



Republic of the Philippines
SANDIGANBAYAN
Quezon City

**PEOPLE OF THE
PHILIPPINES,**
Plaintiff,

CRIM. CASE NO. SB-16-CRM-0085
For: Violation of Sec. 3(e) of R.A. 3019, as
amended

-versus-

**RAQUEL AUSTRIA
NACIONGAYO,**
Accused.

Present:
Herrera, Jr., J. Chairperson
Musngi, J. &
Pahimna, J.

Promulgated:

December 7, 2018

X-----X

DECISION

PAHIMNA, J.:

Accused is charged before this Court with **Violation of Sec. 3(e) of R.A. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as amended**, under an *Information*¹ dated February 9, 2016, filed by Assistant Special Prosecutor I Jonathan G. Paragua of the Office of the Special Prosecutor, which bears the approval of then Ombudsman Conchita Carpio Morales, the accusatory portion of which reads:

SB-16-CRM-0085
For: Violation of Sec. 3(e) of R.A. 3019

"That on January 5, 2006, or sometime prior or subsequent thereto, in Pasig City and within the jurisdiction of this Honorable Court, accused Raquel Austria Naciongayo, holding the item of City Government

¹ Records, Vol. I pp. 1-2

[Signature]

[Signature]

Department Head II and being the Head of City Environment and Natural Resources Office (CENRO), office of the City Mayor, Pasig City, (Salary Grade 26), while in the discharge of her official functions, committing the offense in relation to her office, through manifest partiality, evident bad faith or gross inexcusable negligence, did then and there willfully, unlawfully and criminally give unwarranted benefit, advantage or preference to Enviserve Inc., by procuring its services for the conduct of an environmental congress for a capacity building training for Environment Protection Officers from factories and industries in Pasig City without the required competitive public bidding in violation of Sec. 10 of R.A. 9184 that enabled Enviserve, Inc. to collect the amount of One Thousand Seven Hundred Pesos (P1,700.00) and Two Thousand Pesos (P2,000.00) for the 2006 and 2007 environmental congress, respectively, as participants' registration fees and by requiring a certificate of participation therefrom as a requisite for securing Environmental Permit and renewal of Business Permit to Operate, thereby unduly benefiting Enviserve, Inc., to the exclusion of other service providers, to the damage and prejudice of the government and the public interest.

CONTRARY TO LAW."

ANTECEDENT FACTS

After accused posted bail² on April 11, 2016, she filed a **Motion to Quash**,³ alleging therein that this Court has no jurisdiction over the offense charged considering that it exercises exclusive original jurisdiction on all cases involving public officials generally occupying position which is classified as Salary Grade 27 or higher, while the accused has a Salary Grade of 26.

Per **Resolution**⁴ of the Court, the **Motion to Quash** was denied citing *People versus Sandiganbayan and Rolando Plaza*, where it was ruled that "those that are classified as Grade 26 and below may still fall within the jurisdiction of the Sandiganbayan provided that they hold the positions thus enumerated by the same law."

² Records, p. 163

³ Ibid, p. 179

⁴ Records, Vol. I pp.234-236



Aggrieved, accused filed a **Motion for Reconsideration**⁵ but the Court denied the same per **Resolution**⁶ stating that her appointment by the City Mayor is included in the enumeration of public officials in P.D. 1606, R.A. 8249 and R.A. 10660.

When arraigned on June 27, 2017, accused entered a plea of not guilty to the offense charged.⁷

After termination of the pre-trial conference⁸, trial ensued.

EVIDENCE FOR THE PROSECUTION

To prove the charges against the accused, the prosecution presented the following witnesses:

1. MARIE BETH SILORIO ALMERO

Using her Complaint affidavit marked and identified as Exhibit "A" against accused, she testified that she is a Graft Investigation and Prosecution Officer I, assigned at the Field Investigation Office I of the Office of the Ombudsman.

2. OMAR SAYARI MALYARI

Using his Judicial Affidavit as his direct testimony, he testified that he was an Environment Inspector and former Team Leader of the Anti-Smoke Belching Team B. He worked as traffic enforcer assigned at the Mayor's office-TPMO since September 13, 2001.

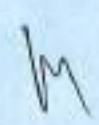
Sometime in 2006, he was asked by accused to assist in the preparation and in the actual seminar of Industrial and Commercial Environmental Congress on December 19, 2006 and June 14, 2007 by sending out invitations in the form of Memorandum Circular for the 2006 and 2007 Congress to

⁵ Ibid, p. 254

⁶ Ibid, p. 288-291

⁷ Ibid, p. 298

⁸ Ibid, p. 343



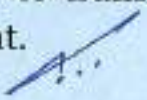
some commercial and industrial establishments located in Pasig City inviting them to attend the said Congress. During the seminar, he assisted in the distribution of snacks to the Protection Officers of the establishments whom he invited. The Memorandum Circular sent out as an invitation was signed by accused and identified as Exhibit "D". He knows it to be the signature of the accused because he is familiar with her signature.

He recalled that accused made the attendance to the forum and exhibit as one of the pre-requisites for the renewal of Environmental Permit to Operate from CENRO for the year 2006 and 2007, which is a mandatory requirement for the renewal of a business permit.

He knew that the seminar was facilitated by Enviserve, Inc. because he was present in both the 2006 and 2007 Congress. He knew that Enviserve, Inc. was personally chosen by accused to conduct the seminar because he believed that accused has an interest in Enviserve. He knew that there was no public bidding conducted as to who shall facilitate the training. Further, he was the one who registered the Articles of Incorporation of the said company under the instruction of the accused. Moreover, it was the father of the accused who stood as Speaker of the event and that Aileen Sherly Austria, sister of the accused, is one of the incorporators of Enviserve, Inc., while accused is made the contact person of the said company. He knew of this details because he saw that it was written in the General Information Sheet⁹ of Enviserve he submitted to the SEC.

On cross-examination, he admitted that he was working as traffic enforcer on March 31, 2006 to April 1, 2006 and he worked for eight (8) hours only since he was requested from his office at TPMO to transfer to CENRO due to his advocacy for the environment.

⁹ Exhibit "P"



He narrated that they sent invitations to all establishments located in Pasig City numbering around three hundred (300) to four hundred (400) relative to the conduct of the Industrial and Commercial Environmental Congress on December 19, 2006 and June 14, 2007 respectively, but he was only assigned to twenty or thirty establishments, while the others were taken care of by his co-workers. He recalled that around two hundred (200) participants attended the event which was a pre-requisite for renewal of the environmental license and business operation permit because not everyone can fit in the venue. He was able to attend the last two congress for this purpose in 2008 and 2009 as evidenced by a Certificate of Attendance¹⁰.

He also mentioned that he was the one who brought and registered the Articles of Incorporation of Enviserve, Inc. with the Securities and Exchange Commission upon the instruction of his boss, herein accused, who particularly instructed him "*wag na daw po ako magmaingay sa iba*". He further stated that he personally witnessed the accused signing the Memorandum she prepared and marked as Exhibit "A" and "D".

He stressed that he personally saw the father of the accused as the speaker of the seminars he attended both in the 2006 and 2007 congress.

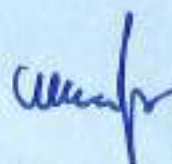
He was removed from his office because accused and he argued when she gave the ACTO Transport Federation jeepney certifications that did not comply with EMB standards.

3. MA. THERESA B. HERNANDEZ

Her testimony was dispensed with as the parties have agreed to stipulate on the due execution and authenticity of prosecution Exhibits "H", "L", "J", "Q", "G", "K" and "N" while accused admitted only the existence of Exhibit "M".

¹⁰ Exhibit Z

¹¹ TSN, January 25, 2018, p. 45



4. CORAZON ECHAPARO

She is an Administrative Aide I at Pasig City Hall. She testified that she received a Subpoena to produce the original copies of Exhibits "B", "C" and "D", among others. However, despite due diligent search, she could not find any such records in the office of CENRO and she presumed that the said documents are with the HR department under the 201 files of Pasig City.

5. SOLITA R. BIERAS

Her testimony was dispensed with as the parties have stipulated as to the Certification she issued (Exhibit "AA"), indicating that Exhibits "B", "C", "D" were not transmitted to the Chief of Records, Pasig City.

On February 7, 2018, the Prosecution filed a ***Motion to Suspend Accused Raquel Austria Naciongayo Pendente Lite***¹² alleging that Sec. 13 of R.A. 3019 explicitly mandates the suspension *pendente lite* of an incumbent public officer facing criminal prosecution. With the ***Vigorous Opposition*** filed by accused, through counsel, the Court resolved to grant the aforesaid ***Motion*** per its ***Resolution***¹³ promulgated on March 16, 2018.

DOCUMENTARY EVIDENCE

On February 14, 2018, the prosecution orally offered its Exhibits and the Court admitted the following documentary Evidence inclusive of its sub-markings, to wit:¹⁴

EXHIBITS	DESCRIPTION
A	Complaint dated September 30, 2014 of Marie Beth S. Almero, GIPO I
B	Certified True Copy of the Proposal to conduct Environmental Industrial and Commercial Congress in Pasig City, signed by Sol. Romualdo C. Bonilla, President, Enviserve, Inc.
C	Certified True Copy of Basic Principle and Guidelines in the Conduct of

¹² Records, Vol. II, p. 26

¹³ Ibid, pp. 87-89

¹⁴ Ibid, p. 68

x-----x

	Environmental Industrial and Commercial Congress issued by accused
D	Memorandum Circular 06-017 dated December 5, 2006 issued by accused
E	Memorandum Circular 06-017 dated May 21, 2007 issued by accused
F	Certification with attachments dated 25 June 2014 issued by accused
G	Certification with attachments dated 25 June 2014 issued by accused
H	Letter dated June 25, 2014 of Ma. Theresa B. Hernandez
I	Certification of Corporate Filing/Information of Enviserve, Inc (stipulated)
J	Certificate of Incorporation of Enviserve, Inc. (stipulated)
K	Article of Incorporation of Enviserve, Inc. (Stipulated)
L	By laws of Enviserve, Inc. (stipulated)
M	Report of Independent Public Accountant (stipulated)
N	Statement of Managements Responsibility of Financial Statements (stipulated)
O	Enviserve Corporation notes to Financial Statement (stipulated)
P	General Information Sheet (Stipulated)
Q	Personal Data Sheet of accused
R	Curriculum vitae of accused
S	Appointment letter of accused
T	Service record of accused
Z	Certificate of Attendance of Omar Malyari to the Environmental Congress in 2006
AA	Subpoena Duces tecum/Ad testificandum OMB-C-C-14-1511

On February 19, 2018, accused filed a **Motion for Leave to File Demurrer to Evidence**¹⁵ alleging that the prosecution grossly failed to present sufficient evidence to sustain a verdict that she is guilty beyond reasonable doubt of the offense charged. This **Motion** was denied per **Resolution**¹⁶ dated March 16, 2018 stating that after a careful study, the Court finds that the evidence presented by the prosecution, testimonial and documentary, appear to be *prima facie* sufficient for conviction of accused Naciongayo, unless successfully rebutted by defense evidence.

Unsatisfied, accused, through counsel, filed an **Omnibus Motion**¹⁷ and a **Motion for Reconsideration**¹⁸ praying for a reconsideration of the Resolution dated March 16, 2018 and holding in abeyance the

¹⁵ Ibid. pp. 54-64

¹⁶ Records, Vol. II, pp. 90-92

¹⁷ Ibid, p. 102

¹⁸ Ibid., p. 112





implementation of the Resolution dated March 16, 2018 ordering her suspension *pendent lite*.

The Court denied the **Motion for Reconsideration** in open court for having been filed out of time.¹⁹ Meanwhile, the Court likewise denied the **Omnibus Motion** as it was filed beyond the non-extendible period of five (5) days from receipt of a copy of the resolution within which to file a motion for reconsideration, as provided by the Revised Guidelines for Continuous Trial of Criminal Cases.

EVIDENCE FOR THE DEFENSE

For the defense, accused presented the following witnesses:

1. **ENGR. RAMON TAN**

He testified that he is the Assistant General Manager of Lunar Steel Corporation which is engaged in the business of steelmaking of section bars for the past 60 years. As an Assistant General Manager, he is tasked to oversee the overall operation of the plant, delegate the production report size and see to it that the company stays profitable in all kinds.

Before being an Assistant General Manager, he worked as the Pollution Control Officer of Lunar Steel and concurrently handling the position of Managing Head of Pollution Control Officer sometime in 1994 up to 2014. As a Pollution Control Officer, he makes sure that the company complies with all government or environmental laws regarding air and water pollution and he obtained such knowledge through trainings as required by DENR and LLDA. As far as he knows, no such training is required by the CENRO but he was able to attend the Environmental Congress organized by CENRO sometime in 2006 and 2007 where they partnered with Enviserve. He denied having received any memo from CENRO requiring his attendance to the Congress and that no one compelled him to do so. He attended the same nonetheless because it is the job of

¹⁹ Order dated April 4, 2018, records, Vol II, p. 129



the PCO to attend every opportunity that can enhance his knowledge on the subject of pollution. In his recollection, he paid around P1,500 to P2,000 for the fee to this Congress and in exchange thereof, he received from Enviserve two (2) meriendas and one lunch, considering that it was a whole day affair. He also testified that the Certificate of Participation to the event was never a requirement for securing environmental permit because in the CENRO Environmental Certificate, it was not stated that you have to attend a seminar or congress prior to its issuance.

He was able to secure environmental permit in 2006²⁰ and 2007²¹ and he never presented any certificate of participation of environmental congress.

2. BERNARDO GALICIA LAO

He testified that as a Plant Manager of Legacy Steel Corp., he supervises the production head, the maintenance supervisor, house head and other department concerned in the production aspect of their plant.

They have one pollution control officer who is knowledgeable in all environmental laws and as such, he supervises and monitors the pollution control appointment of their plant during the operation of the pollution control facilities.

Usually their Pollution Control Officer attends PCO continuing education seminar at least once a year, as a requirement of the LLDA and a requirement of DENR for the accreditation of their pollution control officer.

Their attendance to these trainings are submitted to CENRO as a requisite to apply for business permit. These trainings are sometimes conducted by LLDA and DENR in partnership with private entities and usually the seminar fees

²⁰ Exhibit "29"

²¹ Exhibit "30"



for continuing education seminar for four hours is less than P3,500.00 and for a three-day seminar for PCO accreditation, the fee is P8,000.00.

3. REY NASOL

He is an Engineering Manager and a Pollution Control Officer at Imarflex Battery Manufacturing Corporation. However, his testimony was dispensed with as the parties have stipulated that he did not receive the Memoranda marked as Exhibit "D" and "E".

4. ENGR. BERNARDO DELA CRUZ

He is a Property Manager and a Pollution Control Officer at One Covered Center, Julia Vargas, Ortigas, Pasig City. His testimony was likewise dispensed with in view of the stipulation of the parties that he will testify on matters covered by the testimony of Rey Nasol which was admitted by the prosecution.

5. ATTY. DIANETH L. BALANCIO

She was the former Chief of Business Permit and Licensing Office of Pasig City and the current Acting City Administrator of Pasig City. Her testimony was dispensed with after a stipulation on the genuineness and due execution of defense Exhibit "11" which is the Ordinance of Pasig City.

6. LEO PACUAN

He was a Paralegal and Process Server of Enviserve, Inc. from August 2006 to December 2007 only because after that period, the Directors of Enviserve declared Insolvency and it did not operate anymore. In fact, he was not able to get his 13th month pay in December 2007.

As an employee, he attended seminars that Enviserve conducted as he is tasked to distribute the materials and escort the participants. He remembered the names of all the speakers

who attended their seminars and these are Former EMB-NCR Regional Director Roberto Sheen, Former LLDA Gen. Manager Santiago and Former LLDA Gen. manager Manda. In all such occasions, the father of accused was never present as a speaker.

On re-cross, he admitted that he never attended a seminar in 2006 but only in June 2007.²²

On July 11, 2018, accused orally offered his Exhibits "1" to "30" inclusive of its submarkings which the Court admitted.²³

DOCUMENTARY EVIDENCE

EXHIBITS	DESCRIPTION
1	Ex Parte Order issued by City Mayor Soledad Eusebio
2	Temporary Lifting Order of RI Chemical Corporation
3	Closure Order issued to Mr. Jesus Francisco of MERALCO
4	Letter to Mayor Eusebio by Melina O. Tecson
5	Letter of Horizon Condominium Association to Accused
6	Letter of Horizon Condominium Association to Atty. Ricardo Lim
7	Minutes of Meeting held on Feb. 17, 2005
8	Minutes of Meeting held on April 8, 2005
9	Letter of Chemphil Group to Mayor Eusebio
10	Letter of DENR to Mayor Eusebio
11	Ordinance of Sangguniang Panglungsod Blg. 09 Series of 2003
12	Template of Good Governance
13	A future for our Children
14	Philippine Governance Digest
15	News clippings from Star newspaper dated December 8, 2013
16	Photo of Galing Pook Award
17	Photo of DOH Red Orchid Awards 2011
18	Photo of Recognition Award
19	Photo of Gold Award by International Awards for Livable Communities 2013 to Government of Pasig
20	Photo of Silver Award by International Awards for Livable Communities 2013 to Government of Pasig
21	Photo of Bronze Award by International Awards for Livable Communities 2013 to Government of Pasig
22	Photo of Livecom Awards 2013

²² TSN, July 11, 2018, p. 15

²³ Records, Vol. II p. 224

23	Photo of award from National LGU Eco Champions Project
24	Photo of Certificate of Appreciation issued by DENR to Pasig City
25	Photo of Plaque of Recognition by IGES
29	Environmental Permit to Operate dated March 21, 2006
30	Environmental Permit to Operate dated April 3, 2007

ISSUES

The sole issue in the instant case is whether or not accused is guilty beyond reasonable doubt of violating Section 3(e) of R.A. No. 3019.

THE FACTS

Culled from the evidence adduced by the prosecution, both testimonial and documentary, *vis-à-vis* the admissions and stipulations made in the course of the trial in the instant case, the following facts have been duly established:

Accused was appointed City Government Department Head II assigned to the City Environment and Natural Resources Office (CENRO) of the City of Pasig.

On January 5, 2006, Enviserve, Inc., through its president, Romualdo C. Bonilla sent CENRO a Proposal to conduct a capacity building training through the conduct of an Environmental Industrial and Commercial Congress in Pasig City. The proposal includes, the following, to wit:

1. One day training/seminar with focus on pollution prevention; waste reduction, reuse, recycle management; industrial energy efficiency; environmental natural laws and policies; and sewerage treatment plan maintenance and operation. Participating manufacturing companies in Pasig City shall pay corresponding registration fees.
2. Technical experts and resource persons who will provide the training.
3. Certificate of Participation.





4. Free training for 10 CENRO Staff.

On the said *Proposal*, the accused affixed her conformity thereto.

Citing Sec. 7(b) of R.A. 7862; Sec. 6, Art. 99 of R.A. 7160; and Art. 122(n) of R.A. No. 7160 as bases, accused issued the Basic Principles and Guidelines in the Conduct of Environmental Industrial and Commercial Congress in which "all owners/operators of business, industrial, commercial, or agricultural establishments should appoint/designate an Environmental Protection Officer duly accredited by CENRO²⁴ and in the aforesaid guidelines, it is provided that attendance to the environmental congress is a "pre-requisite for accreditation as Environment Protection Officer."²⁵

Thereafter, accused issued two Certifications²⁶ both dated June 25, 2014 stating that completion of/attendance to the environmental congress is one of the requirements in securing an Environmental Permit to Operate from CENRO and this permit is a mandatory requirement for the issuance of a Business permit as affirmed in a letter²⁷ of then Chief of the Business Permit and License Office of Pasig City, Ms. Ma. Theresa B. Hernandez.

Considering the aforesaid *Proposal*, the prosecution maintains that Enviserve, Inc. was not legally qualified to handle such undertaking as the said company was incorporated²⁸ on November 22, 2006 only. Interestingly, in the cover sheet²⁹ submitted along with the Articles of Incorporation and By-laws of Enviserve, Inc. accused was named therein as the contact person.

On the other hand, accused argued that when she assumed office on November 2001, CENRO had no template on how to operate the task of protecting the environment of Pasig City. Nonetheless, her office implemented several closure orders to high-profile companies within Pasig City. She further alleged that at the time of CENRO's inception, the Pasig City Government had no budget for training Environment Protection

²⁴ Paragraph 5 of Exhibit B

²⁵ Ibid, Paragraph 9

²⁶ Exhibits F and G

²⁷ Exhibit H

²⁸ Exhibit K

²⁹ Exhibit I



Officers. It was only Enviserve, Inc. which made an offer and submitted the proposal at no cost to the City Government. She averred that due to the urgency of addressing the environmental issues which can cause irreparable damages, she was prompted to partner with Enviserve, Inc. Thus, the said collaboration of CENRO with Enviserve, Inc. was done in good faith and was merely an answer to the demand for an information drive and capacity building for Environment Protection Officers.

COURT'S RULING

The requirements of the law on government procurements should never be taken for granted because grave consequences await those who violate them.³⁰

It should be noted that the general rule for procurement of equipment, properties or services/consultancy is to comply with the requirements of R.A. 9184 otherwise known as *Government Procurement Act* which provides that:

SEC. 4. Scope and Application. – This Act shall apply to the Procurement of Infrastructure Projects, Goods, and Consulting Services, regardless of source of funds, whether local or foreign, by all branches and instrumentalities of government, its departments, offices and agencies, including government-owned and/or -controlled corporations and local government units, subject to the provisions of Commonwealth Act No. 138. Any treaty or international or executive agreement affecting the subject matter of this Act to which the Philippine government is a signatory shall be observed.

xxxxxx

SEC. 10. Competitive Bidding. – All Procurement shall be done through Competitive Bidding, except as provided for in Article XVI of this Act. (emphasis supplied)

By way of exception, no bidding is required in the following instances:³¹

³⁰ Sison vs. People, G.R. No. 170339, 170398-403, March 9, 2010

³¹ Sec. XVI of R.A. 8294



- (1) Limited Source Bidding;
- (2) Direct Contracting;
- (3) Repeat Order;
- (4) Shopping;
- (5) Negotiated Procurement

In the instant case, the services required by CENRO should have passed through a public bidding considering that it does not fall within the purview of any of the exceptions above-cited.

The Proposal made by Enviserve, Inc. on January 5, 2006 was hastily acceded to by the accused as she did not even bother to check whether said company has the legal personality to transact with the City of Pasig in the first place. The belated filing of the Articles of Incorporation before the SEC by Enviserve, Inc. on November 2006 further bolsters this fact.

Considering that no competitive bidding was made in the procurement of the subject services and that the same does not even fall within the exceptions provided by law, accused was therefore charged with violation of Sec. 3(e) of R.A. 3019.

Section 3(e) of RA 3019 provides:

Section 3. Corrupt practices of public officers—In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

xxx

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest impartiality, evident bad faith or gross inexcusable negligence. xxx.

To be found guilty under said provision, the following elements must concur:

- (1) the offender is a public officer;*

[Handwritten signature]

(2) the act was done in the discharge of the public officer's official, administrative or judicial functions;

(3) the act was done through manifest partiality, evident bad faith, or gross inexcusable negligence; and

(4) the public officer caused any undue injury to any party, including the Government, or gave any unwarranted benefits, advantage or preference.³²

Accused was charged with the above-cited provision when she accepted the proposal of Enviserve, Inc. without considering its qualification and complying with the requisite selection process.

In *Ramon A. Albert vs. Sandiganbayan*³³, the Supreme Court held:

The second element provides the different modes by which the crime may be committed, that is, through manifest partiality, evident bad faith, or gross inexcusable negligence. In Uriarte v. People, this Court explained that Section 3(e) of RA 3019 may be committed either by dolo, as when the accused acted with evident bad faith or manifest partiality, or by culpa, as when the accused committed gross inexcusable negligence. There is manifest partiality when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. Evident bad faith connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. Evident bad faith contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes. "Gross inexcusable negligence" refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected. (citations omitted)

The first two elements are undisputed. Being the CENRO Department Head, accused was a public officer discharging official functions when she gave Enviserve, Inc. the go signal to provide for the training services of the business owners, including her staff.

³² *Bautista v. Sandiganbayan*, G.R. No. 136082, 12 May 2000

³³ G.R. No. 164015, February 26, 2009

The third element of Section 3 (e) of RA 3019 may be committed in three ways, i.e., through manifest partiality, evident bad faith or gross inexcusable negligence. Proof of any of these three in connection with the prohibited acts mentioned in Section 3(e) of RA 3019 is enough to convict.³⁴

As explained, "partiality," "bad faith" and "gross negligence" mean:

"Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud." "Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property."³⁵

The action of the accused was done with evident partiality and bad faith. The fact that her name is reflected as the contact person in the cover sheet³⁶ of the Corporation and that her office collaborated in the services provided by it, puts her in a bad light and cast doubt as to her true involvement in the said company. Below is the photo of the said cover sheet for ready evaluation.

COVER SHEET 11-20

ENVISERVE, INC.

(Company's Full Name)

71 - C - 5 RICA B, BAGONG ILOG, PASIG CITY

(Business Address: No. Street City / Town / Province)

Maquel Naciongayo
Contact Person

628-4260
Company Telephone Num

12-31
Month Day
Fiscal Year

A I - E L
FORM TYPE

11
Month
Annual

³⁴ Fonacier v. Sandiganbayan, G.R. No. 50691, 5 December 1994

³⁵ ibid

³⁶ Exhibit K

Maquel Naciongayo

M

Further, the partiality of the accused became apparent when she readily affixed her conformity to the January 5, 2006 proposal of Enviserve, Inc. when fact is, it was only on November 22, 2006 or eleven months later that said company would register with the Securities and Exchange Commission (SEC) and accused clearly became privy to Enviserve, Inc. when her name was evidently shown as its contact person as illustrated above and which fact she did not controvert.

Moreover, this inexplicable conformity of accused to the proposal of Enviserve, Inc. without even checking the legal and financial requirements of Enviserve, Inc. in providing and conducting an environmental congress is quite telling.

As reiterated in ***Sison vs. People***³⁷ there are two ways a public official or employee violates Sec. 3 (e) of R.A. 3019 namely: (a) by causing undue injury to any party including the government; or by (b) giving any private party any unwarranted benefits, advantage or preference which is what happened to the instant case. Albeit no public funds were used in the project involved, nonetheless, accused gave *unwarranted benefits, advantage or preference* to Enviserve, Inc. when accused issued the subject Memoranda requiring attendance to the subject environmental congress as a pre-requisite for the issuance of the Environmental and Business to Operate permits. This action has been prejudicial to other business entities which could have participated squarely in a public bidding for the aforesaid consultancy services needed, had the accused complied strictly with the provisions of the law.

THE PENALTY

On the penalty imposed, RA 3019 lays down the penalty for a violation committed under its Secs. 3, 4, 5, and 6. To recapitulate:

Section 9. Penalties for violations. (a) Any public officer or private person committing any of the unlawful acts or omissions enumerated in Sections 3, 4, 5 and 6 of this Act shall be punished with imprisonment for not less than one year nor more than ten years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income.

³⁷ G.R. No. 170339, 170398-403, March 9, 2010




Applying Sec. 1 of the Indeterminate Sentence Law which provides that in offenses punishable by a law, other than the Revised Penal Code, the maximum term of the penalty should "not exceed the maximum fixed by said law and the minimum (should) not be less than the minimum term prescribed by the same."

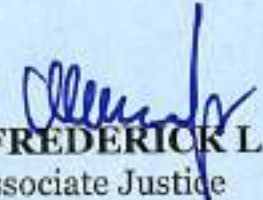
WHEREFORE finding accused guilty of violation of Section 3(e) of R.A. 3019, this Court hereby sentences her to suffer imprisonment of One (1) year and one (1) month, as minimum to three (3) years, as maximum; and perpetual disqualification from holding public office.

SO ORDERED.


LORIFEL L. PAHIMNA
Associate Justice

We concur: ...


OSCAR C. HERRERA, JR.
Chairperson
Associate Justice


MICHAEL FREDERICK L. MUSNGI
Associate Justice

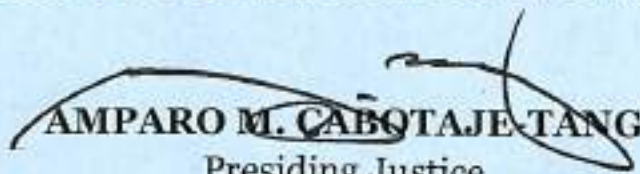
ATTESTATION

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


OSCAR C. HERRERA, JR.
Chairperson
Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's attestation, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


AMPARO M. CABOTAJE TANG
Presiding Justice





