Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PRIMO C. MIRO, in his capacity as Deputy Ombudsman for the Visayas, Petitioner,	**G.R. Nos. 172532 & 172544-45**
	Present:
- versus -	CARPIO, *J., Chairperson,* BRION, DEL CASTILLO, PEREZ, and PERLAS-BERNABE, *JJ.*
MARILYN MENDOZA VDA. DE EREDEROS, CATALINA ALINGASA and PORFERIO I. MENDOZA, Respondents.	Promulgated: NOV 20 2013

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DECISION

BRION, *J.*:

We resolve the petition for review on *certiorari*[1] assailing the decision[2] dated November 22, 2005 and the resolution[3] dated April 21, 2006 of the Court of Appeals (*CA*) in CA-G.R. SP Nos. 83149, 83150 and 83576.

The CA decision reversed and set aside the joint decision[4] dated January 9, 2004 of the Deputy Ombudsman for the Visayas (*Deputy Ombudsman*), Primo C. Miro, in OMB-V-A-02-0414-H finding respondents Marilyn Mendoza Vda. de Erederos, Catalina Alingasa and Porferio I. Mendoza guilty of the administrative charge of Grave Misconduct. The Deputy Ombudsman also found Oscar Peque guilty of Simple Misconduct.

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1 Under Rule 45 of the Rules of Civil Procedure; *rollo,* pp. 12-40.

2 Id. at 43-62; penned by Associate Justice Arsenio J. Magpale, and concurred in by Associate Justices Vicente L. Yap and Apolinario D. Bruselas, Jr.

3 Id. at 65-66.

4 Id. at 67-80.

The Factual Antecedents

As culled from the records, the antecedents of the present case are as follows:

Mendoza, Director of the Regional Office VII of the Land Transportation Office, Cebu City (*LTO Cebu*), Erederos, Mendoza's niece and secretary, Alingasa, LTO clerk, and Peque, Officer-in-Charge, Operation Division of LTO Cebu, were administratively charged with Grave Misconduct before the Deputy Ombudsman by private complainants, namely: Maricar G. Huete (Liaison Officer of GCY Parts), Ernesto R. Cantillas (Liaison Officer of Isuzu Cebu, Inc.), Leonardo Villaraso (General Manager of TBS Trading), and Romeo C. Climaco (Corporate Secretary of Penta Star).[5] They were likewise charged with criminal complaints for violation of Section 3(e) of Republic Act No. 3019, otherwise known as the "Anti Graft and Corrupt Practices Act."

The administrative and criminal charges arose from the alleged anomalies in the distribution at the LTO Cebu of confirmation certificates, an indispensable requirement in the processing of documents for the registration of motor vehicle with the LTO.

Specifically, the private complainants accused Alingasa of selling the confirmation certificates, supposed to be issued by the LTO free of charge. This scheme allegedly existed upon Mendoza's assumption in office as Regional Director of LTO Cebu. They observed that:

(1) Confirmation certificates were sold for the amount of ₱2,500.00 per pad without official receipt;

(2) Alingasa would usually remit the collections to Erederos who would, in turn, remit all the collections to Mendoza;[6]

(3) The official receipt for the processing of the confirmation certificates issued to the private complainants acknowledged only the amount of ₱40.00 which they paid for each engine, chassis or new vehicle, as MR (Miscellaneous Receipt-LTO Form 67);

(4) Said amount was separate and distinct from the ₱2,500.00 required to be paid for each pad;

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5 Id. at 44.

6 Ibid.

(5) The official receipt also served as the basis for the individual stock/sales reports evaluation of Erederos;[7] and

(6) The confirmation certificates processed during the previous administration were no longer honored; thus, the private complainants were constrained to reprocess the same by purchasing new ones.

The NBI/Progress report submitted to the LTO Manila also revealed that the confirmation certificates were given to the representatives of car dealers, who were authorized to supply the needed data therein. In the Requisition and Issue Voucher, it was Roque who received the forms.

On August 19, 2002, Cantillas executed an Affidavit of Desistance on the ground that he was no longer interested in prosecuting the case.

On September 25, 2002, the Deputy Ombudsman ordered the respondents to file their respective counter-affidavits. The respondents complied with the order and made the required submission.

On December 12, 2002, the case was called for preliminary conference. At the conference, the respondents, thru their counsels, manifested their intention to submit the case for decision on the basis of the evidence on record after the submission of their memoranda/position papers.

In the interim, additional administrative and criminal complaints for the same charges were filed by Rova Carmelotes (Liaison Officer of AZC Trading Center), Mildred Regidor (Liaison Officer of Grand Ace Commercial), Estrella dela Cerna (Liaison Officer of JRK Automotive Supply), and Vevencia Pedroza (Liaison Officer of Winstar Motor Sales) against the respondents. These new complaints were consolidated with the complaints already then pending.

In their complaints, the new complainants commonly alleged that they had to pay ₱2,500.00 per pad to Alingasa before they could be issued confirmation certificates by the LTO Cebu. Alingasa would give her collections to Erederos and to Mendoza. When they protested, Erederos and Alingasa pointed to Mendoza as the source of the instructions. They were also told that the confirmation certificates processed during the previous administration would no longer be honored under Mendoza's administration; hence, they had to buy new sets of confirmation certificates to process the registration of their motor vehicles with the LTO.

In his counter-affidavit, Mendoza vehemently denied the accusations. He alleged that the confirmation certificates' actual distribution and

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7 Ibid.

processing were assigned to Alingasa; the processing entails the payment of ₱40.00 per confirmation certificate, as administrative fee; payment is only made when the confirmation certificates are filled up and submitted for processing with the LTO, not upon issuance; and he did not give any instructions to impose additional fees for their distribution.

He also alleged that the case against him was instigated by Assistant Secretary Roberto T. Lastimosa of the LTO Head Office so that a certain Atty. Manuel Iway could replace him as Regional Director of the LTO Cebu.[8]

Mendoza additionally submitted the affidavits of desistance of Carmelotes and Dela Cerna. Carmelotes testified that she has no evidence to support her allegations against Mendoza. Dela Cerna, on the other hand, stated that she was merely told to sign a document which turned out to be an affidavit-complaint against the respondents. Subsequently, however, Dela Cerna executed a second affidavit, retracting her previous statements and narrating how she was threatened by Peque to sign an affidavit of desistance (1st affidavit).

Erederos and Alingasa commonly contended that they did not collect, demand and receive any money from the complainants as payment for the confirmation certificates.

Erederos stated that the case against her was initiated by Huete because she found several discrepancies in the documents she had processed. According to her, the present case was Huete's ploy to avoid any liability.

For their part, Alingasa stressed that her act of maintaining a control book for the releases of the confirmation certificate pads negates her liability, while Peque denied any participation in the distribution and sale of the confirmation certificates.

On January 9, 2004, the Deputy Ombudsman rendered a joint decision on the administrative aspect of the cases filed against the respondents, and a joint resolution on the criminal aspect of the cases.

The Deputy Ombudsman's Ruling

In its joint decision, the Deputy Ombudsman found Mendoza, Erederos and Alingasa guilty of grave misconduct and imposed the penalty of dismissal from the service. Peque, on the other hand, was only found guilty of simple misconduct and was meted the penalty of reprimand.

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8 Id. at 50.

The Deputy Ombudsman believed the complainants' allegations that Alingasa collected ₱2,500.00 for the issuance of confirmation certificates and, thereafter, remitted the collections to Erederos and to Mendoza. He relied largely on the affidavits supporting the respondents' guilt. He found the affidavits and the NBI/Progress report strong enough to establish the respondents' guilt. The Deputy Ombudsman also explained that while the distribution of confirmation certificates to authorized car dealers is not prohibited, the demand and the collection of payment during their distribution are anomalous.

The respondents separately moved for reconsideration, but the Deputy Ombudsman denied their motions on March 5, 2004.[9]

The respondents separately appealed to the CA to challenge the rulings against them.

The CA's Ruling

On November 22, 2005, the CA granted the respondents' petition and reversed the Deputy Ombudsman's joint decision in the administrative aspect. The CA ruled that the Deputy Ombudsman's finding of grave misconduct was not supported by substantial evidence because the affidavits, on which the decision was mainly anchored, were not corroborated by any other documentary evidence. Additionally, the affiants did not appear during the scheduled hearings.

The CA also found that the affiants failed to categorically specify that the respondents personally demanded from them the payment of ₱2,500.00 – an allegation that the appellate court deemed material in establishing their personal knowledge. Without this allegation of personal knowledge, the CA held that the statements in the affidavits were hearsay and, thus, should not be given any evidentiary weight. The dispositive portion of the decision reads:

> WHEREFORE, in light of the foregoing premises, the consolidated petitions are GRANTED and accordingly the assailed Joint Decision dated January 9, 2004 (administrative aspect of the cases filed by the private respondents) is REVERSED and SET ASIDE.
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> Consequently, the administrative charges against petitioners are DISMISSED for lack of merit.

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9 Id. at 116-124.

> With respect to the assailed Joint Resolution also dated January 9, 2004 (criminal aspect) issued by the public respondent, this Court has no jurisdiction to review the same.[10]

The Deputy Ombudsman moved for the reconsideration of the decision, but the CA denied the motion in its resolution of April 21, 2006. The denial led to the filing of the present petition.

The Petitioner's Arguments

The Deputy Ombudsman posits that the evidence adduced by the complainants satisfied the requisite quantum of proof. He argues that the complainants' personal knowledge can be gleaned from the preface of their narration; hence, their affidavits could not have been hearsay. Their affidavits read:

> 3. **That in doing my job, I have noticed and witnessed the following anomalies concerning the processing of vehicle registration, x x x, as follows**:
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> a. That in order to secure the forms of Confirmation of Certificates, you have to buy the same at the present price of ₱2,500.00 per pad from Catalina Alingasa, an LTO personnel, who will remit her collections to a certain Marilyn Mendoza Vda. [de] Erederos, a niece and the Secretary of the Regional Director, Porferio Mendoza;
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> b. That Confirmation Certificates processed during previous administration would not be honored and under such situations, they would require that the same be reprocessed which means that we have to buy and use the new forms supplied by the present administration[.][11]

The Deputy Ombudsman also argues that his joint decision was not solely based on the complainants' affidavits since he also took into account the NBI/Progress report, which uncovered the alleged anomalies. He posits that these pieces of evidence, taken together, more than satisfy the required quantum of proof to hold the respondents administratively liable for grave misconduct.

The Case for the Respondents

In their respective comments, the respondents separately argue that the complainants' statements in their affidavits lack material details and particulars, particularly on the time, the date, and the specific transactions.

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10 Id. at 61.

11 Id. at 183.

They commonly alleged that the affidavits, which contained general averments, and the NBI/Progress report that was based on the same affidavits, failed to meet the quantum of proof required to hold them administratively liable.

For his part, Mendoza argues that since the affidavits failed to categorically state that the complainants personally witnessed the transfer of money from Alingasa to Erederos and eventually to him, his participation in the anomalous scheme has not been sufficiently shown; hence, he should not have been found liable.

The Issue

The case presents to us the issue of whether the CA committed a reversible error in dismissing the administrative charge against the respondents.

The Court's Ruling

We deny the petition. The CA committed no reversible error in setting aside the findings and conclusions of the Deputy Ombudsman on the ground that they were not supported by substantial evidence.

Doctrine of conclusiveness of administrative findings of fact is not absolute

It is well settled that findings of fact by the Office of the Ombudsman are conclusive when supported by substantial evidence.[12] Their factual findings are generally accorded with great weight and respect, if not finality by the courts, by reason of their special knowledge and expertise over matters falling under their jurisdiction.

This rule was reiterated in *Cabalit v. Commission on Audit-Region VII,*[13] where we held that:

> When the findings of fact of the Ombudsman are supported by substantial evidence, it should be considered as conclusive. This Court recognizes the expertise and independence of the Ombudsman and will avoid interfering with its findings absent a finding of grave abuse of discretion. Hence, being supported by substantial evidence, we find no reason to disturb the factual findings of the Ombudsman which are affirmed by the CA.

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[12] Section 27 of Republic Act No. 6770, otherwise known as "An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for Other Purposes."

[13] G.R. No. 180236, January 17, 2012, 663 SCRA 133, 152-153; citations omitted.

This rule on conclusiveness of factual findings, however, is not an absolute one. Despite the respect given to administrative findings of fact, the CA may resolve factual issues, review and re-evaluate the evidence on record and reverse the administrative agency's findings if not supported by substantial evidence. Thus, when the findings of fact by the administrative or quasi-judicial agencies (like the Office of the Ombudsman/Deputy Ombudsman) are not adequately supported by substantial evidence, they shall not be binding upon the courts.[14]

In the present case, the CA found no substantial evidence to support the conclusion that the respondents are guilty of the administrative charges against them. Mere allegation and speculation is not evidence, and is not equivalent to proof.[15] Since the Deputy Ombudsman's findings were found wanting by the CA of substantial evidence, the same shall not bind this Court.

Parameters of a judicial review under a Rule 45 petition

a. Rule 45 petition is limited to questions of law

Before proceeding to the merits of the case, this Court deems it necessary to emphasize that a petition for review under Rule 45 is limited only to questions of law. Factual questions are not the proper subject of an appeal by *certiorari*. This Court will not review facts, as it is not our function to analyze or weigh all over again evidence already considered in the proceedings below. As held in *Diokno v. Hon. Cacdac*,[16] a re-examination of factual findings is outside the province of a petition for review on *certiorari*, to wit:

> **It is aphoristic that a re-examination of factual findings cannot be done through a petition for review on *certiorari* under Rule 45 of the Rules of Court because as earlier stated, this Court is not a trier of facts[.]** xxx The Supreme Court is not duty-bound to analyze and weigh again the evidence considered in the proceedings below. This is already outside the province of the instant Petition for *Certiorari.*

There is a question of law when the doubt or difference arises as to what the law is on a certain set of facts; a question of fact, on the other hand, exists when the doubt or difference arises as to the truth or falsehood of the alleged facts.[17] Unless the case falls under any of the recognized exceptions, we are limited solely to the review of legal questions.[18]

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14 *Hon. Ombudsman Marcelo v. Bungubung, et al.*, 575 Phil. 538, 557 (2008).

15 *Navarro v. Clerk of Court Cerezo*, 492 Phil. 19, 22 (2002).

16 553 Phil. 405, 428 (2007); emphasis ours, italics supplied.

17 *Philippine Veterans Bank v. Monillas*, G.R. No. 167098, March 28, 2008, 550 SCRA 251, 257.

18 (1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;

b. Rule 45 petition is limited to errors of the appellate court

Furthermore, the "errors" which we may review in a petition for review on *certiorari* are those of the CA, and not directly those of the trial court or the quasi-judicial agency, tribunal, or officer which rendered the decision in the first instance.[19] It is imperative that we refrain from conducting further scrutiny of the findings of fact made by trial courts, lest we convert this Court into a trier of facts. As held in *Reman Recio v. Heirs of the Spouses Aguedo and Maria Altamirano, etc., et al.,*[20] our review is limited only to the errors of law committed by the appellate court, to wit:

> Under Rule 45 of the Rules of Court, jurisdiction is generally **limited to the review of errors of law committed by the appellate court**. The Supreme Court is not obliged to review all over again the evidence which the parties adduced in the court a quo. Of course, the general rule admits of exceptions, such as where the factual findings of the CA and the trial court are conflicting or contradictory.

In *Montemayor v. Bundalian,*[21] this Court laid down the guidelines for the judicial review of decisions rendered by administrative agencies in the exercise of their quasi-judicial powers, as follows:

> First, the burden is on the complainant to prove by substantial evidence the allegations in his complaint. Substantial evidence is more than a mere scintilla of evidence. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise. Second, in reviewing administrative decisions of the executive branch of the government, the findings of facts made therein are to be respected so long as they are supported by substantial evidence. **Hence, it is not for the reviewing court to weigh the conflicting evidence, determine the credibility of witnesses, or otherwise substitute its judgment for that of the administrative agency with respect to the sufficiency of evidence.**

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(2) When the inference made is manifestly mistaken, absurd or impossible;

(3) Where there is a grave abuse of discretion;

(4) When the judgment is based on a misapprehension of facts;

(5) When the findings of fact are conflicting;

(6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;

(7) When the findings are contrary to those of the trial court;

(8) When the findings of fact are conclusions without citation of specific evidence on which they are based;

(9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and

(10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record. (*Cirtek Employees Labor Union-Federation of Free Workers v. Cirtek Electronics, Inc.,* G.R. No. 190515, June 6, 2011, 650 SCRA 656, 660).

19 *Vda. de Dayao v. Heirs of Gavino Robles*, G.R. No. 174830, July 31, 2009, 594 SCRA 620, 626.

20 G.R. No. 182349, July 24, 2013; citation omitted, emphasis ours.

21 453 Phil. 158, 167; citations omitted.

> Third, administrative decisions in matters within the executive jurisdiction can only be set aside on proof of gross abuse of discretion, fraud, or error of law. **These principles negate the power of the reviewing court to re-examine the sufficiency of the evidence in an administrative case as if originally instituted therein, and do not authorize the court to receive additional evidence that was not submitted to the administrative agency concerned.** [emphases ours]

The present petition directly raises, as issue, the propriety of the CA's reversal of the Deputy Ombudsman's decision that found the respondents guilty of grave misconduct. While this issue may be one of law, its resolution also requires us to resolve the underlying issue of whether or not substantial evidence exists to hold the respondents liable for the charge of grave misconduct. The latter question is one of fact, but a review is warranted considering the conflicting findings of fact of the Deputy Ombudsman and of the CA. Accordingly, we now focus on and assess the findings of fact of the Deputy Ombudsman and of the CA for their merits.

The Deputy Ombudsman's appreciation of evidence

The Deputy Ombudsman found the respondents guilty of grave misconduct based on the affidavits submitted by the complainants and the NBI/Progress report. In giving credence to the affidavits, the Deputy Ombudsman ruled that the complainants have amply established their accusations by substantial evidence.

The CA's appreciation of evidence

The CA, on the other hand, reversed the Deputy Ombudsman's findings and ruled that no substantial evidence exists to support the latter's decision as the affidavits upon which said decision was based are hearsay evidence. It found that the affidavits lack the important element of personal knowledge and were not supported by corroborating evidence.

We agree with the CA. The findings of fact of the Deputy Ombudsman are not supported by substantial evidence on record.

Substantial evidence, quantum of proof in administrative cases

Substantial evidence is defined as such amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion. It is more than a mere scintilla of evidence.[22] The standard of substantial

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22 *Travelaire & Tours Corp. v. NLRC*, 355 Phil. 932, 936 (1998).

evidence is satisfied when there is reasonable ground to believe, based on the evidence submitted, that the respondent is responsible for the misconduct complained of. It need not be overwhelming or preponderant, as is required in an ordinary civil case,[23] or evidence beyond reasonable doubt, as is required in criminal cases, but the evidence must be enough for a reasonable mind to support a conclusion.

Section 27 of The Ombudsman Act of 1989[24] provides that:

> Findings of fact by the Officer of the Ombudsman when supported by **substantial evidence** are conclusive. Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one (1) month's salary shall be final and unappealable. [emphasis ours]

The only pieces of evidence presented by the complainants to establish the respondents' guilt of the act charged are: **(1) their complaint-affidavits** and the **(2) NBI/Progress report**. As correctly found by the CA, these pieces of evidence do not meet the quantum of proof required in administrative cases.

The Evidence Against Mendoza, Erederos and Alingasa

i. Private complainants' affidavits

The affidavits show that the complainants lack personal knowledge of the participation of Mendoza and Erederos in the allegedly anomalous act. These affidavits indicate that the complainants have commonly "noticed and witnessed" the anomalous sale transaction concerning the confirmation certificates. Without going into details, they uniformly allege that to secure the confirmation certificates, an amount of ₱2,500.00 would be paid to Alingasa, an LTO personnel, "*who will remit her collections to a certain Marilyn Mendoza vda. Erederos, a niece and the Secretary of the Regional Director, Porferio Mendoza.*"[25] While the payment to Alingasa might be considered based on personal knowledge, the alleged remittance to Erederos and Mendoza – on its face – is hearsay.

Any evidence, whether oral or documentary, is hearsay if its probative value is not based on the personal knowledge of the witness

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23 *Marcelo v. Bungubung*, G.R. No. 175201, April 23, 2008, 552 SCRA 589, 608.

24 Republic Act No. 6770, otherwise known as "An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman, and for Other Purposes."

25 *Rollo*, p. 26.

It is a basic rule in evidence that a witness can testify only on the facts that he knows of his own personal knowledge, *i.e.,* those which are derived from his own perception.[26] A witness may not testify on what he merely learned, read or heard from others because such testimony is considered hearsay and may not be received as proof of the truth of what he has learned, read or heard.[27] Hearsay evidence is evidence, not of what the witness knows himself but, of what he has heard from others; it is not only limited to oral testimony or statements but likewise applies to written statements, such as affidavits.[28]

The records show that not one of the complainants actually witnessed the transfer of money from Alingasa to Erederos and Mendoza. Nowhere in their affidavits did they specifically allege that they saw Alingasa remit the collections to Erederos. In fact, there is no specific allegation that they saw or witnessed Erederos or Mendoza receive money. That the complainants alleged in the preface of their affidavits that they "noticed and witnessed" the anomalous act complained of does not take their statements out of the coverage of the hearsay evidence rule. Their testimonies are still "evidence not of what the witness knows himself but of what he has heard from others."[29] Mere uncorroborated hearsay or rumor does not constitute substantial evidence.[30]

The affidavits also show that the complainants did not allege any specific act of the respondents. All that the affidavits allege is a description of the allegedly anomalous scheme and the arrangement whereby payments were to be made to Alingasa. There is no averment relating to any "personal demand" for the amount of ₱2,500.00.

Based on these considerations, we cannot conclude that the complainants have personal knowledge of Erederos' and Mendoza's participation in the anomalous act. At most, their personal knowledge only extends to the acts of Alingasa who is the recipient of all payments for the processing of confirmation certificates. This situation, however, is affected by the complainants' failure to specify Alingasa's act of personally demanding ₱2,500.00 – a crucial element in determining her guilt or innocence of the grave misconduct charged.

With respect to Pedroza's allegation in her affidavit[31] that Alingasa and Erederos categorically told them that it was Mendoza who instructed them to collect the ₱2,500.00 for the confirmation certificates, we once again draw a distinction between utterances or testimonies that are merely

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26 RULES OF CIVIL PROCEDURE, Section 36.

27 *D.M. Consunji, Inc. v. Court of Appeals*, 409 Phil. 275, 285 (2001).

28 Id. at 285.

29 *People v. Manhuyod,Jr.*, 352 Phil. 866, 880 (1998).

30 *Rizal Workers Union v. Hon. Calleja*, 264 Phil. 805, 811 (1990), citing *Ang Tibay v. CIR,* 69 Phil. 635 (1940).

31 *Rollo*, p. 359.

hearsay in character or "non-hearsay," and those that are considered as legal hearsay.

Non-hearsay v. legal hearsay, distinction

To the former belongs the fact that utterances or statements were made; this class of extrajudicial utterances or statements is offered not as an assertion to prove the truth of the matter asserted, but only as to the fact of the utterance made. The latter class, on the other hand, consists of the truth of the facts asserted in the statement; this kind pertains to extrajudicial utterances and statements that are offered as evidence of the truth of the fact asserted.

The difference between these two classes of utterances lies in the applicability of the rule on exclusion of hearsay evidence. The first class, *i.e.*, the fact that the statement was made, is not covered by the hearsay rule, while the second class, *i.e.*, the truth of the facts asserted in the statement, is covered by the hearsay rule. Pedroza's allegation belongs to the first class; hence, it is inadmissible to prove the truth of the facts asserted in the statement.

The following discussion, made in *Patula v. People of the Philippines,*[32] is particularly instructive:

> Moreover, the theory of the hearsay rule is that when a human utterance is offered as evidence of the truth of the fact asserted, the credit of the assertor becomes the basis of inference, and, therefore, the assertion can be received as evidence only when made on the witness stand, subject to the test of cross-examination. However, if an extrajudicial utterance is offered, not as an assertion to prove the matter asserted but without reference to the truth of the matter asserted, the hearsay rule does not apply. For example, in a slander case, if a prosecution witness testifies that he heard the accused say that the complainant was a thief, this testimony is admissible not to prove that the complainant was really a thief, but merely to show that the accused uttered those words. This kind of utterance is hearsay in character but is not legal hearsay. The distinction is, therefore, between (a) the fact that the statement was made, to which the hearsay rule does not apply, and (b) the truth of the facts asserted in the statement, to which the hearsay rule applies. [citations omitted]

Failure to identify the affidavits renders them inadmissible under the hearsay evidence rule

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32 G.R. No. 164457, April 11, 2012, 669 SCRA 135, 153.

We additionally note that the affidavits were never identified by the complainants. All the allegations contained therein were likewise uncorroborated by evidence, other than the NBI/Progress report.

In *Tapiador v. Office of the Ombudsman*,[33] we had the occasion to rule on the implications of the affiants' failure to appear during the preliminary investigation and to identify their respective sworn statements, to wit:

> Notably, the instant administrative complaint was resolved by the Ombudsman merely on the basis of the evidence extant in the record of OMB-ADM-0-94-0983. The preliminary conference required under Republic Act No. 6770 was dispensed with after the nominal complainant, then BID Resident Ombudsman Ronaldo P. Ledesma, manifested on July 29, 1996 that he was submitting the case for resolution on the basis of the documents on record while the petitioner agreed to simply file his memorandum. Consequently, the only basis for the questioned resolution of the Ombudsman dismissing the petitioner from the government service was the unverified complaint-affidavit of Walter H. Beck and that of his alleged witness, Purisima Terencio.
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> **A thorough review of the records, however, showed that the subject affidavits of Beck and Terencio were not even identified by the respective affiants during the fact-finding investigation conducted by the BID Resident Ombudsman at the BID office in Manila.** Neither did they appear during the preliminary investigation to identify their respective sworn statements despite prior notice before the investigating officer who subsequently dismissed the criminal aspect of the case upon finding that the charge against the petitioner "was not supported by any evidence." **Hence, Beck's affidavit is hearsay and inadmissible in evidence.** On this basis alone, the Administrative Adjudication Bureau of the Office of the Ombudsman should have dismissed the administrative complaint against the petitioner in the first instance. (emphasis supplied)

For the affiants' failure to identify their sworn statements, and considering the seriousness of the charges filed, their affidavits must not be accepted at face value and should be treated as inadmissible under the hearsay evidence rule.

ii. NBI/Progress report

With regard to the NBI/Progress report submitted by the complainants as corroborating evidence, the same should not be given any weight. Contrary to the Ombudsman's assertions, the report cannot help its case under the circumstances of this case as it is insufficient to serve as substantial basis. The pertinent portion of this report reads:

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[33] 429 Phil. 47, 55 (2002); citations omitted, emphases ours.

> 04. P/Sinsp. JESUS KABIGTING and Senior TRO ALFONSO ALIANZA visited JAGNA District Office at Jagna, Bohol wherein they were able to conduct interview with MR. RODOLFO SANTOS, Officer-In-Charge who has assumed his new post only in February 2002. During the conduct of the interview, Mr. SANTOS revealed that the anomalous "Dos-por-Dos" transactions have been prevented and eliminated when the previous District Manager in the person of Mr. LEONARDO G. OLAIVAR, who was transferred to Tagbilaran District Office allegedly on a "floating status" and under the direct control and supervision of its District Manager, Mr. GAVINO PADEN, Mr. SANTOS allegations of the existence of "Dos-por-Dos" transactions were supported by the records/documents gathered of which the signatures of Mr. OLAIVAR affixed thereof. Copies are hereto attached marked as Annexes "D-D-6."
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> 06. Submitted Affidavits of Ms. MARICAR G. HUETE, a resident of Lahug, Cebu City and liaison Officer of GCY Parts, Kabancalan Mandaue City and Mr. ERNESTO R. CARTILLAS a resident of Basak, Mandaue City and liaison Officer of Isuzu Cebu, Inc. in Jagobiao, Mandaue City stated among others and both attested that: Annexes "E-E-1."
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> In order to secure the forms of Confirmation of Certificates, you have to buy the same at the present cost of ₱2,500.00 per pad from CATALINA ALINGASA, an LTO Personnel, who will remit her collections to a certain MARILYN MENDOZA Vda. De EREDEROS, a niece and secretary of the Regional Director, PORFERIO MENDOZA.[34]

This quoted portion shows that it was based on complainant Huete's and Cantillas' affidavits. It constitutes double hearsay because the material facts recited were not within the personal knowledge of the officers who conducted the investigation. As held in *Africa, et al. v. Caltex (Phil.) Inc., et al.*,[35] reports of investigations made by law enforcement officers or other public officials are hearsay unless they fall within the scope of Section 44, Rule 130 of the Rules of Court, to wit:

> The first question before Us refers to the admissibility of certain reports on the fire prepared by the Manila Police and Fire Departments and by a certain Captain Tinio of the Armed Forces of the Philippines. xxx.
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> xxxx
>
> There are three requisites for admissibility under the rule just mentioned: (a) that the entry was made by a public officer, or by another person specially enjoined by law to do so; (b) that it was made by the public officer in the performance of his duties, or by such other person in the performance of a duty specially enjoined by law; and (c) that the

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34 *Rollo*, pp. 355-356.

35 123 Phil. 272, 275-278 (1966).

> public officer or other person had sufficient knowledge of the facts by him stated, which must have been acquired by him personally or through official information. (Moran, Comments on the Rules of Court, Vol. 3 [1957] p. 383.)
>
> Of the three requisites just stated, only the last need be considered here. **Obviously the material facts recited in the reports as to the cause and circumstances of the fire were not within the personal knowledge of the officers who conducted the investigation.** Was knowledge of such facts, however, acquired by them through official information? xxx.
>
> **The reports in question do not constitute an exception to the hearsay rule; the facts stated therein were not acquired by the reporting officers through official information, not having been given by the informants pursuant to any duty to do so.** [emphases ours]

The NBI/Progress report, having been submitted by the officials in the performance of their duties not on the basis of their own personal observation of the facts reported but merely on the basis of the complainants' affidavits, is hearsay. Thus, the Deputy Ombudsman cannot rely on it.

Non-applicability of strict technical rules of procedure in administrative or quasi-judicial bodies is not a license to disregard certain fundamental evidentiary rules

While administrative or quasi-judicial bodies, such as the Office of the Ombudsman, are not bound by the technical rules of procedure, this rule cannot be taken as a license to disregard fundamental evidentiary rules; the decision of the administrative agencies and the evidence it relies upon must, at the very least, be substantial.

In *Lepanto Consolidated Mining Company v. Dumapis*,[36] we ruled that:

> While it is true that administrative or quasi-judicial bodies like the NLRC are not bound by the technical rules of procedure in the adjudication of cases, this procedural rule should not be construed as a license to disregard certain fundamental evidentiary rules. **The evidence presented must at least have a modicum of admissibility for it to have probative value.** Not only must there be some evidence to support a finding or conclusion, but the evidence must be substantial. Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

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36 G.R. No. 163210, August 13, 2008, 562 SCRA 103, 113-114; citations omitted, emphasis ours.

Conclusion

With a portion of the complainants' affidavits and the NBI/Progress report being hearsay evidence, the only question that remains is whether the respondents' conduct, based on the evidence on record, amounted to grave misconduct, warranting their dismissal in office.

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer.[37] The misconduct is considered as grave if it involves additional elements such as corruption or willful intent to violate the law or to disregard established rules, which must be proven by substantial evidence; otherwise, the misconduct is only simple. Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others.[38]

Based on these rulings, the Deputy Ombudsman failed to establish the elements of grave misconduct. To reiterate, no substantial evidence exists to show that Erederos and Mendoza received collected payments from Alingasa. Their involvement or complicity in the allegedly anomalous scheme cannot be justified under the affidavits of the complainants and the NBI/Progress report, which are both hearsay.

With respect to Alingasa, in view of the lack of substantial evidence showing that she personally demanded the payment of ₱2,500.00 – a crucial factor in the wrongdoing alleged – we find that the elements of misconduct, simple or grave, to be wanting and unproven.

WHEREFORE, in view of the foregoing, we hereby **AFFIRM** the assailed decision dated November 22, 2005 and the resolution dated April 21, 2006 of the Court of Appeals in CA-G.R. SP Nos. 83149, 83150 and 83576.

SO ORDERED.

ARTURO D. BRION
Associate Justice

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37 *Samson v. Restrivera*, G.R. No. 178454, March 28, 2011, 646 SCRA 481, 495-496.

38 *Office of the Ombudsman v. Miedes, Sr.*, 570 Phil. 464, 473 (2008).

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

MARIANO C. DEL CASTILLO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ATTESTATION

I attest 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's Division.

ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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's Division.

MARIA LOURDES P. A. SERENO
Chief Justice