



Republic of the Philippines  
 Supreme Court  
 Manila

SUPREME COURT OF THE PHILIPPINES  
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EN BANC

**THEO-PAM TRADING  
 CORPORATION,**

**G.R. No. 242764**

*Petitioner,*

Present:

PERALTA, C.J.,  
 PERLAS-BERNABE,  
 LEONEN,  
 CAGUIOA,  
 GESMUNDO,  
 HERNANDO,  
 CARANDANG,  
 LAZARO-JAVIER,  
 INTING,  
 ZALAMEDA,  
 LOPEZ,  
 DELOS SANTOS,  
 GAERLAN, and  
 ROSARIO,\* JJ

- versus -

**BUREAU OF PLANT  
 INDUSTRY and the  
 COMMISSION ON AUDIT,**

Promulgated:

*Respondents.*

January 19, 2021

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**D E C I S I O N**

**INTING, J.:**

This resolves the Petition for *Certiorari*<sup>1</sup> assailing the Commission on Audit (COA) Decision No. 2016-135<sup>2</sup> dated July 28, 2016 and

\* On official leave.

<sup>1</sup> *Rollo*, pp. 3-18; see also Supplemental Petition for *Certiorari*, *id.* at 99-103. Under Rule 65 in relation to Rule 64 of the Rules of Court.

<sup>2</sup> *Id.* at 19-23; signed by Commission on Audit (COA) Chairperson Michael G. Aguinaldo and Commissioners Jose A. Fabia (with dissenting opinion, *id.* at 24-26) and Isabel D. Agito; and attested by Director IV and Commission Secretariat Nilda B. Plaras.

Resolution No. 2018-337<sup>3</sup> dated July 18, 2018 (assailed issuances). In the assailed issuances, the COA Commission Proper (COA Proper) denied Theo-Pam Trading Corporation (Theo-Pam)'s Money Claim against respondent Bureau of Plant Industry (BPI) for the payment of various laboratory chemicals amounting to ₱2,361,060.00.

### *The Antecedents*

This case stemmed from a Petition<sup>4</sup> filed by Theo-Pam against BPI before the COA Proper for the payment of the latter's obligation amounting to ₱2,361,060.00 plus interest, attorney's fees, and litigation expenses (Money Claim).

On various dates between May and October 2009, BPI prepared four purchase orders (POs)<sup>5</sup> naming Theo-Pam as the supplier and directing/requesting the latter to furnish BPI various types of chemicals. BPI Director Joel S. Rudinas (BPI Director Rudinas), as the *head of the agency*, and Susana SG. Gonzalo, OIC, Laboratory Services Division, as the *head of the requisitioning office/department (end user)*, signed and approved the POs. Leonida L. Morales, Budget Officer, also signed the POs and *certified* them as to the availability of funds for the corresponding transactions.

In turn, Theo-Pam issued wholesale invoices corresponding to each BPI PO, *viz.*:

PO No.	PO Date	Invoice		Amount
		No.	Invoice Date	
154-09	May 25, 2009	185906	June 4, 2009	₱88,000.00
206-09	June 15, 2009	186335	June 20, 2009	724,600.00
240-09	July 10, 2009	186584	June 29, 2009	240,500.00
397-09	October 2, 2009	189804	October 20, 2009	1,307,960.00
<b>Outstanding balance due from BPI</b>				<b>₱2,361,060.00</b>

<sup>3</sup> *Id.* at 27-31; signed by COA Chairperson Michael G. Aguinaldo and Commissioners Jose A. Fabia (with dissenting opinion, *id.* at 32-34) and Roland C. Pondoc; and attested by Director IV and Commission Secretariat Nilda B. Plaras.

<sup>4</sup> *Id.* at 37-43.

<sup>5</sup> *Id.* at 82-85.

German T. Yatco, National Pesticide Analytical Laboratory (NPAL) Senior Agriculturalist, and Noreen D. Escobar, NPAL Chemist I,<sup>6</sup> affixed their signatures on Wholesale Invoice Nos. 186335 and 186584, respectively, indicating that they have “[r]eceived the above articles in good order and condition.”<sup>7</sup>

On May 26, 2010, Theo-Pam informed<sup>8</sup> then BPI Director Dr. Larry R. Lacson (BPI Director Lacson) that it has delivered the aforementioned orders to the end user, NPAL of the BPI Laboratory Services Division. However, it has not yet received any payment for the orders.

To “settle different issues regarding the chemicals and re-agents procured by the [NPAL]”<sup>9</sup> as detailed in the above-enumerated POs, BPI Director Lacson issued Memorandum Order No. 34,<sup>10</sup> Series of 2010, dated June 21, 2010 forming an Inspection/Verification Team, viz.:

The team is tasked to perform the following functions with the objective of determining whether the subject chemicals were [sic] delivered and consumed by NPAL

- Conducts/documents physical inventory of all chemicals and their empty containers delivered to NPAL on the aforementioned POs;
- Inventory/Review all residue analysis certificates issued relative to the subject chemical purchased;
- Does interview works [sic] on NPAL staffs [sic] regarding the receipt and use of chemicals.

In another Letter<sup>11</sup> dated June 23, 2010, Theo-Pam, through counsel, reiterated BPI’s outstanding balance and demanded BPI to settle its account within five days. Otherwise, Theo-Pam will proceed with the appropriate legal actions. On even date, BPI Director Lacson responded as follows:

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<sup>6</sup> *Id.* at 20.

<sup>7</sup> *Id.* at 47-48.

<sup>8</sup> See Letter dated May 26, 2010, *id.* at 54.

<sup>9</sup> *Id.* at 86.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 55-56.

This is to acknowledge the receipt of your letter date[d] 23 June 2010 regarding the BPI's outstanding and overdue account in the amount of Two Million Three Hundred Sixty One Thousand and Sixty Pesos (PhP 2,361,060.00)

We would like to assure you that this Office is doing everything to ensure that [Theo-Pam] will get what is due to them without prejudice to the interest of the government.<sup>12</sup>

Subsequently, the Inspection/Verification Team detailed their findings in a Memorandum<sup>13</sup> dated July 9, 2010 (Team Report), viz.:

- A. During our ocular inspection in the area where the waste materials/ empty containers of the subject chemicals are stored, the group find [sic] it difficult to identify which of the waste materials/ empty containers (x x x) in the area belong to the subject chemicals and which are not belong [sic] x x x:

x x x x

- B. The group reviewed the records of Residue Analysis Certificates issued by the National Pesticide Analytical Laboratory (NPAL) and found out that there is neither name nor amount of chemicals used being indicated in the certificate. The name and amount of chemicals used by the said office can be seen only in their RIS, monthly report and accomplishment report.
- C. *During our interview with some of the NPAL staff who are involved either in the receipt, consumption and/ or utilization of the subject chemicals, the said staff categorically denied any ghost delivery x x x and confirmed that the subject chemicals were delivered and the same were used and consumed for their operations. It has been said and affirmed that the subject chemicals were necessary for the analysis of Okra and Mango, otherwise the exportation of said commodities to Japan will be greatly affected. (x x x)*

#### CONCLUSION

While the group found difficulty in determining the delivery and consumption of the subject chemicals on the basis of the Waste Materials and Certificates of Residue Analysis available, yet *there are substantial evidences [sic] to prove that such chemicals had been delivered and consumed by the end-user.* These evidences [sic] include the Delivery Receipts issued by the supplier (Theo-Pam) as

<sup>12</sup> *Id.* at 57.

<sup>13</sup> *Id.* at 61-62.

well as the testimonies made by the NPAL Staff who are involved either in the receipt, consumption and/or utilization of the said chemicals. *It is worth mentioning however, that if there are lapses committed in the procurement process that led to the delay of the payment, the team believes that such lapses cannot justify the non-payment of the subject chemicals. Therefore, it is respectfully recommended that immediate settlement of this account be made in accordance with the Delivery Receipts issued (x x x), in order to uphold the good relationship with the supplier Theo-Pam, who in one way or the other, help [sic] BPI in extending its technical services to the different stakeholders particularly the exporters by offering/providing chemicals at reasonable prices.*<sup>14</sup> (Italics supplied.)

Thereafter, in a Letter<sup>15</sup> dated July 26, 2010, BPI Director Lacson inquired from the COA, through Resident Auditor Adora Rimando, regarding the aforementioned orders, viz.:

Dear Ms. Rimando:

The Bureau of Plant Industry would like to inquire from your Office the best course of action *concerning the unpaid chemicals delivered by Theo Pam to the Bureau of Plant Industry.* Below are the circumstances which may help your Office in assessing the situation:

- A. *That there were deliveries done by Theo-Pam of various chemicals, covered by the approved Purchase Order Nos. 154-09, 206-09, 240-09 and 397-09. Considering the urgency/ necessity of the subject chemicals in their operation, the same were received and accepted in good faith by the end-user, National Pesticide Analytical Laboratory. (x x x)*
- B. *To further attest to the truth of the deliveries, Ms. Noreen D. Escobar and Mr. German Yatco of BPI NPAL submitted a certification appertaining thereto; (x x x)*
- C. That there were BAC Resolutions Declaring Single Calculated Responsive Bids for the aforementioned transactions (x x x);
- D. *Despite of the certification of the BPI Budget Office on the availability of funds to pay the subject PO's, the same remained outstanding due to the refusal of the*

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 59-60.

*Property Officer and the BPI Inspector to affix their respective signature on the Inspection Reports because of the alleged failure of the end-user to inform them before using the delivered chemicals;*

- E. The undersigned in so many times had talked to the persons involved to try to find out the truth and come up with the solutions favorable to the government but fair and just to supplier, *since it was established during the February 10, 2010 meeting that there were indeed deliveries;*
- F. A Team was created under Memorandum Order No. 34, to conduct inventory and verification of the waste materials/ empty containers of the subject chemicals and was also directed to submit a definite findings and conclusion [*sic*] within 10 working days (x x x). In a report submitted to the Director, the Inventory Team recommended the immediate settlement of the Account in accordance with the Delivery Receipts (x x x).

In view of the aforementioned facts, *we are ready to commence the payment of the said chemicals* but before that, may we solicit the opinions and recommendations of the Commission on Audit on the legality of paying the deliveries considering the refusal on the part of Property Officer and the Inspector to affix their respective signatures on the Inspection and Acceptance Reports. Can the report of the Team (Memorandum Order No. 34) be used as sufficient document in lieu of the Inspection Report?<sup>16</sup> (Italics supplied.)

On September 6, 2010, Theo-Pam requested an update regarding the COA's recommendation for the subject transactions. In a Letter<sup>17</sup> dated September 13, 2010, BPI Director Clarito M. Barron (BPI Director Barron) expressed that the COA noted lapses in BPI's procurement procedures, *viz.:*

Ms. Adora Rimando, State Auditor IV of the Commission on Audit, in a letter reply to former BPI Director Larry R. Lacson query dated July 26, 2010 stated that *there was a failure to comply with some requirements such as non-notification of the Property Officer of the deliveries to be accepted and inspected by the BPI's property inspectors.* Thus, there are still issues to be resolved regarding the deliveries before any payment can be made to your client.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 58.

As soon as the problem is resolved and payment is in order, we will immediately notify your office.<sup>18</sup> (Italics supplied.)

In another Letter<sup>19</sup> dated December 21, 2010, BPI Director Barron informed Theo-Pam as follows:

x x x During our exchange of notes, we already accentuated that [Theo-Pam]'s claim cannot be processed due to some issues still unresolved at this time. We had already looked into this situation and when we examined, *the more it is difficult to pinpoint who is responsible or accountable for the release of payments to give their concurrence because of questions which remained unanswered. Please bear in mind that these issues would not have happened if the proper procedures were followed.*

Theo Pam Trading has been our partner for over twenty years and we believe that their representative knows the rules to follow but for these deliveries it is unfortunate that they were overlooked. While we do not deny that there is fault on the part of the bureau's officers and personnel, willingly or not, it cannot be denied also that there are lapses on your client's side. Rest assured that we are doing our very best to reconcile our documents to resolve as carefully as possible so that we will not encounter the same particularly in compliance with the Commission on Audit's rules and regulations. x x x<sup>20</sup> (Italics supplied.)

BPI's balance remained outstanding. Thus, on May 3, 2012, Theo-Pam filed its *Money Claim* before the COA Proper alleging as follows: *First*, BPI purchased items from them as evidenced by four BPI POs and the corresponding Theo-Pam Wholesale Invoices. *Second*, Theo-Pam allowed BPI 30 days from the invoice date to pay for the purchase amounts. *Third*, BPI admitted receiving the orders. *Fourth*, despite repeated demands, BPI failed to settle its outstanding balance.

In its *Answer*,<sup>21</sup> BPI, represented by the Office of the Solicitor General, mainly denied the actual delivery of the orders. It countered as follows:

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 64.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 65-79.

*First, the aforementioned BPI POs and Theo-Pam Wholesale Invoices do not prove actual delivery.* In particular, the wholesale invoices appended to Theo-Pam's Money Claim contained irregularities: (a) there were erasures in relation to the date; (b) it had notations that did not appear on the wholesale invoice copies retained by BPI; and (c) the signature of the personnel who allegedly received the delivery did not match the signature on BPI's file copy of the same invoice.<sup>22</sup>

*Second, the subject transactions did not comply with BPI's new procurement process flow (BPI Process Flow) as directed by then BPI Director Rudinas through an office memorandum<sup>23</sup> dated May 28, 2009 addressed to all BPI employees, viz:*

(4c) Property

- Preparation of Purchase Order

(5a) End User

- Preparation of Obligation Request and signing of Division Chief

(5b) Budget

- For obligation and signature of Budget Officer

(5c) OD/ADO

- Approval of Purchase Order

**(6) Property/[Internal Control Unit]**

- Serving of P.O.
- Delivery of goods:
  - Chemicals/Lab. Equipment (2 days)
  - Goods (2 days)
  - Office equipment / Furnitures, etc. (2 days)
- **Inspection and acceptance**
- **Voucher preparation.**<sup>24</sup> (Emphasis supplied.)

Verily, Romansito G. Guerrero, Inspector, BPI Internal Control Unit,<sup>25</sup> prepared Inspection Reports,<sup>26</sup> noting that the deliveries, as reflected on the delivery receipts, corresponded to the POs, as follows:

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<sup>22</sup> *Id.* at 75.

<sup>23</sup> *Id.* at 80.

<sup>24</sup> *Id.* at 81.

<sup>25</sup> *Id.* at 22.

<sup>26</sup> *Id.* at 70.



PO No.	Observations
P.O.#154-09-	Deliveries are equal to the Purchase Order <sup>27</sup>
P.O.#206-09-	Deliveries are equal to the Purchase Order <sup>28</sup>
P.O. #240-09	Deliveries are greater than the Purchase Order <sup>29</sup>
P.O. #397-09	Deliveries are not equal to the Purchase Order in terms of greater quantities of ACETONE and ACETONITRILLE items but lesser in HEXANE quantity <sup>30</sup>

However, BPI countered that the acceptance of deliveries violated the BPI Procurement Process Flow in the following respects:

11. x x x Guerrero's report was merely based on the delivery receipts which he did not sign since the Inspection Committee was not informed when said deliveries were made in violation of the procurement process flow of the BPI. Thus, the Inspection and Acceptance Report forms relating to the alleged deliveries were not signed by the designated and authorized officers and personnel of [BPI].<sup>31</sup>

x x x x

20. x x x [T]he delivery receipts in the possession of [BPI] were signed by the personnel in the Laboratory Services Division. Under the BPI Procurement Process Flow, it is the Property Officer who inspects and accepts the deliveries and prepares the corresponding Inspection and Acceptance Report.

20.1 Without said Inspection and Acceptance Report, the corresponding disbursement voucher will not be processed for payment."<sup>32</sup>

BPI insisted that Theo-Pam has been BPI's supplier for 20 years. Thus, it "cannot feign ignorance of [these] rules."<sup>33</sup>

<sup>27</sup> *Id.* at 89.

<sup>28</sup> *Id.* at 90.

<sup>29</sup> *Id.* at 91.

<sup>30</sup> *Id.* at 92.

<sup>31</sup> *Id.* at 70-71.

<sup>32</sup> *Id.* at 75-76.

<sup>33</sup> *Id.* at 76.

*Ruling of the COA Proper*

In its assailed Decision No. 2016-135, the COA Proper denied Theo-Pam's Money Claim, *viz.*:

WHEREFORE, premises considered, the petition for money claim of Theo-Pam Trading Corporation for payment of various laboratory chemicals in the total amount of P2,361,060.00 plus 12% interest per annum, and attorney's fees and litigation expenses amounting to P590,257.75 is hereby DENIED.<sup>34</sup>

The COA Proper anchored its ruling on Section 4(6) of Presidential Decree No. 1445, otherwise known as the Government Auditing Code of the Philippines (Government Audit Code), which requires that "[c]laims against government funds shall be *supported with complete documentation*." It pointed out that Theo-Pam's claim is not supported by evidence that sufficiently shows "actual delivery and substantial compliance with the specifications stated [on] the POs."<sup>35</sup> The BPI Process Flow and relevant government accounting procedures<sup>36</sup> require the property officer (*i.e.*, BPI inspector and chief of BPI's Property and Supply Section) to personally inspect the delivery, determine if the quantity and specifications of the goods match those indicated in the PO, and prepare the necessary report (*i.e.*, Inspection and Acceptance Report) to summarize his observations.

*Based on these considerations, the COA ruled that the lack of proper documentation raised "doubt on whether delivery of the laboratory chemicals did take place."*<sup>37</sup> Further, Theo-Pam, "[b]eing a party to a government transaction, it is duty-bound to know the government requirements."<sup>38</sup>

In his *dissent*,<sup>39</sup> Commissioner Jose A. Fabia pointed out that contrary to the majority opinion, *there is substantial evidence showing actual delivery* to NPAL, the end user, *viz.*: (1) the Team Report dated

<sup>34</sup> *Id.* at 22.

<sup>35</sup> *Id.* at 21.

<sup>36</sup> Section 45 of the Manual on the New Government Accounting System (For National Government Agencies).

<sup>37</sup> *Rollo*, p. 21.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 24-26.

July 9, 2010; (2) certifications issued by NPAL personnel; and (3) delivery receipts, the information on which match those on the respective POs. Further, he stressed on the doctrine of *quantum meruit*, which allows a private contractor in a government project “to be reimbursed for the reasonable value of the thing or services actually rendered” in case the applicable law and regulations were not strictly complied with.<sup>40</sup>

Theo-Pam filed a motion for reconsideration. However, the COA Proper denied it. Hence, the present petition.

### *Issues*

The Court shall resolve two issues: (1) Did the COA Proper commit grave abuse of discretion? (2) Is Theo-Pam entitled to the payment of its money claim against BPI?

### *The Court's Ruling*

The petition is meritorious.

The prevailing rule limits the scope of petitions for *certiorari* under Rules 64 and 65 of the Rules of Court only to jurisdictional errors or grave abuse of discretion.<sup>41</sup> Thus, in the absence of grave abuse of discretion, *certiorari* proceedings cannot serve to cure mere errors of judgment committed by the COA Proper.<sup>42</sup> In this regard, the COA commits grave abuse of discretion when it renders a decision or resolution that is not based on law and the evidence but on caprice, whim and despotism.<sup>43</sup>

In the instant case, the Court finds that the COA gravely abused its discretion in the following instances: *First*, the COA, without justification, bypassed the Director and Legal Services Sector's review

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<sup>40</sup> *Id.* at 26.

<sup>41</sup> *Fontanilla v. The Commissioner Proper, COA*, 787 Phil. 713, 723 (2016).

<sup>42</sup> See *Miralles v. Commission on Audit*, 818 Phil. 380 (2017).

<sup>43</sup> *Development Bank of the Phils. v. Commission on Audit*, 808 Phil. 1001, 1018 (2017), citing *TESDA v. COA Chairperson Tan, et al.*, 729 Phil. 60, 72-73 (2014).

and evaluation, despite the clear mandate provided by its internal rules of procedure. *Second*, it consistently disregarded substantial evidence supporting Theo-Pam's Money Claim.

*The COA, without justification, bypassed the Director and Legal Services Sector's review and evaluation, despite the clear mandate provided by its internal rules of procedure.*

It is settled that the COA Proper has "exclusive jurisdiction to settle all debts and claims of any sort due from or owing to the Government or any of its subdivisions, agencies, and instrumentalities."<sup>44</sup>

As regards money claims filed directly before the COA Proper, the 2009 Revised Rules of Procedure of the COA (COA Rules of Procedure)<sup>45</sup> provides as follows: (1) The COA Secretary shall assign the case to the *Director of the appropriate Central or Regional Office*, who shall comment on the case and submit a recommendation; (2) Thereafter, the COA Secretary shall refer the case to the *Legal Services Sector (LSS)*, who shall review and evaluate the claim and prepare a draft decision; and (3) Upon receipt of the draft decision, the COA Proper shall formally deliberate on the case.<sup>46</sup>

<sup>44</sup> *NPC Drivers and Mechanics Assn. (NPC DAMA), et al. v. The National Power Corporation (NPC), et al.*, 821 Phil. 62, 84-85 (2017), citing Section 26, Audit Code and Rule VIII, Section 1, 2009 COA Rules of Procedure.

<sup>45</sup> These are the applicable rules when Theo-Pam filed its Money Claim on May 3, 2012.

<sup>46</sup> Section 2(g), Rule VIII of the COA Rules of Procedure provides:

SECTION 2. *Money Claim.* — A money claim against the government shall be filed directly with the Commission Secretary in accordance with the following:

x x x x

g) *Comment by Concerned Officer.* — Money claims, except court-adjudicated claims, shall first be assigned by the Commission Secretary to the appropriate Central or Regional Office, for comment and recommendation prior to referral to the Legal Services Sector for preparation of the decision and formal deliberation by the Commission Proper.

Further, Section 2, Rule X of the COA Rules of Procedure also provides:

SECTION 2. *Referral of Money Claim Filed Directly with the Commission Proper.* — Within five (5) days from receipt of the complete records of the case including the Answer of the Respondent or other parties in interest, the Commission Secretary shall refer the said records to the Director of the appropriate office in the Central/Regional Office who shall, within fifteen (15) days from receipt thereof, submit his comment and recommendation to the Commission Secretary.

Stated differently, the COA Rules of Procedure provides a *three-tiered review mechanism* in cases of money claims filed against the government: the Director, the LSS, and the COA Proper. The use of the word “shall” in the relevant portions of the rules denotes this mechanism’s mandatory character.<sup>47</sup>

Notably, the money claims are original actions. *They are litigated for the very first time before the COA Proper.* The Court can only interpret the COA’s multi-level review process as an institutional safeguard for a money claim’s proper and thorough evaluation, considering that these actions have not been tried previously.

In the instant case, there is nothing in the COA’s decision or resolution showing that the case was assigned to the appropriate Central or Regional Office Director and/or subsequently referred to the LSS prior to the COA Proper’s deliberation. That the Director and/or the LSS were not even furnished a copy<sup>48</sup> of the assailed issuances strongly suggests that they did not participate in the case, much less review the money claim at all.

Verily, the Court recognizes the COA’s power to install its own rules of procedure,<sup>49</sup> as well as its discretion to relax them in certain cases. Furthermore, the COA Proper is not bound by the results of the Director or LSS’ review and is expected to conduct its own independent evaluation. However, by no means is its discretion unbridled. *COA’s evasion of its internal rules, at the expense of the parties involved who*

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The Commission Secretary shall, thereafter, refer the case to the LSS which shall evaluate the claim and prepare a draft decision to be submitted to the Commission Proper thru the Commission Secretary, within fifteen (15) days from receipt of the referral.

<sup>47</sup> *Id.*

<sup>48</sup> *Rollo*, p. 23. Section 8, Rule X of the COA Rules of Procedures provides:

SECTION 8. *Number of Copies and Distribution of Decision.* — Copies of the Decision or Resolution of the Commission shall be distributed as follows: (1) first original copy to the permanent Book of Decisions which shall be maintained and kept by the Commission Secretary; (2) second original copy to the Central Office Records Division of the Commission; (3) third original copy to the *rollo* or folder containing the original copies of the pleadings and other papers in the custody of the Commission Secretary; (4) one copy each to the Legal Services Sector, Auditor and Director concerned; (5) one copy each to the parties or their counsels in the case.

<sup>49</sup> Section 6(2) of the Audit Code provides, “[t]he Commission Proper shall sit as a body to determine policies, promulgate rules and regulations, and prescribe standards governing the performance by the Commission of its powers and functions.”

*may have relied on the rules' application, amounts to a denial of Theo-Pam's fundamental right to due process—a grave abuse of its discretion.*

*The COA consistently disregarded substantial evidence supporting Theo-Pam's Money Claim.*

The COA struck down Theo-Pam's claim because it failed to show actual delivery of the subject chemicals and substantial compliance with the specifications stated on the POs. However, Theo-Pam insists that the following documents sufficiently prove the goods' actual delivery: (1) the wholesale invoices, (2) POs, (3) Team Report, (4) BPI's replies to and other correspondences with Theo-Pam, and (5) certifications issued by NPAL personnel.

The Court agrees with Theo-Pam.

We also recognize the COA's constitutionally established role as the guardian of government funds. The COA's factual findings are generally accorded utmost respect "by reason of their special knowledge and expertise over matters falling under their jurisdiction."<sup>50</sup> However, the Court shall affirm the COA only to the extent of its findings and conclusions supported by substantial evidence. To blindly uphold the COA despite the absence of proof supporting its conclusions is to sanction a violation of the adverse party's right to due process and, concomitantly, COA's grave abuse of discretion.<sup>51</sup>

In the present case, the COA's final decision to deny Theo-Pam's Money Claim is inconsistent with the following facts on record:

*First*, Theo-Pam's Money Claim is largely based on the wholesale invoices and POs. Particularly, the *wholesale invoices* enumerated the chemicals procured by BPI, specifically for NPAL as end user, as well as the corresponding quantities and prices. They were signed by NPAL personnel signifying that they had "[r]eceived the above articles in good order and condition."

<sup>50</sup> *Geronimo v. COA*, G.R. No. 224163, December 04, 2018; *Paraiso-Aban v. Commission on Audit*, 777 Phil. 730, 737 (2016).

<sup>51</sup> See *Fontanilla v. The Commissioner Proper, COA*, *supra* note 41.

The invoices are *actionable documents*.<sup>52</sup> Thus, BPI was required to *specifically deny, under oath, their genuineness and due execution*.<sup>53</sup> However, upon examination, BPI's Answer was *not verified* nor is there anything on record indicating that BPI made the averments therein under oath. Having failed to provide the requisite *specific denial*, BPI is deemed to have admitted the documents' *genuineness and due execution*,<sup>54</sup> including the authenticity of the receiving personnel's signatures.

That NPAL personnel affixed their signatures on the wholesale invoices supports Theo-Pam's claim that: (a) it delivered to NPAL various chemicals, the quantities and prices of which were detailed therein; and (b) NPAL personnel acknowledged and accepted the deliveries. They establish a *prima facie* case for Theo-Pam, shifting to BPI the burden of disputing the claim.

*Second*, even if the Court ignores its flawed manner of contesting Theo-Pam's claim, BPI's defense of non-delivery is inconsistent with the facts in the present case. It appears that BPI *repeatedly acknowledged* NPAL's receipt and consumption of these chemicals in the following documents: (a) the *Memorandum Order No. 34* dated June 21, 2010, which formed an Inspection/Verification Team to take a physical inventory "of all chemicals and their empty containers delivered to NPAL on the aforementioned POs."<sup>55</sup> (b) the *Team Report* dated July 9, 2010, which stated that, based on the Inspection/Verification Team's inquiry, NPAL personnel "confirmed that the subject chemicals were

<sup>52</sup> As defined under Section 7, Rule 8, RULES OF COURT:

SECTION 7. *Action or Defense Based on Document*. — Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit, which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading.

<sup>53</sup> Section 8, Rule 8, RULES OF COURT:

SECTION 8. *How to Contest Such Documents*. — When an action or defense is founded upon a written instrument, copied in or attached to the corresponding pleading as provided in the preceding section, the genuineness and due execution of the instrument shall be deemed admitted unless the adverse party, under oath, specifically denies them, and sets forth what he claims to be the facts; but the requirement of an oath does not apply when the adverse party does not appear to be a party to the instrument or when compliance with an order for an inspection of the original instrument is refused.

<sup>54</sup> *Id.*

<sup>55</sup> *Rollo*, p. 86.

delivered and the same were used and consumed for their operations.”<sup>56</sup> (c) the *Letter* dated July 26, 2010, where BPI sought to clarify the Theo-Pam purchases with the COA Auditor, and, in the process, categorically stated that Theo-Pam delivered the subject chemicals and, in turn, NPAL received and accepted them in good faith.<sup>57</sup> (d) the *Inspection Reports* prepared by the property officer of BPI’s Internal Control Unit,<sup>58</sup> noting that the deliveries, based on the delivery receipts, were equal to the corresponding POs.

Parenthetically, it appears that the *POs* are *orders* from BPI directing/requesting Theo-Pam to deliver the chemicals enumerated and described thereon. Having been in possession of this order/instruction, *Theo-Pam is presumed to have delivered the items accordingly.*<sup>59</sup> Furthermore, procedural rules consider *these purchases to have been fair, regular,*<sup>60</sup> *and executed observing the ordinary course of business.*<sup>61</sup> The Court cannot consider BPI’s bare allegations of non-delivery sufficient to have overcome these presumptions.

*Third, the NPAL personnel’s certifications provide a clear categorical admission* that Theo-Pam delivered the subject chemicals in accordance with the POs. The personnel acknowledged receipt of these goods, as well as subsequent use and consumption of these items in the course of their operations.

<sup>56</sup> *Id.* at 61-62.

<sup>57</sup> *Id.* at 59-60.

<sup>58</sup> *Id.* at 70.

<sup>59</sup> Section 3(k), Rule 131, RULES OF COURT:

SEC. 3. *Disputable presumptions.* — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

x x x

(k) That a person in possession of an order on himself for the payment of the money, or the delivery of anything, has paid the money or delivered the thing accordingly;

<sup>60</sup> Section 3(p), Rule 131, RULES OF COURT:

SEC. 3. *Disputable presumptions.* — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

x x x

(p) That private transactions have been fair and regular;

<sup>61</sup> Section 3(q), Rule 131, RULES OF COURT:

SEC. 3. *Disputable presumptions.* — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

x x x

(q) That the ordinary course of business has been followed;



Certainly, the COA Proper gravely abused its discretion when it brushed aside the above-discussed documents and certifications' veracity on a mere technicality—a procedural lapse not even attributable to the claimant.

*The deliveries' irregularities do not bar recovery.*

A careful reading of the assailed issuances reveals that while the COA Proper found that NPAL personnel (*i.e.*, German T. Yatco and Noreen D. Escobar) had in fact received the subject chemicals upon delivery,<sup>62</sup> it nonetheless invalidated Theo-Pam's Money Claim on the basis of noncompliance with "standard government procurement procedures and x x x internal control on segregation of duties and functions."<sup>63</sup>

The COA Proper found the following lapses: *First*, there were no Inspection and Acceptance Reports to support the alleged deliveries. *Second*, the inspection of the alleged deliveries was not conducted by the authorized property officer. *Third*, the NPAL personnel who received and inspected the alleged deliveries merely relied on the delivery receipts, in violation of standard government procurement procedures and internal control policies on the proper segregation of duties.<sup>64</sup>

The lapses are not disputed. However, the primary responsibility of complying with these procedural requirements rests on BPI and NPAL because these are *internal* rules. That the BPI Process Flow were internal in nature is evident from the following: (a) it was communicated only through an office memorandum<sup>65</sup> addressed to *all BPI employees*, and (b) none of the steps within the process flow requires a third-party supplier's active participation.

In other words, BPI/NPAL has no one to blame other than its own personnel if the deliveries' acceptance, inspection, and supporting documentation were not performed as required by its process flow. On

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<sup>62</sup> *Rollo*, p. 22.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at 80.

the other hand, a third-party supplier's right to recover cannot be conditioned upon strict compliance with these requirements inasmuch as they are *strangers* to these internal rules.

Verily, the Government Audit Code mandates complete supporting documentation for all claims against government funds. Unfortunately, the documentary/procedural deficiencies in the present case are attributable to the government's own instrumentality. Thus, the responsible personnel who are found to have been remiss in the performance of their duties must be liable for the consequences. BPI cannot conveniently hold a third party liable for the agency's own procedural oversight and continue to evade payment for goods they received and used.

To be sure, a government agency's non-compliance with its own internal control procedures does not negate actual delivery and cannot unduly deprive a supplier of its right to collect the amount corresponding to the goods it has delivered.

*Theo-Pam is entitled to attorney's fees.*

Theo-Pam claims that it is entitled to the payment of attorney's fees and litigation expenses amounting to ₱590,257.75 or 25% of BPI's total outstanding balance, as stipulated on the face of each wholesale invoice, including the appearance fee of ₱5,000.00 for every court appearance.

The Court partially agrees with Theo-Pam's contention.

In the past, the Court has upheld a party's right to recover attorney's fees stipulated in a written agreement, including those imprinted on the face of sales invoices.<sup>66</sup> The wholesale invoices in the present case contain the following statement:

TERMS: Cash upon presentation of bills unless otherwise stipulated.  
Interest at 12% per annum will be charge [sic] on all law suits and an

<sup>66</sup> See *Asian Construction and Dev't. Corp. v. Cathay Pacific Steel Corp.*, 636 Phil. 127 (2010); *Royal Cargo Corp. v. DFS Sports Unlimited, Inc.*, 594 Phil. 73 (2008).

additional amount equal to 25% of the total amount due and unpaid for attorney's fee and cost of the litigation will be charged xxx<sup>67</sup>.

The parties' express stipulation on attorney's fees is a *penal clause*.<sup>68</sup> Thus, the payment thereof is in the nature of *liquidated damages*.<sup>69</sup> However, the Court finds the rate of 25% excessive. Accordingly, the Court reduces the award to a more reasonable rate of 5%.

**WHEREFORE**, the petition is **GRANTED**. The assailed Decision No. 2016-135 dated July 28, 2016 and the Resolution No. 2018-337 dated July 18, 2018 of the Commission on Audit are **REVERSED** and **SET ASIDE**.

Respondent Bureau of Plant Industry is hereby **ORDERED** to pay petitioner Theo-Pam Trading Corporation the value of the chemicals delivered in the subject wholesale invoices in the aggregate amount of ₱2,361,060.00 plus applicable interest and 5% attorney's fees.

Respondent Commission on Audit is hereby **DIRECTED** to allow the above-mentioned payment, after validation of the computation of interest and other fees.

This disposition is without prejudice to any criminal or administrative action against erring Bureau of Plant Industry/National Pesticide Analytical Laboratory officials for violation of the law, if any.

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<sup>67</sup> *Rollo*, pp. 47-49.

<sup>68</sup> Article 1226 of the Civil Code of the Philippines:

ARTICLE 1226. In obligations with a penal clause, the penalty shall substitute the indemnity for damages and the payment of interests in case of noncompliance, if there is no stipulation to the contrary. Nevertheless, damages shall be paid if the obligor refuses to pay the penalty or is guilty of fraud in the fulfillment of the obligation.

The penalty may be enforced only when it is demandable in accordance with the provisions of this Code. (1152a)

<sup>69</sup> *Asian Construction and Dev't. Corp. v. Cathay Pacific Steel Corp.*, *supra* note 66 at 136, citing *Titan Construction Corp. v. Uni-Field Enterprises, Inc.*, 546 Phil. 12, 21 (2007) and *Barons Marketing Corp. v. CA*, 349 Phil. 769, 780 (1998). Also see Article 2226 of the Civil Code of the Philippines:

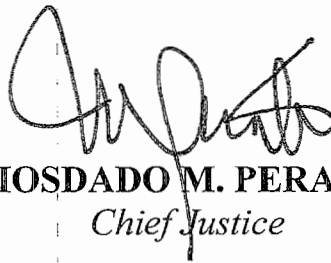
ARTICLE 2226. Liquidated damages are those agreed upon by the parties to a contract, to be paid in case of breach thereof.

**SO ORDERED.**

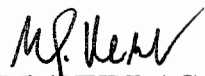


**HENRI JEAN PAUL B. INTING**  
*Associate Justice*

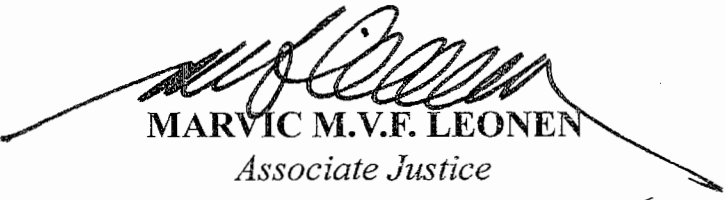
WE CONCUR:



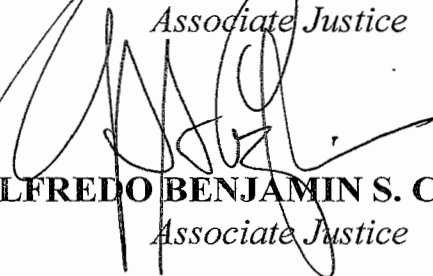
**DIOSDADO M. PERALTA**  
*Chief Justice*



**ESTELA M. PERLAS-BERNABE**  
*Associate Justice*



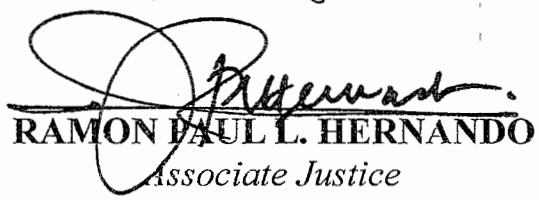
**MARVIC M.V.F. LEONEN**  
*Associate Justice*



**ALFREDO BENJAMIN S. CAGUIOA**  
*Associate Justice*



**ALEXANDER G. GESMUNDO**  
*Associate Justice*



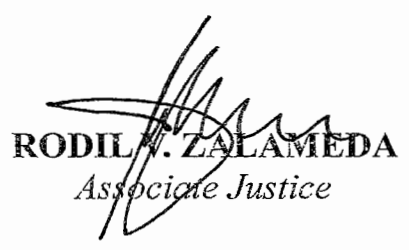
**RAMON PAUL L. HERNANDO**  
*Associate Justice*



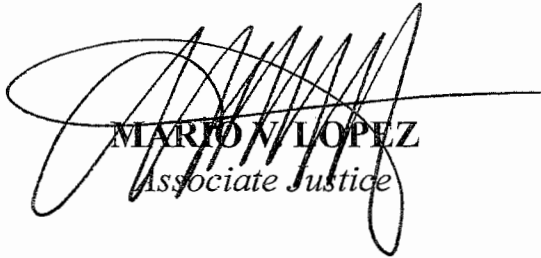
**ROSVART D. CARANDANG**  
*Associate Justice*




**AMY C. LAZARO-JAVIER**  
*Associate Justice*



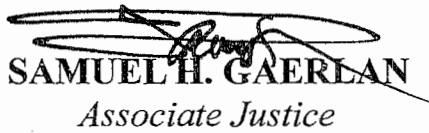
**RODIL V. ZALAMEDA**  
*Associate Justice*



**MARIO N. LOPEZ**  
*Associate Justice*



**EDGARDO L. DELOS SANTOS**  
*Associate Justice*

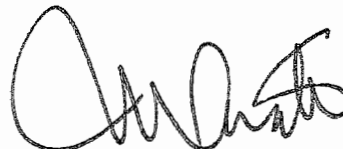


**SAMUEL H. GAERLAN**  
*Associate Justice*

(On official leave)  
**RICARDO R. ROSARIO**  
*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.



**DIOSDADO M. PERALTA**  
*Chief Justice*