

Republic of the Philippines
Supreme Court
Manila

EN BANC

CRISTINA CATU-LOPEZ,
in her capacity as Department
Manager III, Administrative
Department, National Tobacco
Administration,

Petitioner,

G.R. No. 217997

Present:

PERALTA, C.J.,
PERLAS-BERNABE,
LEONEN,*
CAGUIOA,*
REYES, JR., A.B.,
GESMUNDO,
REYES, JR., J.C.,
HERNANDO,
CARANDANG,
LAZARO-JAVIER,**
INTING,** and
ZALAMEDA, JJ.

- versus -

COMMISSION ON AUDIT,
Respondent.

Promulgated:

November 12, 2019

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DECISION

GESMUNDO, J.:

This is a petition for *certiorari* seeking to annul and set aside Notices of Disallowance (ND) No. 98-09 (JV) and 98-013 (JV), in the total amount of ₱47,287,361.11. The NDs were affirmed with modification by the Commission on Audit (COA) in its December 30, 2010 Decision¹ and its

* On Official Business.

** On Wellness Leave.

¹ *Rollo*, pp. 49-57; penned by Chairman Reynaldo A. Villar, Commissioner Juanito G. Espino, Jr. and Commissioner Evelyn R. San Buenaventura; attested by Commission Secretariat, Director IV Fortunata M. Rubico.

292

January 30, 2015 Resolution² docketed as Decision Nos. 2010-151 and 2015-035, respectively.

The Antecedents

In 1996, the National Tobacco Administration (*NTA*) and the Philippine National Bank (*PNB*) executed a Credit Agreement³ to establish an Omnibus Credit Line (*OCL*) in the amount not exceeding ₱100,000,000.00. The purpose of the *OCL* was to provide bridge finance funding for the *NTA*'s Aromatic Tobacco Trading and Export Trading Program (*ATTETP*) for the purchase and/or exportation of leaf tobacco. It was primarily for the benefit of tobacco traders whose tobacco produce were guaranteed to be purchased. Several tobacco traders availed the trading loans from the *OCL* and disbursement from the fund were approved pursuant to the *ATTETP* guidelines.⁴

Meanwhile, the *NTA* Board of Directors (*Board*) initiated and approved the *NTA* Housing Project for its employees under Resolution No. 220-94.⁵ The housing project was initially situated at Brgy. Ampid, San Mateo, Rizal. However, on December 14, 1995, the site was moved to Brgy. San Isidro, Montalban, Rizal.⁶

A Housing Committee was created to monitor and implement the project. Cristina Catu-Lopez (*petitioner*), Department Manager III of the Administrative Department of the *NTA*, was designated as the Chairperson of the Housing Committee.

a.

Two public biddings were conducted on the *NTA* Housing Project on April 4, 1995 and June 9, 1995. However, both biddings were declared as failures. The *NTA* then caused the publication of an Invitation for Negotiated Contract and received several proposals. Out of the four (4) developers that submitted their proposals, PMC Construction and Consuelo Builders Corp. (*Developers*) were pre-qualified with the contract under a Joint Venture Agreement (*the Agreement*). The Notice of Award to the Developers was approved by the *NTA* Board in its Resolution dated February 12, 1996.⁷

² Id. at 238-245; penned by Chairperson Ma. Gracia M. Pulido Tan, Commissioner Heidi L. Mendoza and Commissioner Jose A. Fabia; attested by Commission Secretariat Director IV Nilda B. Plaras.

³ Id. at 301-307.

⁴ Id. at 49.

⁵ Id. at 510.

⁶ Id. at 516.

⁷ Id. at 1247.

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In a Letter⁸ dated February 19, 1996, the NTA requested the Office of the Government Corporate Counsel (*OGCC*) for the preparation of the Agreement for the NTA Housing Project. In turn, in a Letter⁹ dated June 10, 1996, the *OGCC* forwarded the final draft of the Agreement between the NTA and the Developers.

In its June 17, 1996 Resolution,¹⁰ the NTA Board approved and confirmed the Agreement¹¹ with the following amendments:

1. Granting of a Mobilization Fee equivalent to Twenty Five Percent (25%) of land development cost;
2. Initial Investment of Developers at Nine Million Pesos (₱9,000,000.00) for both on land development and construction of houses;
3. Retention Fee of Ten percent (10%) on accomplishment billing; and
4. Employee[s] [b]eneficiaries shall assume the payment for additional amenities in the amount of ₱15.00 per square meter on land development.¹²

The Agreement was then signed by the NTA and the Developers, and notarized on June 25, 1996.¹³ It provided, among others, that 530 housing units for the NTA employees shall be constructed by the Developers on the land of the NTA in the total amount of ₱39,244,973.00; that the land development and construction of units shall be at the expense of the Developers;¹⁴ that the NTA and the Developers shall immediately apply for a developmental loan from the Government Service Insurance System (*GSIS*) or other government financial institutions to pay for the land development cost of the project;¹⁵ and the sale proceeds of each housing package shall be used as payment for the developmental loan.¹⁶

In his December 5, 1996 Memorandum,¹⁷ Amante E. Siapno, the NTA Administrator, informed the NTA Board that the NTA approached the Land Bank of the Philippines for a developmental loan in the amount of ₱25,000,000.00. However, the said amount was far below the development cost of the housing project and the terms and conditions of the loan were not

⁸ Id. at 522.

⁹ Id. at 523-526.

¹⁰ Id. at 527.

¹¹ Id. at 875-898.

¹² Id. at 527.

¹³ Id. at 897.

¹⁴ Id. at 884.

¹⁵ Id. at 886.

¹⁶ Id. at 888.

¹⁷ Id. at 536.

191

in harmony with the Agreement between the NTA and the Developers. Thus, it was suggested that the NTA apply for a developmental loan with the PNB since it had an existing OCL, which was not fully utilized. The OCL would be converted to a developmental loan.

In its December 6, 1996 Resolution No. 531-96,¹⁸ the NTA Board resolved to apply for a developmental loan with the PNB for the land development cost of the NTA Housing Project.

On December 17, 1996, the Mobilization Fee of ₱10,000,000.00 as per Board Resolution No. 469-96 was released to the Developers. On February 19, 1997, the NTA partially released the amount of ₱15,000,000.00 for the NTA Housing Project to the Developers.¹⁹

In his August 28, 1997 Letter,²⁰ Victorio C. Sison, Vice President of the PNB, stated that there must be some amendments in the Agreement between the NTA and the Developers with respect to the developmental loan in the amount of ₱40,000,000.00, to wit: that the developmental loan should include the Developers as co-borrowers; that there must be a sinking fund where all housing proceeds shall be deposited as payment for the developmental loan; and that the liability of the NTA on the developmental loan is primary and absolute and not limited to the land used in the NHA Housing Project.

In its September 1, 1997 Letter,²¹ the NTA Administrator responded to the PNB that the NTA shall deposit all housing proceeds to the sinking fund for the payment of the developmental loan; and that it was made clear in the Agreement that the NTA shall immediately apply for a developmental loan, thus, it understands and acknowledges such responsibility. PNB was further informed therein that during that time, there was no duly constituted NTA Board.

On September 26, 1997, the NTA executed a Supplemental Agreement²² with the Developers to incorporate the comments of the PNB for the grant of the developmental loan. It chiefly provided that the NTA and the Developers shall apply for a developmental loan from PNB as co-

¹⁸ Id. at 537.

¹⁹ Id. at 286.

²⁰ Id. at 541-542.

²¹ Id. at 543-544.

²² Id. at 329-335.

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borrowers;²³ and that a sinking fund shall be established where the housing proceeds shall be deposited for payment of the developmental loan.²⁴

On October 7, 1997, the NTA partially released another ₱5,000,000.00 for the NTA Housing Project.²⁵ On March 4, 1998, the NTA and Developers executed another Amendment Agreement.²⁶ It stated that the developmental loan shall not exceed ₱40,000,000.00;²⁷ and that the parties had agreed to be jointly and severally liable to the loan.²⁸ The NTA had released ₱30,000,000.00 from the developmental loan to the NTA Housing Project.²⁹

In its November 3, 1998 Memorandum,³⁰ the Audit Team for the NTA submitted its Report³¹ to the COA. With respect to the NTA Housing Project, it found that the Agreement between the NTA and the Developers were grossly disadvantageous to the government. It also observed that in the supplemental and amended agreements, the NTA assumed more liabilities and incurred additional interests and other charges totalling ₱10,185,000.00 and ₱7,773,090.31, which were paid out of the NTA corporate operating fund. The Audit Team opined that NTA was solely responsible for the developmental loan. It recommended that criminal and administrative charges be filed against the officers of the NTA, including petitioner.

Consequently, a criminal complaint for violation of Republic Act No. 3019 was filed before the Office of the Ombudsman (*Ombudsman*) docketed as OMB-0-00-1147 against the NTA Officials, including petitioner, for the alleged anomalous transactions in the NTA Housing Project.

In its January 3, 2005 Resolution,³² the Ombudsman dismissed the complaint for want of probable cause. It found that the Agreement between the NTA and the Developers in the NTA Housing Project was not grossly disadvantageous to the government. The NTA did not assume more liabilities in the supplemental agreement because the interest payment, fees, and other charges on the developmental loan were chargeable against the Developers, and it was not amended. As to the mobilization fee of 25% of

²³ Id. at 333.

²⁴ Id.

²⁵ Id. at 286.

²⁶ Id. at 336-338.

²⁷ Id. at 336.

²⁸ Id. at 337.

²⁹ Id. at 250.

³⁰ Id. at 248-251.

³¹ Id. at 246-291.

³² Id. at 88-116.

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the land development cost, the Ombudsman ruled that there was no violation of Presidential Decree (P.D.) No. 1594 because this fee was sourced from the initial investment of the Developers. Thus, it necessarily defeated the said mobilization fee.

The Ombudsman emphasized that the NTA Housing Project was a profitable investment. It underscored that the Philippine Deposit Insurance Corporation (PDIC) bought out the outstanding loan of the NTA with the PNB, which resulted in lower interest rates, and softer terms and conditions. Thus, it did not find any criminal liability on the part of the NTA officials, including petitioner.

The Notices of Disallowance

Meanwhile, on November 13, 1998, the Audit Team issued ND Nos. 98-08 (JV), 98-09 (JV), 98-010 (JV), 98-011 (JV), 98-012 (JV), and 98-013 (JV) against the officers of NTA, including petitioner. The total amount covered by all these NDs was ₱210,617,742.11.³³ In ND No. 98-09 (JV), Promissory Note (PN) Nos. 082-96 (12-17-96), in the amount of ₱10,000,000.00, and 007-97 (2-19-97), in the amount of ₱15,000,000.00, were disallowed and petitioner was made liable.³⁴ PN No. 082-96 (12-17-96) was for the 25% mobilization fee issued in excess of that provided in P.D. No. 1594; while PN No. 007-97 (2-19-97) was for the initial payment wrongfully made to the Developers because, according to the Audit Team, the NTA Housing Project was grossly disadvantageous to the government.

On the other hand, in ND No. 98-013 (JV), PN Nos. 97-1006-017, in the amount of ₱287,361.11, and 136-9801DL-040, in the amount of ₱22,000,000.00, were disallowed and petitioner was held liable.³⁵ Both PN were sourced from the corporate operating budget, which was used to pay the interests and charges in the developmental loan in the amounts of ₱9,974,158.90 and ₱7,773,090.00.³⁶

The NTA officials, including petitioner, moved for reconsideration against the NDs. In its February 10, 2000 Letter, the Audit Team Leader (ATL) recommended the partial lifting of ₱24,000,000.00 each under ND Nos. 98-08 (JV) and 98-09 (JV) on account of full payment made by the avalees therein. In another Letter dated October 20, 2003, the ATL re-evaluated ND No. 98-08 (JV) and lifted the ₱72,000,000.00 disallowance

³³ Id. at 52.

³⁴ Id. at 50.

³⁵ Id. at 51.

³⁶ Id. at 67.

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because it was in accordance with existing government accounting practice.³⁷

As there were still remaining disallowances under the NDs, the NTA officials, including petitioner, filed a petition for review before the COA.

The COA Ruling

In its December 30, 2010 Decision, the COA lifted ND No. 98-08 (JV) amounting to ₱72,000,000.00, ND No. 98-09 (JV) insofar as the amount of ₱24,000,000.00 was concerned, and ND No. 98-011 (JV) to the extent of ₱15,373,944.45. However, the other NDs were affirmed. The COA found that there was no sufficient explanation presented to justify the transactions or rebut the findings of the ATL.³⁸ Thus, the NTA officials, including petitioner, were still held liable for the remaining NDs, in the total amount of ₱99,000,000.00.

However, petitioner and the other NTA officials were not furnished with a copy of the December 30, 2010 Decision. Then, on March 25, 2011, the COA issued a Notice of Finality of Decision. Petitioner could not file a motion for reconsideration because she had not received a copy of the said decision. Eventually, the COA admitted its failure to serve petitioner a copy of its decision. After the COA furnished petitioner a copy of its decision, petitioner filed her Motion for Reconsideration on April 11, 2011.³⁹

Nevertheless, on October 11, 2012, petitioner received a copy of the COA Order of Execution dated October 8, 2012, which instructed the NTA Cashier to withhold the salaries of petitioner for the settlement of her liabilities in the December 30, 2010 COA Decision.⁴⁰

Then, the COA discovered that the motion for reconsideration filed by petitioner was not yet heard, thus, it again admitted that its order of execution was issued without the benefit of a hearing. For a second time, petitioner was required to submit a motion for reconsideration, and the COA lifted its order of execution. Thus, petitioner submitted a second motion for reconsideration against the December 30, 2010 COA Decision.⁴¹

³⁷ Id. at 55.

³⁸ Id. at 56.

³⁹ Id. at 1246.

⁴⁰ Id.

⁴¹ Id.

A99

In its January 30, 2015 Resolution, the COA partly granted petitioner's motion for reconsideration. It found that petitioner did not participate in transactions covered by ND No. 98-09 (JV) on loan proceeds released to third parties in the total amount of ₱23,000,000.00; and ND No. 99-007 (JV) in the total amount of ₱2,315,014.09; thus, these disallowances were lifted.⁴²

However, the COA still declared petitioner liable under ND No. 98-09 (JV) in the amount of ₱25,000,000.00 because she improperly allowed the excess mobilization fee of ₱5,886,745.95 and that the NTA Housing Project was grossly disadvantageous to the government. It also found that petitioner was liable under ND No. 98-013 (JV) in the amount of ₱22,287,361.11 because the NTA incurred additional interest and charges of ₱9,974,158.90 and ₱7,773,090.00, taken from the corporate operating budget, due to the supplemental and amended agreements in the NTA Housing Project. Petitioner affixed her initials therein, even though these were not approved by the NTA Board.

Hence, this petition. In her Memorandum,⁴³ petitioner raises the following issues:

I.

WHETHER OR NOT RESPONDENT COA ACTED CAPRICIOUSLY AND WHIMSICALLY WITHOUT REGARD TO EXISTING RULES BY GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING COA DECISION NOS. 2010-151 AND 2015-035 AFFIRMING THE NOTICES OF DISALLOWANCE NOS. 98-08(JV), 98-09(JV), 98-010(JV), 98-011(JV), 98-012(JV), 98-013(JV) AND 99-007(JV);

II.

WHETHER OR NOT RESPONDENT COA COMMITTED GRAVE ABUSE OF DISCRETION IN ISSUING DECISION NOS. 2010-151 AND 2015-035 BY AFFIRMING THE SUBJECT NOTICES OF DISALLOWANCE, WITH SEVERAL MODIFICATIONS, DESPITE THE DISMISSAL OF THE CASE BEFORE THE OFFICE OF THE OMBUDSMAN; AND

⁴² Id. at 68.

⁴³ Id. at 1244-1257.

877

III.

WHETHER OR NOT RESPONDENT COA COMMITTED GRAVE ABUSE OF DISCRETION IN IMPLICATING PETITIONER [BY] MERE AFFIXING HER INITIALS IN THE [PROMISSORY] NOTES AND WITHDRAWAL SLIPS WHICH ARE BEYOND HER OFFICIAL OR DELEGATED FUNCTIONS AND BASED MERELY ON THE ALLEGATION THAT PETITIONER RECOMMENDED FOUR (4) ADDITIONAL PROVISIONS IN THE DEVELOPMENT AGREEMENT WITHOUT ADVANCING ANY PROOF.⁴⁴

Petitioner argues that the COA committed grave abuse of discretion when it made her initially liable for the total amount of ₱210 Million even though the OCL was only valued at ₱99 Million; that she is not liable under ND No. 98-013 (JV) because the said ₱22,287,361.11 was utilized for operational expenses, salaries of officers and utilities, which is beyond her office; that the interest payments were not approved by petitioner; that she is not liable under ND No. 98-09 (JV) because there is no evidence that she recommended the amendments to the Agreement and she was not present during the board meeting when these amendments were passed; and that the mere placing of her initials in the PNs do not automatically make her liable for the said NDs.

In its Memorandum,⁴⁵ the COA countered that petitioner failed to prove that it committed grave abuse of discretion in upholding the subject NDs; that petitioner, as chairperson of the NTA Housing Committee, exercises some form of accountability regarding the disbursements for the housing project; that her liability stems from her active participation in the release of the NTA housing project loans; that her direct participation is evidenced by her overt act of affixing her initials on the documents, which facilitated the release of the loan; that her initials signified her acquiescence to the loan transactions, irrespective of whether the same were irregular or not; and that due to the amendments of the Agreement, the NTA assumed more liabilities and such amendments were undertaken without board approval.

In her Supplement to Petitioner's Memorandum,⁴⁶ petitioner added that the COA arbitrarily insisted that she recommended the amendments to the Agreement in the NTA Housing Project but there is no evidence on record to prove it.

⁴⁴ Id. at 1250.

⁴⁵ Id. at 1290-1306.

⁴⁶ Id. at 1310-1318.

209

The Court's Ruling

The Court finds the petition meritorious.

*Petitioner merely initialed and
witnessed the documents*

The Constitution vests in the COA the broadest latitude to discharge its role as the guardian of public funds and properties. Thus, the COA was granted exclusive authority, subject to the limitations of Article IX(D), Section 2(2) of the Constitution, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties.⁴⁷ In recognition of such constitutional empowerment, the Court has generally sustained the COA's decisions or resolutions in deference to its expertise in the implementation of the laws it has been entrusted to enforce. Only when the COA has clearly acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction has the Court intervened to correct the COA's decisions or resolutions. For this purpose, grave abuse of discretion means that there is, on the part of the COA, an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law, such as when the assailed decision or resolution rendered is not based on law and the evidence but on caprice, whim and despotism.⁴⁸

Before a person can be held liable under a ND, it must be proven that he or she is directly responsible for the illegal, irregular, unnecessary, excessive, extravagant, or unconscionable transactions. Section 103 of Presidential Decree No. 1445 (Government Auditing Code of the Philippines) provides:

SECTION 103. General liability for unlawful expenditures.

Expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be **directly responsible** therefor. (emphasis supplied)

⁴⁷ Article IX(D), Section 2(2) of the Constitution.

⁴⁸ *Miralles v. Commission on Audit*, 818 Phil. 380, 389-390 (2017); citations omitted.

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In this case, the Court finds that the COA committed grave abuse of discretion in holding petitioner liable for the remaining ND Nos. 98-09 (JV) and 98-013 (JV) even though she merely placed her initials in the documents. According to Report of the Audit Team for the NTA, petitioner was held for the following acts:

Name/Position	Extent of Participation	Particulars
Ms. Cristina C. Lopez Manager Administrative Department	For witnessing Promissory notes	12/17/96-PN#082-96 P10M
	For initialing Promissory note	10/7/97-136-9710DL-017 - P5M
	For initialing Promissory note	1/29/98-136-9801DL-040 - P22M
	For initialing withdrawal slip	10/7/97- P4.473M
	For initialing withdrawal slip	12/17/96 - P10M ⁴⁹
NTA Housing Committee		
Ms. Cristina C. Lopez Chairman	For initialing original developmental agreement, supplemental, developmental & REM & notice of award.	P39.2M/P100M REM ⁵⁰
	For recommending four additional provisions in approving developmental agreement particularly provision for mobilization fee in excess of authorized mobilization under P.D. [No.] 1594	

Evidently, petitioner is primarily held liable by the COA because she initialed and witnessed some of the PNs and withdrawal slips in the OCL and the Agreement. However, it is clear from the report that petitioner is not the one that approved the said transactions. She merely placed her initials therein. The liability of petitioner cannot merely be assumed or inferred based on her initialing and witnessing the transactions, or that she was designated as the chairperson of the NTA Housing Project. There must be some concrete evidence that she was directly responsible for the said transactions or that she was the approving authority therein.

⁴⁹ *Rollo*, p. 273.

⁵⁰ *Id.* at 289.

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Manifestly, the COA failed to prove that petitioner's initials in those documents were the approving or recommending authority for the transactions in the OCL and the Agreement. No evidence was presented that petitioner's initials therein were indispensable; rather, her initials did not have any definite authority on the said transactions.

In contrast, the report of the Audit Team showed that it was actually the NTA Board and the Administrator that approved the said transactions, and it was the Finance Manager that prepared the documents.⁵¹ Further, as pointed out by petitioner, the NTA Board stated that it was the NTA Administrator, Deputy Administrator for Support Services, and Chief of the Fund Management who were the authorized signatories for the OCL with PNB, from which the developmental loan was sourced, to wit:

ADDENDUM TO RESOLUTION NO. 443-96
DATED MARCH 13, 1996

RESOLVED, FURTHER, that for and in behalf of the NTA, the Honorable Amante E. Siapno, Administrator and/or Atty. Amalia M. Guloy, Deputy Administrator for Support Services and Maybelen Dictaan, Chief, Fund Management Division are hereby designated as the authorized official(s) signatory of the NTA for the **subject credit line** and the corresponding Assignment of 1996 Corporate Receivables and Trust Funds, as guarantee thereof, for the PNB.⁵² (emphasis supplied)

On the other hand, the COA attempts to impute liability to petitioner because she recommended the amendments to the Agreement in the NTA Housing Project, which were allegedly prejudicial to the government. According to COA, this proves the direct participation and acquiescence of petitioner to the said irregular transactions.

The Court is not convinced.

There is absolutely nothing in the records which would show that petitioner expressly recommended the said amendments. Glaringly, the COA failed to cite any document which contains petitioner's unequivocal signature or approval to the said amendments. Petitioner was not even present in the NTA Board Meeting when the purported amendments were approved.⁵³ The COA's conclusion that petitioner directly participated in the said amendments is completely unsubstantiated.

⁵¹ Id. at 272.

⁵² Id. at 936.

⁵³ Id. at 415.

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Rather, as stated in the Minutes of the 85th Special Meeting of the NTA,⁵⁴ it was a certain Director Magsaysay that recommended the approval of the said amendments to the NTA Board, and petitioner was not even present during the said meeting, viz.:

While Director Gironella had inquired from Director Magsaysay (assigned to conduct all matters related to the housing) if every aspects of the matter was well[-]taken, **Director Magsaysay assured the other Members of the Board that everything will be transparent and she, therefore, moved for the approval and confirmation of the Agreement** entered into by and between NTA and Consuelo Builders, subject to the following amendments:

1. Granting of mobilization fee equivalent to 25% of Land Development Cost;
2. Initial Investment of Developers at Nine Million Pesos (₱9,000,000.00) for both Land Development and House Construction;
3. Retention fee of ten percent [10%] on accomplishment Billing; and
4. Employee beneficiaries shall assume the payment for other additional amenities in the amount of ₱15.00 per square meter on Land Development.

Director Lasam seconded the motion.⁵⁵ (emphasis and underscoring supplied)

Evidently, it was not petitioner who recommended the amendments to the Agreement. Again, the COA cannot merely assume petitioner is liable without any concrete proof and it cannot merely be inferred in her designation as chairperson of the NTA Housing Project. Indeed, the records demonstrate that petitioner was not directly responsible for the said amendments.

*Amendment of the Agreement
was not an irregular
transaction*

The COA argues that the amendments to the Agreement in the NTA Housing Project were irregular because it made the NTA solidarily liable for the said project with the Developers, which was not contemplated in the original Agreement. In other words, the transactions under such amendment were irregular expenditures. An irregular expenditure is an expenditure

⁵⁴ Id. at 415-420.

⁵⁵ Id. at 419.

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incurred without adhering to established rules, regulations, procedural guidelines, policies, principles or practices that have gained recognition in law.⁵⁶

Even assuming that petitioner had a participation in the amendment of the Agreement of the NTA Housing Project, the Court finds that it cannot be considered as an irregular transaction. The original Agreement for the NTA Housing Project stated that:

The financing scheme for the project shall be as follows:

- a) Construction of the Project's 530 housing units shall be at the total expense of developer without any assistance from the NTA;
- b) Land development costing approximately Thirty-nine [Million] Two Hundred Forty-four [Thousand] and Nine Hundred Seventy Three Pesos (P39,244,973.00) Pesos (*sic*) shall be undertaken and financed as follows:

x x x x

- ii. NTA will immediately apply for a developmental loan (as processing thereof takes sometime) but actual availment thereof shall only be made after approximately Thirty-five percent (35%) of the developmental work has been completed by the DEVELOPER. This jibes with the initial cash infusion by the Developer in the sum of Fifteen Million (P15,000,000.00) PESOS which is roughly 37% of the total land development cost;⁵⁷

x x x x

- a) NTA and the Developer shall apply for a developmental loan from the GSIS or other government financial institutions to pay for the land development cost of the project. The corresponding Tripartite Agreement for the Developmental Loan shall be entered into among NTA, the Developer, and the Government financial institution;⁵⁸

Manifestly, even though the original Agreement stated that the construction of the housing unit shall be at the total expense of the Developers without assistance from the NTA, it also provided that the NTA will apply for a developmental loan for the financing of the project. As a result, the NTA had anticipated, from the original Agreement, that it would

⁵⁶ *Subic Bay Metropolitan Authority v. Commission on Audit*, G.R. No. 230566, January 22, 2019.

⁵⁷ *Rollo*, p. 430.

⁵⁸ *Id.* at 432.

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secure a developmental loan, which would necessarily entail a monetary obligation on its part.

or

The NTA initially secured a developmental loan in the amount of ₱25 million from the Land Bank of the Philippines. However, the terms and conditions of such loan were too stiff. Thus, it was proposed the developmental loan be taken from the existing OCL with PNB because it was not fully utilized.⁵⁹ In its Resolution dated December 6, 1996, the NTA Board approved the request to apply for the developmental loan to the PNB. In its Letter⁶⁰ dated August 28, 1997, the PNB informed the NTA that there must be an amendment of the Agreement to establish a sinking fund, where all housing loan proceeds would be deposited and applied as payment for the developmental loan, and that the NTA's liability is absolute because the developmental loan must be paid upon maturity.

Accordingly, the NTA had no other recourse but to amend the original Agreement and provide therein that it shall be solidarily liable with the Developers with respect to the developmental loan. Nevertheless, the Court finds that even though the Agreement was amended, it was not unfavorable to the government. It must be reiterated that the liability of the NTA was already contemplated in the original Agreement because it was tasked to secure a loan to finance the NTA Housing Project.

Further, as observed by the Ombudsman, while the Agreement was amended due to the developmental loan, it was not prejudicial to the government with respect to the payment of the interests and charges therein. The original Agreement, it explicitly provides that:

The Developer's financial infusion to these Project are, therefore, as follows:

x x x x

- c) The interest, fees and other charges payable on the developmental loan.⁶¹

The supplemental agreement and the amended agreement did not revoke or set aside this provision. Thus, all the interests and charges were still payable by the Developers. Indeed, the Ombudsman correctly opined that the provision on interest payment, fees and other charges on the

⁵⁹ Id. at 536.

⁶⁰ Id. at 541-542.

⁶¹ Id. at 431.

Development loan, which are to the account of the developer, was never amended in the contract.

Consequently, ND No. 98-013 (JV) in the amount of ₱22,287,361.11 issued against petitioner has no valid legal basis because the NTA did not incur additional interest and charges of ₱9,974,158.90 and ₱7,773,090.00, from the Agreement in the NTA Housing Project. Again, the interest and charges were payable by the Developers, not the NTA, based on the Agreement; this provision on interest payments was retained even in the subsequent amendments.

Likewise, the COA failed to prove that the amendment to the Agreement, with respect to the mobilization fee, was an irregular transaction. The said amendment granted a mobilization fee equivalent to 25% of land development cost in favor of the developer.⁶² According to the COA, this was in excess of the 15% mobilization fee under P.D. No. 1594 or in the amount of ₱5,886,745.95.⁶³

However, the COA failed to consider that, in the same amendment, the Developers gave an initial investment of ₱9,000,000.00 for both land development and construction of houses, which is more than enough to cover such excess amount of mobilization fee. As correctly held by the Ombudsman, the said initial investment of the Developers defeats the purpose of the charge against petitioner with respect to the mobilization fee.⁶⁴

Consequently, ND No. 98-09 (JV) in the amount of ₱25,000,000.00 issued against petitioner for allowing the excess mobilization fee of ₱5,886,745.95 is not justified. To reiterate, the said excess mobilization fee is already covered by the initial investment of the Developers. Thus, the said amount did not come from the NTA.

*The NTA Housing Project was
not disadvantageous to the
government*

Another reason for the issuance of ND No. 98-09 (JV) against petitioner, in the amount of ₱25,000,000.00, was because payment of the NTA Housing Project was sourced from the said developmental loan and the

⁶² Id. at 527.

⁶³ Id. at 243.

⁶⁴ Id. at 113.

87

COA argues that such project was grossly disadvantageous to the government.

The Court disagrees.

The Agreement in the NTA Housing Project was amended such that the NTA would be solidarily liable with the Developers for payment of the developmental loan. Nevertheless, there were sufficient safeguards to protect the NTA from liability, such as the creation of a sinking fund in the form of a savings account, where all the housing loan proceeds will be deposited and applied as payment for the developmental loan by virtue of an assignment thereof in favor of PNB. This will ensure that the housing loan proceeds would go directly to the payment of the developmental loan so that the NTA would not incur any additional liability.

Notably, the Ombudsman observed that the NTA Housing Project was a profitable investment, to wit:

Furthermore, it can also be said that in 2002, economic turn around gave hope to NTA housing project. This instigated the Philippine Deposit Insurance Corporation (PDIC) to undertake the buy out of the outstanding loan of NTA with the PNB. With the take-over by the PDIC of NTA's outstanding loan with PNB, penalty charges thereon shall be condoned and the PDIC offered a lower interest rate and softer terms and conditions. Said buy out made by the PDIC would indicate that the NTA Housing Project is a profitable investment. As in fact, said development resulted to the forging of a Supplemental Memorandum of Agreement between NTA and the Developer (Consuelo Builders Corporation/PMC Construction Joint Venture) for them to provide an equitable and reasonable profit sharing scheme.⁶⁵

Petitioner further presented additional evidence that the NTA Housing Project indeed earned profits for the government. During the implementation of the NTA Housing Project, it was able to generate sales proceeds in the total sum of ₱19,512,460.00 based on the Summary of Buyers.⁶⁶ Out of the said amount, a total of ₱11,317,336.99 was directly transferred to the benefit of NTA, as follows:

⁶⁵ Id. at 110-111.

⁶⁶ Id. 1214.



- a. ₱5,984,000.00 from the NTA Housing Project was remitted by the Pag-IBIG Fund to the PDIC based on its certification;⁶⁷
- b. ₱4,613,091.60 was remitted to the Joint Account of the NTA and the Developers as per bank statements;⁶⁸ and
- c. ₱720,245.39 was received by the NTA from direct buyers of the housing project as per certification of the NTA Chief Accountant.⁶⁹

The remaining sales proceeds represent the amount of equity payments of the buyers, as well as the deductions made for the Pag-IBIG Fund from the respective housing loans.

In contrast, aside from its bare allegation that the NTA Housing Project was grossly disadvantageous to the government, the COA did not present any concrete evidence that the said project was a complete and utter failure and a liability to the government, or that such loss was attributable to petitioner. It could not even substantiate that the NTA Housing Project was overpriced compared to other neighboring housing projects. Indeed, without any credible evidence that the NTA Housing Project was grossly disadvantageous to the government, ND No. 98-09 (JV) in the amount of ₱25,000,000.00 cannot be charged against petitioner.

Based on the foregoing, the COA committed grave abuse of discretion since there is insufficient legal and factual basis to charge petitioner with ND Nos. 98-09 (JV) and 98-013 (JV) for the NTA Housing Project.

WHEREFORE, the petition is **GRANTED**. The COA December 30, 2010 Decision and January 30, 2015 Resolution, docketed as Decision Nos. 2010-151 and 2015-035, respectively, insofar as the liability of Cristina Catu-Lopez is concerned, are hereby **REVERSED** and **SET ASIDE**.

SO ORDERED.

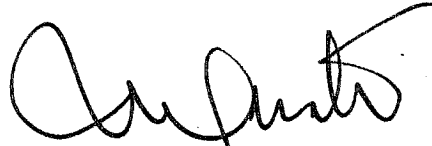

ALEXANDER G. GESMUNDO
Associate Justice

⁶⁷ Id. at 1215.

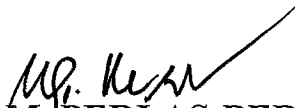
⁶⁸ Id. at 1216-1220.

⁶⁹ Id. at 1221.

WE CONCUR:



DIOSDADO M. PERALTA
Chief Justice



ESTELA M. PERLAS-BERNABE
Associate Justice

(On Official Business)

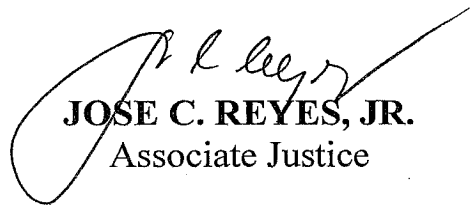
MARVIC M.V.F. LEONEN
Associate Justice

(On Official Business)

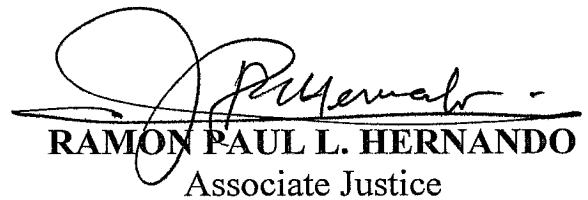
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



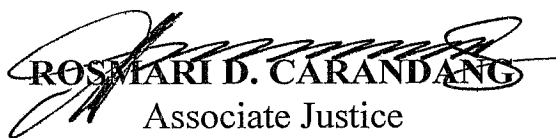
ANDRES B. REYES, JR.
Associate Justice



JOSE C. REYES, JR.
Associate Justice



RAMON PAUL L. HERNANDO
Associate Justice



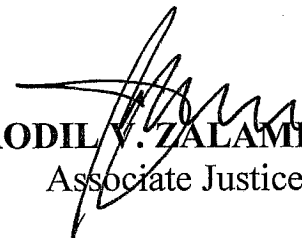
ROSMARI D. CARANDANG
Associate Justice

(On Wellness Leave)

AMY C. LAZARO-JAVIER
Associate Justice

(On Wellness Leave)

HENRI JEAN PAUL B. INTING
Associate Justice

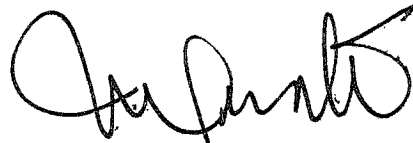


RODIL V. ZALAMEDA
Associate Justice



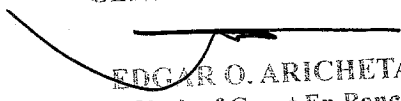
§ **CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I hereby 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

CERTIFIED TRUE COPY


EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court

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