



**Republic of the Philippines
Supreme Court
Manila**

FIRST DIVISION

OFFICE OF THE G.R. No. 181598
OMBUDSMAN,
Petitioner,

Present:

- versus -

SERENO, CJ.,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
MENDOZA, * JJ.

ARNEL A. BERNARDO,
ATTORNEY V, BUREAU OF
INTERNAL REVENUE (BIR),
Respondent.

Promulgated:

MAR 06 2013

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DECISION

LEONARDO-DE CASTRO, J.:

This is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure of the Decision¹ dated January 23, 2007, as well as the Resolution² dated January 7, 2008 of the Court of Appeals in CA-G.R. SP No. 86062, entitled “*ARNEL A. BERNARDO, Attorney V, Bureau of Internal Revenue (BIR) vs. HON. OMBUDSMAN SIMEON V. MARCELO, FACT-FINDING AND INTELLIGENCE BUREAU (FFIB) – Office of the Ombudsman, and HON. GUILLERMO L. PARAYNO, JR., in his capacity as Commissioner of the Bureau of Internal Revenue,*” which reversed and set aside the Decision³ dated July 6, 2004 issued by petitioner Office of the Ombudsman (the Ombudsman) in OMB-C-A-03-0531-K (LSC), entitled “*Fact-Finding and Intelligence Bureau (FFIB), Represented by Atty. Ma. Elena A. Roxas v. Arnel A. Bernardo, Attorney V, Bureau of Internal Revenue (BIR).*”

These are the facts of this case, as summed by the Court of Appeals:

[Respondent] Arnel A. Bernardo was hired by the Bureau of Internal Revenue (BIR) on September 3, 1979 and therein rendered

* Per raffle dated February 25, 2013.

¹ Rollo, pp. 55-86; penned by Associate Justice Bienvenido L. Reyes (now a member of this Court) with Associate Justices Aurora Santiago Lagman and Apolinario D. Bruselas, Jr., concurring.

² Id. at 50-52.

³ Id. at 155-183.

continuous and uninterrupted service until his promotion to his present position as Attorney V with Salary Grade of 25 and assigned as Technical Assistant at the Office of the Deputy Commissioner of Internal Revenue – Criminal Prosecution Group. Primarily, the [respondent] derived his income from his employment with the BIR.

On various dates in 1979 up to 2001 [respondent] acquired various properties and had business interests in BP Realty Corporation which was registered in 1988, and in Rina's Boutique and Gift Shop-Gel's Gift Center where his wife is the owner/proprietress. He and his family also made several foreign travels during the period 1995 to 2002. However, petitioner's SALN for the years 1993 up to 2001 did not disclose any business interest and/or financial connection, but showed a steady increase of his net worth.

Based on the foregoing, [respondent] was administratively and civilly charged with acquiring unexplained wealth by the FFIB (*hereafter, the "OMBUDSMAN"*). Accordingly, on November 12, 2003 the OMBUDSMAN filed the appropriate administrative action against the [respondent] for Violation of Section 8 of Republic Act No. 3019, in relation to Republic Act No. 1379. This case was docketed as OMB-C-A-03-0531-K (LSC) entitled "Fact-Finding and Intelligence Bureau (FFIB), Represented by Atty. Ma. Elena A. Roxas versus Arnel A. Bernardo, Attorney V, Bureau of Internal Revenue (BIR)".

In its Complaint, the OMBUDSMAN alleged that the [respondent] is an incorporator and director of BP Realty Corporation as shown by its Article[s] of Incorporation dated October 15, 1998 and that his wife, Ma. Lourdes I. Bernardo is the owner/proprietress of Rina's Boutiques and Gift Shop-Gel's Gift Center as may be shown by Business Permits for CY 1999-2003. On various dates in 1979 up to 2001 the [respondent] purchased parcels of residential and agricultural land, the purchase prices and costs of which were manifestly out of proportion or not commensurate to his and his wife's lawful incomes, allowances, savings or declared assets. He and his family also made several foreign travels during the period 1995 to 2002. The [respondent's] cash on hand and net worth also consistently increased. However, [respondent's] SALN for the years 1993 up to 2001 did not disclose any business interest and/or financial connection.

The evidence for the Ombudsman consists of the CERTIFICATION (dated July 7, 2003) of the annual salary compensation and allowances received by the [respondent] from 1998 to 2002; Articles of Incorporation and By-Laws of BP Realty Corporation which shows that the [respondent] is one of the incorporators of the said corporation; Business Permits of Rina's Boutiques and Gift Shop; Certificate of Corporate Filing/Information dated June 24, 2003 issued by the Securities and Exchange Commission (SEC) which shows that BP Realty Corporation is registered with the (SEC) on November 4, 1988 and is on active status and that said corporation failed to file the General Information Sheet for 1990-2003 as well as its Financial Statement from 1989 to 2002; SALNs for the years 1993 to 2001; Transfer Certificate of Title (TCT) Nos. 166204, 244954, 191636, CLOA-T-9835, CLOA-T-9834, T-118783; Declaration of Real Property No. D-105-03089, D-105-05849; Deed of Absolute Sale dated October 23, 1997 over a parcel of land covered by TCT No. RT-57064 (T-113488) of the Registry of Deeds

of Bulacan; Deed of Absolute Sale dated May 27, 1985 over a parcel of land covered by TCT No. 151157 of the Registry of Deeds Manila; Deed of Absolute Sale dated August 10, 1999 over a parcel of land covered by TCT No. 190651 of the Registry of Deeds of Manila; Certification dated June 3, 2003 issued by the Bureau of Immigration which shows the travel records from January 1995 to May 31, 2003 of the [respondent], his wife, Ma. Lourdes I. Bernardo, and his children Lorina I. Bernardo and Adrian I. Bernardo, Angeline I. Bernado, and Aldrin I. Bernardo; and Certification dated June 3, 2003 which shows the travel records of the [respondent's] wife, Ma. Lourdes I. Bernardo from January 1995 to May 31, 2003.

The Ombudsman thus sought that the [respondent] be adjudged guilty of acquiring unexplained wealth and be dismissed from the service, as well as the forfeiture of his properties.

In his Counter-Affidavit dated January 30, 2004 the [respondent] (*respondent below*) averred that: he is engaged in various legitimate businesses; he had divested his interest and/or shares from BP Realty Corporation as may be shown by a Deed of Assignment dated November 28, 1988, and that its certificate of registration had been revoked as may be shown by the Certificate of Corporate Filing/Information issued by the Securities and Exchange Commission on September 29, 2003 for being inactive pursuant to Presidential Decree No. 902-A; he religiously paid corresponding internal revenue taxes from income of the business disclosed in his SALN, as may be shown by his Income Tax Returns covering the period 1998, 1999, 2000, and 2001; on his earnings derived not purely from compensation income, but also from legitimate business as well as business interest or financial connection to Rina's Boutique and Gift Shop/Gel[']s Gift Center managed by his wife as shown by business permits for Rina's Boutique and Gift Shop, he stated that he disclosed in his SALNs filed during the period 1993 to 2001 under "B. Personal and Other Properties" the following: "Merchandise Inventory", "Building Improvement", "Store Equipment" and "Depreciation" accounts; on the [respondent's] non-declaration of an agricultural land purchased in Bulacan in 1995, the [respondent] points out that the agricultural land declared in his SALNs for 1995 to 2001 appeared to refer to only one (1) parcel although in truth and in fact, the acquisition covered two (2) parcels of land awarded to him under the Comprehensive Agrarian Reform Program of the government, covered by TCT No. CLOA-T9834 (*consisting of 8,969 sq.m.*) and TCT No. 9835 (*consisting of 20,004 sq.m.*) both registered on November 27, 1995 with the Registry of Deeds of Bulacan. The reason for this is because he honestly believed that it was sufficient to declare the two (2) lots as one, with the total cost indicated in his SALN, since the two parcels were acquired at the same time in 1995; [respondent] had availed of Tax Amnesty under the following laws: Executive Order No. 41 dated August 22, 1986 (*for the years 1981 to 1985*), PD No. 213 dated June 16, 1973 (*for the years 1969 to 1972*), PD No. 631 dated January 6, 1975, and PD No. 1840 dated December 31, 1980.⁴ (Citations omitted.)

From its appreciation of the aforementioned evidence, the Ombudsman rendered a Decision dated April 21, 2004 which expressed its conclusion that respondent had acquired unexplained wealth during his

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Id. at 56-58.

tenure as a government employee. The dispositive portion of said ruling is reproduced here:

WHEREFORE, PREMISES CONSIDERED:

1. Respondent ARNEL A. BERNARDO is hereby found GUILTY of Dishonesty, in accordance with the provision of Section 8 of Republic Act No. 3019, in relation to Republic Act No. 1379, for which the penalty of DISMISSAL FROM THE SERVICE, with cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification for reemployment in the government service, is hereby recommended pursuant to Sections 53 and 58, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service[.]
2. That the Honorable Commissioner of the Bureau of Internal Revenue be furnished a copy of the Resolution, for the implementation of this administrative penalty in accordance with law, with the request to inform this Office of the action taken hereon.
3. Finally, it is respectfully recommended that copies of the case records be referred to the Fact Finding and Intelligence Bureau, this Office for the preparation and filing of the appropriate complaint pursuant to Section 2 of Republic Act No. 1379.⁵

In explanation of its guilty verdict, the Ombudsman essentially opined that the value of respondent's acquired properties, the costs of his and his family's foreign trips abroad, and the increasing net worth indicated in his Statements of Assets, Liabilities and Net Worth (SALNs) for the years 1993 to 2001 were manifestly disproportionate to his salary and allowances. The Ombudsman also decreed that there was no proof of respondent's claim of other lawful income nor was there any evidence that the purported donation he received in the amount of ₱8,000,000.00 was lawful. Thus, the Ombudsman concluded that respondent's properties were illegally acquired based on a finding that the evidence presented by the latter allegedly failed to rebut the presumption provided for by law.

Respondent elevated the case to the Court of Appeals which, in turn, rendered the assailed January 23, 2007 Decision, overturning the Ombudsman's finding of administrative guilt on the part of respondent. The dispositive portion of the Court of Appeals' Decision states:

WHEREFORE, reversible error having been committed by the Ombudsman, the instant petition is hereby **GRANTED** and its Decision dated April 21, 2004 as well as the Order dated July 22, 2004 are both **REVERSED and SET ASIDE**.⁶

The Ombudsman moved for reconsideration but the same was denied by the Court of Appeals in the assailed January 7, 2008 Resolution.

⁵ Id. at 179-180.

⁶ Id. at 86.

Thus, the Ombudsman filed the present petition with the following issues submitted for consideration:

I.

CONTRARY TO THE RULING OF THE COURT OF APPEALS, THE FINDING OF GUILT AGAINST THE RESPONDENT WAS SUPPORTED BY MORE THAN SUBSTANTIAL EVIDENCE THAT SUFFICIENTLY ESTABLISHED THE FACT THAT HE HAS COMMITTED DISHONESTY AND SHOULD BE HELD LIABLE: (A) FOR FAILURE TO DISCLOSE HIS BUSINESS INTERESTS, (B) FOR HAVING ACCUMULATED PROPERTIES WORTH MORE THAN HIS LAWFUL MEANS TO ACQUIRE, (C) FOR HIS FAILURE TO DISCLOSE SUCH PROPERTIES IN HIS STATEMENT OF ASSETS, LIABILITIES AND NETWORTH (SALN), AND (D) FOR FAILING TO DISCLOSE IN HIS SALNs HIS AND HIS SPOUSE'S FINANCIAL AND BUSINESS TRANSACTIONS.

II.

AS CONSISTENTLY HELD BY THE SUPREME COURT, THE FINDINGS OF THE OFFICE OF THE OMBUDSMAN DESERVE GREAT WEIGHT, AND MUST BE ACCORDED FULL RESPECT AND CREDIT.⁷

The Ombudsman argues that there are factual and legal bases to uphold its findings, particularly as to the administrative liability for Dishonesty of respondent. It further asserts that the findings of fact of an administrative agency akin to itself must be respected, as long as such findings are supported by substantial evidence, even if such evidence might not be overwhelming or preponderant.

The petition is without merit.

Administrative proceedings are governed by the “substantial evidence rule.” Otherwise stated, a finding of guilt in an administrative case would have to be sustained for as long as it is supported by substantial evidence that the respondent has committed acts stated in the complaint. Substantial evidence is more than a mere scintilla of evidence. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise.⁸

As a general rule, only questions of law may be raised in a petition for review on *certiorari* because the Court is not a trier of facts.⁹ When supported by substantial evidence, the findings of fact of the Court of Appeals are conclusive and binding on the parties and are not reviewable by this Court, unless the case falls under any of the following recognized

⁷ Id. at 294.

⁸ *Office of the Ombudsman v. Valencia*, G.R. No. 183890, April 13, 2011, 648 SCRA 753, 768-769.

⁹ *Office of the Ombudsman v. Racho*, G.R. No. 185685, January 31, 2011, 641 SCRA 148, 155.

exceptions: (1) when the conclusion is a finding grounded entirely on speculation, surmises and conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when 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) when the findings 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 findings set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and (10) when the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by evidence on record.¹⁰

The issue of whether or not there is substantial evidence to hold respondent liable for the charge of Dishonesty is one of fact, which is not generally subject to review by this Court. Nonetheless, a review of the facts of the instant case is warranted considering that the findings of fact of the Ombudsman and the Court of Appeals were not in harmony with each other.

The Ombudsman applied against the respondent the *prima facie* presumption laid down in Section 2 of Republic Act No. 1379, which states that:

Section 2. *Filing of petition.* – Whenever any public officer or employee has acquired during his incumbency an amount of property which is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property, said property shall be ***presumed prima facie to have been unlawfully acquired.*** x x x. (Emphasis supplied.)

Nevertheless, the presumption in the aforementioned provision is merely *prima facie* or disputable. As held in one case, “[a] disputable presumption has been defined as a species of evidence that may be accepted and acted on where there is no other evidence to uphold the contention for which it stands, or one which may be overcome by other evidence.”¹¹

Unsurprisingly, Section 5 of the same statute requires any court, before which the petition for forfeiture is filed, to set public hearings during which the public officer or employee may be given ample opportunity to explain to the satisfaction of the court how he had acquired the property in question, to wit:

Section 5. *Hearing.* The court shall set a date for a hearing, which may be open to the public, and during which the respondent shall be given ample opportunity to explain, to the satisfaction of the court, how he has acquired the property in question.

¹⁰ *Heirs of Jose Lim v. Lim*, G.R. No. 172690, March 3, 2010, 614 SCRA 141, 147.

¹¹ *People v. De Guzman*, G.R. No. 106025, February 9, 1994, 229 SCRA 795, 798-799.

Respondent appears to have been given sufficient opportunity by the Ombudsman to rebut the *prima facie* presumption applied against him which is that his properties were illegally acquired, however, as the instant case illustrated, the Ombudsman and the Court of Appeals came to differing conclusions with regard to respondent's evidence.

A careful perusal of the records of this case has convinced this Court that although respondent had acquired properties, cash on hand and in bank, and had gone on foreign travels with his family, the aggregate cost of which appear to be not in proportion to the combined salaries of the respondent and of his wife, it had been sufficiently shown that such assets and expenses were financed through respondent's, and his wife's, other lawful business income and assets, and for which they have paid the corresponding taxes thereon.

Anent the Ombudsman's charge that respondent's 1985 purchase of real property could not be supported by his salaries for the period 1980 to 1985, the Court of Appeals noted in respondent's favor his availment of tax amnesty for the taxable years 1981 to 1985 under Executive Order No. 41 dated August 22, 1986. To our mind, this circumstance sufficiently showed that respondent had income other than his salaries for the relevant period prior to his purchase of the aforementioned property. Indeed, it is significant to point out that only respondent's SALNs for the periods 1993 to 2001 were presented in evidence by the Ombudsman. Interestingly, Assistant Ombudsman Pelagio S. Apostol, who was among the signatories to the Ombudsman's Decision dismissing respondent from the service, wrote and appended a comment to the said Decision recommending, among others, that the FFIB "secure additional Statements of Assets, Liabilities and Networth starting from the first day of government service to establish the true opening net worth of the respondent."¹² To be sure, this is a tacit admission that the evidence on record failed to present an accurate picture of all the lawful sources of income of respondent prior to his 1993 SALN.

As for the other charges of unexplained acquisitions/expenses made by the Ombudsman against respondent, we quote with approval the detailed discussion made by the Court of Appeals, speaking through then Court of Appeals Associate Justice Bienvenido L. Reyes (who is now a member of this Court), in the assailed January 23, 2007 Decision:

For the year 1989, We find that the [respondent] had satisfactorily explained how he was able to acquire a residential land in Quezon City covered by Tax Declaration Nos. D-105-02089 and D-105-05849 for ₱235,420.00 despite the fact that his declared income for the year 1989 only amounts to ₱43,140.00. As pointed out by the [respondent], the lot covered by Tax Declaration No. D-105-03089, and the property improvement thereon covered by Tax Declaration No. D-105-05849, was

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Rollo, p. 183.

awarded to the [respondent] by the GSIS for ₱235,420.00 pursuant to a housing program for BIR employees, subject to a monthly salary deduction of ₱2,001.00 since June 1990. This was also secured by the [respondent's] GSIS Insurance Policy and a Real Estate Mortgage on the same property as shown by loan documents.

Anent the Ombudsman's claim that the [respondent] had failed to justify the increase in his "cash on hand and in bank", and to substantiate his claim that the reason for the increase thereon was due to a cash donation of ₱8,000,000.00 made in favor of the [respondent] in the year 2001. The Ombudsman points out that the [respondent's] SALN for the year 2000 showed a total networth of ₱12,734,083.60 while his "cash on hand and in bank" is ₱3,921,061.80. Then for the year 2001, the [respondent's] SALN showed a total networth of ₱21,085,296.95 while his "cash on hand and in bank" is ₱10,431,897.45. We are convinced that the [respondent] had substantiated his claim that the reason for the increase in his "cash on hand and in bank" was due to a cash donation of ₱8,000,000.00 made in his favor in the year 2001. The [respondent] had voluntarily made such disclosure in his SALN as required by the law. The Deed of Donation October 8, 2001 is, indeed, a credible proof that such donation was lawful, there being no showing of its illegality. As correctly noted by the [respondent], there was no legal requirement to attach the Deed of Donation or to disclose the identity of the donor, nor to append to the SALN evidence of payment of the imposable tax due as Sec 99 (b) of RA No. 8424 or the Tax Reform Act of 1997, imposes the tax liability arising from the gratuitous act upon the donor, not upon the donee.

For the year 1999, the Ombudsman noted that the [respondent] acquired a residential land in Manila for ₱1,000,000.00, and this is covered by TCT No. 244854 issued by the Register of Deeds of Manila, despite the fact that his "cash on hand and in bank" had decreased in the amount of ₱565,823.10, such amount together with his income for the year 1999 in the sum of only ₱230,628.00 are not sufficient to justify the purchase of the residential land. Even with the reported net income from Rina's Boutique and Gift Shop/Gel's Gift Center for 1999 amounting to only ₱63,857.65, the purchase still could not be justified. For his part, the [respondent] insists that this property was acquired by him and his wife from the latter's parents. According to the [respondent], his SALN for 1999 shows that his "cash on hand and in bank" was ₱3,653,079.85, which is adequate to justify this purchase. To support his contention, the [respondent] submitted documentary evidence consisting of the following:

- a. Annual Income Tax Return for 1999
- b. Financial Documents:
 - b.1 Audited Report
 - b.2 Balance Sheet
 - b.3 Income Statement
 - b.4 Rental Income Statements
 - b.5 Employer's Certificate of Compensation Payment/Tax Withheld
 - b.6 Monthly Agents Commission/ Withholding Tax Report

- b.7 Certificate of Creditable Tax Withheld at Source issued by the Philippine Charity Sweepstakes Office
- b.8 Official Receipt issued by the Trader's Royal Bank as proof of payment of income Tax Liability in the amount of ₱159,974.65

We are convinced that the [respondent] had justified his purchase of the residential land in 1999 for ₱1,000,000.00. In his SALN for 1999, the [respondent] had declared a networth of ₱12,447,700.75 and cash on hand and in bank in the amount of ₱3,653,079.85. His aggregate tax payment of ₱159,974.65 would indeed negate the Ombudsman's claim that his additional income derived from his wife's business amounted to only ₱63,857.65, and this is bolstered by the fact that in the [respondent's] annual income tax return for 1999 he reported a taxable business income of ₱425,904.50 while his wife reported a taxable business income of ₱63,857.65. We also note that the [respondent] had also derived income from lottery business as may be shown by Annexes "5-I" to "5-R" of his Counter-Affidavit. Although such exhibits are in the name of his (respondent) brother Alberto A. Bernardo, the latter had already assigned to him the operation of two (2) lotto outlets/terminals located in Sta. Mesa, Manila and in Quezon City on June 9, 1998 as shown by the Deed of Assignment. These exhibits also negate the Ombudsman's claim that "(A)s regards the respondent's claim of other income (rental, lottery, other income) no proof of the same was presented."

For the year 1990, the Ombudsman alleged that the [respondent] acquired a residential land in Manila for ₱230,000.00, covered by TCT No. 244854 issued by the Register of Deeds of Manila, despite the fact that his declared income for the year 1990 only amounts to ₱57,432.00. In defense, the [respondent] said that this acquisition was truthfully disclosed in his SALN, and that he had the capacity to make this purchase as he was engaged in lawful business, deriving lawful income. The Ombudsman in its Decision stated that in 1995, the [respondent] acquired a residential land located in Quezon City for ₱4,150,000.00 and an agricultural land in Bulacan worth ₱500,000.00. The [respondent] indicated in his SALN for the year 1995 as one of his liabilities, "notes payable" in the amount of ₱4,000,000.00 which the Ombudsman presumed to have been used by the [respondent] in buying the said properties. The Ombudsman noted, however, that the [respondent's] loan payable had decreased by ₱2,000,000.00 in 1996, but his "cash on hand and in bank" had increased from ₱3,861,077.05 to ₱4,701,709.95. The Ombudsman emphasizes that while the [respondent] had paid out cash in the amount of ₱2,000,000.00, his cash on hand and in bank did not decrease, but even increased by ₱1,600,072.90 which means that he had earned a total amount of ₱3,600,072.90 for the year 1996 alone. [Respondent's] building improvements likewise increased from ₱143,420.00 to ₱902,860.00. However, his annual income for 1996 amounted only to ₱177,428.00. The [respondent] however draws attention to his SALN for the year 1995 which shows that he was financially capable of purchasing property valued at ₱4,150,000.00 as he had a cash disposable balance of ₱12,323,731.75 and net worth of ₱6,471,782.95. The Ombudsman also makes much of the fact of the [respondent's] and his family's trips abroad in the years 1995, 1996, and 1997, pointing out that the [respondent's] lawful income for the years 1995 (₱157,000.00), 1996 (₱177,408.00), and 1997 (₱224,988.00) cannot support such travels. But this is denied by the

[respondent], saying that his Cash on Hand and In Bank (Cash Flow Analysis) for the years 1995 to 2001, his Income Tax Returns for the years 1995-1996-1997, and his networth including disposable income was more than sufficient to justify his property acquisitions and foreign travels for the covered period.

In an attempt to present a clear outline of his financial capacity, the [respondent] presented a comparative Cash Flow Analysis which he had embodied in his counter-affidavit. The evidence for herein [respondent] as attached to his Counter-Affidavit consists of the Deed of Assignment dated November 28, 1988 to show that the [respondent] had absolutely transferred and conveyed his rights and interests over BP Realty Corporation to Noble Bambina B. Perez; Certificate of Corporate Filing/Information dated June 24, 2003 issued by the SEC which shows that BP Realty Corporation's Certificate of Registration was revoked on September 29, 2003; a copy of the Sales Invoice of Rina's Boutique and Gift Shop-Gel's Gift Center; Annual Income Tax Return of the [respondent] for the years 1998 to 2001 with Reports of Independent Certified Public Accountants To Accompany Philippine Income Tax Return; Amended SALN for the year 1995; and Revenue Special Order dated May 5, 2003. His income tax returns clearly show that he had been paying taxes not only for compensation income, but for business incomes, as well. In fact, a big chunk thereof was derived from rental incomes of the [respondent].

Notably, the Ombudsman appeared to have heavily relied solely on the [respondent's] SALNs for the years 1993 to 2001. We do not understand why no evidence was presented to show the [respondent's] beginning net worth from the first day of his employment with the government as declared in the SALN's filed by him. His beginning net worth must be considered for purposes of determining whether his disposable income was more than sufficient to justify his property acquisitions and foreign travels for the covered period, and whether he possesses the financial capability to acquire or purchase properties as reported in his SALNs. Such net worth of the [respondent] as declared in the statement filed by him from the first day of his employment with the government shall be considered as his true new worth as of such date, for purposes of determining his capacity for future property acquisitions during his tenure as a public officer. Any unexplained increase in his net worth thereafter may then fall within the ambit of the presumption provided by Republic Act No. 1379.¹³ (Citations omitted.)

As regards to the Ombudsman's contention that respondent should be administratively held liable for Dishonesty for also failing to truthfully declare in his SALNs the business interests and financial connections that are attributable to himself, his spouse, and unmarried children below 18 years of age living in his household, we hold that, absent a clear showing of intent to conceal such relevant information in his SALN, administrative liability cannot attach.

An examination of his SALNs during the period 1993 to 2001 would reveal that, although respondent indicated the words "Not Applicable" to the

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Id. at 72-76.

SALN question “*Do you have any business interest and other financial connections including those of your spouse and unmarried children below 18 years living in your household?*,” he likewise declared under the enumeration entitled “*B. Personal and Other Properties*” personal properties consisting of “*Merchandise Inventory*,” “*Building Improvement*,” “*Store Equipment*,” and “*Depreciation*” which clearly indicate his engagement in lawful businesses since the said items have nothing to do with compensation income.

Furthermore, respondent clearly indicated on the face of his 1999 and 2000 SALNs that his spouse is a “businesswoman” which manifested his intent to divulge and not to conceal the business interests of his wife. In fact, this Court had previously ruled in another case that the indication of the wife as a “businesswoman” leads to the inference that said person has business interests:

Neither can petitioner’s failure to answer the question, “Do you have any business interest and other financial connections including those of your spouse and unmarried children living in your house hold?” be tantamount to gross misconduct or dishonesty. On the front page of petitioner’s 2002 SALN, it is already clearly stated that his wife is a businesswoman, and it can be logically deduced that she had business interests. **Such a statement of his wife’s occupation would be inconsistent with the intention to conceal his and his wife’s business interests. That petitioner and/or his wife had business interests is thus readily apparent on the face of the SALN; it is just that the missing particulars may be subject of an inquiry or investigation.**¹⁴ (Emphasis supplied.)

In *Office of the Ombudsman v. Valencia*,¹⁵ we elaborated on the nature and effects of an administrative charge of Dishonesty as follows:

Dishonesty is incurred when an individual intentionally makes a false statement of any material fact, practicing or attempting to practice any deception or fraud in order to secure his examination, registration, appointment, or promotion. It is understood to imply the disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; the disposition to defraud, deceive or betray. It is a malevolent act that puts serious doubt upon one’s ability to perform his duties with the integrity and uprightness demanded of a public officer or employee. Like the offense of Unexplained Wealth, Section 52(A)(1), Rule IV of the Revised Uniform Rules on Administrative Cases in Civil Service treats Dishonesty as a grave offense, the penalty of which is dismissal from the service at the first infraction. (Citations omitted.)

On the other hand, we had, on occasion, defined Negligence as the omission of the diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time, and of

¹⁴ *Pleyto v. Philippine National Police Criminal Investigation and Detection Group (PNP-CIDG)*, G.R. No. 169982, November 23, 2007, 538 SCRA 534, 586-587.

¹⁵ *Supra* note 8 at 767.

the place. In the case of public officials, there is negligence when there is a breach of duty or failure to perform the obligation, and there is gross negligence when a breach of duty is flagrant and palpable.¹⁶

Given the fact that respondent was able to successfully overcome the *onus* of demonstrating that he does not possess any unexplained wealth and that the omissions in his SALNs did not betray any sense of bad faith or the intent to mislead or deceive on his part considering that his SALNs actually disclose the extent of his and his wife's assets and business interests, we are inclined to adjudge that respondent is merely culpable of Simple Negligence instead of the more serious charge of Dishonesty.

This Court had previously passed upon a similar infraction committed by another public official in *Pleyto v. Philippine National Police Criminal Investigation and Detection Group (PNP-CIDG)*¹⁷ and ruled that suspension without pay, not removal from office, is the appropriate penalty therefor:

It also rules that while petitioner may be guilty of negligence in accomplishing his SALN, he did not commit gross misconduct or dishonesty, for there is no substantial evidence of his intent to deceive the authorities and conceal his other sources of income or any of the real properties in his and his wife's names. Hence, the imposition of the penalty of removal or dismissal from public service and all other accessory penalties on petitioner is indeed too harsh. Nevertheless, petitioner failed to pay attention to the details and proper form of his SALN, resulting in the imprecision of the property descriptions and inaccuracy of certain information, for which suspension from office for a period of six months, without pay, would have been appropriate penalty. (Citation omitted.)

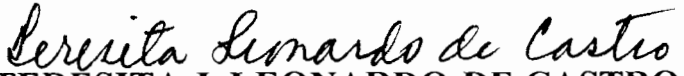
Prescinding from our analysis of the facts and circumstances attending this case, we are inclined to impose the same penalty on herein respondent.

WHEREFORE, premises considered, the instant petition is hereby **DENIED**. The assailed Decision dated January 23, 2007 of the Court of Appeals is hereby **AFFIRMED** with the **MODIFICATION** that respondent Arnel A. Bernardo is found **GUILTY** of simple negligence in accomplishing his Statements of Assets, Liabilities and Net Worth (SALN), and as a penalty therefor, it is **ORDERED** that he be **SUSPENDED** from office for a period of six (6) months without pay.


¹⁶ *Presidential Anti-Graft Commission (PAGC) and the Office of the President v. Pleyto*, G.R. No. 176058, March 23, 2011, 646 SCRA 294, 303.

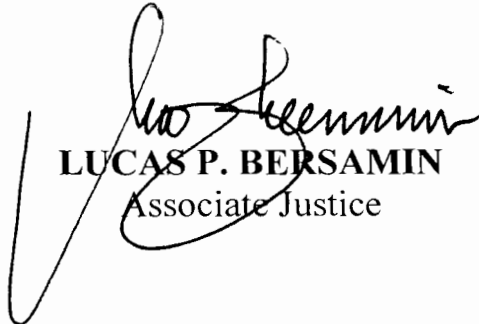
¹⁷ *Supra* note 14 at 594-595.

SO ORDERED.


TERESITA J. LEONARDO-DE CASTRO
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson



LUCAS P. BERSAMIN
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.


MARIA LOURDES P. A. SERENO
Chief Justice