

MALACAÑANG
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 230

IMPOSING THE PENALTY OF DISMISSAL FROM THE SERVICE WITH FORFEITURE OF BENEFITS UNDER THE LAW OF EDDA VILLALUNA-HENSON, ADMINISTRATOR, INTRAMUROS ADMINISTRATION

This is an administrative case filed by the Concerned Employees of Intramuros Administration against the Administrator of Intramuros (IA), Mrs. Edda V. Henson for the following acts:

- 1) Entering into negotiated contracts with Brand Asia worth P6.17 million for print collateral materials and P2 million for video documentary TV program of Intramuros Administration. The print collateral materials were allegedly not utilized but were lying idle at the IA storage room. In both contracts, respondent's daughter, who was then employed with Brand Asia, was involved;
- 2) Allowing Brand Asia to subcontract to Capitol Publishing House, Inc. the printing of the collateral materials;
- 3) Soliciting food or meals from contractors of IA for the yearly Christmas party of the office; and
- 4) Failure to collect more than one million pesos as arrearages from Barbara's Restaurant, a caterer at the Plaza San Luis of Intramuros.

In its Resolution, the Presidential Commission Against Graft and Corruption (Commission) found respondent Henson guilty of the charges for violation of pars. (a) & (e) of Section 3 of RA 3019 by allowing herself to be persuaded, induced, or influenced to commit a violation of rules and regulations and by giving a private party unwarranted benefits, advantage or preference in the discharge of her official administrative function through manifest partiality.

After a careful perusal of the records of the case, the findings of the Commission are AFFIRMED in toto, the same having been supported by substantial evidence.

The findings with respect to the four (4) charges are, as follows:

(1) Alleged Award of Contracts to Brand Asia without Public Bidding.

Respondent admits having entered into negotiated contracts with Brand Asia, one for the video documentary worth P2,000,000 entered into in November, 1992 and the other one for print collaterals entered into in June, 1993 for P6,017,000 in violation of the COA rules and regulations. She argues, however, that the contracts fall within the exceptions provided under Section 1 of Executive Order No. 301 dated July 26, 1987, that the contracts/awards to Brand Asia underwent a rigid selection process; and that the acceptance of proposals from six (6) advertising agencies was with the knowledge and approval of the Department of Tourism (DOT).

This Office takes notice of the following findings of the Commission relative to this matter:

"It is of record that the Commission has required respondent to submit copies of the contracts negotiated with Brand Asia and related documents. This was not complied with despite two (2) directives from the Commission. While the Commission is aware that Executive Order No. 301 gives a Department Head the discretion to determine when a negotiated contract is most advantageous to the government, such discretion however, is either sound or subject to abuse. In the latter case, it can even be violative of certain laws or regulations. By her non-compliance with the directives of the Commission, respondent deprived the Commission of the opportunity to determine from the contract documents if her exercise of discretion was sound or not. Relying alone on her allegation in her counter-affidavit and on her oral testimony, the Commission finds that respondent failed to successfully traverse the charges, as shown by the following:

"First, beyond saying that there were six (6) agencies whose proposals were considered, respondent, even if required in the course of the

proceedings, did not present evidence on the proposals of the other advertising agencies, including that of the awardee. Secondly, respondent failed to prove that any of the enumerated situations in Sec. 1 of Executive Order No. 301 abovequoted existed to justify and allow negotiated contract as an exception to public bidding. On this matter, respondent argues that the agency lacked the necessary expertise to appreciate the project if bid, and further, that the negotiated contract was approved by the Department of Tourism. The Commission notes that aside from these reasons advanced by respondent, there is no direct evidence presented by her to support the claim that the negotiation was more advantageous than public bidding. Clearly, therefore, the defense of respondent lacks merit.

"In this connection, complainants likewise charge that it was the daughter of respondent who personally presented the proposal of Brand Asia to IA and subsequently resigned from said firm after the proposal was closed with IA; and that the Administrator (respondent Edda Henson) was the one who viewed the proposal of Brand Asia.

"During the hearing of the case on May 23, 1995, respondent admitted that her daughter, Maria Elvina Henson, worked as a trainee under probation with Brand Asia. She was then assigned at the Accounts Department headed by its Director Desiree Chua Co. Brand Asia's proposal was presented by its Creative Director Corazon Sarmiento and said Accounts Director Desiree Chua Co. (par. 3.3, Affidavit of respondent, p. 42 records). It would thus appear that Maria Elvina Henson has a working relationship with Desiree Chua Co. Such fact is indicative of a tie-up where unwarranted benefit was given to a proponent by virtue of a mother-daughter relationship, albeit an indirect one. Answering the clarificatory questions propounded by the Commission during the hearing of the case, respondent admitted that it is possible that Brand Asia acquired information relative to the needs of IA for the production of the video

documentary and printed collateral materials from her daughter who, as above stated was working at the time with Brand Asia. Even as a trainee under probation, she had access to material information from both IA and Brand Asia."

2) Alleged Subcontracting of Collateral Materials.

Both IA and Brand Asia were aware that advertising agencies are not commercial printing houses and therefore not expected to print for themselves the related posters and collateral materials, such that, at the time of negotiation it would have been established that Brand Asia can supply only the concept and ideas in promoting Intramuros but not the required printing job. Thus, the printing of the materials should have been subjected to public bidding considering that the transaction involves disbursement of public funds and therefore, subject to the rules on bidding. As correctly pointed out by the Commission:

"The possibility of contracting with other printers or publishing houses at a lower price for the same quantity and quality of materials was foreclosed arbitrarily because of the sub-contract scheme undertaken by Brand Asia. x x x The reason advanced by respondent that the unity of the concept and design must be ensured is not proof of advantage to government. The same cannot be used to obviate or circumvent the requirement of the law. What the law prohibits directly, it also prohibits indirectly."

3) Food subsidy from Contractors for the Christmas Party.

The charge not having been established by evidence, the same was dismissed by the Commission.

4) Non-payment of Arrearages by Barbara's Restaurant.

Despite the directives of the Commission for the submission of alleged settlement agreement between IA and Barbara's Restaurant for the arrears amounting to ₱753,158.00, not ₱1 million as claimed by the complainant, respondent failed to submit the same. The Commission, however, observes that failure to collect is not necessarily a corrupt act.

In fine, the Commission's findings are summarized as follows:

"It must be stressed that respondent, despite repeated directives, did not submit copies of the contracts and relevant documents which were the very subjects of the proceedings. She also refused to submit certain documents specified in the Orders of the Commission, e.g., the proposal of the six (6) agencies which were allegedly considered resulting in the final award to Brand Asia, and logbooks of the Property Custodian of IA. She likewise defied the orders of the Commission by her refusal to submit documents showing payments made to Brand Asia, and the alleged settlement agreement with Barbara's Restaurant.

"It is basic that the non-production by respondent of documents in her custody, unless justified, gives rise to the presumption of suppression of evidence adverse to her (Sec. 3, Rule 130, Rules of Court). Respondent offered no justification for her non-compliance with the aforesaid orders of the Commission. The Commission therefore presumes that if produced, the documents would have been adverse to respondent. From what can be gleaned from the evidence adduced, the Commission finds that respondent violated the rules and regulations on public bidding, specifically Sec. 1 of Executive Order No. 301 aforequoted. It has been established that there was no public bidding on the award to Brand Asia as required by law. The evidence is clear that respondent allowed herself to be persuaded, induced or influenced to commit such violation. It is also clear that respondent gave Brand Asia unwarranted benefits, advantage or preference, through manifest partiality, when it awarded the said two (2) contracts to said agency, to the prejudice of five (5) other proponents."

IN VIEW OF THE FOREGOING, and as recommended by the Presidential Commission Against Graft and Corruption, respondent Edda V. Henson, Administrator, Intramuros

- 6 -


Administration is hereby DISMISSED from the service with forfeiture of benefits under the law for violation of Section 3, par (a) and (e) of RA 3019.

SO ORDERED.

Done in the City of Manila, this 30th day of November, in the year of Our Lord, nineteen hundred and ninety five.



By the President:



RUBEN D. TORRES
Executive Secretary