

MALACAÑANG
Manila

ADMINISTRATIVE ORDER NO. 12

DISMISSING EDILLO C. MONTEMAYOR, DIRECTOR, REGIONAL OFFICE NO. 3, DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS, FROM THE SERVICE WITH FORFEITURE OF ALL GOVERNMENT BENEFITS

This refers to the letter-complaint addressed to the Philippine Consulate General in San Francisco, California, U.S.A., by one Luis Bundalian, dated July 15, 1995, against Edillo C. Montemayor, OIC Regional Director of Region III, Department of Public Works and Highways, for alleged unexplained wealth in violation of Section 8, R.A. No. 3019, as amended.

Quoted hereunder are the facts of the case and the findings and recommendation of the Presidential Commission Against Graft and Corruption (PCAGC) as culled from its Resolution.

"Hearings were held on May 29, July 24 and November 14, 1996; January 24, February 27 and March 13, 1997. During all these hearings, complainant never appeared neither was there any appearance by counsel for him. His true address in the Philippines could not be ascertained. Respondent likewise never appeared personally despite notice, but was represented by counsel.

"The alleged accusations/charges in the complaint are as follows:

- (1) That in 1993, respondent and his wife went to Los Angeles, California, U.S.A., carrying with them more than \$100,000.00 which he used as down payment in buying a house and lot in Burbank, Los Angeles (Pp. 4 & 5, Records);
- (2) That with his income from the government, respondent could not afford to own a beautiful house in a project in Quezon City, make a down payment of \$100,000.00 in Los Angeles, incur 'escrow closing expenses' and

remodelling expenses in Floridablanca,
Pampanga (Ibid);

- (3) That with the income of his in-laws in California and their poor credit standing due to many debts, they could not buy such expensive house (Ibid);
- (4) That in April, 1995, his wife and children vacationed again in California (Ibid);
- (5) That his 'kurakot' came from lahar funds and other projects in public works (Ibid);

"In the Order of the Commission dated February 15, 1996, respondent was directed to submit his Statement of Assets and Liabilities, Income Tax Returns and his Personal Data Sheet but up to the present time he has failed to do so. He submitted only his Service Record.

"Due to his failure and refusal to submit his Statement of Assets, Liabilities and Net Worth (SALN), the Commission on March 11, 1996 wrote the Deputy Ombudsman for Luzon requesting him to furnish this Commission with copies of the SALN of respondent for the past three (3) years - 1992, 1993 and 1994 (p. 8, Records). In reply, the Deputy Ombudsman for Luzon claimed that respondent failed to submit his SALN for calendar years 1992, 1993 and 1994 (p. 18, Records).

"Failure to file Statement of Assets and Liabilities is a violation of Section 8 of Republic Act 6713 and is punishable with imprisonment not exceeding five (5) years or a fine not exceeding P5,000.00 or both under Section 11, par. (a) of said law. Furthermore, Sec. 11, par. (b) thereof reads, thus:

'(b) Any violation hereof proven in a proper administrative proceeding shall be sufficient cause for removal or dismissal of a public official or employee, even if no criminal prosecution is instituted against him.'

"The Commission also wrote DPWH Secretary Vigilar inquiring as to how many times respondent travelled abroad and in his answer dated April 18, 1996, he stated that respondent was sent on official travel to Indonesia on January 11-14, 1994, and that he had no other official travel recorded for the period from 1994 to 1995 (P. 16, Records).

"The Commission will now resolve the complaint on the basis of the evidence on record.

"The complainant submitted the following evidence, to wit:

(1) A copy of a 'Grant Deed' dated May 27, 1993 wherein David R. Tedesco and Judith A. Tedesco granted a piece of real property located at 907 North Bel Aire Drive, Burbank, California, to respondent Edillo C. Montemayor and his wife Irene F. Montemayor (P. 3, Records);

(2) A Special Power of Attorney executed in Los Angeles, California, by respondent and his wife appointing Estela D. Fajardo (sister of respondent's wife) as Attorney-In-Fact to 'negotiate, acknowledge, perform and execute any and all related documents and requirements to complete and close the purchase transaction related to the property located at: 907 NORTH BEL AIRE DRIVE, BURBANK, CALIFORNIA x x x' (p. 1, Records); and

(3) A portion from the column 'Beatwatch' by Lito A. Catapusan (P. 2, Records).

"The respondent submitted the following evidence, to wit:

(1) His counter-affidavit denying all the allegations against him which he described as baseless and unfounded, and attaching therewith certified copies of complaints and OMB resolutions marked as Annexes 'A', 'B', 'C', 'D', 'E' and 'F' (P. 40, Records);

(2) Respondent also submitted an Investigation Report from the Office of the Ombudsman in Cases Nos. OMB-0-94-1172, OMB-0-94-1329 and OMB-0-94-1560 wherein it was recommended that the cases against

respondent be dismissed for lack of evidence (P. 20-31, Records); and

(3) Respondent likewise submitted the Investigation Report on a subsequent case filed with the Ombudsman (OMB-0-95-1100) involving the same issues which was recommended for dismissal for lack or insufficiency of evidence since the issues were already resolved in the three (3) previous cases and there was no additional evidence presented to investigate and prosecute the present case (Pp. 32-34, Records).

"Respondent is being charged of violating Section 8, R.A. No. 3019, as amended, for having acquired a property in Burbank, California, worth \$195,000.00 which, as mentioned by the Graft Investigation Officer (GIO), Office of the Ombudsman, in the Sworn Statement of respondent given on April 11, 1995, at the rate of P20.00 for every dollar, the property would be worth at the very least, P3,900,000.00 and on the basis of respondent's income tax return from 1988 to 1991 do not indicate that he could afford to acquire said property (p. 100, Records). Even with respondent's annual income of P168,648.00 in 1993 as listed in his Service Record dated May 24, 1996, which was finally submitted to the Commission on January 15, 1997, by his counsel, after repeated demands, respondent could not afford to buy such a house, unless he had other sources of income. The burden of proof is now shifted to respondent to present evidence, documentary or otherwise, to rebut the charge which he, however, refused or failed to do.

"As may be gathered from the documents enclosed in the letter-complaint, namely, the Grant Deed and the Special Power of Attorney, respondent and his wife were named as grantees of a piece of real property located at 907 North Bel Aire Drive, Burbank, Los Angeles, California, which transaction was denominated as purchase (pp. 1 & 3, Records).

"In his said sworn statement, respondent admitted that the said property at 907 North Bel Aire Drive, Burbank, Los Angeles, California, is in his and his wife's names but he claimed that the true owner thereof is his sister-in-law, Estela D.

Fajardo. His explanation was lengthy but can be summarized, thus: that because of the unsettled conditions in the government service in 1991, respondent's wife sought the help of her family in the U.S. for their possible emigration thereat. Upon being advised by an immigration lawyer in the United States, that it would be a lot easier if the applicant had a real property thereat under their name, respondent's sister-in-law said that she was acquiring a property in Burbank, California, but because she was disqualified to purchase said property under her name due to an existing mortgage on a property in Palmdale, Los Angeles County, previously acquired in installment and had not yet been fully paid, an internal arrangement was made and said property was placed in respondent and wife's name (pp. 100 & 101, Records).

"Respondent's explanation is unusual, at most. Since it is largely unsubstantiated as he refused and failed to present convincing proof to disprove the allegation that the property in Burbank, California, belongs to him, it is, thus, far-fetched and unbelievable, besides being self-serving.

"The counsel for respondent, instead of adducing evidence to prove respondent's explanation, exerted more effort in filing pleadings, including a motion to dismiss on the ground of forum-shopping which the Commission denied because 'it appears that the cases dismissed by the Ombudsman are all criminal cases. Since the case filed with the Commission is an administrative case, the Commission is of the opinion and so holds that this is not forum-shopping' (P. 50, Records). Furthermore, considering that the function of the Commission is fact-finding in nature, to grant respondent's motion would be to deprive the President of his authority to discipline presidential appointees.

"As has been mentioned earlier, respondent failed and refused to submit his Statement of Assets and Liabilities and Networth as well as his Income Tax Return. In every hearing, counsel for respondent would promise to submit respondent's SALN and other pertinent documents in the next hearing but counsel always failed to do so, except the Service Record of the respondent. Finally, in his counsel's Manifestation and Motion dated October 21, 1996, or

eight (8) months after the Commission's initial order requiring respondent to file copies of his Statement of Assets and Liabilities for the last three (3) years, he gave the lame excuse 'that retained copies of his SAL were submitted before the Fact-Finding and Investigation Bureau of the Office of the Ombudsman' (P. 6, Records). However, to date, respondent has failed to submit to the Commission his Statement of Assets and Liabilities.

"Sec. 5(e), Rule 131, Rules of Court, on disputable presumptions, provides that evidence willfully suppressed would be adverse if produced.

"In brief, it has been established that respondent acquired a property in Burbank, Los Angeles, California, U.S.A., on May 27, 1993, worth \$195,000.00 and that his annual salary at that time was only P168,648.00. At the then exchange rate of P20.00 for every dollar, the cost of said property would at least be P3,900,000.00. To acquire said property, respondent would have to work straight for more than 23 years with such salary and would have to save every centavo thereof.

"Hence, it can be rightly said that the aforesaid acquisition was manifestly out of proportion to his salary and thus rebuttably presumed to have been unlawfully acquired pursuant to Section 2, R.A. No. 1379, 'AN ACT DECLARING FORFEITURE IN FAVOR OF THE STATE ANY PROPERTY FOUND TO HAVE BEEN UNLAWFULLY ACQUIRED BY ANY PUBLIC OFFICER OR EMPLOYEE AND PROVIDING FOR THE PROCEDURE THEREFOR'.

"Under Section 8 of R.A. 3019, it is provided that 'if 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 a ground for dismissal or removal.' It states further that '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 x x x.'

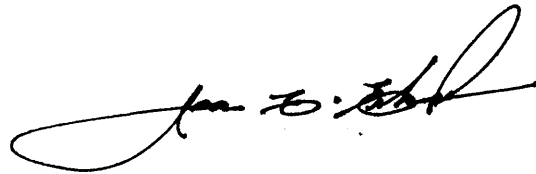
"WHEREFORE, premises considered, this Commission finds Mr. Edillo C. Montemayor, Director, Regional Office No. 3, Department of Public Works and Highways, guilty as charged and recommends . . . that he be ordered DISMISSED from the service with forfeiture of all government benefits.

"SO RESOLVED."

After a careful review of the evidence on record, this Office concurs with the findings and recommendation of the Commission.

WHEREFORE, as recommended by the Presidential Commission Against Graft and Corruption, respondent Edillo C. Montemayor, Director, Regional Office No. 3, Department of Public Works and Highways, is hereby ordered **DISMISSED** from the service with forfeiture of all government benefits.

Done in the City of Manila, this ^{24th} day of ^{AUGUST} in the year of Our Lord, nineteen hundred and ninety eight.



By the President:



RONALDO B. ZAMORA
Executive Secretary

