



April 14, 2021

MEMORANDUM

FOR : The Regional Executive Director
DENR-MIMAROPA Region
1515 L & S Bldg., Roxas Blvd.,
Ermita, Manila

THRU : The Provincial Environment and
and Natural Resources Officer
Sta. Monica, Puerto Princesa City

FROM : FORESTER FELIZARDO B. CAYATOC
The OIC-Community Environment and
Natural Resources Officer

SUBJECT : **OMB-L-A-19-0151 RE: GRAVE MISCONDUCT, GROSS
NEGLECT OF DUTY, GRAVE ABUSE OF AUTHORITY /
OPPRESSION, AND VIOLATION OF SECTION 5 (A) OF
REPUBLIC ACT NO. 6713**

Respectfully furnishing that office is the DECISION rendered by Marites E. Fabila-Vizconde, Graft Investigation and Prosecution Officer III and as concurred by Director Adoracion A. Agbada, Preliminary Investigation Administrative Adjudication and Prosecution Bureau- B/ Acting Assistant Ombudsman of the Office of the Ombudsman – Deputy Ombudsman for Luzon dated September 22, 2020 relative to the aforementioned captioned subject case filed by Nestor S. Lomibao (Complainant) versus Marita Angeles Yap, Rowena Gabay Ramos, Vanessa Garera Mateo, Lorelie Mae Haguling Lagchana-Gallad, all of Commission On Audit, Audit Group E - Cluster 5, Cleotilde Manalo Tuazon, Rhea May Dandan Alvarez of Commission On Audit - Cluster 5, Nelson J. Gorospe of then DENR MIMAROPA, Felizardo B. Cayatoc then OIC, Provincial Environment and Natural Resources Officer and Franklin G. Hernandez, Chief Administrative Officer, Management Services Division, both of Palawan (Respondents).

The complaints of Mr. Lomibao stemmed from withholding his salaries and other emoluments amounting to P 645,209.64 as issued by COA Angeles Yap through the issuance of Withholding Order addressed to the Regional Director Oscar C. Dominguez of DENR MIMAROPA and in turn, RD Dominguez issued a memorandum dated March 30, 2016 addressed to PENRO-Palawan directing the latter to effect the withholding of the salaries of Mr. Lomibao including other emoluments and to submit a copy of the credit notice and/or clearance from COA Auditor that his accountability had already been settled.

Respondents have also submitted their counter-affidavits to the Ombudsman of the filed complaints as stated of Mr. Lomibao including supporting documents.

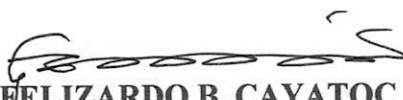
Relative to the above information and as comprehensively stated in the herein Decision, the complaint of Mr. Lomibao to the above Respondents was DISMISSED for lack of merit.




Republic of the Philippines
Department of Environment and Natural Resources
Region IV- MIMAROPA
COMMUNITY ENVIRONMENT AND NATURAL RESOURCES OFFICE
Bgy. Sta. Monica, Puerto Princesa City

Further, please be informed that despite of the Withholding Order issued by the COA for withholding his salaries and other emoluments, only the salaries of Mr. Lomibao were withhold and his mandatory benefits were granted. Furthermore, Mr. Lomibao has already receiving his salaries starting last year up to the present. The withhold salaries amounting to P 645,209.64 are intact and/or reserved.

For information and record.


FELIZARDO B. CAYATOC

DENR MIMAROPA REGION
CENTRO PUERTO PRINCESA
RELEASED
NO. 2776
DATE: April 15, 2021
BY: 



Republic of the Philippines
OFFICE OF THE OMBUDSMAN
Office of the Deputy Ombudsman for Luzon
Agham Road, Diliman, Quezon City 1104

NESTOR S. LOMIBAO

Complainant,

OMB-L-A-19-0151

-versus-

FOR: Grave Misconduct,
Gross Neglect of Duty, Grave
Abuse of Authority/
Oppression, and violation of
Section 5(a) of Republic Act
No. 6713

MARITA ANGELES YAP [SG 24]
State Auditor IV/COA Audit Team Leader

ROWENA GABAY RAMOS [SG 22]
State Auditor III/COA Audit Team Member

VANESSA GARCIA MATEO [SG 22]
State Auditor III/COA Audit Team Member

LORELIE MAE HAGUILING LAGCHANA-GALLAD [SG 19]
State Auditor II/COA Audit Team Member

All of the Commission on Audit, Audit Group E-Cluster 5
Corporate Government Sector/
Natural Resources Development Corporation
L & S Building, 1515 Roxas Boulevard, Ermita, Manila

CLEOTILDE MANALO TUAZON [SG 28]
Director IV, COA-Cluster 5

RHEA MAY DANDAN ALVAREZ [SG 6]
Administrative Aide VI

Both of the Commission on Audit-Cluster 5
Commonwealth Avenue, Quezon City

NELSON V. GOROSPE [SG 26]
OIC, Assistant Regional Director for Management Services
Department of Environment and Natural Resources
Region IV-B (MIMAROPA), L & S Building
1515 Roxas Boulevard, Ermita, Manila

OFFICE OF THE OMBUDSMAN
CERTIFIED TRUE COPY OF THE ORIGINAL

PETER JOHN M. NATIVIDAD
Executive Assistant IV
OMB-Proper

JAN 11 2021

FELIZARDO B. CAYATOC [SG 24]
OIC-Provincial Environment and Natural Resources Officer

FRANKLIN G. HERNANDEZ [SG 24]
Chief Administrative Officer
Management Services Division

Both of the Department of Environment and Natural Resources
Provincial Environment and Natural Resources Office
Barangay Sta. Monica, Puerto Princesa City, Palawan

Respondents.

X-----X

DECISION

This resolves the complaint¹ for Grave Misconduct, Gross Neglect of Duty, and Grave Abuse of Authority/Oppression filed on March 25, 2019² by Nestor S. Lomibao (complainant) against respondents Marita Angeles Yap (Yap), State Auditor IV/Commission on Audit (COA)-Audit Team Leader, and COA-Audit Team Members Rowena Gabay Ramos (Ramos), State Auditor III, Vanessa Garcia Mateo (Mateo), State Auditor III, and Lorelie Mae Haguiling Lagchana-Gallad (Gallad), State Auditor II, (collectively, COA Audit Team), all of the COA Audit Group E-Cluster 5, Corporate Government Sector/Natural Resources Development Corporation (NRDC); Nelson V. Gorospe (Gorospe), Officer-in-Charge (OIC)-Assistant Regional Director for Management Services, Department of Environment and Natural Resources (DENR), Region IV-B (MIMAROPA); and Felizardo B. Cayatoc (Cayatoc), OIC-Provincial Environment and Natural Resources Officer (PENRO), and Franklin G. Hernandez (Hernandez), Chief Administrative Officer, Management Services Division, both of the DENR-PENRO, Barangay Sta. Monica, Puerto Princesa City, Palawan, and for violation of Section 5(a)³ of Republic Act (RA) No. 6713 against

OFFICE OF THE OMBUDSMAN
CERTIFIED TRUE COPY OF THE ORIGINAL

PETER JONIA NATIVIDAD
Executive Assistant IV
OMB Proper
JAN 11 2021

¹ Records, pp. 02-09.

² Docketed on April 24, 2019.

³ Section 5 (a) of Republic Act No. 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees, states: *Act Promptly on Letters and Requests* – All officials and

respondents Cleotilde Manalo Tuazon (Tuazon), Director IV, and Rhea May Dandan Alvarez (Alvarez), COA Administrative Aide VI, both of the COA-Cluster 5, Commission on Audit, Commonwealth Avenue, Quezon City.

Complainant is an Accountant III⁴ of DENR-Region IV-B (MIMAROPA), and presently assigned at the DENR-CENRO, Brooks Point, Palawan. He alleges that: on December 07, 2015, the COA Audit Team, headed by respondent Yap, conducted an examination on his cash and accounts as Special Disbursing Officer of the Palawan Wildlife Rescue and Conservation Center (PWRCC), Puerto Princesa City, Palawan; on January 14, 2016, respondent Yap sent him the Report of Cash Examination containing a total shortage of P1,282,893.64⁵ for all the accountable officers named therein, with the instruction that he should sign the said report on the portions with checked marks; he signed the said Report⁶ believing in good faith that it was the normal procedure undertaken by the COA Audit Team after conducting a cash and account examination of a particular accountable officer;⁷ later on, the COA Audit Team sent him a second Report of Cash Examination containing a shortage of P1,467,333.64⁸ also for all the accountable officers named therein, and much later, the COA Audit Team sent him the third Report of Cash Examination containing a shortage of P1,326,135.64⁹ for all the accountable officers named therein; subsequently, the COA Audit Team, through respondent Yap, issued two Letters of Demand: 1) dated February 03, 2016 with a shortage of P655,189.64,¹⁰ and 2) dated March 01, 2016 (Final Demand Letter) with a shortage of P645,209.64,¹¹ both requiring him to produce the missing funds and to

employees shall, within fifteen (15) working days from receipt thereof, respond to letters, telegrams or other means of communications sent by public. The reply must contain the action taken on the request.

⁴ Records, p. 10.

⁵ *Id.* at 03.

⁶ *Id.* at 18-19.

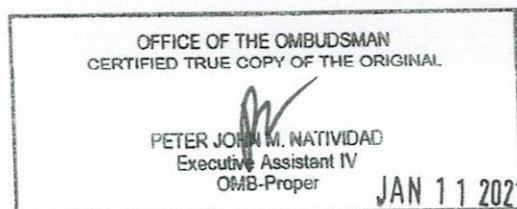
⁷ *Id.* at 17-25.

⁸ *Id.* at 20-22.

⁹ *Id.* at 23-25.

¹⁰ *Id.* at 28.

¹¹ *Id.* at 29.



explain why the shortage occurred; on March 21, 2016, despite the discrepancy in the findings of the amounts of shortages on their accounts, respondent Yap issued a Withholding Order¹² addressed to Oscar C. Dominguez (Dominguez), Regional Director, DENR-Region IV-B-MIMAROPA, directing the latter to immediately withhold the payment of his salaries and other emoluments, and to apply the withheld amounts in full satisfaction of his shortage amounting to P645,209.64; and in turn, Dominguez issued a Memorandum¹³ dated March 30, 2016 addressed to PENRO-Palawan directing the latter to effect the withholding of his salaries and other emoluments, or to submit a copy of the credit notice and/or clearance from the COA Auditor that his accountability had already been settled.

Complainant contends that: there could not have been an audit on his cash and accounts as Special Disbursing Officer of PWRCC on December 07, 2015 because the COA Audit Team conducted the audit when he was already assigned at the DENR-CENRO, Brooks Point, Palawan; he was not designated as Special Collecting Officer of PWRCC and he was not bonded as such; and he did not perform the duties and functions of Special Collecting Officer of PWRCC.

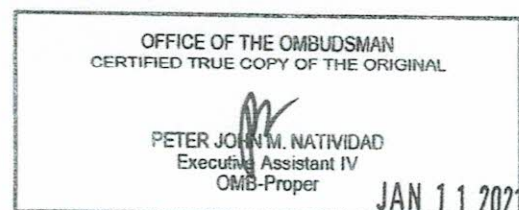
Complainant adds that: on August 23, 2016, he wrote a Letter-Appeal¹⁴ from the withholding of his salaries and other emoluments addressed to Merle M. Valentin, OIC-Supervising Auditor, and respondent Yap; acting on his Letter-Appeal, respondent Yap wrote a Letter¹⁵ dated August 18, 2017 addressed to Natividad Y. Bernardino, OIC-Regional Director, DENR-Region IV-B (MIMAROPA), informing the latter that the

¹² *Id.* at 36.

¹³ *Id.* at 37.

¹⁴ *Id.* at 40-45.

¹⁵ *Id.* at 47-49.



Withholding Order issued to him could not be lifted, and reiterating his shortage amounting to P645,209.64; consequently, respondent Gorospe instructed¹⁶ the PENRO-Palawan (respondent Cayatoc) to immediately implement the Withholding Order until the shortage amounting to P645,209.64 indicated in the Final Demand Letter has been fully collected; respondent Cayatoc then issued a Memorandum¹⁷ to DENR-CENRO, Brooks Point, Palawan, directing the latter to start withholding his salaries and other emoluments starting September 2017 until the amount of P645,209.64 has been collected; and in turn, respondent Hernandez prepared the documents necessary for the withholding of his salaries and other emoluments; and starting September 2017 up to the filing of the present complaint on March 25, 2019, he was deprived of his salaries and other emoluments.

Complainant continues that: the audit conducted by the COA Audit Team was not in accordance with the established rule and regulations, thus, on March 08, 2018, he filed a Letter-Petition¹⁸ before the Office of the Cluster Director, headed by respondent Tuazon, requesting for the re-evaluation and review of the cash examination conducted by the COA Audit Team on December 07, 2015; the said Letter-Petition was personally received by respondent Alvarez; despite the lapse of considerable period of time, respondent Tuazon failed to act on his Letter-Petition; based on the Certification¹⁹ dated January 17, 2019 of Cathy R. Flores (Flores), Accountant, DENR Region IV-B (MIMAROPA), his total withheld compensations and other emoluments already amounted to P921,525.23; and respondents conspired and connived with one another in unlawfully withholding his salaries and other emoluments, to his damage and prejudice.

¹⁶ Through Memorandum dated August 24, 2017; records, p.50.

¹⁷ Dated August 29, 2017; records, p. 51.

¹⁸ Letter-Petition dated February 26, 2018 of complainant Nestor S. Lomibao addressed to the COA-Cluster Director, records, pp. 55-59.

¹⁹ Records, p. 61.



OFFICE OF THE OMBUDSMAN
CERTIFIED TRUE COPY OF THE ORIGINAL

PETER JOHN M. NATIVIDAD
Executive Assistant IV
OMB-Prober

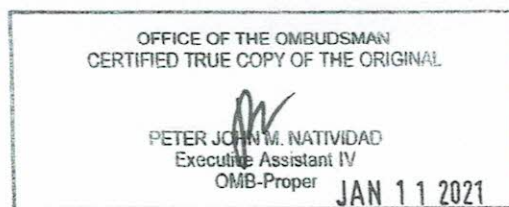
JAN 11 2021

In their Joint Counter-Affidavit,²⁰ respondent-COA Audit Team explain that: on November 10, 2015, Merle M. Valentin, COA State Auditor IV/OIC-Supervising Auditor, issued Travel Order No. 2015-002²¹ directing them to conduct cash examination of the accountable officers of PWRCC from December 06-12, 2015, and to submit an audit report relative thereto; accordingly, they proceeded to the Administrative and Finance Section, PWRCC, Puerto Princesa City, Palawan, to conduct cash examination of the accountable officers on December 07-11, 2015; upon inspection, only Cynthia S. Tabotabo (Tabotabo), Finance Clerk I, PWRCC, had cash in her possession and they counted the monies in her presence; inquiry from the accountable officers revealed that the ticket sales and other fees collected by Ticket Booth Receptionists were turned-over to Tabotabo, who in turn, transmitted the same to complainant, as Head of Administrative and Finance, for deposit to the Land Bank of the Philippines (Landbank), Puerto Princesa City, Palawan Branch.

Respondent-COA Audit Team adds that: during the audit, they were informed by the accountable officers that the Ticket Booth Receptionists were not using the Cash Receipts Register, as required under COA Circular No. 2003-006 dated December 02, 2003, because no one was designated as Collecting Officer, and they were not instructed to prepare and maintain the said Cash Register Receipts; they manually checked the available documents and receipts from PWRCC covering the period from January 01, 2014 to December 06, 2015 to determine if there were undeposited collections and to ascertain the respective accountabilities therein; due to the limited time to conduct cash examination, they gathered the documents from PWRCC and brought them to their office at NRDC to conduct further cash examination and review of the accountabilities of the accountable officers; upon review, they found out that there were still documents which needed to be submitted

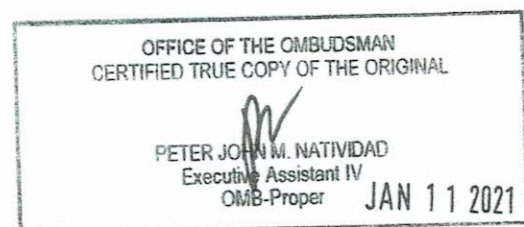
²⁰ *Id.* at 78-106.

²¹ *Id.* at 134.



to determine the persons liable for the alleged shortages; thus, on January 14, 2016, they requested²² from Veronica D. De Guzman (De Guzman), Project Director, PWRCC, the certified true copies of the Daily Collection Reports, Bank Statements, and Report of Collections and Deposits, but only the Bank Statements were submitted to them; and despite the absence of the required documents, they proceeded with the cash examination and they found out that there were unreported collections and cash shortages.

Respondent-COA Audit Team further narrates that: on February 03, 2016, they issued Letters of Demand to the accountable officers²³ found responsible for the cash shortages; since the documents submitted were incomplete and there were also no Cash Receipts Register presented, upon review of the pink copies of the Official Receipts (ORs) and the validated deposit slips and bank statements submitted by NRDC, they came up with a recalculated amount of cash shortages and issued the final Letters of Demand, all dated March 01, 2016 to the accountable officers;²⁴ in the said Letters of Demand, the accountable officers were required to immediately return the amount of cash shortages and to submit written explanation why the shortages occurred; and while waiting for the written explanations, they drafted their initial findings of the cash examination in Audit Observation Memorandum (AOM) No. 2015-22 (15)²⁵ dated March 01, 2016 with its attachments.



²² *Id.* at 135-136.

²³ Namely: (1) Mary Ann B. Valones, former Ticket Booth Receptionist - P747,591.64, (2) Jollivie H. Gerbolingo, Ticket Booth Receptionist - P840,875.64, (3) Carmelito D. Comoso, Administrative Officer I - P419,113.64, (4) Cynthia S. Tabotabo, Finance Clerk I - P655,189.64, (5) complainant Nestor S. Lomibao, former Chief, Administrative and Finance - P655,189.64, and (6) Veronica D. De Guzman, former Project Director - P655,189.64; records, pp. 138-139, 141, 143, 145-147, respectively.

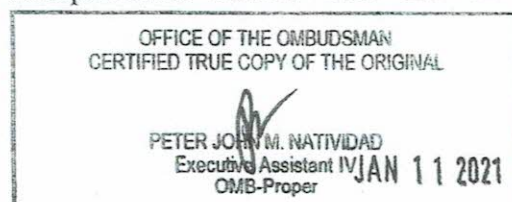
²⁴ Namely: (1) Mary Ann B. Valones, former Ticket Booth Receptionist - P606,393.64, (2) Jollivie H. Gerbolingo, Ticket Booth Receptionist - P844,507.64, (3) Carmelito D. Comoso, Administrative Officer I - P409,133.64, (4) Cynthia S. Tabotabo, Finance Clerk I - P645,209.64, (5) complainant Nestor S. Lomibao, former Chief, Administrative and Finance - P645,209.64, and (6) Veronica D. De Guzman, former Project Director - P645,209.64; records, pp. 148-149, 151, 153, 155, 156-157, respectively.

²⁵ *Id.* at 160-176.

Respondent-COA Audit Team adds that: complainant was present during the cash examination conducted on December 07 to 11, 2015, except on the last day where they were informed that complainant went to the Landbank-Puerto Princesa City, Palawan Branch to deposit money; complainant's liability on the cash shortages which led to the issuance of the Withholding Order is based on his negligence as the Head of the Administrative and Finance of PWRCC; the documents submitted to them were incomplete and the green copies of the ORs in the custody of the PWRCC were illegible, hence, they had to request the pink copies of the ORs from NRDC; before the receipt of the pink copies, an initial Report was made, but upon reviewing their working formula and upon receipt of the pink copies, the computation was reviewed and recalculated to come up with the final total amount of cash shortages; they issued two revised Reports of Cash Examination to reflect the recalculated amount of shortages based on the revised formula and the clear pink copies of the ORs submitted to them; and the over-all results of the audit are as follows: (1) the cash examination conducted on collections of PWRCC for the period January 01, 2014 to December 06, 2015 disclosed cash shortage amounting to P1,326,135.64 due to absence of duly designated Collecting Officer, contrary to Section 64 of Presidential (PD) No. 1445, (2) non-maintenance of Cash Receipts Register contrary to COA Circular No. 2003-006 dated December 02, 2003, (3) late deposit of collections in violation of Section 69 (1) of PD No. 1445, (4) lack of monitoring of collections and deposits, and (5) various weaknesses noted in the internal control system.

Respondent-COA Audit Team also avers that: in the interim, some of the accountable officers complied with the Demand Letters and submitted their written explanations; in his letter²⁶ dated March 09, 2016, complainant acknowledged that there was undeposited collection in the amount of P384,463.64; in the same letter, complainant stated that the unknown

²⁶ *Id.* at 237.



signatures found in some ORs belong to former Ticket Booth Receptionists Mary Joy P. Ortega (Ortega) and Jane S. Laurente (Laurente); attached to complainant's letter is the Certification²⁷ dated March 21, 2016 issued by Ortega and Laurente stating that the signatures appearing in the ORs are theirs and that complainant had no knowledge of the unremitted collections from their daily collections, if there is any; on March 18, 2016, a letter²⁸ was sent to complainant requesting his presence at the exit conference scheduled on March 31, 2016 at the NRDC Conference, Ermita, Manila, in order for him to give his comments on AOM No. 2015-22 (15) dated March 01, 2016, but complainant did not attend the said exit conference; on March 21, 2016, a Withholding Order²⁹ was issued directing Dominguez to withhold the payment of complainant's salaries and other emoluments; and said directive was reiterated in the Withholding Order³⁰ dated April 06, 2016 addressed to Lucio A. Quimbo, Jr., OIC-President and Department Manager, Administrative and Finance, NRDC.

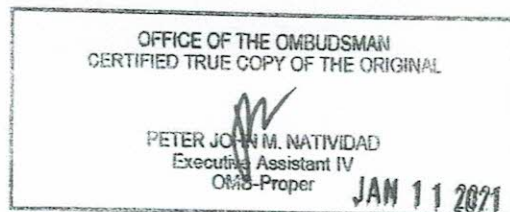
Respondent-COA Audit Team insists that: complainant is an accountable officer within the definition of law because he was functioning as such as evidenced by his signatures appearing in the numerous reports such as the Report of Collections and Deposits, Report of Accountability for Accountable Forms, and Cash Receipts Record; complainant is also the one who deposited the PWRCC's collections to the Landbank-Puerto Princesa City, Palawan Branch as shown in the validated deposit slips, and he continued to act as such until the time they (respondent-COA Audit Team) conducted the cash examination on December 07 to 11, 2015; complainant, as Head of Administrative and Finance of PWRCC, was included as one of the accountable officers because he has the duty to ensure that there should be proper collection of the fees and that said fees/monies be properly

²⁷ *Id.* at 238.

²⁸ *Id.* at 269.

²⁹ *Id.* at 270.

³⁰ *Id.* at 271.



remitted to the NRDC-Managed Account; the mere fact that cash shortages were discovered under his watch is a glaring indication that complainant was remiss in his duties.

Respondent-COA Audit Team finally asserts that in conducting the cash examination and issuing the Reports of Cash Examination, Letters of Demand, and the Withholding Orders to the accountable officers liable for the cash shortages, they were merely performing their constitutionally mandated duties to audit and safeguard the revenues and funds of the government.

For her part, respondent Tuazon alleges in her Counter-Affidavit³¹ that: on March 08, 2018, her co-respondent Alvarez received complainant's letter³² dated February 26, 2018 which was subsequently forwarded to an action officer for appropriate action; on March 12, 2018, she issued a Memorandum³³ addressed to Arsenio R. Rayos, Jr., Supervising Auditor, and respondent Yap, attaching thereto the said letter of complainant and requesting for their comments and recommendations; on July 25, 2018, she received the letter³⁴ dated July 11, 2018 of respondent Yap stating her comments and recommendations on complainant's Petition for Re-evaluation and Review of the cash examination conducted on December 07, 2015; she forwarded respondent Yap's letter to an action officer, but she was not able to make a follow-up on the said letter because she was already assigned³⁵ to the COA Corporate Government Sector (CGS) Cluster 6; and before assuming her functions as Director of CGS-Cluster 6, all communications and paper works submitted to her were acted upon but

³¹ *Id.* at 393-400.

³² RE: Petition for re-evaluation and review of the Cash Examination conducted on December 07, 2015 by the NRDC Audit Team on the cash and accounts of the Palawan Wildlife Rescue and Conservation Center (PWRCC) Accountable Officers.

³³ Records, pp. 466-467.

³⁴ *Id.* at 408-418.

³⁵ COA Office Order No. 2018 – 734 issued by COA Chairperson Michael G. Aguinaldo, records, p. 403.

OFFICE OF THE OMBUDSMAN
CERTIFIED TRUE COPY OF THE ORIGINAL

PETER JOHN L. NATIVIDAD
Executive Assistant IV
JAN 11 2021
OMB-Propier

complainant's Petition for Re-evaluation and Review was not included therein because it was still pending before the action officer.

Respondent Alvarez explains in her Counter-Affidavit³⁶ that: at the time material to the complaint, she was assigned as Administrative Aide VI under CGS Cluster 5, which has audit jurisdiction over the NRDC; on March 08, 2018, complainant went to the Office of CGS-Cluster 5 to file his Petition for Re-evaluation and Review which she personally received; sometime in March 2018, complainant made a follow-up asking for the status of his Letter-Petition; she informed complainant that the Petition was referred³⁷ by their office to the COA-NRDC Audit Team for their comments and recommendations; and she gave the contact number of the COA-NRDC Audit Team to complainant in case he wanted to inquire about his Petition.

In his Counter-Affidavit,³⁸ respondent Gorospe denies the charges and avers that: a criminal complaint involving the same set of facts filed by complainant before the Office of the City Prosecutor (OCP), Puerto Princesa City, Palawan, docketed as NPS Docket No. IV-17-INV-19B-0087, was dismissed³⁹ by the said office for lack of probable cause; in the absence of the Regional Director of the DENR Region IV-B (MIMAROPA) at that time, he issued the Memorandum⁴⁰ dated August 24, 2017 pursuant to the letter of respondent Yap; by issuing the said Memorandum, he was merely complying with the directive from the COA-NRDC Audit Team to implement the Withholding Order after complainant's Appeal to lift the said Withholding Order was denied by respondent Yap per her letter⁴¹ dated August 18, 2017; based on the Certification⁴² dated March 15, 2019 issued

³⁶ Records, pp. 420-427.

³⁷ *Id.* at 437-438.

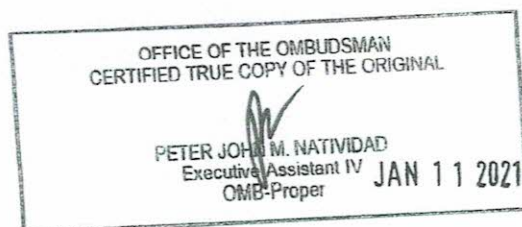
³⁸ *Id.* at 348-357.

³⁹ *Id.* at 367-376.

⁴⁰ *Id.* at 377.

⁴¹ *Id.* at 379-381.

⁴² *Id.* at 511.



by the DENR-PENRO, Palawan, the net amount of the salaries and emoluments received by complainant from September 2017 to February 2019 amounted only to P510,147.91, which is still below the amount of cash shortage (P645,209.64) incurred by complainant; and complainant should have not based his complaint on the Certification dated January 17, 2019 because said amount represents his gross income as his regular deductions such as the withholding tax, contributions (GSIS, PAG-IBIG and Philhealth), and loan payments have not yet been deducted therefrom.

Respondents Cayatoc and Hernandez aver in their Joint Counter-Affidavit⁴³ that: the criminal aspect of the present complaint was already dismissed⁴⁴ by the OCP; the complaint against them was predicated on the Memorandum prepared by respondent Hernandez and signed by respondent Cayatoc as the OIC-PENRO, directing the CENRO of Brookes Point, Palawan, to withhold the payment of the salaries and other emoluments of complainant pursuant to the directive of their superior (respondent Gorospe), who implemented the Withholding Order issued by respondent Yap; the withholding of the salaries and other emoluments of complainant was due to the fact that he incurred cash shortage in his accounts amounting to P645,209.64 as found by the COA Auditors; despite issuance of the Letters of Demand, complainant failed to settle his accountability for the period of more than one (1) year; the Withholding Order issued by the COA has become final, hence, they had to implement the same; the salaries and other emoluments of complainant had been withheld, but the same were not yet remitted to the government as payment of his cash shortage pending resolution of his Appeal; during the pendency of the Appeal, they would continue to withhold the salaries and other emoluments of complainant up to the extent corresponding to his cash shortage; and as of March 15, 2019, the total net income withheld from complainant amounted only to P510,147.91.

OFFICE OF THE OMBUDSMAN
CERTIFIED TRUE COPY OF THE ORIGINAL

PETER JOHN M. NATIVIDAD
Executive Assistant IV
OMB-Proper

⁴³ *Id.* at 443-464.
⁴⁴ *Id.* at 466-475.



OFFICE OF THE OMBUDSMAN
CERTIFIED TRUE COPY OF THE ORIGINAL

PETER JOHN M. NATIVIDAD
Executive Assistant IV
OMB-Proper

JAN 11 2021

X ----- X

Respondents Cayatoc and Hernandez also insist that complainant should have made a follow-up on his Petition for Re-evaluation and Review, instead of filing the present complaint before this Office.

The parties filed their respective Position Papers⁴⁵ reiterating their claims and defenses.

RULING

The charge for Grave Misconduct⁴⁶ against respondent-COA Audit Team must be dismissed since they did not transgress any established and definite rule of action when they conducted the audit pursuant to COA Travel Order No. 2016-002⁴⁷ dated November 10, 2015, on the cash and accounts of complainant on December 07-11, 2015. Save for his bare allegations, complainant failed to establish that respondent-COA Audit Team deviated from procedure in the conduct of the subject audit. Moreover, complainant himself admitted that he was present during the audit,⁴⁸ hence, he could have called out the attention of respondent-COA Audit Team if there was any irregularity in the conduct of the audit. Respondent Yap, as COA Audit Team Leader, should not also be faulted for issuing the Withholding Order directing⁴⁹ the Regional Director, DENR Region IV-B

⁴⁵ Records, pp. 521-521-532 for respondent Tuazon; pp. 560-575 for respondent Alvarez; pp. 577-609 for respondents Yap, Ramos, Mateo, and Lagchana-Gallad; pp. 644-668 for respondents Cayatoc and Hernandez; and pp. 677-714 for complainant Lomibao.

⁴⁶ Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. The misconduct is grave if it involves additional elements such as corruption, or willful intent to violate the law, or to disregard established rules, which must be proven by substantial evidence; otherwise, the misconduct is only simple. Corruption, as an element of Grave Misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others (*Office of the Ombudsman vs. Mallari, G.R. No. 183161, December 03, 2014*).

⁴⁷ COA Travel Order No. 2015-002 issued by Merle M. Valentin, State Auditor IV/OIC-Supervising Auditor, authorizing respondents Marita A. Yap, Rowena G. Ramos, Vanessa G. Mateo, and Lorelie Mae H. Lagchana-Gallad to conduct cash examination of the accountable officers of PWRCC, Puerto Princesa City, Palawan from December 06-12, 2015, records, p. 134.

⁴⁸ Refer to item 3 of complainant's Position Paper, records, p. 680.

⁴⁹ Records, p. 36.



OFFICE OF THE OMBUDSMAN
CERTIFIED TRUE COPY OF THE ORIGINAL

PETER JOHANN MATWIDAJAN
Executive Assistant IV
OMB-Propier
JAN 11 2021

X ----- X

(MIMAROPA) to withhold the salaries and other emoluments of complainant up to the extent of his cash shortage as this is sanctioned under Section 37 of Presidential Decree No. 1445,⁵⁰ otherwise known as the Government Auditing Code of the Philippines, and Section 21, Chapter 4, Subtitle B, Book V of the Administrative Code of 1987.⁵¹ It must be emphasized that the Withholding Order was issued by respondent Yap only after complainant failed to settle his cash shortage amounting to P645,209.64 and to submit his written explanation why the shortage occurred as directed in the Demand Letter⁵² dated March 01, 2016 issued to complainant. Records also reveal that complainant was given an opportunity to explain his side and to comment about the audit findings during the exit conference⁵³ conducted on March 31, 2016, but he failed to attend the same.

The claim of complainant that as of January 17, 2019, the total amount of the salaries and other emoluments withheld from him already amounted to P921,525.23 cannot be given weight because the said amount, as stated in the Certification⁵⁴ dated January 17, 2019, represents his gross income from September 2017 to January 17, 2019 without the regular deductions such as GSIS, PAG-IBIG, and Philhealth contributions and loan payments. It must be stressed that based on the Certification⁵⁵ dated March 15, 2019 issued by Flores, the net amount of the salaries and other emoluments withheld from complainant amounted only to P510,147.91,⁵⁶ which is still below the amount of cash shortage incurred by complainant at

⁵⁰ Section 37 of Presidential Decree No. 1445 states: Section 37. Retention of Money for Satisfaction of Indebtedness to Government- When any person is indebted to any government agency, the Commission may direct the proper officer to withhold the payment of any money due such person or his state to be applied in satisfaction of the indebtedness.

⁵¹ Section 21, Chapter 4, Subtitle B, Book V of the Administrative Code of 1987 states: Section 21. Retention of Money for Satisfaction of Indebtedness to Government- When any person is indebted to any government agency, the Commission may direct the proper officer to withhold the payment of any money due such person or his state to be applied in satisfaction of the indebtedness.

⁵² Dated March 01, 2016, records, p. 155.

⁵³ Records, p. 269.

⁵⁴ *Id.* at 61.

⁵⁵ *Id.* at 511.

⁵⁶ Certification dated March 15, 2019 issued by Cathy R. Flores, OIC-Accounting Unit, DENR-PENRO, Puerto Princesa City, Palawan, records, p. 511.

OFFICE OF THE OMBUDSMAN
CERTIFIED TRUE COPY OF THE ORIGINAL

PETER JOHANN NATIVIDAD
Executive Assistant IV
OMB-Proprietary

P645,209.64.⁵⁷ Hence, respondent Yap should not be faulted when she did not lift the Withholding Order issued against complainant.

The plain allegation of complainant without any evidence that the conduct of the audit by respondent-COA Audit Team was not in accordance with the established rules and regulations cannot also be given weight because as government officials, they were presumed to have performed their respective duties with regularity. *Reyes, Jr. vs. Belisario, et al.*⁵⁸ enunciates that "As a general rule, 'official acts' enjoy the presumption of regularity, and the presumption may be overthrown only by evidence to the contrary. When an act is official, a presumption of regularity exists because of the assumption that the law tells the official what his duties are and that he discharged these duties accordingly". Hence, as government officials, respondent-COA Audit Team are presumed to have performed their functions with regularity and strong evidence is necessary to rebut this presumption.⁵⁹ Without presenting any evidence to rebut the presumption, respondent-COA Auditor Team's act of conducting the audit which resulted to the finding of complainant's cash shortage amounting to 645,209.64, and the eventual issuance of Withholding Order by respondent Yap, are considered lawful.

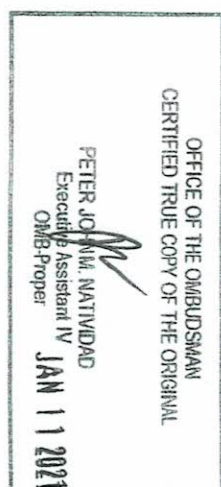
Granting *arguendo* that respondent-COA Audit Team committed mistake in their conduct of the audit on the cash and accounts of complainant, such mistake does not make them automatically administratively liable for Grave Misconduct because mistakes committed by public officers are not actionable as long as it is not shown that they were motivated by malice or gross negligence amounting to bad faith.⁶⁰ Bad faith

⁵⁷ Records, p. 156.

⁵⁸ G.R. No. 154652, August 14, 2009; 596 SCRA 31, 51-52.

⁵⁹ See *Tatad vs. Garcia, Jr.*, G.R. No. 114222, April 06, 1995.

⁶⁰ *Magbanua vs. Junsay*, G.R. No. 132659, February 12, 2007, 215 SCRA 419, 440.



[Signature]

does not simply mean negligence or bad judgment. It involves a state of mind dominated by ill-will or motive. It implies a conscious and intentional design to a wrongful act for a dishonest purpose or some moral obliquity.⁶¹

The charge for Grave Abuse of Authority/Oppression⁶² against respondent-COA Audit Team must likewise be dismissed since they did not act with cruelty, severity or excessive use of power or authority when they conducted the audit and when respondent Yap issued the Withholding Order⁶³ directing to withhold the salaries and other emoluments of complainant up to the extent of his cash shortage. As discussed above, said acts of respondent-COA Audit Team are sanctioned under Section 37 of PD No. 1445 and Section 21, Chapter 4, Subtitle B, Book V of the Administrative Code of 1987.

Also, respondent-COA Audit Team cannot be held liable for Gross Neglect of Duty⁶⁴ considering that they did not fail to perform their respective duties in conducting the audit and the eventual issuance of the Withholding Order against complainant. Records show that in order to protect the rights of complainant, respondent-COA Audit Team gave him the opportunity to settle his cash shortage and to explain his side by issuing a Demand Letter⁶⁵ on March 01, 2016, and by inviting him to attend the exit

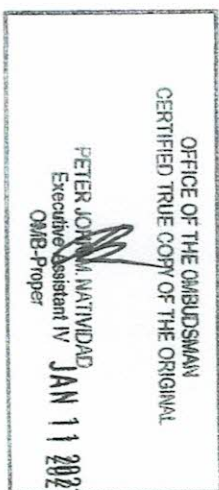
⁶¹ See *Galmaitan vs. Gonzales, et al.*, G.R. No. 149226, June 26, 2006.

⁶² Oppression is also known as Grave Abuse of Authority, which is a misdemeanor committed by a public officer, who under color of his office, wrongfully inflicts upon any person any bodily harm, imprisonment or other injury. It is an act of cruelty, severity or excessive use of authority (*Office of the Ombudsman vs. Caberoy*, G.R. No. 188066, October 22, 2014).

⁶³ Records, p. 36.

⁶⁴ Gross Neglect of Duty or Gross Negligence refers to negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences, insofar as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to give to their own property. In cases involving public officials, there is Gross Negligence when a breach of duty is flagrant and palpable (*Civil Service Commission vs. Rabang*, G.R. No. 167763, March 14, 2008, 548 SCRA 540, 547).

⁶⁵ Records, p. 155.



conference⁶⁶ scheduled on March 31, 2016, which complainant failed to comply with.

Likewise, all the administrative charges against respondents Gorospe, Cayatoc and Hernandez must be dismissed since they did not commit any infraction when they implemented the Withholding Order of salaries issued by respondent Yap to cover the amount of shortage incurred by complainant on his cash and accounts.

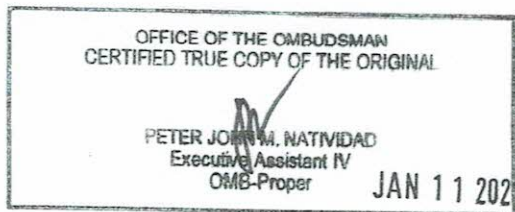
Lastly, the charge for violation of Section 5(a) of RA No. 6713 against respondent Alvarez, who personally received the Petition for Re-evaluation and Review filed by complainant, must be dismissed because she acted on it by forwarding the same to an action officer. Likewise, the same charge against respondent Tuazon must be dismissed because she had acted on the said Petition for Re-evaluation and Review by issuing a Memorandum⁶⁷ dated March 12, 2018 addressed to respondent Yap and Arsenio S. Rayos, Jr., COA-Supervising Auditor, requesting for their comments and recommendations on the said Petition. As explained by respondent Tuazon, the reason why she was not able to follow-up the result of complainant's Petition for Re-evaluation and Review is because she was already assigned⁶⁸ to COA-CGS Cluster 6 pursuant to COA Office Order No. 2018-734 dated August 20, 2018.

WHEREFORE, the complaint against respondents Marita Angeles Yap, Rowena Gabay Ramos, Vanessa Garcia Mateo, Lorelie Mae Haguiling Lagchana-Gallad, Cleotilde Manalo Tuazon, Rhea May Dandan Alvarez,

⁶⁶ *Id.* at 269.

⁶⁷ *Id.* at 406-407.

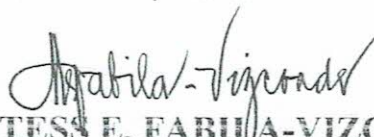
⁶⁸ *Id.* at 419.



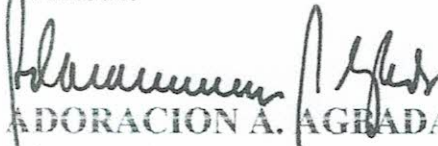
Nelson V. Gorospe, Felizardo B. Cayatoc and Franklin G. Hernandez is
DISMISSED for lack of merit.

SO ORDERED.

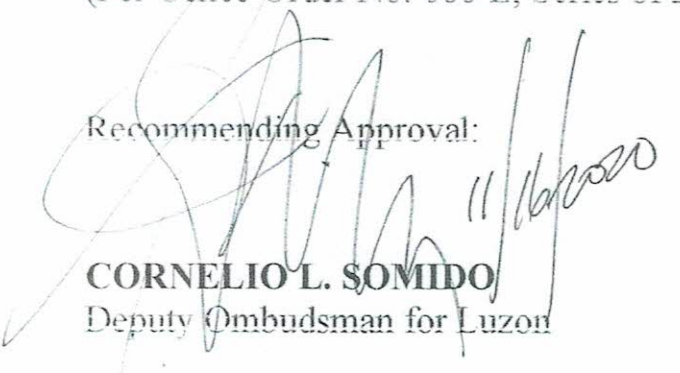
Quezon City, Philippines, September 22, 2020.


MARITESS E. FABILA-VIZCONDE 09.22.2020
Graft Investigation & Prosecution Officer III

I concur:

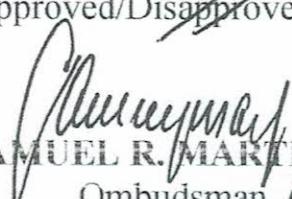

ADORACION A. AGRADA 10/27/2020
Director
Preliminary Investigation, Administrative
Adjudication and Prosecution Bureau-B/
Acting Assistant Ombudsman
(Per Office Order No. 086-L, Series of 2018)

Recommending Approval:


CORNELIO L. SOMIDO 11/16/2020
Deputy Ombudsman for Luzon

Approved/Disapproved:⁶⁹



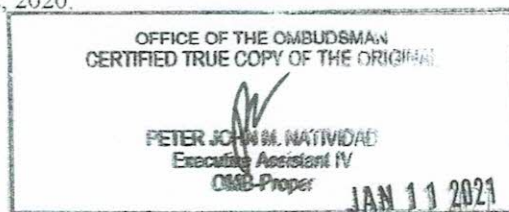

SAMUEL R. MARTIRES
Ombudsman 12/9/2020

⁶⁹ The dispositive portion reads:

WHEREFORE, the complaint against respondents Marita Angeles Yap, Rowena Gabay Ramos, Vanessa Garcia Matco, Lorelie Mae Haguiling Laghana-Gallad, Cleotilde Manalo Tuazon, Rhea May Dandan Alvarez, Nelson V. Gorospe, Felizardo B. Cayatoc and Franklin G. Hernandez is **DISMISSED** for lack of merit.

SO ORDERED.


Quezon City, Philippines, September 22, 2020.



MEFV*

cc: **NESTOR S. LOMIBAO**, Princesa Homes Subdivision, Barangay San Pedro, Puerto Princesa City 5300, Palawan
MARITA A. YAP, COA-Audit Group E-Cluster 5, Corporate Government Sector/Natural Resources Development Corporation, L & S Building, No. 1515 Roxas Boulevard, Ermita, Manila; Now assigned at the Philippine Crop Insurance Corporation and Quedan and Rural Credit Guarantee Corporation, Quezon City; OR: Block 9, Lot 9, Magdalena Homes, Barangay Ampit 1, San Mateo, Rizal
ROWENA G. RAMOS, COA-Audit Group E-Cluster 5, Corporate Government Sector/Natural Resources Development Corporation, L & S Building, No. 1515 Roxas Boulevard, Ermita, Manila; OR: Block 4, Lot 14, Phase 8, Topacio Street, Barangay Magdalo, Bahayang Pag-asa Subdivision, Imus 4103, Cavite
VANESSA G. MATEO, COA-Audit Group E-Cluster 5, Corporate Government Sector/Natural Resources Development Corporation, L & S Building, No. 1515 Roxas Boulevard, Ermita, Manila; OR: No. 8 Baco Street, Sta. Teresita 1114, Quezon City
LORELIE MAE H. LAGCHANA-GALLAD, COA-Audit Group E-Cluster 5, Corporate Government Sector/Natural Resources Development Corporation, L & S Building, No. 1515 Roxas Boulevard, Ermita, Manila; Now assigned at Food Terminal Inc., Taguig City; OR: Block 75, Lot 2, 37B 10th Avenue, HHSG, Barangay North Signal Village, Taguig City
CLEOTILDE M. TUAZON, Corporate Government Sector Cluster, Commission on Audit, Commonwealth Avenue 880, Quezon City; Now assigned at Cluster 6-Social, Cultural, Trading, Promotional and Other Services, Corporate Government Sector, Commission on Audit, Commonwealth Avenue 880, Quezon City; OR: No. 518 Reparo Street, Libis, Bacs 1401, Caloocan City
RHEA MAY D. ALVAREZ, COA-Cluster 5, Commission on Audit, Commonwealth Avenue 880, Quezon City; OR: No. 64 J. P. Rizal Street, Barangay Sta. Lucia, Novaliches 1117, Quezon City
NELSON V. GOROSPE, OIC- Assistant Regional Director for Management Services, Department of Environment and Natural Resources Region IV-B, MIMAROPA, L & S Building, No. 1515 Roxas Boulevard, Ermita, Manila; Now assigned at the Department of Environment and Natural Resources Region IV-A, CALABARZON, L & S Building, No. 1515 Roxas Boulevard, Ermita, Manila
FELIZARDO B. CAYATOC, OIC-Provincial Environment and Natural Resources Officer, Department of Environment and Natural Resources, Barangay Sta. Monica, Puerto Princesa City 5300, Palawan
FRANKLIN G. HERNANDEZ, OIC-Community Environment and Natural Resources Office, Department of Environment and Natural Resources, Barangay Sta. Monica, Puerto Princesa City 5300, Palawan



OFFICE OF THE OMBUDSMAN
CERTIFIED TRUE COPY OF THE ORIGINAL

PETER JOHN M. NATIVIDAD
Executive Assistant IV
OMB-Proper
JAN 11 2021