



Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

**FLOR GUPILAN-AGUILAR and
HONORE R. HERNANDEZ,**
Petitioners,

G.R. No. 197307

Present:

- versus -

**OFFICE OF THE OMBUDSMAN,
represented by HON. SIMEON V.
MARCELO; and PNP-CIDG,
represented by DIR. EDUARDO
MATILLANO,**

VELASCO, JR., *J.*, Chairperson,
PERALTA,
BERSAMIN,*
MENDOZA, and
LEONEN, *JJ.*

Promulgated:

Respondents.

February 26, 2014

X-----X

DECISION

VELASCO, JR., *J.*:

The Case

This Petition for Review on Certiorari under Rule 45 seeks to reverse and set aside the July 22, 2009¹ Decision of the Court of Appeals and its June 13, 2011 Resolution in CA-G.R. SP No.88954, affirming the decision of the Ombudsman in OMB-C-A-03-0327-I that found petitioners guilty of grave misconduct and dishonesty and dismissed them from the service.

The Facts

In June 2003, the Philippine National Police Criminal Investigation and Detection Group (PNP-CIDG) conducted an investigation on the lavish lifestyle and alleged nefarious activities of certain personnel of the Bureau of Customs, among them petitioners Flor Gupilan-Aguilar (Aguilar), then Chief of the Miscellaneous Division, and Honore Hernandez (Hernandez), Customs Officer III. Aguilar was then receiving a basic annual salary of PhP 249,876. Her year-to-year assets, liabilities and net worth for CYs 1999 to 2002, taken from her Statement of Assets, Liabilities and Net Worth (SALNs) for the corresponding years, are shown below:

* Designated Acting Member per Special Order No. 1640 dated February 19, 2014.

¹ Penned by Associate Justice Marlene B. Gonzales-Sison and concurred in by Associate Justices Bienvenido L. Reyes (now a member of this Court) and Isaias P. Dicanan.

Real Properties²	1999³	2000⁴	2001⁵	2002⁶
House and Lot in Quezon City	P880,000.00	P980,000.00	P1,030,000.00	P1,030,000.00
Apartment in Caloocan City	P500,000.00	P550,000.00	P550,000.00	P550,000.00
Personal Properties⁷				
Car	P450,000.00	P450,000.00	P450,000.00	P900,000.00
Jewelry	P500,000.00	P600,000.00	P650,000.00	P750,000.00
Appliances	P100,000.00	P120,000.00	P125,000.00	P135,000.00
Furniture and Fixture	P100,000.00	P120,000.00	P125,000.00	P150,000.00
Total Assets	P2,530,000.00	P2,820,000.00	P2,930,000.00	P3,515,000.00
Liabilities				
GSIS	-	P450,000.00	P400,000.00	P300,000.00
Car Loan	-	-	-	P500,000.00
Total Liabilities	-	P450,000.00	P400,000.00	P800,000.00
Net Worth	P2,530,000.00	P2,370,000.00	P2,530,000.00	P2,715,000.00

Her SALNs for the years aforementioned do not reflect any income source other than her employment. The spaces for her spouse’s name and business interest were left in blank.

Following weeks of surveillance and lifestyle probe, the PNP-CIDG investigating team, headed by Atty. Virgilio Pablico, executed on July 28, 2003 a *Joint-Affidavit*, depicting Aguilar, who, in her Personal Data Sheet, indicated “Blk 21 Lot 8 Percentage St. BIR Vill, Fairview, QC” as her home address, as owning properties not declared or properly identified in her SALNs, specifically the following:

Real Properties

- 1. Lot 6, Blk 21, BIR Village, Fairview, Quezon City worth approximately Php1,000,000.00;
- 2. A 4-bedroom Unit 1007-A Antel Seaview Towers, 2626 Roxas Blvd., Pasay City worth Php12,000,000.00, with rights to 4 parking slots; and
- 3. Residential lot in Naga City worth Php148,200.00

² Valuation based on acquisition cost.
³ *CA rollo*, p. 187.
⁴ *Id.* at 188.
⁵ *Id.* at 189.
⁶ *Id.* at 190.
⁷ Valuation based on acquisition cost.

Personal Properties

Make/Model	Plate No.	Registered Owner
Honda CRV	BIM-888	Flor G. Aguilar
Isuzu Trooper	HRH-659	Honore R. Hernandez
BMW (red)	XCR-500	Asia Int’l Auctioneer, Inc.
BMW (silver)	XFD-441	Southwing Heavy Industries, Inc. ⁸

It was also unearthed that, during a four-year stretch, from July 1999 to June 2003, Aguilar, per the Bureau of Immigration (BI) records, took 13 unofficial trips abroad, eight to Los Angeles, California, accompanied most of the time by daughter Josephine. During the same period, her two other daughters also collectively made nine travels abroad. Per the PNP-CIDG’s estimate, Aguilar would have spent around PhP 3,400,000 for her and her daughters’ foreign travels.

In view of what it deemed to be a wide variance between Aguilar’s acquired assets and what she spent for her four-year overseas travels, on one hand, and her income, on the other, the PNP-CIDG, through P/Director Eduardo Matillano—in a letter-complaint of July 28, 2003, with enclosures, on a finding that she has violated Republic Act No. (RA) 1379⁹ in relation to RA 3019¹⁰ and 6713¹¹—charged her with grave misconduct and dishonesty. Hernandez was charged too with the same offenses. Upon evaluation of the complaint and of the evidence presented, which included the aforementioned joint-affidavit, the Ombudsman created an investigating panel which then conducted administrative proceedings on the complaint, docketed as OMB-C-A-03-0327-I.

By Order of September 3, 2003, then Overall Deputy Ombudsman Margarito Gervacio, Jr. placed Aguilar under preventive suspension for six (6) months without pay. Another Order,¹² however, was issued, effectively lifting the order of preventive suspension on the stated ground that Aguilar’s untraversed controverting evidence “considerably demonstrated the weakness of the evidence in support of the complaint.”

In the meantime, Aguilar filed her *Counter-Affidavit*,¹³ primarily addressing the allegations in the aforementioned joint-affidavit. In it, she belied allegations about not declaring Lot 6, Blk 21, BIR Village, Fairview. As explained, what she considers her dwelling in that area consists of a duplex-type structure that sits on the Lot 8 she originally owned and the contiguous Lot 6, which she subsequently acquired from one Norma Jurado.

⁸ *Rollo*, pp. 39-40.
⁹ An Act Declaring Forfeiture in Favor of the State any Property Found to Have Been Unlawfully Acquired by any Public Officer or Employee and Providing for the Proceedings Therefor.
¹⁰ Anti-Graft and Corrupt Practices Act.
¹¹ Code of Ethical Standard for Public Officials and Employees.
¹² *Rollo*, pp. 237-241, signed also by Overall Deputy Ombudsman Gervacio, Jr.
¹³ *Id.* at 197-204.

Anent Unit 1007-A of Antel Seaview Towers, Aguilar pointed to her US-based brother Carlo as owner of this condo unit, the latter having purchased it from Mina Gabor on July 14, 2003. Carlo, as she averred, has allowed her to stay in the unit. Appended to Aguilar's counter-affidavit is a Deed of Sale¹⁴ purportedly executed in Los Angeles in favor of Carlo.

Aguilar also denied owning the so-called third real property, the Panicuason, Naga City lot, since she had already sold it in 1992.

As to allegations that she owns but failed to declare the four above-listed vehicles, Aguilar admitted to owning only the subject Honda CRV van, but denied the charge of failing to declare it in her SALN. She ascribed ownership of the Isuzu Trooper to Hernandez. As for the red and silver BMW cars registered in the name of the entities mentioned in the complaint, Aguilar alleged that they were merely lent to her by her brother's friend.

Not being the owner of the properties aforementioned, Aguilar wondered how she can be expected to include them in her SALN.

Finally, she claimed having seven brothers and two sisters in the US who had sponsored her US trips and who at times even sent airline tickets for her and her daughters' use.

Hernandez, for his defense, alleged that the complaint adverted only to his being the registered owner of an Isuzu Trooper. There is no specification, he added, as to his acquisition of, and not declaring, unexplained wealth.¹⁵

Ruling of the Ombudsman

Based on the evidence on record and the parties' position papers, the investigating panel issued for approval a draft *Decision*¹⁶ dated June 3, 2004, which found Aguilar guilty of the offenses charged. And while Hernandez was also charged and investigated, the *fallo* and even the body of the proposed decision was silent as to him, save for the following line:

x x x the fact that the motor vehicle, Isuzu Trooper with Plate No. HRH 659 is registered in his [Hernandez's] name, does not make him administratively liable.¹⁷

Evidently not totally satisfied with the panel's recommended action, the Ombudsman directed that a joint clarificatory hearing be conducted, and one was held on September 23, 2004. The proceedings resulted in the issuance of what the investigating panel styled as *Supplemental Decision*¹⁸

¹⁴ Id. at 205-207.

¹⁵ Ombudsman records, pp. 239-241.

¹⁶ *Rollo*, pp. 127-144.

¹⁷ Id. at 142.

¹⁸ Id. at 145-170.

dated January 6, 2005 further detailing the bases for the earlier finding on Aguilar's liability. Like the earlier draft, no reference was made in the *fallo* of the *Supplemental Decision* to Hernandez's guilt or innocence.

Following a review of the two issuances thus submitted, then Ombudsman Simeon Marcelo issued on January 18, 2005 a decision denominated *Supplement*,¹⁹ approving, with modification, the adverted *Decision* and *Supplemental Decision*. The modification relates to the liability of Hernandez whom the Ombudsman found to be Aguilar's dummy and equally guilty of grave misconduct and dishonesty deserving too of the penalty of dismissal from the service. Dispositively, the *Supplement* reads:

WHEREFORE, the Decision dated 03 June 2004 and Supplemental Decision dated 06 January 2005 are approved insofar as it finds respondent Flor Aguilar guilty of the administrative offenses of Grave Misconduct and Dishonesty and is hereby meted the penalty of DISMISSAL from the service, with the accessory penalty of cancellation of eligibility, forfeiture of retirement benefits and perpetual disqualification for re-employment in the government service.

Further, the undersigned hereby disapproves the ruling contained in the Decision dated 03 June 2004 with regard to Honore Hernandez, the latter being likewise found guilty of the administrative offenses of Grave Misconduct and Dishonesty and is hereby meted the penalty of Dismissal from the service, with the accessory penalty of cancellation of eligibility, forfeiture of retirement benefits and perpetual disqualification for re-employment in the government service.

SO ORDERED.

Aguilar and Hernandez moved for but were denied reconsideration²⁰ via an Order²¹ of February 28, 2005. The two then went to the Court of Appeals (CA) on a petition for review under Rule 43, docketed as CA-G.R. SP No. 88954. Even as they decried what they tag as a case disposition in installments, petitioners asserted the absence of substantial evidence to support the allegations in the complaint, and that the judgment of dismissal is recommendatory and not immediately executory.

Ruling of the Court of Appeals

The CA, in its assailed Decision of July 22, 2009, affirmed that of the Ombudsman, disposing as follows:

WHEREFORE, the instant petition is DENIED and the assailed Decision of the Ombudsman finding petitioners guilty of Grave Misconduct and Dishonesty, and meted them the penalty of DISMISSAL from the government service, with the accessory penalty of cancellation of eligibility, forfeiture of retirement benefits and perpetual disqualification for

¹⁹ Id. at 171-182.

²⁰ Id. at 183-194.

²¹ Id. at 209-212.

reemployment in the government service in OMB-C-A-03-0327-I is
AFFIRMED.

SO ORDERED.²²

Even as it junked petitioners' contention on the sufficiency of the complainant's inculpatory evidence and on the nature of the Ombudsman's judgment, the CA declared that petitioners' remedy under the premises is an appeal to this Court by force of Section 14 in relation to Sec. 27 of RA 6770 or the *Ombudsman Act of 1989*. Sec. 14 provides that "[n]o court shall hear any appeal or application for remedy against the decisions or findings of the Ombudsman, except the Supreme Court on pure questions of law," while Sec. 27 states that "[f]indings of fact by the [OMB] when supported by substantial evidence are conclusive."

On June 13, 2011, the CA denied petitioners' motion for reconsideration.

Hence, the present petition raising the following issues:

1. Whether or not a Rule 43 petition to assail the findings or decisions of the Ombudsman in an administrative case is proper;
2. Whether or not the acts complained of constitute grave misconduct, dishonesty or both;
3. Whether or not there is substantial evidence to support the assailed findings of the Ombudsman and the CA; and
4. Whether or not the decision of the Ombudsman is but recommendatory or immediately executory.

Petitioners also invite attention to the June 4, 2012 decision of the Regional Trial Court (RTC) of Manila in Criminal Case No. 08-263022, acquitting Aguilar for falsification allegedly involving the same disputed transactions in OMB-C-A-03-0327-I.

The Court's Ruling

The petition, on its procedural and substantial aspects, is partly meritorious. The Court shall first address procedural issues and concerns raised in this recourse.

Petitioners properly appealed to the CA

Petitioners first contend that the CA erred in its holding that, in line with Sec. 14²³ and Sec. 27 of RA 6770, they should have appealed the

²² Id. at 56.

²³ **Section 14. Restrictions.** — No writ of injunction shall be issued by any court to delay an investigation being conducted by the Ombudsman under this Act, unless there is a prima facie evidence that the subject matter of the investigation is outside the jurisdiction of the Office of the Ombudsman.

No court shall hear any appeal or application for remedy against the decision or findings of the Ombudsman, except the Supreme Court, on pure question of law.

Ombudsman's Decision to this Court on questions of law instead of filing a Rule 43 petition before the CA.

Petitioners stand on solid ground on this issue.

The Ombudsman has defined prosecutorial powers and possesses adjudicative competence over administrative disciplinary cases filed against public officers. What presently concerns the Court relates to the grievance mechanism available to challenge the OMB's decisions in the exercise of that disciplinary jurisdiction.

The nature of the case before the Office of the Ombudsman (OMB) determines the proper remedy available to the aggrieved party and with which court it should be filed. In administrative disciplinary cases, an appeal from the OMB's decision should be taken to the CA under Rule 43, unless the decision is not appealable owing to the penalty imposed.

In the case at bar, the Ombudsman, in the exercise of his administrative disciplinary jurisdiction had, after due investigation, adjudged petitioners guilty of grave misconduct and dishonesty and meted the corresponding penalty. Recourse to the CA via a Rule 43 petition is the proper mode of appeal. Rule 43 governs appeals to the CA from decisions or final orders of quasi-judicial agencies.²⁴

Reliance by the CA on Sec. 14 in relation to Sec. 27 of RA 6770 to support its position as to which court a party may repair to to assail the OMB's decision in disciplinary cases is misinformed. As has been held, those portions of said Sec. 27 and any other provisions implementing RA 6770, insofar as they expanded the appellate jurisdiction of this Court without its concurrence, violate Article VI, Sec. 30 of the 1987 Constitution.²⁵ We said so in the landmark *Fabian v. Desierto*:²⁶

WHEREFORE, Section 27 of [RA] 6770 (Ombudsman Act of 1989), together with Section 7, Rule III of [A.O.] 07 (Rules of Procedure of the [OMB]), and any other provision of law or issuance implementing the aforesaid Act and **insofar as they provide for appeals in administrative disciplinary cases from the Office of the Ombudsman to the Supreme Court, are hereby declared INVALID and of no further force and effect.** (Emphasis added.)

As a consequence and in line with the regulatory philosophy adopted in appeals from quasi-judicial agencies in the 1997 Revised Rules of Civil Procedure, appeals from decisions of the Ombudsman in administrative disciplinary cases should be taken to the CA under the provisions of Rule

²⁴ *Pleyto v. PNP-CIDG*, G.R. No. 169982, November 23, 2007, 538 SCRA 534.

²⁵ **Section 30.** No law shall be passed increasing the appellate jurisdiction of the Supreme Court as provided in this Constitution without its advice and concurrence.

²⁶ G.R. No. 129742, September 16, 1998, 295 SCRA 470, 493.

43.²⁷ *Barata v. Abalos, Jr.*,²⁸ *Coronel v. Desierto*,²⁹ and recently *Dimagiba v. Espartero*³⁰ have reiterated the pertinent holding in *Fabian*.

The Decision of the Ombudsman is mandatory and immediately executory

This brings us to the issue on the nature of the Ombudsman's decisions in administrative disciplinary suits, it being petitioners' posture that such decisions, as here, are only recommendatory and, at any event, not immediately executory for the reason that the PNP-CIDG filed the basic complaint on August 20, 2003³¹ when the ruling in *Tapiador v. Office of the Ombudsman*³² had still controlling sway. To petitioners, *Tapiador* enunciated the dictum that the Ombudsman's disciplinary power is only to recommend, the power to suspend and dismiss erring personnel being vested in the head of the office concerned. As a corollary point, petitioners also advance the argument that the legal situation changed only when *Office of the Ombudsman v. Court of Appeals*³³ and *Ombudsman v. Samaniego*³⁴ were decided in June 2006 and September 2008, respectively.

We are not impressed.

Petitioners' witting or unwitting invocation of *Tapiador* is specious. Administrative disciplinary authority of the OMB does not end with a recommendation to punish. The statement in *Tapiador* that the Ombudsman is without authority to directly dismiss an erring public official as its mandate is only to recommend was mere *obiter dictum*, and cannot, in the words of *Ledesma v. Court of Appeals*,³⁵ "be cited as a doctrinal declaration of the Supreme Court." In fact, the pronouncement in *Tapiador* on the Ombudsman's disciplinary authority was only limited to two sentences, to wit:

x x x Besides, assuming arguendo, that petitioner were administratively liable, the Ombudsman has no authority to directly dismiss the petitioner from the government service x x x. Under Section 13, subparagraph (3), of Article XI of the 1987 Constitution, the Ombudsman can only "recommend" the removal of the public official or employee found to be at fault, to the public official concerned.³⁶

The terse *obiter* in *Tapiador* should be compared with the holding in *Ombudsman v. De Leon*³⁷ which even chronicled the pertinent internal rules of procedure in the Office of the Ombudsman (OMB) and illustrated that, as

²⁷ Id. at 490.

²⁸ G.R. No. 142888, June 6, 2001, 358 SCRA 575, 579-560.

²⁹ G.R. No. 149022, April 8, 2003, 401 SCRA 27, 32-33.

³⁰ G.R. No. 154952, July 16, 2012, 676 SCRA 420.

³¹ CA rollo, p. 96.

³² G.R. No. 129124, March 15, 2002, 379 SCRA 322.

³³ G.R. No. 160675, June 16, 2006, 491 SCRA 92.

³⁴ G.R. No. 175573, September 11, 2008, 564 SCRA 567.

³⁵ G.R. No. 161629, July 29, 2005, 465 SCRA 437.

³⁶ Supra note 32.

³⁷ G.R. No. 154083, February 27, 2013.

early as 2000, rules were already enforced by the OMB that provide for the immediate execution of judgments pending appeal. As pointed out in *De Leon*, Sec. 27 of the *Ombudsman Act of 1989* prescribes the rules on the effectivity and finality of the OMB's decisions:

SEC. 27. *Effectivity and Finality of Decisions.* – (1) All provisional orders at the Office of the Ombudsman are immediately effective and executory.

x x x x

In all administrative disciplinary cases, orders, directives, or decisions of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition for certiorari within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court.

The above rules may be amended or modified by the Office of the Ombudsman x x x. (Emphasis supplied.)

The then Sec. 7, Rule III of Administrative Order No. 07 (AO 07) or the Rules of Procedure of the OMB, in turn, stated:

Sec. 7. *Finality 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 and unappealable. In all other cases, the decision shall become final after the expiration of ten (10) days from receipt thereof by the respondent, **unless a motion for reconsideration or petition for certiorari, shall have been filed by him as prescribed in Section 27 of RA 6770.** (Emphasis supplied.)

The Court, in *Lapid v. Court of Appeals*,³⁸ has interpreted the above-quoted provision to mean that the sanctions imposed by the Ombudsman other than public censure, reprimand, suspension of not more than one month or a fine equivalent to one month salary are not immediately executory and can be stayed by an appeal timely filed. The pertinent ruling in *Lapid* has, however, been superseded.³⁹ On August 17, 2000, AO 14-A was issued amending Sec. 7, Rule III of the Rules of Procedure of the OMB. The rule, as thus amended, pertinently reads:

Section 7. *Finality and execution of decision.* – Where x x x 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 and unappealable. In all other cases, the decision may be appealed x x x.

An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such

³⁸ G.R. No. 142261, June 29, 2000, 334 SCRA 738.

³⁹ *Office of the Ombudsman v. Court of Appeals*, G.R. No. 159395, May 7, 2008, 554 SCRA 75.

appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal. (Emphasis supplied.)

Then came AO 17 dated September 15, 2003 further amending Sec. 7 of Rule III. Thus, the section now provides:

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 x x x.

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

Clearly then, as early as August 17, 2000, when AO 14-A was issued, the OMB-imposed penalties in administrative disciplinary cases were already immediately executory notwithstanding an appeal timely filed. In this case, it must be noted that the complaint dated July 28, 2003 was filed on August 20, 2003 or after the AO 14-A has come into effect. Thus, no error can be attributed to the CA when it ruled that the penalties imposed by the Ombudsman against petitioners are immediately executory. Immediate execution argues against the outlandish notion that the Ombudsman can only recommend disciplinary sanctions.

The acts complained of constitute Dishonesty but not Grave Misconduct

a. Grave Misconduct

The charges against petitioners for grave misconduct and dishonesty basically stemmed from their alleged act of amassing unexplained wealth or acquiring properties disproportionate to their income, petitioner Aguilar's alleged failure to declare them in her SALNs, and for petitioner Hernandez's alleged acquiescence to be her dummy. To our the mind, however, we find that even if petitioners, for argument, failed to include several properties in their SALNs, the omission, by itself, does not amount to grave misconduct.

*Largo v. Court of Appeals*⁴⁰ is instructional as to the nature of the offense. To constitute misconduct, the complained act/s or omission must have a direct relation and be linked to the performance of official duties. The Court wrote in *Amosco v. Magro*:

⁴⁰ G.R. No. 177244, November 20, 2007, 537 SCRA 721, 730-731.

x x x By uniform legal definition, **it is a misconduct such as affects his performance of his duties as an officer and not such only as affects his character as a private individual.** In such cases, it has been said at all times, it is necessary to separate the character of the man from the character of the officer x x x. It is settled that misconduct, misfeasance, or malfeasance warranting removal from office of an officer must have direct relation to and be connected with the performance of official duties amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of the office x x x.⁴¹

Owning properties disproportionate to one's salary and not declaring them in the corresponding SALNs cannot, without more, be classified as grave misconduct. Even if these allegations were true, we cannot see our way clear how the fact of non-declarations would have a bearing on the performance of functions by petitioner Aguilar, as Customs Chief of the Miscellaneous Division, and by petitioner Hernandez, as Customs Operations Officer. It is *non-sequitur* to assume that the omission to declare has served, in some way, to hinder the rendition of sound public service for there is no direct relation or connection between the two. Without a nexus between the act complained of and the discharge of duty, the charge of grave misconduct shall necessarily fail.

b. Dishonesty

Dishonesty, as juridically understood, implies the disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty or probity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray.⁴² It is a malevolent act that puts serious doubt upon one's ability to perform duties with the integrity and uprightness demanded of a public officer or employee.⁴³

The inculpatory allegations in the controversy, if proved, qualify as acts of dishonesty that would merit dismissal from service. The requirement of filing a SALN is enshrined, as it were, in the Constitution⁴⁴ to promote transparency in the civil service and operates as a deterrent against government officials bent on enriching themselves through unlawful means. By mandate of law, it behooves every government official or employee to make a complete disclosure of his or her assets, liabilities and net worth in order to suppress any questionable accumulation of wealth because the latter usually results from non-disclosure of such matters.⁴⁵

⁴¹ A.M. No. 439-MJ, September 30, 1976, 73 SCRA 107, 108-109.

⁴² *Ampong v. Civil Service Commission, CSC-Regional Office No. 11*, G.R. No. 167916, August 26, 2008, 563 SCRA 293, 307.

⁴³ *Civil Service Commission v. Sta. Ana*, A.M. No. OCA-01-5, August 1, 2002, 386 SCRA 1, 11-12.

⁴⁴ Art. XI, Section 17. A public officer or employee shall, upon assumption of office and as often thereafter as may be required by law, submit a declaration under oath of his assets, liabilities, and net worth. In the case of the President, the Vice-President, the Members of the Cabinet, the Congress, the Supreme Court, the Constitutional Commissions and other constitutional offices, and officers of the armed forces with general or flag rank, the declaration shall be disclosed to the public in the manner provided by law.

⁴⁵ *Ombudsman v. Racho*, G.R. No. 185685, January 31, 2011, 641 SCRA 148, 159.

The significance of requiring the filing of a complete, truthful, and sworn SALN as a measure to curb corruption in the bureaucracy cannot be gainsaid. Secs. 7 and 8 of the *Anti-Graft and Corrupt Practices Act* (RA 3019) are emphatic on this point:

Sec. 7. Statement of Assets and Liabilities. — Every public officer, within thirty days after assuming office, and thereafter, on or before the fifteenth day of April following the close of every calendar year, x x x shall prepare and file x x x a true, detailed and sworn statement of the amounts and sources of his income, the amounts of his personal and family expenses and the amount of income taxes paid for the next preceding calendar year x x x.

Sec. 8. Prima Facie Evidence of and Dismissal Due to Unexplained Wealth. — If in accordance with the provisions of [RA 1379], a public official has been found to have acquired during his incumbency, whether in his name or in the name of other persons, an amount of property and/or money manifestly out of proportion to his salary and to his other lawful income, that fact shall be ground for dismissal or removal. Properties in the name of the spouse and dependents of such public official may be taken into consideration, when their acquisition through legitimate means cannot be satisfactorily shown. x x x [M]anifestly excessive expenditures incurred by the public official, his spouse or any of their dependents including x x x frequent travel abroad of a non-official character by any public official when such activities entail expenses evidently out of proportion to legitimate income, shall likewise be taken into consideration in the enforcement of this Section x x x. The circumstances hereinabove mentioned shall constitute valid ground for the administrative suspension of the public official concerned for an indefinite period until the investigation of the unexplained wealth is completed.

The aforequoted Section 8 speaks of unlawful acquisition of wealth and excessive expenditure, the evil sought to be suppressed and avoided, and Section 7, which directs full disclosure of wealth in the SALN, is a means of preventing said evil and is aimed particularly at minimizing if not altogether curtailing the opportunities for official corruption and maintaining a standard of honesty in the public service. By the SALN, the public is able to monitor movement in the fortune of a public official; it serves as a valid check and balance mechanism to verify undisclosed properties and wealth.⁴⁶

The failure to file a truthful SALN puts in doubts the integrity of the officer and would normally amount to dishonesty. It should be emphasized, however, that mere misdeclaration in the SALN does not automatically amount to such an offense. Dishonesty requires malicious intent to conceal the truth or to make false statements; otherwise, the government employee may only liable for negligence, not for dishonesty.⁴⁷ In addition, only when the accumulated wealth becomes manifestly disproportionate to the income of the public officer/employee and income from other sources, and the

⁴⁶ *Ombudsman v. Valeroso*, G.R. No. 167828, April 2, 2007, 520 SCRA 140.

⁴⁷ *Pleyto v. PNP-CIDG*, G.R. No. 169982, November 23, 2007, 538 SCRA 534.

public officer/employee fails to properly account or explain these sources of income and acquisitions, does he or she become susceptible to dishonesty.⁴⁸

Substantial evidence

The core of the controversy in this case lies in whether or not the complainant's pieces of evidence extant in and deducible from the records meet the quantum of evidence required to justify the dismissal action taken against petitioners. Petitioner Aguilar argues that the initial evidentiary assessment by the OMB when it lifted the order of preventive suspension was correct. To recall, the OMB declared at that time that the evidence PNP-CIDG presented was not strong enough to support the basic complaint.

In essence, petitioners, Aguilar in particular, urge us to gauge whether or not the complainant has hurdled the quantum of evidence requirement in administrative cases so as to shift the burden of evidence on them. Respondents, on the other hand, are correct in pointing out that a review of the evidence would necessarily entail a corresponding evaluation of facts ascertained by the Ombudsman and the CA, and that as a general rule, the Court should refrain from delving into factual questions. However, we have already held in a catena of cases that the general rule admits of exceptions, including when the judgment is based on misappreciation of facts or when the findings of facts are conflicting.⁴⁹ In light of the series of seemingly confusing orders and rulings promulgated by the Ombudsman, it is beyond cavil that a review of the facts in this case is warranted.

a. Evidence against petitioner Aguilar

i. Lot 6, Block 21, BIR Village, Fairview, Quezon City

Petitioner Aguilar admits owning this parcel of land, but insists at every turn that she had consistently declared it in her SALNs. A perusal of her SALNs from 1999-2002 would indeed show that she had declared ownership of the Fairview property, entering it merely as "House & Lot, Q.C." This is as opposed to the allegations of the PNP-CIDG that what she has been declaring is Lot 8 of Block 21, and not Lot 6.

We sustain the findings of the Ombudsman contained in the *Supplemental Decision* as to the validity of petitioner Aguilar's account on this point. As observed by the Ombudsman, the house and lot she declared as residence is actually a duplex-type structure, with a party wall in the middle, erected on two lots, Lots 6 and 8. When petitioner Aguilar purchased Lot 8 from one Norma Jurado, she dismantled the dividing wall to make a solitary unit.

⁴⁸ *Ombudsman v. Racho*, supra note 45, at 163.

⁴⁹ *Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.*, G.R. No. 190515, June 6, 2011, 650 SCRA 656, 660.

This explanation finds support from a perusal of her travel documents wherein she interchanges her address between said Lot 6 and Lot 8.

ii. Antel Towers

Petitioner Aguilar argues next that the four-bedroom condominium apartment with two parking slots along Pasay City is actually owned by her US-based brother Carlo who allegedly purchased it from Mina Gabor, as evidenced by the Deed of Sale dated July 14, 2003.

The Court, as were the CA and the OMB, is unconvinced. A cursory reading of the deed shows July 14, 2003, or a month after the PNP-CIDG initiated an investigation over Aguilar's lifestyle, as its date of execution. On the other hand, petitioner Aguilar admitted during the clarificatory hearing conducted on September 23, 2004 that, as early as 2000, she and her daughter have already been occupying the apartment, thus:

Q: You said in your direct clarificatory questioning that you don't know when Carlo Gupilan bought this property? **A:** Yes, sir.

Q: But when did you reside in that property for the first time? **A: Mga 2000 pa yun.**

Q: When for the first time did you know that Carlo Gupilan acquired that Antel Towers property? **A:** Noon pong sinabi niya: "Ate, napakalayo sa opisina mo ang bahay mo. Gusto mo gamitin mo yung bahay ko sa Pasay?"

Q: Mga kailan yun? **A: Mga 2000.**⁵⁰

Evidently, a serious disparity exists between the document presented and the statements petitioner Aguilar herself made. As the CA observed, citing the Ombudsman's findings, petitioner insists that the property is owned by her brother Carlo who invited her to stay in his condo unit in 2000. However, per the document she presented, the alleged Deed of Sale between him and Gabor, was only executed on July 14, 2003.

On what authority then she has been staying on the apartment unit before the alleged Carlo-Gabor sales transaction was executed remained unexplained. This aberration coupled by her beneficial ownership of the property, as demonstrated by her possession and occupancy of the unit, casts serious doubts as to her brother's alleged ownership of the unit since 2000 and renders dubious the alleged deed of sale. To recall, graft investigators will not only look into properties in a public servant's name, but also those claimed by their relatives or dummies. The SALN requirement will be a useless ritual if public officers can easily evade the obligation to disclose if they register the asset under someone else's name.

⁵⁰ CA rollo, p. 568.

iii. Naga City property

As petitioner Aguilar alleged, she purchased the property from her parents who, in June 1990, executed the corresponding deed of sale in her favor. This sale may be documented, but her claim that she subsequently sold the Naga property to one Rosendo Gonzales sometime in 1992 is not supported by evidence. She has not adduced any document or deed proving that she no longer owns the property. On the other hand, the PNP-CIDG was able to secure from the City Assessor's office a copy of the tax declaration of the property in 2002 which, on its face, clearly yields this fact: the property is still registered under Aguilar's name; the alleged sale between her and Rosendo Gonzales was not annotated.

iv. Vehicles

There is no quibbling as to the ownership of the Honda CRV and the Isuzu Trooper. The question pivots only as to the two (2) BMWs that petitioner Aguilar had acknowledged using.

Per petitioner Aguilar's account, a friend of another brother, Salvador, has allowed her the use of the BMWs. As claimed, US-based Salvador is in the business of exporting used cars from the US to the Philippines and has local contacts which include the two corporations under whose names the BMWs are registered. The PNP-CIDG, on the other hand, submitted pictures⁵¹ taken during its surveillance of Aguilar showing the red and silver BMWs leaving the parking space of Antel Towers, if not parked at slots reserved for the use of the unit Aguilar has been occupying.

We rule, as the CA and the Ombudsman earlier did, against petitioner Aguilar on this point. As found by the Ombudsman and confirmed by the CA, petitioner Aguilar had control and possession—both attributes of ownership—of the two BMW vehicles. While she alleged having only borrowed them, her statement during the clarificatory hearings that she does not know who the real owners are over stretches credulity. Her allegation was that the vehicles were only lent her by her brother's friend. But when pressed on how she came into contact with the friend, who was unnamed, since her brother is in the US, she was unable to give a direct answer.⁵²

In another perspective, it bears to stress that petitioner Aguilar, a ranking customs official, had veritably admitted to receiving benefits from the above named corporations which had been facilitating her brother's used car export business. As correctly observed by the Ombudsman, Sec. 7 of RA 6713 or the *Code of Ethical Standards*⁵³ prohibits public officials and employees from directly or indirectly soliciting or accepting gifts, favor or things of monetary value from anyone in connection with any operation being regulated by, or any transaction which may be affected by the

⁵¹ Id. at 154-156, 158, 160, 162.

⁵² Id. at 547-551.

⁵³ RA 6713, Sec. 7(d).

functions of their office. The *Anti-Graft and Corrupt Practices Act* declares and penalizes similar acts.⁵⁴

The act complained of as regards the BMW cars for sure is indicative of corruption, tending to suggest that petitioner Aguilar had used her position in the customs bureau to advance her brother's business interests as well as that of the two corporations which facilitate the vehicle exportation and importation business. Thus, even in the absence of compelling evidence to prove that petitioner Aguilar is the actual owner of the subject high-priced BMW vehicles, she can still be held amenable under the premises for conduct prejudicial to the best interest of the service.

v. Foreign Travels

Petitioner Aguilar's exculpating allegations, as earlier narrated, as to her foreign travels during the period material fail to convince.

While indeed some of her siblings executed affidavits tending to prove they have sufficient income to shoulder her travels, they stopped short of saying that they did in fact contribute or entirely pay, as Aguilar urges the Court to believe, for her and her daughters' trip to Los Angeles. Nowhere in the documents was it mentioned that they defrayed petitioner Aguilar's expenses for her visits. The general affidavits merely indicated their jobs and how much salary they receive monthly. As held in *Office of the Ombudsman v. Racho*,⁵⁵ an unexplained wealth case, the documents that Racho presented, purportedly showing his brothers' financial capability to send or contribute large sum of money for their business, do not prove that they did, in fact, contribute or remit money for their supposed joint business venture.

As a final note on the matter, petitioner Aguilar had submitted affidavits⁵⁶ wherein she averred that all expenses for her and her daughter's travel shall be borne or defrayed by her alone.⁵⁷ So what happens to her claim that her siblings shouldered most of her travel expenses?

vi. Summary

Administrative proceedings are governed by the "substantial evidence rule," meaning a finding of guilt in an administrative case may and would issue if supported by substantial evidence that the respondent has committed the acts stated in the complaint. Substantial evidence is more than a mere scintilla. 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.⁵⁸ Its absence is not shown by stressing that there is contrary evidence, direct or circumstantial, on record.⁵⁹

⁵⁴ RA 3019, Sec. 3(b).

⁵⁵ Supra note 45.

⁵⁶ CA rollo, p. 132.

⁵⁷ Id. at 111-112.

⁵⁸ *Office of the Ombudsman v. Bernardo*, G.R. No. 181598, March 6, 2013.

⁵⁹ *Picardal v. Lladas*, No. L-21309, December 29, 1967, 21 SCRA 1483.

In the case at bar, the required evidence sufficient to justify holding petitioner Aguilar administratively liable has been, to us, as to the CA, satisfied. Not only did she fail to declare in her SALN the residential lot located at Panicuason, Naga City, she likewise failed to satisfactorily explain her beneficial ownership of the Antel Seaview Towers four-bedroom condominium unit and her use of the two BMWs registered in the name of different corporations, which, as the records show, are both based in Olongapo City.

Relevant to this determination is Sec. 2 of RA 1379,⁶⁰ in relation to Sec. 8 of RA 3019, which states that 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 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. When the presumption holds, the burden of evidence then shifts to the respondent, in this instance petitioner Aguilar, to show that the financial resources used to acquire the undeclared assets and her expenditures came from lawful income. To be sure, petitioner Aguilar has failed to discharge this burden, as the CA, and the OMB before it, have determined. The explanation she offered when confronted with her undeclared acquisitions and travel splurge is too flimsy compared to her own admissions as to her beneficial ownership over the properties. Her SALNs during the years in question clearly indicated she was a pure compensation income earner. With an annual salary of PhP 249,876, it is incomprehensible how she could have acquired her undeclared assets on top of paying for her annual travels and living expenses. The discrepancy in the total valuation of her declared and undeclared assets is also too glaring for petitioner Aguilar's omission to be written off as mere negligence or carelessness. As a result, no error can be attributed to the CA and the Ombudsman adjudging her guilty of dishonesty.

Petitioner Aguilar's acquittal in Crim. Case No. 08-263022 of the Manila RTC on the ground of insufficiency of evidence would not carry the day for her. The dismissal of the criminal aspect of the complaint filed against Aguilar has hardly any bearing on the administrative case mainly because the quantum of evidence required to support a finding of guilt in a criminal case is proof beyond reasonable doubt. Administrative cases are, as a rule, separate and independent from criminal suits and are governed by differing evidentiary criteria. The acquittal of an accused who is also a respondent in an administrative case does not conclude the administrative proceedings, nor carry with it relief from administrative liability. This is because unlike in criminal cases where the threshold quantum of evidence required is proof beyond reasonable doubt, only substantial evidence is necessary in administrative cases.⁶¹

⁶⁰ An Act Declaring Forfeiture in Favor of the State any Property Found to Have Been Unlawfully Acquired by any Public Officer or Employee and Providing for the Proceedings Therefor.

⁶¹ *Barillo v. Gervacio*, G.R. No. 155088, August 31, 2006, 500 SCRA 561, 572.

b. Evidence against petitioner Hernandez

Unlike in the case of his co-petitioner, this Court is unable to make out a case of dishonesty, let alone grave misconduct against petitioner Hernandez. To be sure, the OMB investigating panel, in the *Decision* dated June 3, 2004, recommended petitioner Hernandez's exoneration. However, in a bizarre twist, the Ombudsman, in its *Supplement* dated January 18, 2005, disapproved the panel's own assessment of the sufficiency of evidence as regards petitioner Hernandez and ruled that, while the Isuzu Trooper with Plate No. HRH-659 was registered under his name, it is actually owned by Aguilar. Accordingly, the Ombudsman decreed Hernandez's dismissal for supposedly consenting to act as Aguilar's dummy. The Ombudsman, in net effect, used petitioner Hernandez's own admission of vehicle ownership against him and ruled that he could not afford to acquire the car on his salary of PhP 14,098 a month.

In ruling for petitioner Hernandez, we do so taking stock of the pronouncement in the first-issued *Decision* of the Ombudsman. There was indeed no specific allegation in the complaint against him other than his owning an Isuzu Trooper vehicle, which he declared in his SALN. But mere ownership is not an actionable administrative offense. The PNP-CIDG also did not present any additional evidence as against petitioner Hernandez. We are, thus, at a loss to understand how the Ombudsman, after saying in not so many words that Hernandez was not guilty, would completely reverse itself in the *Supplement*. Having already disposed of the issue as regards petitioner Hernandez in the *Decision*, it was then quite improper for the Ombudsman to reverse its findings six months after, albeit no evidence had been adduced in the interim to support the new finding.

While the Ombudsman's reasoning—as adopted by the CA, regarding petitioner Hernandez's purchasing capability, or lack of it—may be plausible at first blush, the latter was able to justify his ownership of the Isuzu Trooper. Evidence on record would show that aside from his employment, he and his wife have other sources of income. As he alleged in his pleadings, his wife, Ruth, is a practicing physician who, besides maintaining a clinic in both the Seamen's Hospital in Manila and at the Medical Center Muntinlupa, engages in OB-GYN consultancy. And as seen in his SALN for 2002, the couple run Sarah Katrina's Drugstore in Las Piñas City and even own shares of stocks in Medical Center Muntinlupa. A car loan worth PhP 1,600,000 was also reported in his 2002 SALN.⁶² In fine, there is valid reason to conclude that the Hernandez couple, with their combined income, could very well afford a medium-priced motor van.

Given these circumstances, the innocence claim of petitioner Hernandez becomes all the more credible and the justifications offered sufficient to absolve him of administrative liability. It should be understood that the laws on SALN aim to curtail the acquisition of unexplained wealth. Where the source of the undisclosed wealth can be properly

⁶² CA rollo, p. 272.


accounted for, as in the case of petitioner Hernandez, then it is “explained wealth” which the law does not penalize.⁶³

Under OMB AO 17, if the respondent, meted by OMB the penalty of suspension or removal, is exonerated on appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he failed to receive by reason of that suspension or removal. So it must be in the case of petitioner Hernandez.

WHEREFORE, the petition is **PARTIALLY GRANTED**. The appealed July 22, 2009 Decision and June 13, 2011 Resolution in CA-G.R. SP No.88954 are **MODIFIED**. The charge for Grave Misconduct against Flor Gupilan-Aguilar is **DISMISSED**, while the appellate court’s finding of her liability for Dishonesty and the corresponding penalty imposed are **AFFIRMED**.

The CA Decision, however, insofar as it finds Honore Hernandez guilty of the offenses charged against him, is hereby **REVERSED** and **SET ASIDE**. The complaint against him for Grave Misconduct and Dishonesty is accordingly **DISMISSED**. He is accordingly ordered **REINSTATED** immediately to his former or equivalent position in the Bureau of Customs without loss or diminution in his salaries and benefits. In addition, he shall be paid his salary and such other emoluments corresponding to the period he was out of the service by reason of the judgment of dismissal decreed by the Office of the Ombudsman, as affirmed by the Court of Appeals.

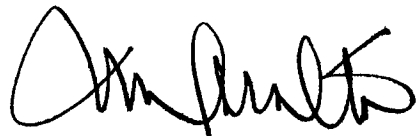
SO ORDERED.



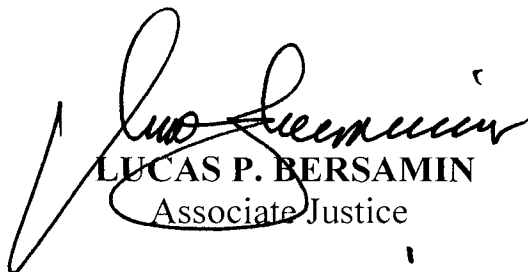
PRESBITERO J. VELASCO, JR.
Associate Justice

⁶³ See *Ombudsman v. Racho*, supra note 45.

WE CONCUR:



DIOSDADO M. PERALTA
Associate Justice



LUCAS P. BERSAMIN
Associate Justice



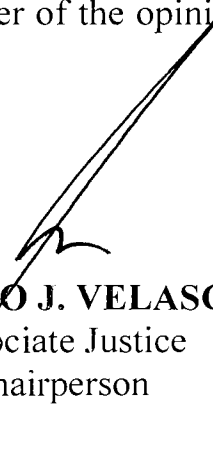
JOSE CATRAL MENDOZA
Associate Justice



MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ATTESTATION

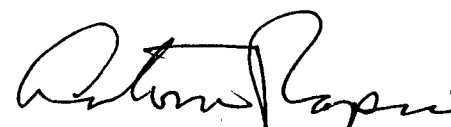
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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
Acting Chief Justice