

Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

LEOVIGILDO A. DE CASTRO,
Petitioner,

G.R. No. 192723

Present:

- versus -

SERENO, C.J., Chairperson,
LEONARDO-DE CASTRO,
DEL CASTILLO,
PERLAS-BERNABE, and
CAGUIOA, JJ.

FIELD INVESTIGATION
OFFICE, OFFICE OF THE
OMBUDSMAN and the
COMMISSIONER OF CUSTOMS,
Respondents.

Promulgated:

JUN 05 2017

X-----X

DECISION

CAGUIOA, J.:

The Case

This is a petition for review on *certiorari*¹ (Petition) filed under Rule 45 of the Rules of Court against the Decision² dated April 29, 2009 (Assailed Decision) and Resolution³ dated June 23, 2010 (Assailed Resolution) in CA-G.R. SP No. 99752 rendered by the Second Division of the Court of Appeals (CA). The Assailed Decision and Resolution stem from an appeal from the Decision⁴ dated March 26, 2007 rendered by the Office of the Ombudsman (Ombudsman) in OMB-C-A-05-0617-K, finding petitioner Leovigildo A. De Castro (Leovigildo) guilty of Dishonesty and Grave Misconduct, and imposing upon him the penalty of dismissal from service, cancellation of civil service eligibility, forfeiture of retirement benefits, and perpetual disqualification from re-employment in the government service.

¹ Rollo, pp. 8-47.

² Id. at 49-68. Penned by Associate Justice Myrna Dimaranan-Vidal, with Associate Justices Portia Aliño-Hormachuelos and Rosalinda Asuncion-Vicente concurring.

³ Id. at 70-71. Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Fernanda Lampas Peralta and Vicente S.E. Veloso concurring.

⁴ Id. at 72-116. Penned by Overall Deputy Ombudsman Orlando C. Casimiro.

The administrative charges filed against Leovigildo are anchored on his alleged failure to file truthful Statements of Assets and Liabilities (SALNs) for the years 1994, 1995 and 1996, and explain the manifest disproportion between his declared income for the years 1973 to 2004 and the value of the assets he acquired within the same period.⁵

The Facts

Leovigildo began working in the Bureau of Customs (BOC) on December 4, 1973⁶ as storekeeper at the Manila International Airport.⁷ Since then, Leovigildo had been assigned to occupy the following positions:⁸

Year of Assignment	Position
1979	Common Bonded Inspector
1980	Common Bonded Supervisor
1986	Customs Operations Assistant Chief
1989	Supervising Customs Operations Officer
1996	Chief Customs Operations Officer

Marina Rios (Marina), Leovigildo's wife, also served in government. Sometime in July 1969, Marina began working as a clerk in the now defunct Philippine Atomic Energy Commission.⁹ Thereafter, Marina rose through the ranks, until she retired as a training officer sometime in 1988.¹⁰

Based on the Certificates of Employment and Compensation which form part of the records of the case, Leovigildo and Marina's declared income from 1974 to 2004 amounted to **₱10,841,412.28**.¹¹

Sometime in 2003, the Ombudsman, through its Field Investigation Office (FIO), conducted *motu proprio* lifestyle checks on government officials and employees.¹² Leovigildo was among those evaluated. The findings of the FIO in respect of Leovigildo's assets and net worth are summarized as follows:

Documents revealed that [Leovigildo] earns primarily from his salary as an employee of the [BOC]. [Leovigildo's] annual salary as of 2004 is estimated at [₱]303,052.54, including allowances and bonuses.

[Leovigildo's] [SALN] from 1994 to 2003 showed that neither he nor his spouse had financial connections and business interests. Thus, [Leovigildo] [had] no other source of income except his salary from employment.

⁵ Id. 59-60.

⁶ Id. at 12.

⁷ Now Ninoy Aquino International Airport.

⁸ *Rollo*, p. 12.

⁹ Id. at 23, 81.

¹⁰ Id. at 23.

¹¹ Id. at 81-83.

¹² Id. at 10-11.

[Leovigildo], in his SALN from 1997 to 2003, declared a residential house and lot in Parañaque, a house and lot in Taal[,] Batangas, and an agricultural land in Laguna. [Leovigildo] also disclosed that he acquired a car worth [P]625,000.00 in 2002.

Records show that there are other properties and business interests belonging to [Leovigildo] which were not declared in his SALNs such as his investments amounting to P416,669.00 in Lemar Export and Import Corporation, which was incorporated on 25 May 1994.

There are also properties registered under the name (sic) of [Leovigildo's] children, which should be considered as part of his undisclosed assets, in view of the fact that during the time of the acquisition, the children have (sic) no sources of income or means of livelihood of their own.¹³

The assets in the names of Leovigildo's children (Disputed Assets), which FIO alleged should be attributed to Leovigildo, are further summarized as follows:¹⁴

Asset	Acquisition Cost	Date of Acquisition	Registered Owner	Age at Acquisition
Investment in Lemar Export and Import Corporation (Lemar Corp.)	P625,003.50	May 25, 1994	Marina Rose and Leo Gerald, jointly with Leovigildo	Marina Rose – 18 Leo Gerald – 24
450 square-meter (sq. m.) residential house and lot in Muntinlupa City	P5,708,600.00 ¹⁵	December 3, 1997	Leo Gerald	27
Investment in De Castro Oral Implant Center	P500,000.00	February 28, 1998	Leo Gerald	28
Condominium unit in Makati City	P3,984,929.75	August 28, 1998	Leo Gerald	28
Investment in Lemar General Trading (Lemar Trading)	P3,500,000.00 ¹⁶	February 2, 1999	Leo Gerald Marie Aleli (Aleli) Marie Antoinette (Antoinette) Leovigildo, Jr. Marina Rose	Leo Gerald -29 Aleli -28 Antoinette-26 Leovigildo, Jr. – 24 Marina Rose - 23

¹³ Id. at 73-74.

¹⁴ Id. at 79-80, 152-160.

¹⁵ Figure represents the sum of the values of the lot and improvements thereon, set at P3,825,000.00 and P1,883,600.00, respectively.

¹⁶ Appears as P3,500.00 in *rollo*, p. 80.

Condominium unit in Ayala Alabang, Muntinlupa City	₱5,676,861.64	July 8, 1999	Leovigildo, Jr.	24
Toyota Land Cruiser	₱2,800,000.00	June 19, 2000	Leo Gerald	30
Investment in Ceraco Corporation (Ceraco)	₱120,000.00	December 19, 2001	Leovigildo, Jr.	26
Investment in Le Mar Dental Clinic	₱100,000.00	January 21, 2003	Marina Rose	27
Honda CRV Wagon	₱701,832.00 on installment basis	February 27, 2004	Marina Rose	28
Total Value	₱23,717,226.89			

In addition to Leovigildo's alleged undisclosed assets and investments, the FIO also found that based on Bureau of Immigration (BI) records, Leovigildo and his family had taken seventy (70) outbound flights between 1993-2004 to several countries, including Japan, Hong Kong and South Korea. The FIO pegged the cost of such trips at ₱30,000.00 each, bringing the De Castros' total estimated travel cost to **₱2,100,000.00**.¹⁷

Consequently, the FIO concluded that Leovigildo and Marina's assets and expenses from 1974-2004 amounted to ₱30,829,603.48,¹⁸ and found that this was manifestly disproportionate to their declared income of **₱10,841,412.28**.¹⁹

Proceedings before the Ombudsman

Subsequently, the FIO filed a Complaint²⁰ dated October 5, 2005 before the Ombudsman, charging Leovigildo of Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service, pursuant to Section 22 of the Omnibus Rules Implementing Book V of Executive Order No. 292²¹ (Omnibus Rules).²² In the same Complaint, FIO prayed that (i) a preliminary investigation be conducted against Leovigildo for violation of Section 8 of Republic Act No. (R.A.) 6713²³ and Article 183

¹⁷ Id. at 78.

¹⁸ Id. at 76-80. Figure represents the sum of Leovigildo's declared assets (**₱3,012,376.59**), Leovigildo's alleged undeclared assets registered in the names of his children (**₱23,717,226.89**), the estimated travel cost incurred by the De Castros' (**₱2,100,000.00**), and the De Castros' expenses incurred (**₱2,000,000.00**), over the period beginning 1997 to 2004.

¹⁹ Id. at 82-83.

²⁰ Id. at 149-162.

²¹ Administrative Code of 1987.

²² *Rollo*, pp. 149, 160-161.

²³ Section 8 of R.A. 6713 reads, in part:

SEC. 8. *Statements and Disclosure*. — Public officials and employees have an obligation to accomplish and submit declarations under oath of, and the public has the right to know their assets, liabilities, net worth and financial and business interests including those of their spouses and of unmarried children under eighteen (18) years of age living in their households.

of the Revised Penal Code;²⁴ and (ii) forfeiture proceedings be lodged against Leovigildo, Marina, and their children.²⁵

On March 24, 2006, the Ombudsman issued an Order placing Leovigildo under preventive suspension.²⁶

In his Counter-Affidavit²⁷ dated August 28, 2006, Leovigildo maintained that the assets which he and Marina acquired while in government service were all reported in their respective SALNs. Leovigildo summarized these assets accordingly:

Income from 1974 to 2004		₱10,841,412.28
Less: Properties acquired (at acquisition cost):		
- House and [lot], Paranaque	₱381,536.59	
- House and lot at Taal, Batangas	135,000.00	
- Agricultural land, Sta. Maria, Laguna	30,000.00	
- Toyota Premio	500,000.00	
- Other personal properties	<u>530,000.00</u>	
	<u>₱1,576,536.59</u>	
Expenses:		
- Cash donation to Leo Gerald, 1995	₱1,000,000.00	
- Wedding gift to Leo Gerald and Angelica Beatriz, 1998	<u>250,000.00</u>	
	<u>₱1,250,000.00</u>	(2,826,536.59)
Available funds for family/other expenses		₱8,014,875.69
Less: Cash on hand [as of] December 31, 2004		<u>115,000.00</u>
Actual family and other expenses		<u>₱7,899,875.69</u> ²⁸

Based on these figures, Leovigildo averred that the net value of the assets he and Marina acquired for the period in question amounts only to ₱1,576,536.59.²⁹ Further, he also argued that FIO bloated his net worth by using the market values of the properties declared in his SALNs as basis for their computation, instead of using their respective acquisition costs.³⁰

²⁴ Article 183 of the Revised Penal Code reads, in part:

ART. 183. *False testimony in other cases and perjury in solemn affirmation.* — The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period shall be imposed upon any person, who knowingly makes untruthful statements and not being included in the provisions of the next preceding articles, shall testify under oath, or make an affidavit, upon any material matter before a competent person authorized to administer an oath in cases in which the law so requires.

²⁵ *Rollo*, p. 160.

²⁶ *Id.* at 81.

²⁷ *Id.* at 347-366.

²⁸ *Id.* at 353-354.

²⁹ *Id.* at 354.

³⁰ *Id.* at 354-355.

Leovigildo also insisted that his children are all professionals who possess the financial capacity to acquire the Disputed Assets that FIO wrongfully attributed to him.³¹ He then proceeded to detail his children's professional qualifications to bolster his defense:

	Degree	Acquisition of license	Sources of Income
Leo Gerald	Dentistry, Centro Escolar University	1994	(i) service in various dental clinics; (ii) service in own clinic at the Medical Plaza, Makati; (iii) service as professor at Our Lady of Fatima University; (iv) service as company dentist at Global Lighting Phils., Inc.; (v) rental income from clinic space; and (vi) sales income from Lemar Trading ³²
Leovigildo, Jr.	Law, Ateneo de Manila University	2000	(i) service as associate for Quasha Ancheta Pena and Nolasco Law Office; (ii) service as Chief Legal Counsel of Philippine Power Distributors Investment Corporation; (iii) service as External Legal Counsel of Seed Capital Ventures Inc.; and (iv) service as Special Consultant for P.A. Garcia Law Office ³³
Aleli	Medicine, University of Sto. Tomas	1997	(i) service as resident trainee and medical officer at East Avenue Medical Center; (ii) service as general obstetrics and gynecology practitioner at San Jose District Hospital and Fortmed Medical Clinic in Sta. Rosa, Laguna; and (iii) service as gynecologic oncologist at Philippine General Hospital ³⁴
Antoinette	Medicine, University of Sto. Tomas	1998	Service as gastroenterologist at the Institute of Digestive Diseases, St. Luke's Medical Center in Quezon City ³⁵
Marina Rose	Dentistry, University of the East	1999	(i) service in various dental clinics; (ii) service in own clinic in Carmona, Cavite; and (iii) service as company dentist for Provident Apparel International Manufacturing Corporation ³⁶

³¹ Id. at 356.

³² Id. at 357-361.

³³ Id. at 361.

³⁴ Id. at 363.

³⁵ Id. at 364.

³⁶ Id. at 365.

Finally, Leovigildo denied FIO's claims regarding his family's foreign trips, emphasizing that the documents which serve as basis for these claims were not attached to the Complaint.³⁷

On March 26, 2007, the Ombudsman issued a Decision finding Leovigildo guilty of the administrative charges against him. The relevant portion of said Decision reads:

[R]espondent LEOVIGILDO DE CASTRO is hereby found **GUILTY** of DISHONESTY and GRAVE MISCONDUCT and is meted the corresponding penalty of DISMISSAL FROM THE SERVICE and shall carry with it the cancellation of eligibility, forfeiture of retirement benefits and perpetual disqualification for re-employment in the government service.³⁸

The Ombudsman observed that while Leovigildo admits that he and his wife acquired a house and lot in Taal, Batangas through inheritance in 1969, and subsequently purchased a 197.6 sq. m. contiguous lot and built a house thereon in 1973 and 1988, respectively, these assets were not reported in his 1994, 1995 and 1996 SALNs.³⁹ Leovigildo also failed to report that his wife won ₱2,000,000.00 from the sweepstakes in 1994.⁴⁰

In addition, the Ombudsman found that while Leovigildo's children were all practicing professionals at the time of the investigation, the documentary evidence on record show that the cost of the Disputed Assets were grossly disproportionate to their respective incomes at the time of acquisition.⁴¹ Thus, the Ombudsman concluded that Leovigildo deliberately placed the Disputed Assets in the names of his children to exclude them from his SALNs.⁴² According to the Ombudsman, such deliberate exclusion, coupled with the fact that the acquisition cost of the Disputed Assets were manifestly out of proportion to Leovigildo and Marina's declared income, gave rise to the *prima facie* presumption that these assets were unlawfully acquired.⁴³

Leovigildo filed a Motion for Reconsideration (MR) dated May 2, 2007, which the Ombudsman denied on June 25, 2007 for lack of merit.⁴⁴

Proceedings before the CA

On August 1, 2007, Leovigildo filed an appeal (Appeal) before the CA *via* Rule 43, ascribing both errors of fact and law to the Ombudsman.

³⁷ Id.

³⁸ Id. at 115.

³⁹ Id. at 95-96, 109.

⁴⁰ Id. at 109.

⁴¹ Id. at 111.

⁴² Id. at 96.

⁴³ Id. at 111.

⁴⁴ Id. at 117-121.



Leovigildo questioned the Ombudsman's authority to directly review his SALNs, arguing that under Section 10 of R.A. 6713, it is the Commissioner of Customs who is vested with authority to review the SALNs filed by the employees of the BOC.⁴⁵

Further, Leovigildo insisted that the Ombudsman's findings were not supported by substantial evidence.⁴⁶ While Leovigildo admitted that he failed to report his Taal assets in his 1994, 1995 and 1996 SALNs, he claimed that such failure was an honest mistake which he voluntarily rectified in his succeeding SALNs.⁴⁷ Moreover, Leovigildo argued he did not report Marina's sweepstakes winnings in his 1994 SALN as these are not among the assets required to be reported thereunder.⁴⁸

In any case, Leovigildo maintained that under BOC guidelines,⁴⁹ the penalty prescribed for failure to file or correct an erroneous SALN is only suspension for a period of one (1) month and one (1) day to six (6) months on the first instance and dismissal from service on the second instance. Moreover, such offense does not constitute Dishonesty or Gross Misconduct.⁵⁰

On April 29, 2009, the CA rendered the Assailed Decision dismissing the Appeal. The dispositive portion of said Decision reads:

WHEREFORE, premises considered, the instant petition is **DISMISSED**. Accordingly, the assailed Decision and Order of the Ombudsman **STAND**.

SO ORDERED.⁵¹

The CA held that the Ombudsman possesses ample authority to review Leovigildo's SALN pursuant to its Constitutional mandate.⁵²

Anent Leovigildo's claim that the omissions in his 1994, 1995 and 1996 SALNs were not impelled by any malicious intent, the CA stressed that Leovigildo's liability rests not only on the basis of such omissions, but *primarily* on his failure to explain the manifest disproportion between his declared income and the assets in his name, and in the names of his children.⁵³ In this connection, the CA found the Ombudsman's findings were

⁴⁵ Id. at 683-685.

⁴⁶ Id. at 687.

⁴⁷ Id. at 682.

⁴⁸ Id. at 686.

⁴⁹ Guidelines in the Filing and Submission of Statement of Assets, Liabilities and Networth and Disclosure of Business Interests and Financial Connections, BOC Memorandum dated March 19, 2007; *rollo*, pp. 702-703.

⁵⁰ See *rollo*, p. 686.

⁵¹ Id. at 67.

⁵² Id. at 59; see also 1987 CONSTITUTION, Art. XI, Sec. 13.

⁵³ Id. at 59-60.



supported by “more than [a] substantial amount” of evidence, and thus found no reason to overturn the same.⁵⁴

Aggrieved, Leovigildo filed an MR on May 22, 2009. The CA denied said MR through the Assailed Resolution,⁵⁵ which was subsequently received by Leovigildo on July 5, 2010.⁵⁶

On July 19, 2010, Leovigildo filed a Motion for Extension of Time, praying for an additional period of fifteen (15) days within which to file his petition for review on *certiorari* before the Court.

Finally, Leovigildo filed the present Petition on August 2, 2010.

The Issue

The sole issue for this Court’s resolution is whether the CA erred in affirming the Assailed Decision and Resolution finding Leovigildo administratively liable for Dishonesty and Grave Misconduct.

The Court’s Ruling

As a general rule, only questions of law may be raised in petitions filed under Rule 45.⁵⁷ However, there are recognized exceptions to this general rule, namely:

(1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) **when there is grave abuse of discretion**; (4) **when the judgment is based on a misapprehension of facts**; (5) **when the findings of facts are conflicting**; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) **when the findings are conclusions without citation of specific evidence on which they are based**; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. x x x⁵⁸ (Emphasis supplied)

The allegations in the Petition invoke the third, fourth, fifth and eighth exceptions above, and call on this Court to review the findings of the

⁵⁴ Id. at 60-61.

⁵⁵ Id. at 70-71.

⁵⁶ Id. at 4.

⁵⁷ RULES OF COURT, Rule 45, Sec. 1.

⁵⁸ *Ambray and Ambray, Jr. v. Tsourous, et al.*, G.R. No. 209264, July 5, 2016, pp. 6-7.



Ombudsman in the Assailed Decision, which were in turn affirmed by the CA.

The Petition is granted, in part. The Court finds that while the CA correctly ruled that Leovigildo's acts constitute Dishonesty, it erred when it further held that such acts also constitute Grave Misconduct. Accordingly, the Court finds sufficient basis to warrant the modification of the Assailed Decision in this respect.

The Ombudsman possesses sufficient authority to undertake a direct review of Leovigildo's SALN

Leovigildo claims that he does not question the general authority of the Ombudsman to investigate and prosecute erring public officials and employees. However, he submits that Section 10 of R.A. 6713 vests upon heads of executive departments the *specific and direct* authority to review their subordinates' SALNs. Proceeding therefrom, Leovigildo alleges that the review, investigation and corrective action taken by the Ombudsman collectively constitute a violation of R.A. 6713, an encroachment of the authority of the Commissioner of Customs,⁵⁹ and a blatant disregard of the latter's guidelines prescribing the review and compliance procedure for the submission of SALNs governing the employees and officials of the BOC.⁶⁰ Leovigildo is mistaken.

Section 10 of R.A. 6713 provides:

Section 10. *Review and Compliance Procedure.* — (a) The designated Committees of both Houses of the Congress shall establish procedures for the review of statements to determine whether said statements have been submitted on time, are complete, and are in proper form. In the event a determination is made that a statement is not so filed, the appropriate Committee shall so inform the reporting individual and direct him to take the necessary corrective action.

(b) In order to carry out their responsibilities under this Act, the designated Committees of both Houses of the Congress shall have the power, within their respective jurisdictions, to render any opinion interpreting this Act, in writing, to persons covered by this Act, subject in each instance to the approval by affirmative vote of the majority of the particular House concerned.

The individual to whom an opinion is rendered, and any other individual involved in a similar factual situation, and who, after issuance of the opinion acts in good faith in accordance with it shall not be subject to any sanction provided in this Act.

⁵⁹ *Rollo*, p. 42.

⁶⁰ *Id.* at 41-42.



(c) The heads of other offices shall perform the duties stated in subsections (a) and (b) hereof insofar as their respective offices are concerned, subject to the approval of the Secretary of Justice, in the case of the Executive Department and the Chief Justice of the Supreme Court, in the case of the Judicial Department. (Emphasis supplied)

Section 10 of R.A. 6713 vests upon heads of executive departments the authority to ensure faithful compliance with the SALN requirement. However, it does not strip the Ombudsman of its sole power to investigate and prosecute, *motu proprio* or upon complaint of any person, any public official or employee for acts or omissions which appear to be illegal, unjust, improper, or inefficient.⁶¹ The Court's ruling in *Carabeo v. Sandiganbayan*⁶² is instructive:

True, Section 10 of R.A. 6713 provides that when the head of office finds the SALN of a subordinate incomplete or not in the proper form such head of office must call the subordinate's attention to such omission and give him the chance to rectify the same. But this procedure is an internal office matter. **Whether or not the head of office has taken such step with respect to a particular subordinate cannot bar the Office of the Ombudsman from investigating the latter. Its power to investigate and prosecute erring government officials cannot be made dependent on the prior action of another office. To hold otherwise would be to diminish its constitutionally guarded independence.**⁶³ (Emphasis supplied)

The fact that Leovigildo had not been previously placed under a BOC sanctioned investigation does not make the Ombudsman's acts void or premature, as the latter's power to investigate and prosecute him on account of discrepancies in his SALNs stands independent of the power of the Commissioner of Customs to ensure compliance with the SALN requirement within the BOC.

*Leovigildo's acts do not constitute
Grave Misconduct*

Leovigildo's administrative liability primarily rests on his failure to faithfully comply with the SALN requirement, and the acquisition of assets manifestly disproportionate to his lawful income. These acts, while undoubtedly inimical to public service, do not constitute Grave Misconduct.

Misconduct has been defined as an intentional wrongdoing or a deliberate violation of a rule of law or standard of behavior.⁶⁴ Misconduct is grave where the elements of corruption, a clear intent to violate the law, or a flagrant disregard of established rules are present.⁶⁵ To constitute

⁶¹ *Carabeo v. Sandiganbayan*, 659 Phil. 40, 46 (2011).

⁶² *Id.*

⁶³ *Id.* at 46-47.

⁶⁴ *Abulencia v. Hermosisima*, 712 Phil. 248, 252 (2013).

⁶⁵ *Id.*



Misconduct, the act or omission complained of must have a direct relation to the public officer's duties and affect not only his character as a private individual, but also, and more importantly, the performance of his official duties as a public servant.⁶⁶

Hence, to hold Leovigildo liable for Grave Misconduct, the acts and omissions for which he was charged must be of such character as to have had an effect on his duties as Chief Customs Operations Officer. The Court finds that such is not the case. The Court's ruling in *Gupilan-Aguilar v. Office of the Ombudsman*⁶⁷ is in point:

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.⁶⁸ (Emphasis supplied)

Nevertheless, Leovigildo cannot be completely absolved of liability.

There exists substantial evidence on record to hold Leovigildo liable for Dishonesty.

To counter the charge of Dishonesty, Leovigildo argues that the Ombudsman's findings are grounded entirely on speculation, surmises and conjectures, and that the CA, in turn, failed to appreciate important facts which, if properly considered, will justify a reversal of the Ombudsman's findings.⁶⁹ In particular, Leovigildo adopts the allegations in his Appeal and asserts that the Ombudsman (i) failed to attach the BI records which supposedly prove that he and his family had taken seventy (70) foreign trips while he was in government service,⁷⁰ and (ii) glossed over his children's professional qualifications, as well as other circumstances which prove that they each had the financial capacity to legitimately acquire the Disputed Assets which were attributed to him.⁷¹

After a perusal of the Ombudsman's submissions, the Court finds that the disputed BI records which serve as the latter's proof of the De Castros'

⁶⁶ See *Gupilan-Aguilar v. Office of the Ombudsman*, 728 Phil. 210, 231 (2014).

⁶⁷ Id.

⁶⁸ Id. at 231-232.

⁶⁹ *Rollo*, p. 21.

⁷⁰ Id. at 38-40.

⁷¹ Id. at 27-35.



alleged foreign trips do not form part of the records of the case. The value the Ombudsman used to quantify the cost of these alleged trips (P30,000.00 for each trip) was a “conservative estimate”⁷² which the latter appears to have arbitrarily assigned for expediency.

Before a foreign trip taken by a public officer can be considered as proof of unexplained wealth, it shall be first necessary to establish that the cost thereof is, in fact, manifestly disproportionate to the latter’s lawful income. Thus, in *Pleyto v. PNP-Criminal Investigation and Detection Group*,⁷³ the Court refused to consider the foreign trips alleged to have been taken by respondent therein as proof of unexplained wealth for failure of the complainant therein to establish that the cost of these trips were beyond the former’s capacity to pay, hence:

The travel records from the BID could only establish the details on the trips taken by petitioner and his wife, specifically, the dates of departure and arrival, the destination, and the frequency thereof. Even these details were at times incomplete or contradictory. x x x It appears to this Court that complete reliance was made on the travel records provided by the BID. No further effort was exerted to complete the travel information of petitioner and his wife and clarify or reconcile confusing entries.

It is a long jump to conclude just from the BID travel records that the foreign travels taken by petitioner and his wife were beyond their financial capacity. As this Court has already found, petitioner had other sources of lawful income apart from his salary as a public official. His wife was also earning substantial income from her businesses. Now the question is, whether the petitioner and his wife could afford all their trips abroad considering their combined income.

Obviously, before this question can be answered, the cost of the trips must be initially determined. The investigating officers of the PNP-CIDG estimated the cost of each trip to be P100,000.00, an estimation subsequently adopted by the Office of the Ombudsman and the Court of Appeals. This Court, though, cannot simply affirm such estimation.

x x x The investigating officers, in fixing the amount of all the foreign trips at P100,000.00 each, offered no explanation or substantiation for the same. With utter lack of basis, the figure of P100,000.00 as cost for each foreign travel is random and arbitrary and, thus, unacceptable to this Court. Without a reasonable estimation of the costs of the foreign travels of petitioner and his wife, there is no way to determine whether these were within their lawful income.⁷⁴ (Emphasis supplied)

Proceeding therefrom, the Court finds that the CA erred when it considered the Ombudsman’s findings regarding the De Castros’ alleged foreign trips as established facts, in the absence of substantial evidence

⁷² Id. at 78.

⁷³ 563 Phil. 842 (2007).

⁷⁴ Id. at 896-897.

showing that such trips were in fact taken, and that it was reasonable to peg the total cost of these trips at ₱2,100,000.00.

Nevertheless, the Court still finds that substantial evidence exists on record to hold Leovigildo guilty of Dishonesty for having acquired assets manifestly disproportionate to his lawful income, and concealing the same by deliberately placing them in the names of his children.

Sections 7 and 8 of R.A. 3019⁷⁵ spells out the SALN requirement and lays down its scope. These provisions state:

Section 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, as well as upon the expiration of his term of office, or upon his resignation or separation from office, shall prepare and file with the office of the corresponding Department Head, or in the case of Head of Department or Chief of an independent office, with the Office of the President, a true, detailed and sworn statement of assets and liabilities, including a 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: *Provided*, That public officers assuming office less than two months before the end of the calendar year, may file their first statement on or before the fifteenth day of April following the close of the said calendar year.

Section 8. *Prima facie evidence of and dismissal due to unexplained wealth.* — If in accordance with the provisions of Republic Act Numbered One thousand three hundred seventy-nine, **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. Bank deposits in the name of or manifestly excessive expenditures incurred by the public official, his spouse or any of their dependents including but not limited to activities in any club or association or any ostentatious display of wealth including 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, notwithstanding any provision of law to the contrary. 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. (Emphasis supplied)

While mere omission from or misdeclaration in one's SALN *per se* do not constitute Dishonesty, an omission or misdeclaration qualifies as such

⁷⁵ The Anti-Graft and Corrupt Practices Act.

offense when it is attended with malicious intent to conceal the truth,⁷⁶ as Dishonesty implies a disposition to lie, cheat, deceive, or defraud.⁷⁷

Here, Leovigildo's malicious intent to conceal the Disputed Assets is evident. Leovigildo deliberately placed the Disputed Assets in the names of his children for the purpose of concealing the same. While Leovigildo maintains that his children had the financial capacity to acquire the Disputed Assets, the evidence on record clearly show otherwise. As painstakingly explained by the CA:

Remarkably, as can be gleaned from the records, albeit at present they are all lucratively employed, [Leovigildo's] children were able to acquire real and personal properties despite the fact that at the time of the said properties' acquisition they had no financial capacity to do so. [Leovigildo] failed to convince [the CA] to overturn the factual findings of the Ombudsman on this matter which is notably supported by a more than substantial amount of evidence.

For one, LEO GERALD, his eldest son, is the registered owner of a condominium unit located in Makati City which was acquired in 1995 through installment basis and fully paid in 1998 in the total amount of P3,984,929.75. The terms of payment which were purportedly undertaken by LEO GERALD in the purchase of the aforesaid unit are the following:

1. [O]n 1 September 1994, LEO GERALD paid P100,000.[00];
2. [H]e paid P447,323.96 per month for three [3] months starting October 1994 to December 1994 or a total of P1,341,971.90; P90,123.24 per month for 24 months starting January 1995 to November 1996 or a total of P2,542,957.85; and
3. [H]is last payment was on 2 December 1996 in the amount of P470,123.33.

However, [Leovigildo's] explanation relative thereto is totally unsatisfactory. As correctly observed by the Ombudsman, it was only on 3 January 1994 when LEO GERALD was issued his license to practice his dental profession, thus, it is highly incredible that he could have afforded to comply with the abovementioned terms of payment. Truly, [the CA] can not come to terms with [Leovigildo's] stance that on LEO GERALD's first year as a dentist, i.e., in 1994, the latter had earned close to P1.5 million. x x x

x x x x

Moreover, records show that in 1994 LEO GERALD likewise made an investment with Lemar Export and Import Corporation worth P208,334.50. Then, a year after LEO GERALD allegedly paid the last installment for the aforementioned condominium unit, he purchased a 450 square meter property in Muntinlupa in the amount of P3,825,000.00. Thereafter, a house was built thereon which was valued at P1,883,600.00. [Leovigildo] argues that the lot acquisition was financed by LEO

⁷⁶ *Gupilan-Aguilar v. Office of the Ombudsman*, supra note 66, at 234.

⁷⁷ *Dumaguete CLC Lending Corp. v. Tubilla*, A.M. No. P-15-3343, August 3, 2015, p. 3 (Unsigned Resolution).



GERALD's soon-to-be parents-in-law, while the money used in the investment was advanced by Atty. RODRIGO STA. ANA. The construction of the house was financed by the proceeds of the sale of LEO GERALD and his wife's Toyota Land Cruiser on 2 April 2003.

This reasoning is likewise flawed.

It bears stressing that the relationship of LEO GERALD and Atty. STA. ANA has never been established in the instant case, thus, considering that at that time LEO GERALD was not yet financially capable to undertake such investment, the source thereof is indeed highly suspicious. It could only be then surmised that the source of such investment was from [Leovigildo's] pocket, which again, is observed to be incongruent with [Leovigildo's] disposable income as appearing in his SALNs.

Regarding the 450 square meter property in Muntinlupa City, per the Deed of Absolute Sale dated 3 December 1997, LEO GERALD paid the vendor, TAN TIONG, the full amount on even date. However, the supposed loan, which was said to have financed the aforementioned acquisition, was undertaken by LEO GERALD with the Spouses AVENA, his soon-to-be parents-in-law, on 18 December 1997, which was notably 15 days after the full payment of the property. Evidently, the documents on hand support the Ombudsman's findings that the proceeds of the alleged loan was not used by LEO GERALD in the purchase of the 450 square meter property.

In the same vein, with respect to [Leovigildo's] claim that the money used in the construction of the house x x x was the proceeds from the sale of LEO GERALD's Toyota Land Cruiser, it should be stressed that the subject vehicle was acquired in cash by LEO GERALD and his wife in the year 2000 when their registered total annual net income per their Annual Income Tax Return was only P216,825.50. x x x

x x x x

Similarly, the subject properties acquired by [Leovigildo's] other children, namely: LEOVIGILDO, Jr., MARIE ANTOINETTE and MARINA ROSE, were proved by substantial quantum of evidence [to have been] purchased during the time when the said children were likewise not financially capable of acquiring the same.

Recorded evidence disclosed that on 14 January 1999, LEOVIGILDO, Jr. purchased a condominium unit at Richville Corporate Tower in Ayala, Alabang, for P5,676,861.64. Notably, however, on said date, LEOVIGILDO, Jr. was only 24 years old and still a law student at that. [Leovigildo's] position that such ownership was just held in trust by LEOVIGILDO, Jr. for his first cousin, LEONILO DE CASTRO ATIENZA is hard to believe considering that, as admitted by [Leovigildo], no copy of declaration of trust has been filed with the Office of the Clerk of Court of Makati City as required by the Notarial Law. This verity casts doubt on the veracity of the supposed trust agreement. Concomitantly, the allegation is self-serving and viewed as a tool to hide the truth that the said condominium unit is indeed owned by [Leovigildo]. Perforce, what is clear and convincing from the records is the fact that LEOVIGILDO, Jr. is the registered owner of the subject condominium unit. Naturally, as

between the documents and the said declaration of trust x x x the former is deserving of more credence.

Evidence further shows that in the year 1999, MARIE ANTOINETTE, together with her husband, had a total income of P374,083.50, but made an investment of P700,000.00 in Lemar General Trading Corporation which was established in the same year. Evidently, this circumstance is suspicious considering that they were not financially capable then to invest such amount.

Also, on the same year (1999), MARINA ROSE, [Leovigildo's] daughter who just passed the Dental Board Examinations, made a P100,000.00 investment in Le Mar Dental Clinic. Again, the source of said investment is dubious considering that MARINA ROSE could not have earned that much as she was just in the practice of her profession in barely less than a year.

Viewed in the light of the aforementioned disquisition, and as found by the Ombudsman, [to] which [the CA] totally subscribe[s], all the foregoing acquisitions and investments could only mean one thing, *viz*: the sources thereof came from [Leovigildo] and are in fact owned by [him] but were registered under his children's name so as to hide [their ownership]. Sadly, [Leovigildo] miserably failed to satisfactorily establish the legitimate source of income which was used in acquiring the subject properties.⁷⁸

This Court, not being a trier of facts, accords respect to the findings of the Ombudsman where, as here, they are supported by substantial evidence and have been affirmed by the CA. Accordingly, these findings will no longer be disturbed.⁷⁹ Consequently, since Leovigildo failed to satisfactorily show that his children had the capacity to acquire the Disputed Assets, the Ombudsman, and thereafter, the CA, correctly arrived at the inescapable conclusion that the same were acquired by Leovigildo himself.

When a public officer's accumulated wealth is manifestly disproportionate to his lawful income and such public officer fails to properly account for or explain where such wealth had been sourced, he becomes administratively liable for Dishonesty.⁸⁰ In this case, the disproportion between Leovigildo and Marina's declared income (P10,841,412.28) and the acquisition cost of the Disputed Assets (P23,717,226.89) is too stark to be ignored.

Under Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service (URACCS) then in force at the time the Complaint was filed, Dishonesty was classified as a grave offense punishable by dismissal on the first instance, which penalty inherently carries with it cancellation of civil service eligibility, forfeiture of retirement benefits, and perpetual disqualification from re-employment in the

⁷⁸ *Rollo*, pp. 60-66.

⁷⁹ See *Bulos, Jr. v. Yasuma*, 554 Phil. 591, 601 (2007).

⁸⁰ See *Gupilan-Aguilar v. Office of the Ombudsman*, *supra* note 66, at 234.

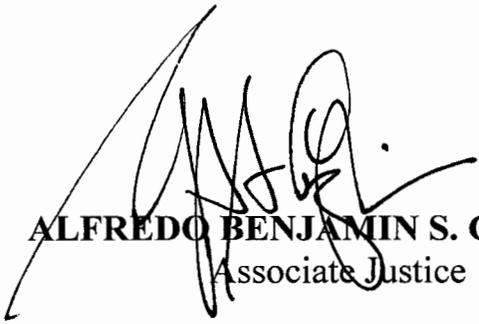
government service.⁸¹ This penalty had been adopted under the Revised Rules on Administrative Cases in the Civil Service now in force. Hence, the Court finds that the penalty imposed upon Leovigildo is proper.

Public service demands the highest level of honesty and transparency from its officers and employees. The Constitution requires that all public officers and employees be, at all times, accountable to the people; serve with utmost responsibility, integrity, loyalty and efficiency; act with patriotism and justice; and lead modest lives. Public office *is* a public trust; it must be treated as a privilege rather than a right, and rest firmly upon one's sense of service rather than entitlement. In this light, the Court deems it necessary to reiterate, as a final note, its pronouncement in *Casimiro v. Rigor*:⁸²

The constitutionalization of public accountability shows the kind of standards of public officers that are woven into the fabric of our legal system. To reiterate, public office is a public trust, which embodies a set of standards such as responsibility, integrity and efficiency. Unfortunately, reality may sometimes depart from these standards, but our society has consciously embedded them in our laws so that they may be demanded and enforced as legal principles, and the Court is mandated to apply these principles to bridge actual reality to the norms envisioned for our public service.⁸³

WHEREFORE, premises considered, the petition for review on *certiorari* is **GRANTED IN PART**. The Court of Appeals' Decision dated April 29, 2009 and Resolution dated June 23, 2010 in CA-G.R. SP No. 99752 are **MODIFIED**. The charge of Grave Misconduct against petitioner Leovigildo A. De Castro is **DISMISSED**. However, his conviction for Dishonesty is **AFFIRMED**, and accordingly, he is meted the corresponding penalty of **DISMISSAL FROM THE SERVICE** and shall carry with it the cancellation of eligibility, forfeiture of retirement benefits and perpetual disqualification from re-employment in the government service.

SO ORDERED.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

⁸¹ Section 58(a), URACCS, CSC Resolution No. 991936 dated August 31, 1999.

⁸² G.R. No. 206661, December 10, 2014, 744 SCRA 611.

⁸³ *Id.* at 627-628.

WE CONCUR:



MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson


TERESITA J. LEONARDO-DE CASTRO
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice

