



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

THE HONORABLE OFFICE OF G.R. No. 208976  
THE OMBUDSMAN,

Petitioner,

Present:

CARPIO, *J.*, Chairperson,  
BRION,  
DEL CASTILLO,  
MENDOZA, and  
LEONEN, *JJ.*

-versus-

LEOVIGILDO DELOS REYES, JR.  
Respondent.

Promulgated:

OCT 13 2014 *HM Cabalag Infante*

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RESOLUTION

LEONEN, *J.*:

This resolves the petition for review on certiorari under Rule 45 of the Rules of Court, assailing the Court of Appeals' decision<sup>1</sup> dated March 1, 2013, which set aside the Office of the Ombudsman's decision and order in OMB-C-A-04-0309-G finding respondent Leovigildo Delos Reyes, Jr. guilty of grave misconduct and gross neglect of duty,<sup>2</sup> and order dated August 29, 2013, which denied petitioner Office of the Ombudsman's motion for reconsideration.

The facts as summarized by the Court of Appeals are as follows:

<sup>1</sup> The decision was penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Marlene Gonzales-Sison and Edwin D. Sorongon of the Sixth Division.

<sup>2</sup> *Rollo*, pp. 51-67 and 68-72. The decision was dated June 10, 2006, and the order was dated November 15, 2007.

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To generate more funds in line with its mandate, the Philippine Charity Sweepstakes Office (PCSO) maintains On-line Lottery Terminals in its main office and in provincial district offices. The Marketing and On-line Division of PCSO's Central Operations Department (COD) manages the terminals in the main office under Agency Number 14-5005-1.<sup>3</sup> Respondent Leovigildo Delos Reyes, Jr. (Delos Reyes) served as the COD Division Chief.<sup>4</sup>

On June 13, 2001, PCSO auditors submitted a consolidated report based on a surprise audit conducted on June 5, 2001.<sup>5</sup> The auditors found that the cash and cash items under Delos Reyes' control were in order.<sup>6</sup> However, the auditors recommended that the lotto proceeds be deposited in a bank the next working day instead of Delos Reyes keeping the lotto sales and proceeds in a safe inside his office.<sup>7</sup>

On June 5, 2002, COD Manager Josefina Lao instructed OIC-Division Chief of the Liaison and Accounts Management Division Teresa Nucup (Nucup) to conduct an account validation and verification to reconcile accounts due to substantial outstanding balances as of May 31, 2002.<sup>8</sup> On August 16, 2002, Nucup reported that Agency No. 14-5005-1 had unremitted collections in the amount of ₱428,349.00 from May 21, 2001 to June 3, 2001.<sup>9</sup> The amount was subsequently reduced to ₱387,879.00 excluding penalties.<sup>10</sup>

Nucup also found that "there was a deliberate delay in the submission of the periodic sales report; that the partial remittance of total sales were made to cover previous collections; and that the unremitted collections were attributed to Cesar Lara, Cynthia Roldan, Catalino Alexandre Galang, Jr., who were all employed by [PCSO] as Lottery Operations Assistants II, and Elizabeth Driz, the Assistant Division Chief."<sup>11</sup>

After conducting its own investigation, the PCSO Legal Department recommended filing formal charges against Delos Reyes and Elizabeth Driz (Driz) for dishonesty and gross neglect of duty. The PCSO Legal Department found that the Lottery Operations Assistants turned over the lotto proceeds and lotto ticket sales reports to Delos Reyes as the Division Chief. In case of his absence, the proceeds and reports were turned over to Driz.<sup>12</sup> Driz would then deposit the proceeds in the bank. If both Delos

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<sup>3</sup> Id. at 34-35.

<sup>4</sup> Id. at 35.

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> Id. at 36.

<sup>11</sup> Id. at 35.

<sup>12</sup> Id. at 36.

Reyes and Driz were absent, the proceeds would be placed in the vault under Delos Reyes' control and deposited the next banking day.<sup>13</sup>

On May 14, 2003, formal charges were filed against Delos Reyes and Driz, with the cases docketed as Administrative Case Nos. 03-01 and 03-02, respectively.<sup>14</sup> Delos Reyes and Driz were preventively suspended for 90 days.<sup>15</sup>

On June 8, 2004, PCSO filed an affidavit-complaint with the Office of the Ombudsman.<sup>16</sup> Delos Reyes and Driz were criminally charged with malversation of public funds or property under Article 217 of the Revised Penal Code, and administratively charged with dishonesty and gross neglect of duty under Section 46(b)(1) and (3) of Book V of Executive Order No. 292.<sup>17</sup>

After the submission of the parties' pleadings, the Office of the Ombudsman rendered the decision dated June 10, 2006 in OMB-C-A-04-0309-G finding Delos Reyes and Driz guilty of grave misconduct and gross neglect of duty, and ordering their dismissal from service. The dispositive portion of the decision reads:

**WHEREFORE**, premises considered, respondents, Leovigildo T. Delos Reyes, Jr. and Elizabeth G. Driz, are found guilty for Grave Misconduct and Gross Neglect of Duty, and are thus imposed the penalty of **DISMISSAL** from the service, including all the accessory penalties of, cancellation of eligibility, forfeiture of leave credits and retirement benefits, and disqualification for reemployment in the government service.

The complaint for Dishonesty filed against the respondent is however Dismissed for insufficiency of evidence.

The Honorable Rosario Uriarte, Chairman and General Manager of the Philippine Charity Sweepstakes Office, is hereby directed to implement immediately this decision pursuant to Memorandum Circular No. 01, Series of 2006.

**SO ORDERED.**<sup>18</sup>

Delos Reyes' partial motion for reconsideration was denied on November 15, 2007.<sup>19</sup> He then filed before the Court of Appeals a petition for certiorari docketed as CA-G.R. SP No. 117683 under Rule 65 of the Rules of Court.

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<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> Id.

<sup>17</sup> Id. at 36-37.

<sup>18</sup> Id. at 37.

<sup>19</sup> Id.

On March 1, 2013, the Court of Appeals granted the petition and reversed and set aside the Office of the Ombudsman's decision and resolution, thus:

**WHEREFORE**, the petition is **GRANTED** and the assailed June 10, 2006 *Decision* and November 15, 2007 *Order*, finding petitioner Leovigildo T. Delos Reyes, Jr. guilty of grave misconduct and gross neglect of duty, are **REVERSED** and **SET ASIDE**. The Philippine Charity Sweepstakes Office (PCSO) is ordered to **REINSTATE** petitioner as Chief of the Marketing and On-Line Division, Central Operations Department (COD) of the PCSO, with full backwages, retirement benefits and emoluments, and without diminution as to his seniority rights from the time of his dismissal from office until his reinstatement.

**SO ORDERED.**<sup>20</sup>

According to the Court of Appeals, the Office of the Ombudsman disregarded the PCSO's findings as to Delos Reyes' liability for grave misconduct and gross neglect of duty.<sup>21</sup> The Office of the Ombudsman failed to prove Delos Reyes' guilt with substantial evidence, and the ruling must be overturned. The Court of Appeals found that it was Driz who had the specific duty to prepare and consolidate the sales reports and to remit the proceeds to the bank.<sup>22</sup>

The Court of Appeals relied on PCSO's position paper before the Office of the Ombudsman, which stated that Driz's manipulation of the lotto sales reports exonerates Delos Reyes from liability.<sup>23</sup> The Court of Appeals also gave weight to PCSO's assertion that he had no means of verifying the reports submitted to him by Driz, absent the final accounting report of another division, the Liaison and Accounts Management Division.<sup>24</sup>

The Court of Appeals further held that:

Generally, the Court will not interfere with the investigatory and prosecutorial powers of the Ombudsman, so long as the rulings are supported by substantial evidence. For the Court to overturn the Ombudsman's finding, it is imperative to clearly prove that the Ombudsman acted with grave abuse of discretion. Grave abuse of discretion refers not merely to palpable errors of jurisdiction, or to violations of the Constitution, the law and jurisprudence, it refers also to

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<sup>20</sup> Id. at 45–46.

<sup>21</sup> Id. at 43.

<sup>22</sup> Id. at 41.

<sup>23</sup> Id. at 41–42.

<sup>24</sup> Id. at 42–43.

cases in which, for various reasons, there has been a gross misapprehension of facts.<sup>25</sup> (Citations and original emphasis omitted)

The Office of the Ombudsman and PCSO filed their respective motions for reconsideration.<sup>26</sup> These were denied by the Court of Appeals in its resolution dated August 29, 2013.<sup>27</sup>

On October 29, 2013, the Office of the Ombudsman, through the Office of the Solicitor General, filed the present petition for review on certiorari. In the resolution dated January 22, 2014, we required Delos Reyes to comment on the petition.<sup>28</sup>

On April 21, 2014, we noted Delos Reyes' comment dated March 10, 2014 and required the Office of the Ombudsman to submit its reply.<sup>29</sup> However, it submitted a manifestation and motion instead.

The manifestation and motion dated June 16, 2014, filed by the Office of the Solicitor General, prayed that this court adopt the Office of the Ombudsman's petition for review on certiorari as its reply to Delos Reyes' comment. This was because the comment did not raise any new matter which must be controverted.<sup>30</sup>

The manifestation and motion was noted and granted in this court's resolution dated July 9, 2014.<sup>31</sup>

The issues to be resolved in this case are: (1) whether the Court of Appeals erred in taking cognizance of the petition for certiorari under Rule 65 of the Rules of Court despite availability of the remedy under Rule 43 of the Rules of Court; and (2) whether the Court of Appeals erred in holding that the Office of the Ombudsman committed gross misapprehension of facts in finding that substantial evidence exists for the administrative charge of grave misconduct and gross neglect of duty.

Petitioner argued that the petition for certiorari under Rule 65 of the Rules of Court was the wrong remedy to assail the Office of the Ombudsman's decision before the Court of Appeals.<sup>32</sup> The proper remedy is a petition for review under Rule 43 of the Rules of Court. In any case, the

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<sup>25</sup> Id. at 45.

<sup>26</sup> Id. at 48–50. PCSO assailed the award of full backwages to respondent in view of its good faith in filing the case against respondent.

<sup>27</sup> Id. at 50.

<sup>28</sup> Id. at 76.

<sup>29</sup> Id. at 335.

<sup>30</sup> Id. at 336.

<sup>31</sup> Id. at 342.

<sup>32</sup> Id. at 17–20.

petition was already filed out of time.<sup>33</sup> A petition for certiorari is not a substitute for a lost appeal.<sup>34</sup>

The Court of Appeals also erred in ruling that the Office of the Ombudsman committed gross misapprehension of facts despite lack of proof of grave abuse of discretion on the part of the Office of the Ombudsman.<sup>35</sup> There was substantial evidence to justify the finding of gross misconduct and gross neglect of duty.<sup>36</sup> Misappreciation of facts or evidence is not equivalent to a finding of grave abuse of discretion.<sup>37</sup>

Moreover, citing Section 27 of Republic Act No. 6770, petitioner argued that “findings of fact of the Ombudsman are conclusive when supported by substantial evidence.”<sup>38</sup>

In his comment<sup>39</sup> dated March 10, 2014, respondent relied on the PCSO’s acknowledgement that it was Driz who was solely liable for the missing lotto proceeds. He argued that “Driz was manipulating the bank deposit slips as against her daily sales report to cover her lapping activities without the knowledge or participation of [respondent].”<sup>40</sup>

Respondent assailed the Office of the Ombudsman’s argument that respondent had the obligation to ensure Driz’s deposit of the daily lotto sales proceeds to the bank.<sup>41</sup> As established from the proceedings before the PCSO up to the Court of Appeals, the task of depositing the proceeds falls squarely on Driz based on her job description.<sup>42</sup>

Respondent summarized facts that belie the Office of the Ombudsman’s finding of guilt for grave misconduct, hence:

(1) Driz made the lapping of funds in a clandestine manner and respondent Delos Reyes had no means to make the necessary precautionary measures or restorative measures to avoid the misappropriation of funds, (2) there were no clear-cut guidelines by which Delos Reyes’ actions can be measured against to determine whether his acts were of such nature to render it a grave misconduct or gross neglect of duty, and (3) it was impossible to pinpoint the lapping of funds based on Delos Reyes’ functions, the latter cannot be held guilty of simple misconduct, more so, of

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<sup>33</sup> Id. at 20.

<sup>34</sup> Id. at 21.

<sup>35</sup> Id. at 24.

<sup>36</sup> Id.

<sup>37</sup> Id. at 23.

<sup>38</sup> Id. at 27.

<sup>39</sup> Id. at 77–100.

<sup>40</sup> Id. at 89.

<sup>41</sup> Id. at 88–89.

<sup>42</sup> Id.

grave misconduct[.]<sup>43</sup>

Likewise, respondent cannot be held liable for gross neglect of duty. Respondent faithfully discharged his duties as certified in the Commission on Audit auditor's report finding the cash and cash items under respondent's control to be in order.<sup>44</sup> There was never a flagrant culpable refusal to perform a duty on respondent's part.<sup>45</sup>

Respondent added that "[c]onsidering . . . PCSO, the very institution that initiated this case, sought to exculpate the respondent from the administrative charges filed against him indicates that there are compelling reasons for this Honorable Court to review the flawed decisions of the Honorable Office of the Ombudsman."<sup>46</sup>

Furthermore, respondent averred that he has served the PCSO with a clean record for 27 years, with him starting as a young clerk to support himself in college.<sup>47</sup> The wrongful actions of a "scheming subordinate"<sup>48</sup> resulted in his termination from service and tarnished his and his family's reputation.<sup>49</sup> He asked that justice be given and his innocence proven.<sup>50</sup>

We grant the petition.

At the outset, we note that the Court of Appeals initially dismissed the petition for certiorari under Rule 65 filed by respondent to assail the Office of the Ombudsman's decision dated June 10, 2006 in OMB-C-A-04-0309-G.<sup>51</sup> The Court of Appeals, however, reinstated the case "in the interest of substantial justice and in order to afford the parties the amplest opportunity for the proper and just disposition of their cause."<sup>52</sup>

It is settled that appeals from decisions of the Office of the Ombudsman in administrative disciplinary cases should be appealed to the Court of Appeals under Rule 43 of the Rules of Court.<sup>53</sup> Indeed, certiorari

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<sup>43</sup> Id. at 91.

<sup>44</sup> Id. at 93.

<sup>45</sup> Id.

<sup>46</sup> Id. at 96.

<sup>47</sup> Id. at 97.

<sup>48</sup> Id.

<sup>49</sup> Id. at 97-98.

<sup>50</sup> Id. at 98.

<sup>51</sup> Id. at 39.

<sup>52</sup> Id.

<sup>53</sup> See *Fabian v. Desierto*, 356 Phil. 787 (1998) [Per J. Regalado, En Banc]; See *Namuhe v. Ombudsman*, 358 Phil. 781 (1998) [Per J. Panganiban, First Division]; See *Nava v. National Bureau of Investigation, Regional Office No. XI, Davao City*, 495 Phil. 354 (2005) [Per J. Tinga, Second Division]; See *Pia v. Gervacio, Jr.*, G.R. No. 172334, June 5, 2013, 697 SCRA 220 [Per J. Reyes, First Division]; Rule 43, Section 1 of the Rules of Court provides: This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these

lies to assail the Office of the Ombudsman's decision when there is allegation of grave abuse of discretion.<sup>54</sup> Grave abuse of discretion involves a "capricious and whimsical exercise of judgment tantamount to lack of jurisdiction."<sup>55</sup> It must be shown that the Office of the Ombudsman exercised its power "in an arbitrary or despotic manner — which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law — in order to exceptionally warrant judicial intervention."<sup>56</sup>

The prevailing view is that the remedy of certiorari from an unfavorable decision or resolution of the Office of the Ombudsman is available only in the following situations: a) in administrative cases that have become final and unappealable where respondent is exonerated or where respondent is convicted and the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to a one-month salary; and b) in criminal cases involving the Office of the Ombudsman's determination of probable cause during preliminary investigation.<sup>57</sup>

Furthermore, the writ of certiorari is an extraordinary remedy and is only granted when "there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law. . . ."<sup>58</sup>

In *Balbastro v. Junio*,<sup>59</sup> this court held that certiorari is not a substitute for a lost appeal. Verily, a petition for review under Rule 43 of the Rules of Court was already proscribed for being filed beyond the reglementary period, thus:

Appeals from decisions in administrative disciplinary cases of the  
Office of the Ombudsman should be taken to the CA by way of petition

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agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law. (n)

<sup>54</sup> See *Dagan v. Office of the Ombudsman*, G.R. No. 184083, November 19, 2013, 709 SCRA 681 [Per J. Perez, En Banc]. This case involved a petition for certiorari under Rule 65 of the Rules of Court, assailing the Office of the Ombudsman's decision in an administrative case exonerating respondents.

<sup>55</sup> *Id.* at 694. See *Ferrer v. Office of the Ombudsman*, 583 Phil. 50, 63–64 (2008) [Per J. Nachura, Third Division].

<sup>56</sup> *Dagan v. Office of the Ombudsman*, G.R. No. 184083, November 19, 2013, 709 SCRA 681, 694 [Per J. Perez, En Banc].

<sup>57</sup> See *Nava v. National Bureau of Investigation, Regional Office No. XI, Davao City*, 495 Phil. 354 (2005) [Per J. Tinga, Second Division]; *Kuizon v. Desierto*, 406 Phil. 611 (2001) [Per J. Puno, First Division]; *Mendoza-Arce v. Office of the Ombudsman (Visayas)*, 430 Phil. 101 (2002) [Per J. Mendoza, Second Division]; *Republic v. Canastillo*, 551 Phil. 987 (2007) [Per J. Ynares-Santiago, Third Division].

<sup>58</sup> RULES OF CIVIL PROCEDURE, Rule 65, sec. 1.

<sup>59</sup> 554 Phil. 548 (2007) [Per J. Austria-Martinez, Third Division].



for review under Rule 43 of the 1997 Rules of Civil Procedure, as amended. Rule 43 which prescribes the manner of appeal from quasi-judicial agencies, such as the Ombudsman, was formulated precisely to provide for a uniform rule of appellate procedure for quasi-judicial agencies. Thus, *certiorari* under Rule 65 will not lie, as appeal under Rule 43 is an adequate remedy in the ordinary course of law.

Petitioner failed to file an appeal with the CA within fifteen days from notice of the assailed decision. As noted by the CA, she filed her petition for *certiorari* only after 52 days from receiving the denial of her motion for reconsideration by the Ombudsman. Such remedy cannot prosper as *certiorari* under Rule 65 cannot be resorted to as a substitute for the lost remedy of appeal. The remedies of appeal and *certiorari* are mutually exclusive and not alternative or successive.<sup>60</sup> (Citations omitted)

In this case, the remedy of an appeal via Rule 43 of the Rules of Court was available to respondent; however, he still opted to file a petition for *certiorari* in complete disregard of the rules. The rules and jurisprudence necessitated the dismissal of the petition before the Court of Appeals. In addition, the petition for *certiorari* was filed 60 days from the receipt of the copy of the denial of respondent's motion for reconsideration, which was beyond the 15-day period to file an appeal provided in the rules. Liberal application of the rules cannot be invoked to justify a flagrant disregard of the rules of procedure.<sup>61</sup>

The Court of Appeals, thus, erred in granting respondent's petition for *certiorari*.

On the issue of the Office of the Ombudsman's gross misapprehension of facts in finding that substantial evidence exists for the administrative charge of grave misconduct and gross neglect of duty, we hold that the Court of Appeals committed reversible error in reversing and setting aside the Office of the Ombudsman's findings and decision.

It is settled that "[f]indings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive."<sup>62</sup> Substantial evidence is defined as "such relevant evidence which a reasonable mind may accept as adequate to support a conclusion."<sup>63</sup> We reiterate that only arbitrariness will warrant judicial intervention of the Office of the Ombudsman's findings.<sup>64</sup>

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<sup>60</sup> Id. at 557.

<sup>61</sup> See *Prudential Guarantee and Assurance, Inc. v. Court of Appeals*, 480 Phil. 134, 139 (2004) [Per J. Carpio Morales, Third Division].

<sup>62</sup> Rep. Act No. 6770 (1989), otherwise known as "An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for Other Purposes," sec. 27; See *Tolentino v. Loyola*, G.R. No. 153809, July 27, 2011, 654 SCRA 420, 432-434 [Per J. Leonardo-De Castro, First Division].

<sup>63</sup> RULES OF COURT, Rule 133, sec. 5. See *Orbase v. Office of the Ombudsman*, G.R. No. 175115, December 23, 2009, 609 SCRA 111, 126 [Per J. Peralta, Third Division].

<sup>64</sup> See *Dagan v. Office of the Ombudsman*, G.R. No. 184083, November 19, 2013, 709 SCRA 681, 694

The records reveal that petitioner did not commit grave abuse of discretion in rendering its assailed decision in OMB-C-A-04-0309-G.

Misconduct has been defined as a “transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or disregard of established rules, which must be proved by substantial evidence.”<sup>65</sup>

Meanwhile, gross neglect of duty is:

“[N]egligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property.” It denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty. In cases involving public officials, gross negligence occurs when a breach of duty is flagrant and palpable.<sup>66</sup> (Citations omitted)

To establish respondent’s liability for grave misconduct and gross neglect of duty, the Office of the Ombudsman found that:

. . . both the respondents [have] the authority to receive daily remittances from the tellers. **But all must be handed to respondent Delos Reyes, Jr. for the reconciliation of the daily reports and the proceeds remitted. . . . [Driz] cannot [deposit the proceeds] without the authority and/or approval of her chief and supervisor, respondent Delos Reyes, Jr.**

. . . . As far as Delos Reyes, Jr. is [concerned], he not only has the obligation of monitoring, checking and reconciling lotto sales proceeds with the reports of the tellers, **but is likewise responsible for seeing to the prompt deposits of these proceeds**, he being the chief of the Marketing and On-Line Division and the supervisor of the remitting tellers of the Main Office. . . .

The procedure is quite simple. To safeguard the proceeds of the daily lotto sales, prompt deposit to the agency’s bank must be made. Yet, they failed to fulfill the same . . . **and despite COA’s recommendation to deposit it immediately to a bank, the respondents failed to heed the**

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[Per J. Perez, En Banc].

<sup>65</sup> *Valera v. Office of the Ombudsman, et al.*, 570 Phil. 368, 385 (2008) [Per C.J. Puno, First Division].

<sup>66</sup> *Office of the Ombudsman v. De Leon*, G.R. No. 154083, February 27, 2013, 692 SCRA 27, 38 [Per J. Bersamin, First Division].

**same, in apparent and wanton disregard of their lawful duty.**<sup>67</sup>  
(Emphasis supplied)

Furthermore, as argued by petitioner, respondent's liability is shown in the following:

First, the Ombudsman investigation revealed that the Commission on Audit, in a Memorandum dated June 13, 2011, submitted a **consolidated report recommending that the proceeds of the lotto sales for June 1 to 4, 2001 . . . be deposited promptly in a bank to avoid any untoward incident.** It was respondent's failure to heed COA's advice to promptly deposit the amount found in the vault that caused the loss of the subject amount of ₱387,879.00.

Second, the said vault in which the lost money was kept is subject to the control and custody of the respondent Leovigildo Delos Reyes, Jr.

Third, **based on his Performance and Evaluation System, it is the duty of respondent Delos Reyes to monitor, check, and reconcile reports and daily remittances of lotto sales submitted by the tellers assigned at the Main Office (where the subject unremitted collections originated) and San Marcelino Outlets. Clearly, he is accountable for the proceeds of the lotto sales in said outlets.**

Fourth, while it is the duty of Elizabeth Driz to deposit the said amount, it is her defense that **said deposit must be made with the authority of respondent Delos Reyes, and any remittances or deposits made without his approval is considered unauthorized. It would thus be improbable for Driz to have misappropriated the amount without the connivance of respondent Delos Reyes.**<sup>68</sup> (Emphasis supplied)

In administrative cases, it is sufficient that "there is reasonable ground to believe that the petitioner is guilty of the act or omission complained of, even if the evidence might not be overwhelming."<sup>69</sup>

In this case, we find respondent guilty of both grave misconduct and gross neglect of duty.

There is substantial evidence supporting the Office of the Ombudsman's finding that respondent intentionally failed to act on his duty with a conscious indifference to the consequences. The alleged lack of specific internal control procedures does not sway this court.

It is undisputed that as Chief of the Marketing and On-Line Division of the COD, respondent was accountable for the vault and the lotto proceeds

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<sup>67</sup> *Rollo*, p. 63–64.

<sup>68</sup> *Id.* at 24–25.

<sup>69</sup> *Orbase v. Office of the Ombudsman*, G.R. No. 175115, December 23, 2009, 609 SCRA 111, 126 [Per J. Peralta, Third Division].

placed inside it. As the Division Chief, respondent had the duty to monitor, check, and reconcile the reports of the daily lotto proceeds. It is true that it was not his job to personally deposit the lotto proceeds with the bank, as this fell under Driz's responsibility. However, it was incumbent upon respondent to ensure that the lotto proceeds deposited in the bank correspond to the reports submitted to him and that the proceeds are deposited promptly.

Despite such duty, respondent willfully ignored the auditor's recommendations for prompt deposit of the lotto sales proceeds. He disregarded his duty of overseeing the deposit of the proceeds and wholly relied on Driz's representations. Respondent's act constitutes gross neglect of duty.

Similarly, records show that petitioner adduced substantial evidence to show how respondent flagrantly disregarded the rules and acted with a willful intent to violate the law, thus, amounting to grave misconduct. The Office of the Ombudsman's investigation revealed that all of the daily lotto remittances went through the hands of respondent. It also found that respondent's authorization and/or approval was required before Driz could deposit the daily lotto proceeds. Driz's alleged manipulation of the bank deposit slips and lapping of funds could not have been missed by respondent had he performed his duties. Respondent could have easily discovered the lapping of funds if he had checked the deposit records with Driz vis-à-vis the reports and lotto sales proceeds he had allegedly reconciled upon turn-over of the tellers to him.

This court's ruling in *Arias v. Sandiganbayan*,<sup>70</sup> that heads of offices may rely to a certain extent on their subordinates, will not exonerate respondent in this case. As held in *Cesa v. Office of the Ombudsman*,<sup>71</sup> when there are facts that point to an irregularity and the officer failed to take steps to rectify it, even tolerating it, the *Arias* doctrine is inapplicable.<sup>72</sup>

Grave misconduct is punished by dismissal from the service, even for the first offense.<sup>73</sup> Likewise, gross neglect of duty merits dismissal from the service.<sup>74</sup>

In sum, the Court of Appeals erred when it failed to show how the Office of the Ombudsman committed grave abuse of discretion in rendering the contested decision and order despite the presence of substantial evidence.

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<sup>70</sup> 259 Phil. 794 (1989) [Per J. Gutierrez, Jr., En Banc].

<sup>71</sup> 576 Phil. 345 (2008) [Per J. Quisumbing, En Banc].

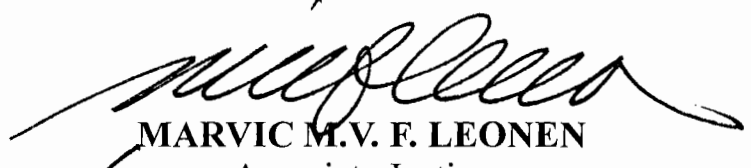
<sup>72</sup> Id. at 354–355, citing *Alfonso v. Office of the President*, 548 Phil. 615 [Per J. Carpio Morales, Second Division].

<sup>73</sup> Revised Rules on Administrative Cases in the Civil Service (RRACCS), Rule 10, sec. 46(A)(3). See *De la Cruz v. Department of Education, Culture and Sports-Cordillera Administrative Region*, 464 Phil. 1033, 1051–1052 (2004) [Per J. Quisumbing, Second Division].

<sup>74</sup> Revised Rules on Administrative Cases in the Civil Service (RRACCS), Rule 10, sec. 46(A)(2).

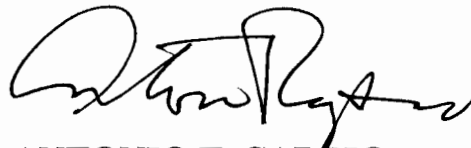
**WHEREFORE**, the petition is **GRANTED**. The Court of Appeals' decision dated March 1, 2013 and resolution dated August 29, 2013 are **REVERSED and SET ASIDE**. The Office of the Ombudsman's decision dated June 10, 2006 and order dated November 15, 2007 are **REINSTATED**. Respondent Leovigildo Delos Reyes, Jr. is **DISMISSED** from service, which includes the accessory penalties of cancellation of eligibility, forfeiture of leave credits and retirement benefits, and disqualification for re-employment in the government service.

**SO ORDERED.**



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

WE CONCUR:



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson



**ARTURO D. BRION**  
Associate Justice




**MARIANO C. DEL CASTILLO**  
Associate Justice



**JOSE CATRAL MENDOZA**  
Associate Justice

**ATTESTATION**

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson, Second Division

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARIA LOURDES P. A. SERENO**  
Chief Justice