

August 12, 2014, denying the petitioners' Motion for Reconsideration³ and Supplemental⁴ Motion for Reconsideration, affirming COA's Decision No. 2013-227 dated December 23, 2013⁵ and sustaining the Notices of Disallowance (ND) Nos. 10-004 GF (2007-2008)⁶ and 10-004 GF (2007-2009)⁷ both dated August 13, 2010.

The Facts

This case stemmed from the COA's act of disallowing the Extraordinary and Miscellaneous Expenses (EMEs) of the *ex officio* members of the Monetary Board (MBM), allegedly in violation of their respective constitutional rights.

Petitioner Amando M. Tetangco, Jr., (Tetangco, Jr.) is the Governor of the Banko Sentral ng Pilipinas (BSP). Petitioners Peter B. Favila (Favila), Juanita D. Amatong (Amatong), Nelly A. Favis-Villafuerte (Favis-Villafuerte), Alfredo C. Antonio (Antonio) and Ignacio R. Bunye (Bunye) were the MBM at the time that the allowance for EMEs was approved. Petitioners Marie Michelle N. Ong (Ong), Bella M. Prudencio (Prudencio), Esmegardo S. Reyes (Reyes) and Ma. Corazon G. Catarroja (Catarroja) were employees of the BSP who participated in the processing and approval of the EME.

COA's March 23, 2010 Decision No. 2010-048,⁸ on the Performance Audit Report on the allocation and utilization of EME of the MBM, stated, among others, that “ x x x *the ex-officio member of the Monetary Board x x x shall not be entitled to additional EMEs, other than that appropriated for him or her under the GAA as a cabinet member x x x.*”⁹

Pursuant to this Decision, COA conducted an actual audit of the specific accounts that allegedly exceeded the prescribed limitations and/or were not properly documented/justified.

As a consequence, the EMEs of MBM Neri and Favila were disallowed and became the subject of ND dated August 13, 2010. Eventually, the MBM and BSP personnel, which include the petitioners,

³Id. at 94-119.

⁴Id. at 128-133.

⁵Penned by Chairperson Ma. Gracia M. Pulido Tan, with Commissioners Heidi L. Mendoza and Rowena V. Guanzon, concurring; Id. at 85-92.

⁶Id. at 44-45.

⁷Id. at 46-47.

⁸Penned by Chairman Reynaldo A. Villar, with Commissioners Juanito G. Espino, Jr. and Evelyn R. San Buenaventura concurring, Id. at 252-263.

⁹“WHEREFORE, premises considered, this Commission finds the instant appeal partly meritorious, accordingly, the ceiling of the EMEs of qualified officials of the BSP shall be at the rates fixed in the appropriate resolutions of the Monetary Board and whose claim for reimbursement thereof shall be supported by receipts and/or other documents evidencing the disbursements. In the case, however, of the *ex officio* member of the Monetary Board, he or she shall not be entitled to additional EMEs, other than that appropriated for him or her under the GAA as a cabinet member.”; Id. at 260.

W

were held personally liable under ND Nos. 10-004 GF (2007-2008) and 10-004 GF (2007-2009).

Petitioners filed a Motion for Reconsideration and/or Appeal with the COA Director on May 26, 2011, but the same was denied. They filed a Petition for Review¹⁰ with the COA, but the same was likewise denied in the COA's December 23, 2013 Decision No. 2013-227.¹¹

With their Motion for Reconsideration and Supplemental Motion for Reconsideration having been denied in the COA's Resolution dated August 12, 2014, they filed the instant petition.

The petitioners alleged that the COA acted without or in excess of its jurisdiction, and/or with grave abuse of discretion amounting to lack or excess of jurisdiction: (A) in disallowing the EMEs of the *ex officio* MBMs: (1) because the March 23, 2010 COA Decision No. 2010-048, should not be applied since the disallowed EMEs were incurred by the *ex officio* MBMs in the years 2007, 2008 and 2009, which years are prior to the date of finality (May 5, 2010) of the said decision; (2) since as MBMs, they incur extraordinary and miscellaneous expenses in the discharge of their functions, separate and distinct from the expenses they incur in relation to their principal office; (3) since it cannot be said that the MBMs failed to exercise the highest degree of responsibility in approving the grant of EMEs; (4) since it violates the equal protection clause under Article III, Section 1 of the 1987 Constitution; and (B) in including Petitioner Favila as one of the persons solidarily liable under ND No. 10-004 GF (2007-2008), despite the fact that he had no participation in the approval of the EMEs covered by the ND.

For its part, the COA countered that: Petitioners failed to show grave abuse of discretion on the part of COA in rendering its assailed Decision and subsequent Resolution; COA did not gravely abuse its discretion in disallowing the EMEs of the *ex officio* MBM, because the allowances were based on the applicable laws, jurisprudence, rules and regulations; the defense of good faith in approving the grant of EMEs to the *ex officio* MBM with reliance on BSP's independence and autonomy is unavailing; there was no violation of the equal protection clause in the subject disallowances; and petitioner Favila is solidarily liable with other officials of the BSP under ND No. 10-004 GF (2007-2009) because he was a member of the Monetary Board and also the recipient of the irregular EMEs.

¹⁰ Id. at 53-71.

¹¹ WHEREFORE, premises considered, the instant Petition for Review is hereby DENIED. Accordingly, Corporate Government Sector-A Decision No. 2012-13 dated September 11, 2012, which sustained the disallowance on the payment of Extraordinary and Miscellaneous Expenses to *ex officio* members of the Monetary Board in the amounts of P1,140,000.00 and P373,613.62, respectively, is hereby AFFIRMED. Notice of Disallowance Nos. 10-004GF (2007-2008) and 10-004GF (2007-2009), both dated August 13, 2010, are hereby SUSTAINED WITH MODIFICATION, insofar as Ms. Elizabeth S. Eizaguirre is EXCLUDED from among the persons liable.; Id. at 91.



The Issue

Simply, the core issue boils down to whether or not the COA gravely abused its discretion when it disallowed the EMEs of the *ex officio* MBM.

The Ruling

We rule in the negative.

In disallowing the EMEs of the *ex officio* MBM, COA did not abuse the exercise of its discretion as its denial was grounded on the law, facts and circumstances that would warrant such disallowance arising from the following observations:

The nature of EME, however, was not the foremost reason for the disallowance, but the *limitations imposed by law* in availing such allowance. x x x the *ex officio* members of the Monetary Board are entitled to EMEs *to the extent of that appropriated in the General Appropriations Act (GAA)*. *Since the ex officio members already received their EMEs from their respective Departments (as appropriated in the GAA)*, the additional EMEs from BSP are no longer necessary. It must be stressed that *the ex officio position is actually and, in legal contemplation, part of the principal office; hence, the ex officio member is no longer entitled to receive any form of compensation, allowance or other euphemism from the extended agency*. x x x we quote the pertinent discussion of the subject COA Decision: [Emphasis Supplied.]

x x x In fact, the *ex officio* membership of the cabinet member in the Monetary Board does not comprise 'another office' but rather annexed to or is required by the primary functions of his or her official position as cabinet member. Of equal significance, too, is that the *ex officio* member of the Monetary Board already receives separate appropriations under the GAA for EMEs, he or she being a member of the cabinet. Being such, it is highly irregular that the said *ex officio* member of the Monetary Board, who performs only additional duties by virtue of his or her primary functions, will be provided with additional EMEs, which in this case, appear much higher than his or her appropriations for the same expenses under the GAA as a cabinet member. x x x¹²

x x x x

x x x the irregularity of giving additional compensation or allowances to *ex officio* members was no longer a novel issue during the time that the subject allowances were authorized by BSP. As early as 1991, the issue was already ruled on by the Supreme Court in the case of *Civil Liberties Union vs. Executive Secretary*,¹³ followed by several

¹²Id. at 88.

¹³272 Phil. 147 (1991).

14

jurisprudence in the cases of *Dela Cruz, et. al. vs. COA*,¹⁴ and *National Amnesty Commission vs. COA*,¹⁵ to name a few.¹⁶ (Emphasis supplied)

Absent any showing that COA capriciously, arbitrarily or whimsically exercised its discretion that would be tantamount to evasion of a positive duty or a virtual refusal to perform the duty or to act at all in contemplation of law resulting to the prejudice of the rights of the claimants, the Court finds no reason to set aside its decision.

In the absence of grave abuse of discretion; the factual findings of the COA, which are undoubtedly supported by the evidence on record, must be accorded great respect and finality. COA, as the duly authorized agency to adjudicate money claims against government agencies and instrumentalities has acquired special knowledge and expertise in handling matters falling under its specialized jurisdiction.¹⁷

Verily, the Court has sustained the decisions of administrative authorities like the COA as a matter of general policy, not only on the basis of the doctrine of separation of powers but also upon the recognition that such administrative authorities held the expertise as to the laws they are entrusted to enforce.¹⁸ The Court has accorded not only respect but also finality to their findings especially when their decisions are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion.¹⁹ Only when the COA acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, may this Court entertain and grant a petition for *certiorari* brought to assail its actions.²⁰ However, we find no grave abuse of discretion on the part of the COA in issuing the assailed decision.

Anent petitioners' defense of good faith in approving the grant of EMEs to the *ex officio* members of the Monetary Board, this Court opines that said defense is unavailing.

As correctly pointed out by the COA:

This Commission finds that the Petitioners MBM, in approving the irregular allowance, were remiss in their duty to protect the interest of the Bank. x x x they ought to know that the ex officio members of the

¹⁴422 Phil. 473 (2001).

¹⁵481 Phil. 279 (2004).

¹⁶*Rollo*, p. 91.

¹⁷*Madag Buisan, et. al. v. Commission On Audit and Department of Public Works and Highways*, G.R. No. 212376, January 31, 2017.

¹⁸*TESDA v. The Commission on Audit; et. al.*, G.R. No. 196418, February 10, 2015, 250 SCRA 247.

¹⁹ *Id.*

²⁰ *Id.*

15

Monetary Board were already receiving the same allowance from their respective Departments, hence, they were no longer entitled to the additional EMEs.

It must be emphasized that the degree of diligence required from bank employees and officials is not ordinary but requires ***the highest standards of integrity and performance***. Section 2 of R.A. No. 8791, also known as the General Banking Law of 2000, provides for the degree of diligence expected from the industry, to wit:

Section 2. Declaration Of Policy. - The State recognizes the vital role of banks providing an environment conducive to the sustained development of the national economy and the fiduciary nature of banking that requires high standards of integrity and performance.
xxx

In support of the above provision of the law, the Supreme Court, in the case of *Philippine National Bank v. Rodriguez, et.al.* (G.R. No. 170325, September 26, 2008), ruled, viz:

Banks handle daily transactions involving millions of pesos. By the very nature of their work the degree of responsibility, care and trustworthiness expected of their employees and officials is far greater than those of ordinary clerks and employees. For obvious reasons, the banks are expected to exercise the highest degree of diligence in the selection and supervision of their employees. x x x

x x x ***for failure of the Petitioners MBM to exercise the highest degree of responsibility required by law, their defense of good faith fails.***²¹ [Emphasis Supplied.]

By jurisprudence, the patent disregard of several case laws and COA directives, as in this case, amounts to gross negligence; hence, petitioners cannot be presumed in good faith. In *TESDA vs. The Commission on Audit, et.al.*,²² this Court ruled that:

In *Casal v. COA*,²³ x x x we held the approving officials liable for the refund of the incentive award due to their patent disregard of the issuances of the President and the directives of COA. In *Casal*, we ruled that ***the officials' failure to observe the issuances amounted to gross negligence, which is inconsistent with the presumption of good faith.*** We applied the *Casal* ruling in *Velasco v. COA*,²⁴ to wit:

x x x ***the blatant failure of the petitioners-approving officers to abide with the provisions of AO 103 and AO 161 overcame the presumption of good faith. The***

²¹Rollo, p. 89.

²² 729 Phil. 60, 76 (2014).

²³ 538 Phil. 634 (2006).

²⁴ 695 Phil. 226 (2012).

M

deliberate disregard of these issuances is equivalent to gross negligence amounting to bad faith. Therefore, the petitioners-approving officers are accountable for the refund of the subject incentives which they received.

[Emphasis Supplied]

Applying by analogy the above rulings, We hold the petitioners-approving officers of the Monetary Board are liable for the excess EMEs which they received.

As the records bear out, the petitioners who approve the EMEs failed to observe the following: *first*, there is already a law, the GAA, that limits the grant of EMEs; *second*; COA Memorandum No. 97-038 dated September 19, 1997 is a directive issued by the COA to its auditors to enforce the self-executing prohibition imposed by Section 13, Article VII of the Constitution²⁵ on the President and his official family, their deputies and assistants, or their representatives from holding multiple offices and receiving double compensation; and *third*, the irregularity of giving additional compensation or allowances to *ex officio* members was already settled by jurisprudence,²⁶ during the time that the subject allowances were authorized by the BSP.

Indeed, the petitioners-approving officers' disregard of the aforementioned case laws, COA issuances, and the Constitution, cannot be deemed as a mere lapse consistent with the presumption of good faith.

In line with this, We cannot subscribe to petitioner Favila's insistence that he should not be liable in the approving, processing and receiving of EMEs on the basis that he did not participate in the adoption of the resolutions authorizing the payment of the EMEs.

As pointed out during the deliberation by Our learned colleague, Hon. Justice Lucas P. Bersamin, the doctrine on the non-liability of recipients of disallowed benefits based on good faith did not extend to petitioner Favila for the following reasons: *first*, there was precisely a law (the relevant GAAs) that expressly limited the amounts of the EMEs to be received by the *ex officio* members; and *second*, in so far as ND No. 10-004GF (2007-

²⁵Section 13. The President, Vice-President, the Members of the Cabinet, and their deputies or assistants shall not, unless otherwise provided in this Constitution, hold any other office or employment during their tenure. They shall not, during said tenure, directly or indirectly, practice any other profession, participate in any business, or be financially interested in any contract with, or in any franchise, or special privilege granted by the Government or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries. They shall strictly avoid conflict of interest in the conduct of their office.

The spouse and relatives by consanguinity or affinity within the fourth civil degree of the President shall not, during his tenure, be appointed as Members of the Constitutional Commissions, or the Office of the Ombudsman, or as Secretaries, Undersecretaries, chairmen or heads of bureaus or offices, including government-owned or controlled corporations and their subsidiaries.

²⁶*Civil Liberties Union v. Executive Secretary*, supra note 13; *Dela Cruz, et. al. v. COA*, supra note 14; and *National Amnesty Commission v. COA*, supra note 15.

2008)²⁷ is concerned, his liability arose from his receipt of the subject allowances in 2008, when he was an *ex officio* member of the Board. Hence, good faith did not favor him not only because he had failed to exercise the highest degree of responsibility, but also because as a cabinet member he was aware of the extent of the benefits he was entitled to.

Verily, petitioners Tetangco, Jr., Favila, Amatong, Favis-Villafuerte, Antonio, and Bunye, who were members of the Monetary Board were expected to keep abreast of the laws that may affect the performance of their functions. The law, jurisprudence and COA issuances subject of this case are of such clearness that the concerned officials could not have mistaken their meaning. It was incumbent upon them to instruct Petitioners Ong, Prudencio, Reyes and Catarroja who participated in the processing of the EMEs, to comply with these laws. Unfortunately, they did not. Thus, they cannot find shelter in the defense of good faith.

WHEREFORE, the Petition is **DISMISSED**. The Commission on Audit's Resolution dated August 12, 2014, denying the petitioners' Motion for Reconsideration²⁸ and Supplemental Motion for Reconsideration, affirming its Decision No. 2013-227 dated December 23, 2013 and sustaining the Notices of Disallowance Nos. 10-004 GF (2007-2008) and 10-004 GF (2007-2009) both dated August 13, 2010, are hereby **AFFIRMED** *in toto*.

SO ORDERED.

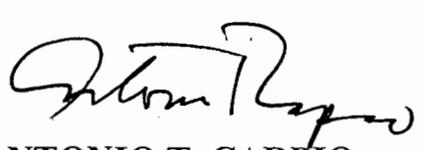


NOEL GIMENEZ TIJAM
Associate Justice

WE CONCUR:



MARIA LOURDES P.A. SERENO
Chief Justice



ANTONIO T. CARPIO
Associate Justice



PRESBITERO J. VELASCO, JR.
Associate Justice

²⁷Supra at Note 6.

²⁸Rollo, pp. 94-119.


TERESITA J. LEONARDO-DE CASTRO
Associate Justice


DIOSDADO M. PERALTA
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice

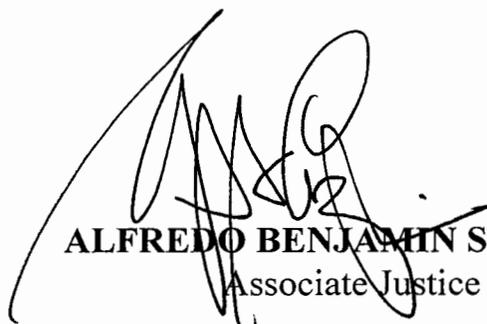
(On Leave)
JOSE CATRAL MENDOZA
Associate Justice


BIENVENIDO L. REYES
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice


MARVIC M.V.F. LEONEN
Associate Justice


FRANCIS H. JARDELEZA
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

(On Leave)
SAMUEL R. MARTIRES
Associate Justice

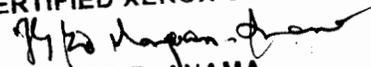
CERTIFICATION

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.



MARIA LOURDES P.A. SERENO
Chief Justice

CERTIFIED XEROX COPY:



FELIPA B. ANAMA
CLERK OF COURT, EN BANG
SUPREME COURT