are independent from criminal proceedings.⁶⁷ In fact, the dismissal of one case does not necessarily merit the dismissal of the other.⁶⁸

All told, we find that there is substantial evidence to show that petitioner failed to remit the amount of ₱53,658,371.00 from the sale of accountable forms with money value and documentary stamps for the period January 2000 up to October 2002.

The Ombudsman has the power to dismiss erring public officials or employees.

As a last ditch effort to save himself, petitioner now puts in issue the power of the Ombudsman to order his dismissal from service. Petitioner contends that the Ombudsman in dismissing him from service disregarded Section 13, subparagraph 3, Article XI of the Constitution as well as Section 15(3) of RA No.

⁶² *Velasquez v. Hernandez*, 480 Phil. 844, 859 (2004).

⁶³ *Rollo*, p. 581.

⁶⁴ *Id.* at 571-581.

⁶⁵ *CA Rollo*, pp. 12-56.

⁶⁶ *Rollo*, pp. 97 and 527-528.

⁶⁷ *Dr. Barillo v. Hon. Gervacio*, 532 Phil. 267, 279 (2006).

⁶⁸ *Regidor, Jr. v. People*, *supra* note 1 at 269.

6770,⁶⁹ which only vests in the Ombudsman the power to recommend the removal of a public official or employee.

Petitioner's contention has no leg to stand on.


It is already well-settled that "the power of the Ombudsman to determine and impose administrative liability is not merely recommendatory but actually mandatory."⁷⁰ As we have explained in *Atty. Ledesma v. Court of Appeals*,⁷¹ the fact "[t]hat the refusal, without just cause, of any officer to comply with [the] order of the Ombudsman to penalize an erring officer or employee is a ground for disciplinary action [under Section 15(3) of RA No. 6770], is a strong indication that the Ombudsman's 'recommendation' is not merely advisory in nature but is actually mandatory within the bounds of law."⁷²

WHEREFORE, the petition is hereby **DENIED**. The Decision dated April 27, 2006 and the Resolution dated June 28, 2006 of the Court of Appeals in CA-G.R. SP No. 91021 are hereby **AFFIRMED**.

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson


⁶⁹ Otherwise known as THE OMBUDSMAN ACT of 1989.

⁷⁰ *Office of the Ombudsman v. Delijero, Jr.*, G.R. No. 172635, October 20, 2010, 634 SCRA 135, 152, 503 Phil. 396 (2005).

⁷² *Id.* at 407.



MARTIN S. VILLARAMA, JR.
Associate Justice


BIENVENIDO L. REYES
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice


ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson

CERTIFICATION

I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, R.A. 296,
The Judiciary Act of 1948, as amended)

