



Republic of the Philippines
Supreme Court
 Manila

EN BANC

**NAOMI K. TORRETA and
 JAIME M. LOPEZ,**
 Petitioners,

G.R. No. 242925

Present:

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

- versus -

COMMISSION ON AUDIT,
 Respondent.

Promulgated:
 November 10, 2020

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DECISION

GAERLAN, J.:

The case is a petition for *certiorari* and prohibition with application for preliminary injunction and temporary restraining order¹ filed by Naomi K. Torreta (Torreta) and Jaime M. Lopez (Lopez), herein (petitioners), who are officers of National Dairy Authority (NDA), seeking to annul and set aside the Notices² and Decisions³ issued by herein public respondent Commission on Audit (COA) against NDA which awarded dairy cows in the amount of ₱17,316,000.00 to HapiCows@Tropical Dairy Farm, Inc. (Hapicows) under NDA's Dairy Multiplier Farm Program in 2009.

* On official leave.

¹ *Rollo*, pp. 3-31.

² *Id.* at 42-43, 44.

³ *Id.* at 45-50; penned by Director Jose R. Rocha, Jr., 51-59; signed by Chairperson Ma. Gracia M. Pulido Tan, Commissioners Heidi L. Mendoza and Jose. A. Fabia with Director Nilda B. Plasas, attesting.

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Antecedents

NDA is a government-owned and controlled corporation created by Republic Act (R.A.) No. 7884. The NDA was created to be the central policy determining and directing body tasked to ensure the accelerated development of the Philippine dairy industry, in accordance with the policies and objectives set forth by the law.

Under the NDA's Dairy Multiplier Farm Program (Program), NDA is to distribute imported, mature female dairy animal to eligible and qualified participants, who, within a certain period of time, would make a repayment-in-kind: For every one mature female dairy animals, payment shall be by way of two mature female dairy animals with similar or higher dairy blood composition and with condition similar to the animals originally received by the Multiplier Farm Partner from the NDA.⁴

The Qualification Requirements and Selection Criteria of the Application for the Batch 10 Imported Animals⁵ under the Program is as follows:

1. Submit a formal Letter of Intent to Avail of Batch 10 imported dairy animals[.]
2. Pass the Technical Evaluation of NDA on Viable Dairy Farm Operation covering:
 - a) Acceptability & Readiness of Farm Site/Location
 - Has the capability to provide the minimum animal-to-land area requirement;
 - b) Availability & Adequacy of Farm/Utility Resources
 - Has own production facility & equipment;
 - c) Adequacy of & Accessibility to Feeds Resources
 - d) Dairy Husbandry Capability & Readiness of the Proponent
 - Provide clean, fresh water at all times (ad libitum supply)
 - Conducts regular health tests, if and when applicable, on Tuberculosis, Leptospirosis, and Brucellosis
 - Conducts regular vaccination, if and when applicable, on Hemorrhagic septicemia and Foot and Mouth Disease
 - Provide a daily; dry matter equivalent to 10% of the animal's body weight (minimum of 40 kg of fresh roughage and 2 kg concentrate.)
 - Maintains technical and financial records.

⁴ Id. at 8-9.

⁵ Id. at 61.

3. The cooperative/organization to which the partner is a member must be of good standing in accordance with the Cooperative Development Authority (CDA) and Securities and Exchange Commission (SEC) rules and policies.
4. Existing partner must have a good credit/updated loan standing with the National Dairy Authority while new farmers must have a good track record with the cooperative.
5. Existing partners has the capacity and ability to pay the animals being availed from the National Dairy Authority (NDA); and
6. Able to pay the hauling cost of the animals being availed from the quarantine site to point of destination.⁶

NDA found Hapicows qualified for the program. On August 20, 2009, NDA delivered 134 heads of imported pregnant dairy animals to Hapicows' farm in Pagbilao, Quezon. The other 16 heads empty imported animals were delivered in Ayusan, Tiaong, Quezon farm.⁷ At the same time, the Memorandum of Agreement (MOA)⁸ between NDA and Hapicows was executed; herein petitioners signing the said MOA as officers of NDA. Torreta is the Deputy Administrator while Lopez is Division Chief of the Technical Support Unit of NDA.⁹

COA, thereafter, conducted a post-audit on NDA's Program. The Audit Team Leader (ATL) of respondent issued Audit Observation Memorandum (AOM) No. 10-006¹⁰ dated March 5, 2010 noting that the dispersal of the 150 heads of dairy animals in favor of Hapicows was of doubtful validity due to lack of proper recording as stated in the approved NDA Board Resolution No. 424 Series of 2009 and as required under Section 112 of Presidential Decree (P.D.) No. 1445. Thus, ATL recommended that management of NDA comply with the aforementioned laws and requested the submission of the following documents:

- a) acknowledgment receipt of the dairy animals by Multiplier-Farm-partners;
- b) MOA entered into by and between NDA and the Multiplier Farm-partners;
- c) criteria for eligibility requirements of progressive farms/entities; and
- d) technical evaluation and actual accreditation report for each farm by the designated NDA officers including location and terms of lease of

⁶ Id.

⁷ Id. at 11.

⁸ Id. at 85-92.

⁹ Id. at 13.

¹⁰ Id. at 40-41.

pasture area.¹¹

NDA allegedly filed the requested documents. However, ATL found that not all the requested documents were submitted. This prompted them to issue Notice of Suspension (NS) No. 10-001-(10)¹² on June 21, 2010. Further, ATL requested for additional supporting documents.

On July 26, 2010, ATL conducted an audit inventory of NDA Animals which resulted to the issuance of the second AOM No. 10-017¹³ because Hapicows failed to comply with the prescribed standards of sound dairy production and husbandry management as mandated in the MOA due to observed high incidence of mortality and abortion cases among the dairy animals. Thus, ATL recommended the following actions:

1. Reevaluate the technical and financial capability of Hapicows and determine whether Mr. Benjamin Molina (Molina) is representing Hapicows or acting in his individual capacity;
2. Implement Article 7 of the MOA providing for the repossession of the animals and termination of the MOA; and
3. Submit management action to save the remaining animals in the custody of Hapicows and its proposal for the animals' rehabilitation.¹⁴

Upon the recommendation of the COA, NDA decided to pull out the animals. However, the Secretary of Agriculture Memorandum requested a suspension of the pullout and NDA acceded.¹⁵

On September 28, 2010, ATL issued a Notice of Disallowance (ND) No. 10-002(10)¹⁶ stating that the dispersal of the 150 heads of dairy animals to Hapicows was irregular as it lacks proper evaluation and supporting documents holding herein petitioners, together with Molina, President-CEO of Hapicows, Orkhan H. Usman, NDA Former Administrator and Suplicio Bayawa Jr., NDA-Operations Department OIC, liable as signatories of the MOA.¹⁷

Petitioners appealed the ND to COA Office of the Cluster Director, Corporate Government Sector, Cluster C (CGS-C). In its Decision¹⁸ dated July 1,

¹¹ Id. at 41.

¹² Id. at 42-43.

¹³ Id. at 262-264.

¹⁴ Id. at 52.

¹⁵ Id. at 12-13.

¹⁶ Id. at 44.

¹⁷ Id.

¹⁸ Id. at 45-50.

2011, the CGS-C denied the appeal, and further stating the following observations:

1. Torreta in her letter dated September 20, 2010, admitted that there was only partial submission of requirements by Hapicows, which fell short of the NDA requirements and stated that the NDA management decided to repossess the remaining animals with Hapicows;
2. Hapicows did not have a good credit/updated loan standing with the NDA in violation of Item 4 of the Qualification Requirements having only partially updated its account with the NDA per Certification dated June 22, 2010 issued by the NDA Finance and Administrative manager;
3. There was inadequate capitalization of Hapicows with paid-up capital of only ₱62,500; thus, unduly exposing the dairy animals to unnecessary risk in case the Hapiows reneges or fails to comply with its duty under the MOA;
4. Hapicows was not a member of good standing in accordance with the CDA and SEC rules and policies. The certification issued by the SEC revealed that Hapicows was registered merely one year before the signing of the MOA. Also, Hapicows failed to submit certain required statements and to secure prior approval of the SEC for changes in its capital stock; and
5. As to Hapicows' three farm sites, two of which were not substantiated due to lack of lease contracts and other pertinent documents while one was covered by a lease contract that was undated and not notarized, and entered into with the punong barangay who had no property rights over the property.¹⁹

Aggrieved with the above findings and decision of the CGS-C, petitioners filed a petition for review before the Commission Proper. In its Decision²⁰ dated September 11, 2014, the Commission Proper denied the petition for review for lack of merit. The dispositive portion of which reads as follows:

WHEREFORE, the Commission hereby **DENIES** the herein petition for review for lack of merit and **AFFIRMS** Corporate Government Sector-C Decision No. 2011-021 dated July 1, 2011 affirming Notice of Disallowance No. 10-002-(10) dated September 28, 2010 pertaining to the dispersal of 150 heads of dairy animals to Hapicows@Tropical Dairy Farm, Inc. in the amount of P17,316,000.00. Accordingly, National Dairy Authority is hereby directed to Implement Article 7 of the Memorandum Agreement providing for the repossession of the dairy animals. Hapicows@Tropical Dairy Farm, Inc. and officials of the National Dairy Authority, who signed or initiated the

¹⁹ Id. at 48-50.

²⁰ Id. at 51-59.

Memorandum of Agreement, are jointly and severally liable for the difference between the book value of the originally distributed animals and the appraised/assessed value of the repossessed animals.²¹

Petitioners filed a motion for reconsideration for the above Commission Proper's decision however the same was denied thru the Commission's Resolution dated August 16, 2018.²²

Hence, this review under Rule 64, in relation to Rule 65 of the Rules of Court.

Issues

Petitioners submit that the COA committed grave abuse of discretion amounting to lack or in excess of jurisdiction:

1. When its audit was wrongly based on its perceived evaluation process instead of what the NDA, as the country's sole dairy authority, had observed and implemented.
2. When its findings and interpretations were not based on the documents actually submitted by Hapicows to NDA and adamantly refused to acknowledge NDA's evaluation process and documentation, in direct contravention of the petitioners' right to administrative due process.
 - a) COA misinterpreted petitioner Torreta's statement and wrongly treated the same as admission of Hapicows lack of evaluation and documents.
 - b) Because COA erred in considering Hapicows and Molina as one and the same, its findings on the outstanding loans of Hapicows and its Manager Molina became disjointed and confused. Yet both notably enjoy good credit and standing regardless of whether both were to be treated as one or separately.
 - c) The NDA's and Hapicows' MOA included insurance at the time when security against risks stemming from animal safety was unfortunately rare and almost non-existent.
 - d) Hapicows' Articles of Incorporation and its capital stock were regular and its standing was unassailed.

²¹ Id. at 58.

²² Id. at 60.

- e) The Tagkawayan property can serve as a third farm whenever a need for one is required. Hapicows provided two farms for the dairy animals both of which were evaluated and found qualified by the NDA.
3. Thus, petitioners cannot and should not be held liable for this transaction as no irregularity attended the same; their participation in the evaluation process is minimal while documents required by the COA and the rules have been submitted and complied by them in good faith.²³

Ruling of the Court

The petition for *certiorari* is bereft of merit.

I. COA acted within its constitutional mandate.

Petitioners contend that NDA was vested by law to be the country's authority on the dairy industry. Thus, they are in the best position to formulate the process of distribution of animals and the evaluation of the farms as recipient under the Program. Petitioners do not question the authority of COA to conduct audit, however, they claim that it was exercised without caution, fairness and circumspect. COA found the delivery of dairy animals to Hapicows farm irregular despite the petitioners providing it all the documents it requested in support of the award. Petitioners find COA's disallowance as arbitrary, unreasonable and wrong. By imposing its own interpretation and evaluation of the criteria set by NDA, COA effectively arrogated itself to be the authority in the dairy farm industry.²⁴

We do not agree.

Petitioners' insistence for COA to accept the documents provided by Hapicows as sufficient compliance with the requirements of audit is misplaced. It proceeds from petitioners' myopic view that the term "supporting documents" in ND No. 10-002(10) should only refer to the qualification requirements of Hapicows during the selection of the Program. However, the proceedings that led to the issuance of ND No. 10-002(10) evince that the purpose of the subject audit was not simply to look into Hapicow's eligibility, but likewise to monitor the status of the government's transaction with the latter as one of the selected Multiplier Farm Partners for the Program. This was clear from the import of the ATL's observation in AOM No. 10-017 – a precursor of ND No. 10-002(10) – viz.:

²³ Id. at 14-15.

²⁴ Id. at 18-19.

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From the farm records presented, the original important pregnant heifers reduction of 23.13% unaccounted pregnancy abortion cases of 30.59% and the absence of documents and farm facilities showing multiplier farm partner's capability, we have observed that the MULTIPLIER FARM PARTNER failed to manage the dairy animals according to the prescribed standards of sound dairy production and husbandry management as mandated by Article 3.2 of the Memorandum of Agreement, particularly animals at Pagbilao Farm.

Being a non-technical observer as to the farm status, we have observed that the multiplier partner was unable to implement the provisions of Sections 3.2.4, 3.2.7, 3.2.13 and 3.2.14 of the MOA. These resulted to poor animal condition as manifested by the majority of animals that were tick infested during our count. All original animals seem to be non-pregnant. According to Mr. Molina, he opted to dry all animals since he saw them not fit for lactation. The conditions were also incorporated in the inventory team's report.

Due to said failure of implementing the provisions of the MOA, the agency's objective as stipulated in the approved Board Resolution No. 424 S-2009 could not be attained.²⁵

Given the scope of the audit made, COA was clearly justified in requiring the submission of the additional documents which consisted mainly of the documents listed under Section 3.2²⁶ of the MOA, in order to determine

²⁵ Id. at 264.

²⁶ Section 3.2 of the MOA provides:

The **MULTIPLIER FARM PARTNER** shall manage the dairy animals according to the prescribed standards of sound dairy production and husbandry management to ensure technical and financial viability of its business. Specifically, the **MULTIPLIER FARM PARTNER** shall:

3.2.1. Acknowledge the receipt of the animals by signing an Acknowledgment Receipt as well as this Agreement on the date of delivery of animals.

3.2.2. Insure the animals with a **reputable insurance company** to ensure that the animals can be repaid within the prescribed payment period.

3.2.3. Expenses for such insurance as an option shall be for the account of the **MULTIPLIER FARM PARTNER**.

3.2.4. Regularly, provide adequate inputs such as, but not limited to, safe drinking water, quality feeds and roughage, mineral supplements, drugs and biologics and other supplies necessary for the efficient care and management of the dairy animals including its offsprings.

3.2.5. Ensure that all offspring's borne out of the dairy animals provided by the **NDA** are properly registered in the municipality to where the farm/s is/are located and shall in no case be sold to anyone without prior consultation with and consent from the **NDA**.

3.2.6. Offer first to the **NDA** the offsprings should the **MULTIPLIER FARM PARTNER** opt to sell or otherwise dispose of the same.

3.2.7. Ensure to milk all lactating animals, preferably, twice a day and according to standard milking practices, process them according to prescribed dairy technology standards and/or course the milk produce to the nearest processing center.

3.2.8. Ensure the breeding of the dairy animals with dairy bloodline and implement, as deemed necessary, the corrective measures as recommended by the **NDA**.

3.2.9. Monitor and maintain milk production, health and breeding records of each dairy animal and make available and submit the same to the **NDA** on a monthly basis including other reports as may be prescribed by the **NDA** from time to time.

3.2.10. Furnish the **NDA** with financial statements (preferably, audited) on an annual basis, including other documents pertaining to the project that may be required by duly authorized government entities.

3.2.11. Agree that, for purposes of the application of this Agreement, the liability of its Board of Directors shall be solidary with the **MULTIPLIER FARM PARTNER**.

3.2.12. Remit to **NDA** an Annual Milk Volume Service Fee equivalent to **One Peso (Php 1.00) per liter** of

Hapicow's compliance with its duties and obligations under the Program.

On this score, it is well to note that the extent of the auditor's review does not unnecessarily encroach upon the administrative functions of the NDA. For one, no less than the Constitution has vested COA with the exclusive authority to define the scope of its audit and examination, and establish techniques and methods required therefor.²⁷ As such, it is vested with the broadest latitude to discharge its role as the guardian of public funds and property and is accorded the complete discretion to exercise its constitutional duty.²⁸

Furthermore, the action taken by COA auditor of monitoring the progress of the project, with a view of ascertaining if the public assets were utilized economically, efficiently and effectively; and evaluating the adequacy of controls over the account, was completely in accord with the following examination standards and objectives prescribed under Sections 55 and 58 of P.D. No. 1445, otherwise known as the Government Auditing Code of the Philippines, *viz.*:

Section 55. *Examination and evaluation standards.*

- (1) The audit work shall be adequately planned and assistants shall be properly supervised.
- (2) A review shall be made of compliance with legal and regulatory requirements.
- (3) An evaluation shall be made of the system of internal control and related administrative practices to determine the extent they can be relied upon to ensure compliance with laws and regulations and to provide for efficient, economical and effective operations.
- (4) The auditor shall obtain through inspections, observation, inquiries, confirmation and other techniques, sufficient competent evidential matter to afford himself a reasonable basis for his opinions, judgments, conclusions, and recommendations.

Section 58. *Audit of assets.* The examination and audit of assets shall be performed with a view to ascertaining their existence, ownership, valuation and

milk produced by the original dairy animals provided by the NDA to the MULTIPLIER FARM PARTNER based on the milk production records submitted by the latter and upon the former's validation thereof. It shall be understood that the Service Fee aforementioned shall be charged only on the milk actually marketed and sold by the MULTIPLIER FARM PARTNER.

The remittance of such fees to the NDA shall be on a quarterly basis. The period covered for the remittance shall be ten (10) days after every calving of the original dairy animal/s provided by the NDA and shall continue throughout the aforesaid animal/s' lactation cycle; Provided however, that this obligation shall automatically cease upon full payment by the MULTIPLIER FARM PARTNER of its obligations under Article 5 of this Agreement.

3.2.13. Provide any other services and support within its means to ensure the success of the Program.

3.2.14. Continue its dairy activities and vigorously play its role in dairy development even after full payment of the animals has been completed.

²⁷ Section 2(2), Article IX(D) of the 1987 Constitution.

²⁸ *Development Bank of the Phils. v. Commission on Audit*, 808 Phil. 1001, 1017 (2017).

encumbrances as well as the propriety of items composing the respective asset accounts, determining their agreement with records; proving the accuracy of such records; ascertaining if the assets were utilized economically, efficiently and effectively; and evaluating the adequacy of controls over the accounts.

In view of the foregoing, We find that COA acted within its mandate. It did not act beyond what was expected of it to do in audit. The Court is mindful that the implementation of the Program and the enforcement of the provisions of the subject MOA are functions which are lodged primarily in the NDA as the central policy in determining and directing the body of the Philippine dairy industry. However, in keeping with the COA's role as the watchdog of the financial operations of the government and the guardian of the people's property, it was well-within the scope of the respondent's audit power to enjoin the submission of the documentary requirements under Section 3.2 of the MOA for audit purposes.

II. The Notice of Disallowance is proper.

Petitioners argued that they have provided COA all the necessary documentation it requested, however, COA still failed to recognize these documents and thus, violating their right to administrative due process.

Again, We are unimpressed.

Section 6 of COA Circular No. 77-55 provides:

6. AUDITORIAL ACTION:

Whenever, in the course of audit and guided by the set of standards aforementioned, an auditor is convinced and has satisfied himself that the transaction in question is irregular, unnecessary, excessive, or extravagant, he may pursue any of the following alternative courses of action:

In-pre-audit -

a) The auditor may tentatively suspend payment on the proposed expenditure and require compliance with certain auditing requirements within the period prescribed by existing regulations. After the lapse of said period without the requirements having been complied with, such tentative suspension shall become a final disallowance;

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Corollarily, Section 82²⁹ of P.D. No. 1445 prescribes a period of 90 days for

²⁹ Section 82. *Auditor's notice to accountable officer of balance shown upon settlement.* The auditor concerned shall, at convenient intervals, send a written notice under a certificate of settlement to each officer whose

the settlement of NS.

Accordingly, by itself alone, the non-submission by petitioners of the documents required in audit within 90 days from receipt of NS No. 10-001-(10) constitutes a valid ground for disallowance.

In any case, even by looking into the pre-selection qualification of Hapicows, We agree with COA's conclusion that NDA failed to strictly implement the Qualification Requirements and Selection Criteria for the program when it awarded the project to Hapicows.

Well-settled is the rule that factual findings of administrative agencies are generally respected and even afforded finality because of the special knowledge and expertise gained by these agencies from handling matters falling under their specialized jurisdiction. By reason of their special knowledge and expertise over matters falling under their jurisdiction, administrative agencies are in a better position to pass judgment thereon, and their findings of fact are generally accorded great respect, if not finality by the courts. Such findings must be respected as long as they are supported by substantial evidence even if such evidence is not overwhelming or even preponderant. It is not the task of the appellate court or this Court to once again weigh the evidence submitted before and passed upon by the administrative body and to substitute its own judgment regarding the sufficiency of the evidence.³⁰

It must be noted that at the time of the award, Hapicows does not have enough capital to secure the dairy animals amounting to ₱17,316,000.00. Even though it subsequently boosted its financial capability by infusing additional funds, it is still insufficient to cover the amount of the dairy animals. Moreover, the dispersal of the dairy animals happened before the capital infusion; hence, it could not have been considered in the evaluation of Hapicows' ability and capability to pay for the dairy animals.

III. Petitioners are liable. There is no good faith when there is gross negligence.

Petitioners contend that they should not be held liable in this transaction as

accounts have been audited and settled in whole or in part by him, stating the balances found due thereon and certified, and the charges or differences arising from the settlement by reason of disallowances, charges, or suspensions. The certificate shall be properly itemized and shall state the reasons for disallowance, charge, or suspension of credit. A charge of suspension which is not satisfactorily explained within ninety days after receipt of the certificate or notice by the accountable officer concerned shall become a disallowance, unless the Commission or auditor concerned shall, in writing and for good cause shown, extend the time for answer beyond ninety days.

³⁰ *Sps. Hipolito v. Cinco*, 611 Phil 331, 349, (2011).

they acted in good faith in the dispersal of the dairy animals to Hapicows. They alleged that they followed the same requirements and procedures as they have with the other farms in the Program.

We are not persuaded.

Good faith is a state of mind denoting “honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even though technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious.³¹ Indeed, a public officer is presumed to have acted in good faith in the performance of his duties. However, public officials can be held personally accountable for acts claimed to have been performed in connection with official duties where they have acted beyond their scope of authority or where there is a showing of bad faith.³²

Consistent thereto, Sections 38 and 39 of the Administrative Code of 1987 provides that the presumption of good faith is unavailable when there is a clear showing of gross negligence, to wit:

Section 38. *Liability of Superior Officers.* – (1) A public officer shall not be civilly liable for acts done in the performance of his official duties, unless there is a clear showing of bad faith, malice or gross negligence.

(2) Any public officer who, without just cause, neglects to perform a duty within a period fixed by law or regulation, or within a reasonable period if none is fixed, shall be liable for damages to the private party concerned without prejudice to such other liability as may be prescribed by law.

(3) A head of a department or a superior officer shall not be civilly liable for the wrongful acts, omissions of duty, negligence, or misfeasance of his subordinates, unless he has actually authorized by written order the specific act or misconduct complained of.

Section 39. *Liability of Subordinate Officers.* – No subordinate officer or employee shall be civilly liable for acts done by him in good faith in the performance of his duties. However, he shall be liable for willful or negligent acts done by him which are contrary to law, morals, public policy and good customs even if he acted under orders or instructions of his superiors.³³

Likewise, a person can be held liable under a ND, if it was proven that he or she is directly responsible for the illegal, irregular, unnecessary, excessive, extravagant, or unconscionable transactions. Section 103 of P.D. No. 1445

³¹ *Montejo v. COA, et al.*, G.R. No. 232272, July 24, 2018.

³² *Dr. Velasco, et al. v. COA, et al.*, 695 Phil. 226, 241 (2012).

³³ EXECUTIVE ORDER NO. 292, Book I, Chapter 9-General Principles Governing Public Officers.

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.

Gross negligence is evident in the case at bar. Petitioners hold vital positions in the NDA. By holding such positions, they are knowledgeable of the principles and policies of the said government agency. Further, their signatures appearing in pertinent documents of the said program proves that they were directly responsible for the irregular transaction. Lopez's signature appeared in the Farm Evaluation Sheet³⁴ of Hapicows which recommended it as a qualified recipient farm of the imported dairy animals. On the other hand, Torreta's signature appeared in Qualification Requirements and Selection Criteria of the Applicants for Batch 10 Imported Animals Documents³⁵ which signifies that she reviewed and recommended the said criteria to which a farm must comply with. Clearly, the award to Hapicows is highly irregular as the qualifications set were not complied. The term "irregular expenditure" signifies an expenditure incurred without adhering to established rules, regulations, procedural guidelines, policies, principles or practices that have gained recognition in laws. Irregular expenditures are incurred if funds are disbursed without conforming with prescribed usages and rules of disciplines. There is no observance of an established pattern, course, mode of action, behavior, or conduct in the incurrence of an irregular expenditure. A transaction conducted in a manner that deviates or departs from, or which does not comply with standards set is deemed irregular. A transaction which fails to follow or violates appropriate rules of procedure is, likewise, irregular.³⁶ Both officers had the opportunity to review and scrutinize the evaluation and qualification documents, yet the dairy animals were still awarded to an unqualified recipient. The financial capability of Hapicows glaringly shows that it is an unqualified farm. This fact alone should have alerted petitioners.

Further, petitioners allowed and accepted the reason of Hapicows with regard to the non-procurement of insurance for the animals notwithstanding the express requirement in the MOA. In an effort to justify, petitioners averred that such requirement of insurance is unavailable at that time. As such they still push through with the award even without it. Evidently, petitioners had been remiss in exercising the necessary diligence to protect government assets and prevent irregular disbursement. Petitioners already knew the circumstances which make Hapicows unqualified for the program yet they still signed the MOA. Considering that public funds are involved, the government would always be on the losing end

³⁴ *Rollo*, pp. 63-66.

³⁵ *Id.* at 61.

³⁶ Section 3.1, COA Circular No. 85-55-A dated September 8, 1985; Section 3.1, COA Circular No. 2012-003 dated October 29, 2012.

in this transaction should an unfortunate event happens, without recourse to insurance coverage or Hapicows' insufficient assets. Accordingly, petitioners' gross negligence negates the presumption of good faith.

IV. Petitioners are solidarily liable

With the finding of gross negligence on the part of the petitioners, COA did not err in finding petitioners together with the other NDA officers who signed the MOA solidarily liable for the disallowed amount. According to Section 52 of the Administrative Code of 1987, [e]xpenditures 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.³⁷

Notably, the ND also included Molina, the President-CEO of Hapicows in the list of persons liable. In their decision, COA ruled that the application of the doctrine of piercing the veil of corporate fiction is proper in the case because it was found that not only did Molina own the controlling interest in Hapicows but it was his expertise and experience which NDA considered to qualify Hapicows to the program despite its financial incapability.

We agree that the piercing of the corporate veil was properly applied by COA in the present case. Piercing the corporate veil is warranted when “[the separate personality of a corporation] is used as a means to perpetrate fraud or an illegal act, or as a vehicle for the evasion of an existing obligation, the circumvention of statutes, or to confuse legitimate issues.” It is also warranted in alter ego cases “where a corporation is merely a farce since it is a mere alter ego or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation.”³⁸ Based on the factual findings of respondent COA, Hapicows is a mere alter ego of Molina. As such, all liabilities being imputed to Hapicows is in fact attributed to Molina as they are considered one and the same.

Further, Hapicows is held to be solidarily liable as the recipient in an irregular expenditure. Section 43 of the Administrative Code of 1987 provides that:

SECTION 43. *Liability for Illegal Expenditures.*— Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said

³⁷ EXECUTIVE ORDER NO. 292, Book V, Title I Subtitle B Chapter 9-Accountability and Responsibility for Government Funds and Property.

³⁸ *Lamza Jr. v. BF Corporation*, 744 Phil. 612, 636-637 (2014).

provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received.

Any official or employee of the Government knowingly incurring any obligation, or authorizing any expenditure in violation of the provisions herein, or taking part therein, shall be dismissed from the service, after due notice and hearing by the duly authorized appointing official. If the appointing official is other than the President and should he fail to remove such official or employee, the President may exercise the power of removal.³⁹

Based on the foregoing, Hapicows, being the named partner farm in the MOA and the recipient of the dairy animals of the program, is held liable for the disallowed amount. This is in line with the recent pronouncement in the case of *Madera*⁴⁰ wherein it abandoned the “good faith rule” with regard to passive recipients of disallowed amounts. In the said case, it reconciled the previous rulings due to the presence of inadvertent injustice wherein passive recipients were excused from returning the amount they received on the basis of good faith and imposing upon the approving/certifying officers the responsibility to refund the amounts they did not personally receive or benefitted from. Thus, if we would deviate from the *Madera* ruling, Hapicows may evade its solidary liability using the good faith doctrine, to the detriment and disadvantage of the government. As earlier mentioned, Hapicows’ solidary liability is in fact the liability of Molina, the former’s corporate personality having been pierced.

We, however, recognize Senior Associate Justice Estela Perlas-Bernabe’s (Justice Perlas-Bernabe) position that the Rules of Return in the *Madera* case will not squarely apply in the case at bar. The Rules of Return in *Madera* is as follows:

E. The Rules on Return

In view of the foregoing discussion, the Court pronounces:

1. If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.
2. If the Notice of Disallowance is upheld, the rules on return are as follows:
 - a) Approving and certifying officers who acted in good faith, in regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code.
 - b) Approving and certifying officers who are clearly shown to

³⁹ EXECUTIVE ORDER NO. 292, Book VI, Chapter 5, Budget Execution.

⁴⁰ *Madera, et al. v. Commission on Audit (COA) and COA Regional Office No. VIII*, G.R. No. 244128, September 8, 2020.

have acted in bad faith, malice, or gross negligence are pursuant to Section 43 of the Administrative Code of 1987, solidarily liable to return only the net disallowed amount which, as discussed herein, excludes amounts excused under the following sections 2c and 2d.

- c) Recipients – whether approving or certifying officers or mere passive recipients – are liable to return the disallowed amounts, respectively received by them, unless they are able to show that the amounts received were genuinely given in consideration of services rendered.
- d) The Court may likewise excuse the return of recipients based on undue prejudice, social justice considerations and other *bonafide* exceptions as it may determine on a case to case basis.⁴¹

As pointed out by Justice Perlas-Bernabe, the above-mentioned rules were specifically borne from the context of disallowance cases involving employee incentives and benefits and not to government contracts for the procurement of goods and services involving the use or expenditures of the public funds, as in this case. Quoting her discussion, to wit:

To recall, *Madera* is a landmark jurisprudence which not only abandoned the then-prevailing “good faith rule” that absolved passive recipients from civil liability to return disallowed incentives and benefits received by them, but also detailed the statutory bases for the new rules of return in disallowance cases. In *Madera*, the Court primarily situated the civil liability of approving/authorizing officers under Section 38, Chapter 9, Book I of the Administrative Code, while that of recipients under the civil law principles of *solutio indebiti* and unjust enrichment.

Further, pursuant to Section 43, Chapter 5, Book VI of the Administrative Code, the Court ruled that the approving/authorizing officers who had acted with bad faith, malice, or gross negligence are solidarily liable for the disallowance. However, as discussed in *Madera*, such civil liability should only be confined to the net disallowed amount, *i.e.*, the total disallowed amount minus the amounts excused to be returned by recipients particularly those: (a) genuinely given in consideration of services rendered (**Rule 2c**); and (b) excused by the Court based on undue prejudice, social justice considerations, and other bona fide exceptions as may be determined on a case-to-case basis (**Rule 2d**). These exceptions were formulated by the Court relative to the *solutio indebiti* nature of the recipients’ civil obligation, on a finding that these grounds for return negated the existence of unjust enrichment, and hence, resulted in no proper loss on the part of the government.

X X X X

Given the backdrop of *Madera*, the *solutio indebiti* nature of the recipients’ obligation to return the incentives and benefits they had received,

⁴¹ Id.

and the considerations behind Rules 2c and 2d as above-discussed, it is my view that the *Madera* rules do not squarely apply in disallowances made under the peculiar auspices of unlawful/irregular **government contracts** authorizing the use or expenditure of public funds.

Since these contracts, by their very nature, provide for the expenditure of public **funds in consideration of services rendered/to be rendered and/or the delivery of property/goods**, the exception under Rule 2c of the *Madera* Rules (genuinely given in consideration of services rendered), as formulated, should not squarely apply. Neither should the grounds for excuse under Rule 2d (undue prejudice, social justice considerations, and other *bona fide* exceptions) apply since these grounds were intended to address the inequitable situation of requiring government employees to still return the incentives and benefits they had already received based on exceptional fairness or social justice considerations.

This notwithstanding, the general provisions of Sections 38 and 43 of the Administrative Code – which were utilized in Rules 2a and 2b of *Madera* – still apply.⁴²

To summarize, the Rules of Return in *Madera* is applicable in cases involving government contracts for the procurement of goods and services only in so far as paragraph 2a and 2b is concerned which deals with the determination of who are liable for the disallowed amount.

However, with regard to the amount to be returned, we take note of the peculiarity of the cases of government procurement contracts for goods or services. In the instant case, what makes it unique is that what was delivered to the recipient were live animals and not its monetary equivalent. Logically, the subject of the return must be the same animals delivered in case of valid ND. The peculiarity of this situation is that some of these dairy animals have died already at the time of audit. And because of its perishable nature, some may even die during the pendency of this case. In any case, the records provide that the dairy animals remain in the possession of Hapicows.⁴³

It must also be noted that in the COA Decision, COA ordered the application of the repossession/termination clauses as provided under the MOA. Under the provisions of the MOA specifically 7.1 and 7.2 the repossession/termination clause shall only apply under the following instances:

- a) When there is failure to comply with the provisions of the MOA due to gross negligence and or mismanagement on the part of the Multiplier farm partner;

⁴² Concurring Opinion, Justice Perlas-Bernabe, pp. 3-5.

⁴³ *Rollo*, p. 111

- b) the multiplier farm partner loses the capacity to manage the dairy animals properly; and
- c) failure to submit to NDA the animal payments due and to pay the penalty charges, if any, one year after the due date.⁴⁴

To reiterate, respondent COA has not issued any findings regarding mismanagement or non-payment committed by Hapicows. It must be noted that the audit was made to ascertain the qualification of Hapicows and not as to its management or dealings with the dairy animals delivered. As such, the application of the clauses regarding repossession/termination in the MOA is improper.

Verily, the peculiarity of cases involving government contracts for procurement of goods or services necessitates the promulgation of a separate guidelines for the return of the disallowed amounts. In these cases, it is deemed fit that the passive recipients be ordered to return what they received subject to the application of the principle of *quantum meruit*. *Quantum meruit* literally means “as much as he deserves.” Under this principle, a person may recover a reasonable value of the thing he delivered or the service he rendered. The principle also acts as a device to prevent undue enrichment based on the equitable postulate that it is unjust for a person to retain benefit without paying for it. The principle of *quantum meruit* is predicated on equity.⁴⁵ In the case of *Geronimo v. COA*,⁴⁶ it has been held that “the [r]ecovery on the basis of *quantum meruit* was allowed despite the invalidity or absence of a written contract between the contractor and the government agency.”⁴⁷ In *Dr. Eslao v. COA*,⁴⁸ the Court explained that the denial of the contractor’s claim would result in the government unjustly enriching itself. The Court further reasoned that justice and equity demand compensation on the basis of *quantum meruit*. Thus, in applying this principle, the amount in which the petitioners together with the other liable individuals shall be equitably reduced.⁴⁹

Accordingly, we hereby adopt the proposed guidelines on return of disallowed amounts in cases involving unlawful/irregular government contracts submitted by herein Justice Perlas-Bernabe, to wit:

1. If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.
2. If a Notice of Disallowance is upheld, the rules on return are as follows:

⁴⁴ Id. at 89.

⁴⁵ *Rolando S. Gregorio v. Commission on Audit and Department of Foreign Affairs*, G.R. No. 240778, June 30, 2020.

⁴⁶ G.R. No. 224163, December 4, 2018.

⁴⁷ Id.

⁴⁸ 273 Phil. 97, 106 (1991).

⁴⁹ Id. at 107.

- a. Approving and certifying officers who acted in good faith, in the regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987.
- b. Pursuant to Section 43 of the Administrative Code of 1987, approving and certifying officers who are clearly shown to have acted with bad faith, malice, or gross negligence, are solidarily liable together with the recipients for the return of the disallowed amount.
- c. The civil liability for the disallowed amount may be reduced by the amounts due to the recipient based on the application of the principle of *quantum meruit* on a case to case basis.
- d. These rules are without prejudice to the application of the more specific provisions of law, COA rules and regulations, and accounting principles depending on the nature of the government contract involved.⁵⁰

In applying the above rules to the present case, this Court is aware of the technicalities involved in fixing the amount that should ultimately be returned by the persons solidarily liable under the ND. The process requires assessing the value of animals to be repossessed and computing the value due to the government based on the applicable rules, regulations, and issuances. It is therefore, proper that the present case be remanded back to COA for the determination of amount of liability of the petitioners, applying the general accepted accounting rules and COA rules and regulations.

WHEREFORE, premises considered, the Petition for *Certiorari* filed by petitioners is hereby **DISMISSED**. The Notice of Disallowance [No. 10-002(10)] issued by Commission on Audit against herein petitioners is **AFFIRMED WITH MODIFICATION**. Accordingly, the case is hereby remanded to COA to:

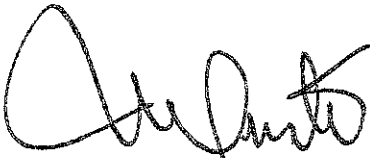
- a. Direct NDA to repossess the remaining dairy animals and their offsprings in the possession of Hapicows and determine their fair market value in accordance with the general accepted accounting principles and COA's own rules and regulation.
- b. Deduct the fair market value of the returned dairy animals from the civil liability of the named individuals held solidarily liable under ND 10-002(10); and
- c. Issue an amended Notice of Disallowance reflecting any deductions in accordance with the COA's factual determination.

⁵⁰ Concurring Opinion, Justice Perlas-Bernabe, p. 7.


SO ORDERED.


SAMUEL H. GAERLAN
Associate Justice

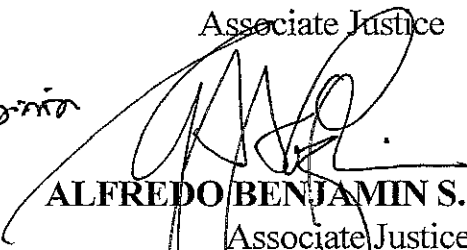
WE CONCUR:



DIOSDADO M. PERALTA
Chief Justice

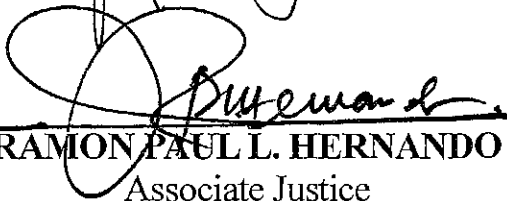
*Please see Concurring opinion
M.P. Bernabé*
ESTELA M. PERLAS-BERNABE
Associate Justice

*I join SAs Peralta Bernabe and
J. Caguioa's separate opinion*

MARVIC M.V.F. LEONEN
Associate Justice

*Please see
Concurring opinion*


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

Aggremunt

ALEXANDER G. GESMUNDO
Associate Justice

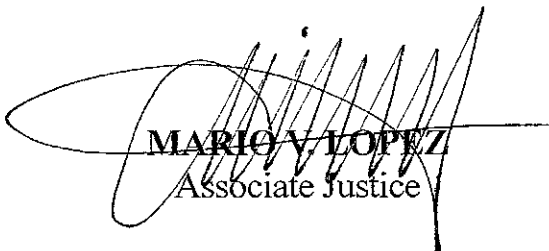

RAMON PAUL L. HERNANDO
Associate Justice


ROSMARID. CARANDANG
Associate Justice

(On official leave)
AMY C. LAZARO-JAVIER
Associate Justice

(On official leave)
HENRI JEAN PAUL B. INTING
Associate Justice

(On official leave)
RODIL V. ZALAMEDA
Associate Justice

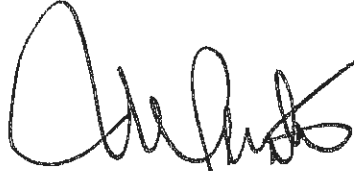

MARIC V. LOPEZ
Associate Justice


EDGARDO L. DELOS SANTOS
Associate Justice


RICARDO R. ROSARIO
Associate Justice

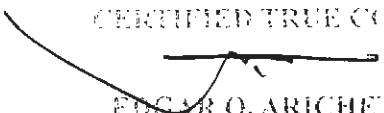
CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



DIOSDADO M. PERALTA
Chief Justice

CERTIFIED TRUE COPY



EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court

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