

REPUBLIC OF THE PHILIPPINES  
SANDIGANBAYAN  
Quezon City

Fifth Division

PEOPLE OF THE  
PHILIPPINES,  
Plaintiff,

- versus -

MANUEL NIEVES TABORA,  
Accused,

-----and-----

PEOPLE OF THE  
PHILIPPINES,  
Plaintiff,

-versus-

MANUEL NIEVES TABORA,  
Accused.

CASE NO. SB-17-CRM-1161

FOR: Violation of Section 3(c) of  
R.A. No. 3019 (Anti-Graft and  
Corrupt Practices Act, as amended)

CASE NO. SB-17-CRM-1162

FOR: Violation of Section 7(d) of  
R.A. No. 6713 (Code of Conduct  
and Ethical Standards for Public  
Officials and Employees)

Present:  
LAGOS, J., Chairperson,  
MENDOZA-ARCEGA, and  
CORPUS-MAÑALAC, JJ.

*Promulgated:*

May 17, 2019 *Jed*

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DECISION

**LAGOS, J.:**

These cases stemmed from a complaint filed on December 27, 2011 before the Office of the Ombudsman (OMB) by International Minerals Marketing & Advising, Inc. (IMMAI), a domestic corporation duly organized under Philippine laws, represented by Steven R. Shieldkret, against herein accused Manuel Nieves Tabora (or simply, "Tabora"), who at the time relevant to these cases, was the Assistant Budget Officer and *acting*

Provincial Administrator of Nueva Vizcaya (or simply, "N. Vizcaya"), and a private individual also named in the case caption as "Krisjann A. Mapile"<sup>1</sup> (or simply, "Mapile"), docketed as OMB-L-C-12-0008-A, for violation of Section 3(b) of Republic Act No. 3019 (or simply, RA 3019), a.k.a. the "Anti-Graft and Corrupt Practices Act", violation of Sec. 7 of R.A. No. 6713 (or simply, RA 6713), a.k.a. the "Code of Conduct and Ethical Standards for Public Officials and Employees", and for Estafa under Article 315(2)(b) of the Revised Penal Code (RPC),<sup>2</sup> in connection with the intended sale/purchase of copper ores mined from the province of N. Vizcaya. After preliminary investigation, the OMB in its Resolution dated January 20, 2016, found probable cause to indict Tabora, with violation of Section 7(d) of RA 6713, while the charges for violation of Sec. 3(b) of RA 3019 and Estafa against Tabora and Mapile were dismissed.<sup>3</sup> Though not specifically mentioned in its resolution, it appears Mapile was deemed not covered under RA 6713, not being a government official or employee. With respect to the complaint for Estafa, the OMB resolved that, "[c]onsidering that the charge for Estafa against respondents hinges on the alleged breach of the Agreement by respondents which has to be settled through arbitration, this Office is constrained to dismiss the charge."<sup>4</sup> Subsequent thereto, upon complainant's motion for reconsideration which the OMB partially granted, the OMB in its Order dated June 9, 2016, ruled: "This Office finds probable cause to also indict respondent **Manuel N. Tabora** for violation of Section 3(c) of RA 3019, in addition to violation of Section 7(d) of RA 6713. Let the corresponding Informations be filed in the appropriate court."<sup>5</sup>

Accused Tabora, is charged under two (2) separate Informations for violation of Section 3(c) of RA 3019 and Sec. 7(d) of RA 6713, allegedly committed, as follows:

Crim. Case No. SB-17-CRM-1161 for Violation of Sec. 3(c), RA 3019

**INFORMATION**

X X X

That on or about 12 April 2011, or sometime prior or subsequent thereto, in the Province of Nueva Vizcaya, Philippines, and within the jurisdiction of this Honorable Court, accused **MANUEL NIEVES TABORA**, a high ranking public officer, being the Acting or Officer-In-Charge (OIC) Administrator of the provincial government of Nueva Vizcaya, and its Assistant Provincial Budget Officer, in such acting capacity, committing the crime in relation to his office and taking

<sup>1</sup> Records, p. 5, Footnote no. 3 in OMB-L-C-12-0008-A Resolution which states, "Also referred to in the Complaint and pleadings as Mapile." (emphasis added) "Mapile" is the preferred spelling herein.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Id.*, p. 14.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Id.*, p. 20; emphasis in the original.

advantage thereof, did then and there willfully, unlawfully and criminally request and receive for his personal benefit the amount of **Two Hundred Fifty Thousand Pesos (Php250,000.00)**, covered by Banco de Oro Check No. 0005302, from Steven R. Shieldkret, representative of International Minerals & Advising, Inc. (IMMAI) with office address at 45-C South Pacific Plaza Towers, Pacific Avenue, Taguig City, in consideration of his (Tabora's) promise and assurance of assistance in securing or obtaining for IMMAI the required permits for its ore trading business, such as but not limited to Ore Transport Permit and/or Mineral Ore Export Permit, to the damage and detriment of the Government and the public interest. (Emphasis in the original.)

CONTRARY TO LAW.

Crim. Case No. SB-17-CRM-1162 for Violation of Sec. 7(d) of RA 6713

#### INFORMATION

X X X

That on or about 12 April 2011, or sometime prior or subsequent thereto, in the Province of Nueva Vizcaya, Philippines, and within the jurisdiction of this Honorable Court, accused **MANUEL NIEVES TABORA**, a high ranking public officer, being then the Acting or Officer-In-Charge (OIC) Administrator of the provincial government of Nueva Vizcaya, and its Provincial Budget Officer, in such acting capacity, committing the crime in relation to his office and taking advantage thereof, did then and there willfully, unlawfully and criminally request and receive for his personal benefit the amount of **Two Hundred Fifty Thousand Pesos (Php250,000.00)**, covered by Banco de Oro Check No. 0005302 from Steven R. Shieldkret, representative of International Minerals Marketing & Advising, Inc. (IMMAI) with office address at 45-C South Pacific Plaza Towers, Pacific Avenue, Taguig City, in connection with the issuance or obtaining for IMMAI of an Ore Transport Permit and/or Mineral Ore Export Permit, which permits are issued under the authority of the Provincial Mining Regulatory Board (PMRB) where the provincial governor sits either as chairman or member, and which transaction may be affected by the functions of the office of the OIC provincial administrator, to the damage and detriment of the Government and the public interest. (Emphasis in the original.)

CONTRARY TO LAW.

The subject Informations were filed and docketed with the Sandiganbayan on June 7, 2017. Subsequent thereto, a Hold Departure Order (HDO)<sup>6</sup> and two (2) separate warrants of arrest<sup>7</sup> were ordered issued by the Court against the accused on June 13, 2017. The accused posted cash bail bond for his provisional liberty in both cases on June 13, 2017.<sup>8</sup> Accused, assisted by counsel, was arraigned and pleaded not guilty on both charges on

<sup>6</sup> Records, p. 56.

<sup>7</sup> *Id.*, p. 57.

<sup>8</sup> *Id.*, p. 71.

August 8, 2017.<sup>9</sup> Preliminary conference followed on September 17, 2017. Pre-trial was set on October 3, 2017, whereupon the Court issued the Pre-Trial Order<sup>10</sup> in these cases, signed by the parties, which embodies, among other things, the following:

### III. PROPOSALS FOR STIPULATIONS

#### A. For the Prosecution

1. Identity of the accused and the jurisdiction of the Honorable Court - **ADMITTED**;

2. Accused Manuel Nieves Tabora, at the time material to the Informations, was a public officer, being the Assistant Provincial Budget Officer and Officer-in-Charge (OIC) Provincial Budget Administrator of the Province of Nueva Vizcaya - **ADMITTED**;

3. As OIC Provincial Administrator and member of the Provincial Mining Regulatory Board (PMRB), accused Tabora has the authority to issue Ore Transport Permit (OTP) and Mineral Ore Transport Permit (MOTP) for the transportation of mineral ores - **ADMITTED**, with qualification that Tabora has the authority to issue Ore Transport Permit (OTP) and Mineral Ore Transport Permit (MOTP) for the transportation of mineral ores as a member or part of the PMRB;

4. That accused Tabora and Krisjan Mapile met Steven R. Shieldkret, President and representative of International Minerals Marketing and Advising, Inc. (IMMAI) on April 12, 2011 at Highlander Hotel, Solano, Nueva Vizcaya - **the fact of meeting is ADMITTED**;

5. That IMMAI is a juridical entity organized and existing by virtue of the Corporation Code - **DENIED**, subject to the presentation of the Articles of Incorporation of IMMAI;

6. That IMMAI engaged in the business of buying, selling and exporting fine copper ores - **DENIED**, subject to the presentation of the Articles of Incorporation of IMMAI;

7. That on April 19, 2011, accused Tabora received BDO Check No. 0005302 in the amount of Two Hundred Fifty Thousand Pesos (Php250,000.00) from Steven R. Shieldkret - **DENIED**;

8. That accused Tabora deposited the BDO Check No. 0005302 to his bank account at Landbank of the Philippines, Solano Branch - **ADMITTED**, as appearing on the check.

#### B. For accused Tabora:

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<sup>9</sup> *Id.*, p. 109.

<sup>10</sup> *Id.*, pp. 143-148.

*M/ot*

1. That the participation of accused Tabora was merely to introduce Krisjan Mapile to Steven R. Shieldkret, President and representative of International Minerals Marketing and Advising, Inc. (IMMAI) – **DENIED.**
2. That Tabora did not actively participate in the negotiation between Krisjan Mapile and IMMAI – **DENIED.**

#### **IV. ISSUE**

- A. For the Prosecution:** Whether or not accused Manuel Nieves Tabora is guilty beyond reasonable doubt for the crimes charged in the Informations.
- B. For Accused Tabora:** Whether or not the accused committed the crimes charged against him.

Pre-trial was deemed closed and terminated on October 3, 2017 and, after the parties agreed to utilize the Judicial Affidavit Rule,<sup>11</sup> trial ensued.

#### **PROSECUTION'S EVIDENCE**

The prosecution's witnesses were Atty. Conrado Pineda Sajor, Ms. Odette Angeles Pastoral, Ms. Praxima Lagundi, Ma. Carla Lucia M. Torralba, Engr. Mario A. Ancheta, Steven Robert Shieldkret as representative of the private complainant IMMAI, and Hermes A. Dichosa. The witnesses gave their testimonies through their judicial affidavits, supplemented by redirect and/or cross-examination, or through direct testimony, as with witness Shieldkret.

**Atty. Conrado Pineda Sajor** was present in court and ready to testify at the hearing on November 22, 2017 but, after some discussions between counsels and the Court, his testimony was dispensed with and, in lieu thereof, the Court entered the following Order: "...The prosecution was ready to present Atty. Conrado Pineda Sajor who had executed and prepared a Judicial Affidavit. Upon proposal for stipulations by Prosecutor Cortez, to the effect that the intended witness, Atty. Sajor can identify the affidavit executed by Steven Shieldkret, and that he was the one who notarized the same and assisted in the preparation of the attachments of the affidavit, these stipulations were agreed to by counsel for the accused. Atty. Beltran proposed a counter stipulation that Atty. Sajor has no personal knowledge of the facts stated in the affidavit of the complainant and this was also admitted to by the prosecution."<sup>12</sup>

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<sup>11</sup> *Id.*, p. 142.

<sup>12</sup> TSN dated November 22, 2017, p. 11. See also Records, Order at p. 243.

**Ms. Odette Angeles Pastoral.** Upon the prosecution's request, the Court allowed it to adopt, subject to cross-examination by the defense and additional direct by the prosecution, the purposes stated in the judicial affidavit of the witness,<sup>13</sup> viz.: "1. That she is currently the Branch Manager of Banco de Oro (BDO), Bonifacio Global City-One McKinley Place Branch; 2. That International Minerals Marketing & Advising, Inc. (IMMAI) is a client of BDO Bonifacio Global City-One McKinley Place Branch with Account No. 007418000381; 3. That per Statement of Account, an amount of TWO HUNDRED FIFTY THOUSAND PESOS (PHP 250,000.00) was debited from its account corresponding to the payment of BDO Check No. 5302; [and] 4. To testify on other matters relevant in this case."<sup>14</sup>

She attested in her Judicial Affidavit that as Branch Manager of BDO, it was part of her duties and responsibilities to "maintain a record of the branch as the bank may allow, like customer information records, bank statements, certifications and other bank documents."<sup>15</sup> In compliance with the Court's subpoena, she brought with her and identified during her testimony: (1) the Customer Account Record of IMMAI (International Minerals Marketing and Advising, Inc.), marked as Exh. K, under Account No. 007418000381; (2) the Signature Card pertaining to the IMMAI account, marked as Exh. "K-1", signed by Steven R. Shieldkret and Hermes A. Dichosa; (3) the Statement of Account of April 2011 of IMMAI with Account No. 007418000381, marked as Exh. "L"; (4) the microfilm copy of BDO Check No. 5302, with the pertinent portion showing the negotiation of BDO Check No. 5302 marked as Exh. "M" and the BDO Check No. 5302, marked as Exh. "O". The witness stated in her judicial affidavit that, per the Statement of Account, there were two (2) separate transactions on the subject account, specifically: "That the first transaction is on April 20, 2011, which is an on-us check issuance for the amount of Pesos: Two Million (P2,000,000.00)", and "The last transaction is on April 27, 2011, which is a fund transfer of the amount of Pesos: Two Hundred Fifty Thousand (P250,000.00)."<sup>16</sup> Furthermore, "[b]ased on the Statement of Account for April 2011, BDO Check No. 5302 was negotiated on April 27, 2011 amounting to Pesos: Two Hundred Fifty Thousand (Php 250,000.00), and was debited from the account of IMMAI."<sup>17</sup>

On cross-examination by the defense counsel, the witness admitted that during the time material to the case, she was a Service Officer of BDO and "personally assisted" or was "personally in-charge with the IMAI (sic) account."<sup>18</sup> She confirmed that with respect to the Two Hundred Fifty

<sup>13</sup> TSN dated November 23, 2017, p. 6.

<sup>14</sup> Judicial Affidavit of Odette Pastoral, Records p.222, 223

<sup>15</sup> *Id.*, p. 224.

<sup>16</sup> *Id.*, Answer to Q9, Records, p. 225.

<sup>17</sup> *Id.*, p. Answer to Q11, p. 225.

<sup>18</sup> TSN dated November 23, 2017, p. 14.

Thousand (Php250,000.00) check (Exh. "M") which was saved on microfilm, that she did not have "any personal knowledge as to the transaction relating to the said check"<sup>19</sup> nor "any participation as to the alleged transaction subject matter of this case between IMAI (sic) and the accused."<sup>20</sup>

Upon clarificatory questioning by the Court as to "who encashed the check or into whose account was the check deposited," she answered that the subject check "was deposited to Mr. Manuel Tabora's account,"<sup>21</sup> and that her answer was "based on the back dorsal portion of the check."<sup>22</sup> She confirmed that the check was "deposited" and "not encashed over the counter."<sup>23</sup>

**Ms. Praxima Lagundi.** The witness was a Department Manager of the Land Bank of the Philippines and present in court at the hearing on December 5, 2017. By stipulation, the defense admitted "to the deposit of the subject BDO Check in his [accused Tabora's] Land Bank Account." As was discussed at the previous hearing on November 23, 2017, the Bank Manager of Landbank Solano Branch was to be presented in court to corroborate the testimony of witness Pastoral (BDO Bank Manager) in that the accused had a Landbank account<sup>24</sup> as well, and to which the defense agreed to stipulate on, i.e., "regarding the existence of the Landbank account."<sup>25</sup> In addition, the defense agreed to admit the Offer of Testimony, as found in the Judicial Affidavit of witness Lagundi, to wit: "1. That she is currently the Department Manager III of Land Bank of the Philippines (LBP), Solano Branch; 2. That accused Manuel N. Tabora is the client/depositor of Land Bank of the Philippines, Solano Branch with Account Number 0431-1764-91; 3. That on April 25, 2017, the amount of Two Hundred Fifty Thousand Pesos (Php 250,000.00) was deposited to the LBP Account No. 0431-1764-91 under the name of Manuel N. Tabora; 4. To identify and authenticate the Client Information and Specimen Signature Card of Manuel Nieves Tabora under Account No. 0431-1764-91, and the Certified Statement of Account of Manuel Nieves Tabora for the month of April 2017; and 5. To testify on other matters relevant to the case."<sup>26</sup>

In her Judicial Affidavit dated November 24, 2017, the witness Lagundi described her duties and responsibilities as Department Manager III of the LBP, Solano Branch, which included "monitoring deposits and other bank products targets; maintain a record of the branch as the bank may

<sup>19</sup> *Id.*, p. 15.

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

<sup>22</sup> *Id.*, p. 16.

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> *Id.*, p. 17.

<sup>26</sup> Judicial Affidavit of Praxima L. Lagundi, Records, p. 256-260, dated November 24, 2017.

allow, like customer information records, bank statements, certifications, and other bank documents.<sup>27</sup> The witness brought with her to court the following subpoenaed records: the Customer Information Record of Manuel Nieves Tabora under Account No. 0431-1764-91 (marked as Exhs. "P" to "P-3"), the Signature Card of Manuel Nieves Tabora (marked as Exhs. "Q" and "Q-1"), and the Certified Statement of Account of Manuel Nieves Tabora for the month of April 2011 (marked as Exhs. "R" to "R-1").<sup>28</sup> The witness attested in her Judicial Affidavit that based on the Signature Card, Account No. 0431-1764-91 was opened by Manuel N. Tabora; that based on the Certified Statement of Account of Manuel Nieves Tabora for the month of April 2011, an amount of Two Hundred Fifty Thousand Pesos (Php 250,000.00) was deposited in the same account on April 25, 2011.<sup>29</sup> In view of the foregoing, the direct/open court testimony of witness Lagundi was dispensed with.<sup>30</sup>

**Ma. Carla Lucia M. Torralba.** This witness appeared in court during the same hearing on December 5, 2017 attended by witness Lagundi, to testify about the position and service record of the accused. With respect to the appearance of both witnesses Lagundi and Torralba, the Court issued the following Order: "At the hearing, the prosecution was ready to present two witnesses in the persons of Praxima Lingan Lagundi and Ma. Carla Lucia M. Torralba, who were ready to testify on their Judicial Affidavits. However, upon manifestation by Atty. Shelamarie M. Beltran, counsel for the accused, that she is willing to stipulate on and admit the offer of testimony of these witnesses as contained in the Judicial Affidavit, and that she has no objection to the additional markings moved for by the prosecution, the open court testimonies of these witnesses were dispensed with."<sup>31</sup>

Per her Judicial Affidavit<sup>32</sup> dated November 20, 2017, witness Torralba started at her job and was Planning Officer III at the Provincial Planning and Development Office of N. Vizcaya in 1998, until she became and currently holds the position of Provincial Human Resource Officer in the province since 2003. Among her duties and responsibilities in her current position include the maintenance of and to certify service and other employment records of all employees of the Provincial Government of N. Vizcaya. Her open court testimony was dispensed with by the Court in view of the stipulations entered into by prosecution and the defense, the latter admitting the Offer of Testimony in her Judicial Affidavit<sup>33</sup> dated November 20, 2017 and the marking of additional exhibits mentioned in the Affidavit,

<sup>27</sup> *Id.*, p. 258

<sup>28</sup> *Id.*, 258, 259; TSN dated December 5, 2017, pp. 5-6.

<sup>29</sup> *Id.*, p. 259

<sup>30</sup> TSN dated December 5, 2017, p.6.

<sup>31</sup> *Id.*, p. 14; Records, p.291.

<sup>32</sup> Records, p. 267-292.

<sup>33</sup> Judicial Affidavit of Ma. Carla Lucia M. Torralba; Records, p. 267, 268.



viz.: "1. That she is currently the Provincial Human Resource Management Officer of the Provincial Government of N. Vizcaya; 2. That based on available records, accused Manuel N. Tabora wa a former employee of N. Vizcaya from August 2, 1982 until he was Terminated on December 5, 2016; 3. Accused Manuel N. Tabora was designated as Officer-in-Charge of the Provincial Administrator's Office on April 4, 2007 (Exh. "D") and as Acting Provincial Administrator of N. Vizcaya on January 2, 2008 (Exh. "C") by then incumbent governor of N.Vizcaya, Luisa Lloren Cuaresma. She identified and authenticated the following documents:

EXHIBITS	DESCRIPTION
"A" TO "A-3"	PERSONAL DATA SHEET OF MANUEL N. TABORA
"B" TO "B-1"	SERVICE RECORD OF MANUEL N. TABORA
"C"	DESIGNATION ORDER NO. APP-120-08 DATED JANUARY 2, 2008
"D"	DESIGNATION ORDER DATED APRIL 4, 2007
"S"	NOTICE OF TERMINATION DATED DECEMBER 5, 2016

According to Torralba in her Judicial Affidavit, the Personal Data Sheet (PDS) (Exh. "A") and Service Record (Exhs. "B" to "B-1") of the accused show that "Manuel Tabora was an official of the Provincial Government of Nueva Vizcaya from August 2, 1982 until his termination on December 5, 2016" and that the governor's Designation Order dated April 4, 2007 (Exh. "D") and Designation Order No. APP-120-08 (Exh. "C"), are "proof that Manuel N. Tabora acted as Officer-in-Charge of the Provincial Administrators (sic) Office on April 4, 2007 and as Acting Provincial Administrator effective January 2, 2008 in addition to his duties and responsibilities as Budget Officer;"<sup>34</sup> Accused Tabora was removed from office by Notice of Termination (Exh. "S"), signed by then N. Vizcaya Governor Carlos M. Padilla, dated December 5, 2016.<sup>35</sup>

**Engr. Mario A. Ancheta.** Witness appeared in court on January 16, 2018. He was then the Officer-in-Charge (OIC), Regional of Director of the Mines and Geo-Sciences Bureau of the DENR-MGB Region 2 in Tuguegarao City, and Chairman of the "Commission Mining and Regulatory Board" in the Province of Nueva Vizcaya. He offered in court a Certification signed and dated November 6, 2017, though he acknowledged he subscribed thereto on oath on November 9, 2017. He brought the document with him in connection with the subpoena *duces tecum* issued by the Office of the Special Prosecutor dated October 27, 2017.<sup>36</sup> The prosecution requested that

<sup>34</sup> *Id.*, p. 271.

<sup>35</sup> *Id.*, p. 270.

<sup>36</sup> TSN dated January 16, 2018.

the Certification "be formed part of the direct testimony of witness Ancheta and marked as Exh. "T" and "T-1".<sup>37</sup> The Certification reads:

#### CERTIFICATION

In connection with the Subpoena Duces Tecum issued to the undersigned dated 27 October 2017 regarding SB-17-CRM-1161 to 62, this is to certify that we do not have the following documents:

1. Composition of Members of Provincial Mining and Regulatory Board in the Province of Nueva Vizcaya from years 2007 to 2011;
2. List of holders of Ore Transport Permit (OTP) and Mineral Ore Export Permit (MOEP) in the Province of Nueva Vizcaya in the years 2007-2011;
3. Certification whether or not the person named Manuel Nieves Tabora is a member of PMRB of Nueva Vizcaya for the years 2007-2011;
4. Certification whether or not the person named Krisjan April A. Mapile is a holder of OTP and/or MOEP.

That it was only on October 12, 2011 when the PMRB of Nueva Vizcaya was formally organized which was subsequent to the solicitation made for the nominations for the PMRB members on September 16, 2011;

That, organization of the PMRB is pursuant to the provisions of Republic Act No. 7942, otherwise known as the Mining Act of 1995 and the DENR Memorandum for the PMRB members on September 16, 2011;

That, composition of the said organized PMRB of Nueva Vizcaya was composed of the following:

Engr. Mario A. Ancheta OIC, Regional Director MGB Regional Office No. II	-	Chairman
Hon. Ma. Luisa I. Loren Cuarsma Governor Province of Nueva Vizcaya	-	Vice-Chairman
Mr. Jose P. Leviste	-	Member
Mr. Teody Tabil Representative, Small Scale Mining	-	Member (Interim)
Sr. Eden I. Orlino, spc Representative Non-Government Organization	-	Member

<sup>37</sup> *Id.*, p. 11

That, from the period of the organization of the said PMRB, there were no OIP and/or MOEP applications which were deliberated and/or recommended by the Board for the Approval of the Governor.

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At that hearing on January 16, 2018, the Court ordered that, due to the accused's absence despite notice and for failure to pay the postponement fee, his right to cross-examine the witness was deemed waived.<sup>38</sup>

**Steven Robert Shieldkret.** The witness appeared in court and testified on March 6, 2018.<sup>39</sup> While testifying, he identified, affirmed and confirmed the due execution of his "Complaint Affidavit" (as referred to by the prosecution), which ultimately led to the filing of the instant cases in court. The said complaint was originally filed by the witness before the Office of the Ombudsman (OMB), docketed as OMB-L-C-12-0008-A, for "Gross violation of 'Anti-Graft and Corrupt Practices Act (RA 3019) &/or Code of Conduct and Ethical Standards for Public Officials and Employees (RA 6713)' and Estafa." When shown with a copy of a "Fine Copper Ore Trial Lot(s) Sale Purchase Agreement" (Exh. "F" to "F-5") dated April 19, 2011, and after perusing the subject document, he affirmatively identified the same as the "Fine Copper Ore Trial Lot(s) Sale Purchase Agreement" he had executed involved in the present cases, evidenced by his signature on every page thereof.<sup>40</sup> Also when shown "BDO Check No. 5302" dated April 19, 2011, he identified his signature thereon and affirmatively identified the check as the same BDO Check bearing the same number that he issued to accused Tabora.<sup>41</sup>

Upon request of the prosecution, the same Complaint Affidavit (marked as Exhs. "I" to "I-9") was admitted by the Court to form part of the direct testimony of the witness.<sup>42</sup> Relatedly, upon its formal offer in evidence by the prosecution,<sup>43</sup> the defense admitted to its existence, but with objections, specifically, that "the purposes that accused made a promise and assurance that he will secure the necessary permits for IMMAI and his request for consultancy are specifically objected to for being self-serving...."<sup>44</sup> In his Complaint Affidavit dated December 12, 2011 (technically designated as "Affidavit-Complaint", marked as Exhs. "I" to "I-9"), Shieldkret identified himself as the duly authorized representative of International Minerals Marketing & Advising, Inc., as complainant, "to represent the Corporation in the institution of criminal and/or civil action

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<sup>38</sup> *Id.*, p. 13; Records, p. 302.

<sup>39</sup> TSA dated March 6, 2018.

<sup>40</sup> *Id.*, p. 7.

<sup>41</sup> *Id.*, p. 9.

<sup>42</sup> *Id.*, p. 9-10.

<sup>43</sup> Records, pp. 332, 337-339.

<sup>44</sup> *Id.*, pp. 401, 402, Comment/Opposition dated April 16, 2018.

against **MANUEL TABORA & KRISJAN MAPILI (sic)**" (emphasis in the original), per the Secretary's Certificate dated December 3, 2011, attached thereto as Annex "A" (marked as Exh. "E"). To recall, Krisjann Mapili (a.k.a. "Mapile") was Tabora's co-respondent in Shieldkret's complaint in OMB-L-C-12-0008-A. In Tabora's Counter-Affidavit in the OMB case/investigation, he identified Mapile as someone whom he knew to be personally engaged in the copper ore business "using a Permit from a legitimate permittee, hence the OTP [Ore Transport Permit] being sought for [by Shieldkret/IMMAI] and alleged to have been promised them is already in place."<sup>45</sup> In its Resolution dated January 20, 2016, the complaint leveled against Mapile was dismissed by the OMB.<sup>46</sup>

Shieldkret claims in his Affidavit-Complaint that on April 12, 2011, he met with Tabora and Mapile at Highlander Hotel in Solano, N. Vizcaya, and discussed the sale of copper ore from a mine site at Kasibu, N. Vizcaya. Tabora introduced himself as the Provincial Administrator of N. Vizcaya and Tabora promised to him to provide, among other things, the required Ore Transport Permit and/or Mineral Ore Export Permit in connection with the sale.<sup>47</sup> Then, on April 19, 2011, he executed a Fine Copper Ore Trial Lot(s) Sale Purchase Agreement allegedly with the respondents, where the latter "obligated themselves to procure, produce and deliver fine copper ore, produced from ball mill processing facilities with copper range of fifteen (15%) percent minimum to forty (40%) percent. The average copper content per initial trial lot shall be approximately twenty five (25%) percent or higher on average [item 1 of the agreement]."<sup>48</sup> Under the agreement, "the initial trial (test) lot shall be a minimum of fifty (50) WMT (wet metric tons) valued in accordance with the schedule provided in the Agreement...."<sup>49</sup> On that same day he "paid to public respondent Tabora[,] representing payment for consultancy/handling fee of Five Thousand Pesos (P5,000.00) per WMT as stipulated in the agreement," the sum of Two Hundred Fifty Thousand Pesos (P250,000.00), covered by BDO Check No. 0005302.<sup>50</sup> Separate payment of Two Million Pesos, covered by BDO Check No. 0005303, was deposited directly April 20, 2011 to Mapili's through the BDO account at One Mckinley, Taguig.<sup>51</sup> On May 10, 2011, they met again at Highlander Hotel and they asked for more money "due to the overhead costs and the fact that they were controlling the quality of the ore material"<sup>52</sup> and also, "Tabora claimed that he had to give respondent Krisjan (sic) [Mapile] One Million Pesos to assist with the cargo purchase and for immediate delivery of the

<sup>45</sup> Records, p. 52, Counter-Affidavit of Manuel Tabora y Nilves In OMB-C-12-0008-A.

<sup>46</sup> Records, pp. 5, 14.

<sup>47</sup> Affidavit-Complaint, Exh. "I", par. 4, p. 2.

<sup>48</sup> *Id.*, par. 5, pp. 2-3.

<sup>49</sup> *Id.*, par. 7, p. 3.

<sup>50</sup> *Ibid.*, par. 8.

<sup>51</sup> *Ibid.*, par. 9.

<sup>52</sup> *Id.*, par. 11, p. 4

goods.”<sup>53</sup> On May 11, 2011, Shieldkret issued BDO Check No. 0005309 for Two Million Seven Hundred Fifty Thousand Pesos (P2,750,000.00) to Mapile.<sup>54</sup> Despite all these payments, Shieldkret maintained that “complainant corporation have (sic) not received any information concerning the “ore product delivery as well as any conclusive proof of the grade/specification to conform with the agreement.”<sup>55</sup> During a visit to the stockyard to inspect the ore materials, he noticed that the said materials had “clay type balls” and when tested “said ore minerals contained 4.35% copper ore that is way below that threshold limit of 15% to 30% as per the agreement.”<sup>56</sup> The technical specifications of the copper ore subject of the sale agreement were specified in the sale agreement. Also, during the same visit, he told respondents “to complete all documentation of the ore materials such as but not limited to the Invoice, Ore Transport Permit and Mineral Ore Export Permit[,] including the ore grade/specification documentation which respondents assured and will be send (sic) thru courier.”<sup>57</sup> According to Shieldkret, IMMAI was disappointed on the quality of the ore materials and the deficiencies of the documents needed for the transaction, such as but not limited to the “ore transport permit, mineral ore export permit, etc.” that respondents undertake to provide.<sup>58</sup> Although the respondents emailed to complainant a Certificate of Analysis showing that the ore materials showing that the ore materials at the stockyard was 23%, it did not specify “who undertook the analysis or how it was conducted.” Shieldkret later found out while surfing the internet that a certain “Earthcore Trading” was offering for sale the same ore materials seen at the stockyard on May 10, 2011, which they had promised to sell and deliver to complainant.”<sup>59</sup>

On cross-examination, Shieldkret testified that IMMAI was no longer in business; that Tabora and Mapile had “taken” from him a total of Six Million pesos (P6,000,000.00). Said fund was “personal money” and, thus, he said, “I decided that I could not continue business in the Philippines, Ma’am.”<sup>60</sup> As President of IMMAI, he personally transacted with the people he did business with. The first time he went to N. Vizcaya in April 2011, the “first person” he met with was a certain retired Fiscal who lived in the province. When mentioned by defense counsel, he confirmed the Fiscal’s name to be Felimon Villasan. It was during the meeting at the hotel in Solano, N. Vizcaya on April 12, 2011 that Villasan introduced Tabora to him. Tabora, in turn, introduced Mapile to him “as his assistant” and “the person to handle the business for him.”<sup>61</sup> He admitted without a doubt that

<sup>53</sup> *Ibid.*, par. 12.

<sup>54</sup> *Id.*, par. 11, pp. 4-5.

<sup>55</sup> *Id.*, par. 13, p. 5.

<sup>56</sup> *Id.*, par. 14 and 15, pp. 5-6.

<sup>57</sup> *Id.*, par. 15, p. 5.

<sup>58</sup> *Id.*, par. 18, p. 6.

<sup>59</sup> *Id.*, par. 20-21, pp. 6-7.

<sup>60</sup> TSN dated March 5, 2018, p. 10.

<sup>61</sup> *Id.*, p. 14.

the Fine Copper Ore Trial Lot(s) Sale Purchase Agreement was signed between him and Mapile at the hotel in Solano, and that Tabora "did not want his name shown" in the agreement.<sup>62</sup> The agreement was not notarized because insofar as he was concerned, it was "not a requirement."<sup>63</sup> He said he paid Tabora the same day they signed the agreement. He confirmed that the BDO check for "P250,000.00 represents payment for consultancy or hiring fee to Mr. Tabora." The "consultancy or handling fee" was part of the agreement because it was "the way Mr. Tabora wanted it done to include that in the contract that was written which I did...before I brought that up on April 19 for signature."<sup>64</sup> He denied that the P250,000.00 was actually given to Villasan. He explained, "The check was written out to Mr. Tabora and he deposited it into his bank account and that's the extent that I recall about the check, ma'am. [What] Mr. Tabora and Mr. Villasan may have agreed to between themselves had nothing to do with me." He wanted Villasan included in his complaint for estafa, but his lawyer then decided against it.

**ATTY. HERMES A. DICHOSA.** He was the prosecution's last witness. He testified on his judicial affidavit which served as his direct testimony.<sup>65</sup> He affirmed and confirmed the veracity and due execution of his judicial affidavit. He was Corporate Secretary of IMMAI. The company was engaged in the business of trading with mineral products and by-products, and sometimes technical consultation and services on mining sector. He knew Steven Shieldkret as President of IMMAI. Part of his duties and responsibilities was attending and taking minutes of IMMAI directors' and members' meetings; that he issued the Secretary's Certificate (Exh. "E") attesting to the authority of Steven Shieldkret to file a criminal case against Manuel N. Tabora and Krisjann Mapile. He knew Tabora and Mapile when he met with them, together with Shieldkret, at Highlander Hotel, in Solano, N. Vizcaya on April 12, 2011. The purpose of the meeting was to discuss the sale of copper ore coming from a mine site at Kasibu, N. Vizcaya and the contract details. He claims that "[d]uring the meeting, Manuel Tabora introduced himself as the Provincial Administrator of the Province of Nueva Vizcaya, and he promised us that he will provide the required documentation such as Ore Transport Permit and Mineral Ore Export Permit in case our transactions will materialize."<sup>66</sup> By 'transaction' he meant sale of copper ore. In particular, "He told us that he will provide the Ore Transport Permit and Mineral Ore Export Permit to IMMAI if we will purchase the copper ore from Krisjan Mapili (sic) and upon payment of Consultancy/Handling Fee of Five Thousand Pesos per Wet Metric Tons of copper ore."<sup>67</sup> He identified the Fine Copper Ore Trial Lot(s) Purchase Agreement (Exhs. "F" to "F-5")

<sup>62</sup> *Id.*, p. 15.

<sup>63</sup> *Id.*, p. 16.

<sup>64</sup> *Ibid.*

<sup>65</sup> Records, Order dated April 4, 2018, p. 329.

<sup>66</sup> *Id.*, Judicial Affidavit of Hermes A. Dichosa dated November 29, 2017, p. 280, 283.

<sup>67</sup> *Id.*, p. 284.

and, according to Dichosa, as part of Tabora's participation, "He assured us that he shall be responsible for obtaining the Ore Transport Permit and Mineral Ore Export Permit for IMMAI to allow us the legal export of the copper ore from the Philippines."<sup>68</sup> He confirmed the check payment to Tabora, and according to Dichosa, "Manuel Tabora instructed us to issue the Check in his name as payee."<sup>69</sup> He co-signed with Shieldkret the BDO Check No. 5302 issued as payment to Tabora. According to Dichosa, "The sale did not materialize because the ore mineral products of Krisjan Mapili contained 4.35% copper ore that was way below the threshold limit of 15% to 30% in violation of the agreement."<sup>70</sup> When they requested for Tabora and Mapile to complete all the documentation of the ore materials such as Invoice, Ore Transport Permit (OTP) and Mineral Ore Transport Permit (MOTP), they "discovered that Manuel N. Tabora and Krisjan Mapili (sic) deceived us because there was no application for OTP and MOEP (sic) being deliberated by the Provincial Mining and Regulatory Board in the Province of Nueva Vizcaya and Krisjan Mapili (sic) is not a holder of OTP and/or MOEP (sic)."<sup>71</sup> Thus, the Board of Directors of IMMAI decided to sue Tabora and Mapile.

On cross-examination, Dichosa admitted he could not recall when IMMAI was incorporated; that the company had ceased operation, but had no information if it had actually been dissolved. Before the company's business transaction in N. Vizcaya, it had a successful ore purchase somewhere in Tarlac. He gave legal advice to Shieldkret from time to time. He accompanied Shieldkret when he ventured into N. Vizcaya to buy (copper) ore. He had basic knowledge of the processes involved in securing permits and other licenses with regard to ore purchases because he was previously in-house counsel of other mining companies. Indeed, it was Villasan who introduced Tabora to him and Shieldkret; that Tabora was the Provincial Administrator of N. Vizcaya at that time and Villasan told them "that he asked for the help of Mr. Tabora in securing the necessary permits with the provincial government of Nueva Ecija (sic)."<sup>72</sup> He testified he could not really recall who introduced Mapile to him and Shieldkret; that Mapile "represented himself to be the authorized person to sell" the ore IMMAI wanted to purchase in N. Vizcaya. He only learned that Tabora would "provide the required documentation in case the sale of the ore will materialize" from what Shieldkret had told him.<sup>73</sup> He did not try to verify the alleged representation or promise of Tabora. The Fine Copper Ore Trial Lot(s) Sale Agreement was prepared personally by Shieldkret, although he reviewed the same. He is not sure if he was present when the agreement was signed. His involvement overall was his attendance in two meetings with

<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.*

<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid.*

<sup>72</sup> *Id.*, p. 16

<sup>73</sup> *Id.*, p. 18

Tabora, Mapile and Villasán, review of the subject agreement, and co-signing of BDO check. He did not do any follow-up work, verification or to make sure if the sale transaction was actually consummated. According to him, he "did not perform any executive function in the company."<sup>74</sup>

Upon clarificatory questioning by the Court on why the BDO check was issued to Mr. Tabora, Dichosa answered that it was "...the consideration for Mr. Tabora in helping or securing the OTP which is Ore Transport Permit and the MEOP (sic) which is the Mineral Ore Transport Permit." When asked in a follow-up question: "But you, yourself said earlier that Mr. Tabora never represented to you directly that he would do those things for IMMAI?", he answered, "Yes."

After the presentation of its last witness, the prosecution filed its Formal Offer of Documentary Exhibits<sup>75</sup> on April 6, 2018, viz.:

EXHIBIT	DESCRIPTION
"A" to "A-3"	Certified True Copy of the Personal Data Sheet of Manuel N. Tabora consisting of four (4) pages
"B" to "B-1"	Certified True Copy of the Service Record of Manuel N. Tabora consisting of two (2) pages
"C"	Certified True Copy of the Designation Order No. APP-120-08 dated January 2, 2008
"D"	Certified True Copy of the Designation Order dated April 4, 2007  (stipulated/admitted facts, page 4, Pre-Trial Order date 3 October 2017)
"E"	Original Copy of the Secretary's Certificate of International Minerals Marketing & Advising, Inc. (IMMAI) dated 14 December 2011 executed by Hermes Dichosa;
"F" to "F-5"	Original Copy of the Fine Copper Ore Trial Lot(s) Sale/Purchase Agreement dated 19 April 2011 consisting of six (6) pages;
"F-5-a"	Signature of Steven R. Shieldkret
"G"	Banco de Oro (BDO) Check No. 0005302 dated 19 April 2011 issued by IMMAI to Manuel N. Tabora amounting to Php250,000.00;
"H"	Dorsal Portion of Banco de Oro (BDO) Check No.

<sup>74</sup> *Id.*, p. 20.

<sup>75</sup> Records, pp. 332-345.



	0005302 dated 19 April 2011;
"I" to "I-9"	Original copy of the Complaint-Affidavit of Steven Shieldkret dated 12 December 2011, consisting of ten (10) pages with Annexes from "A" to "H".
"J"	Original copy of Customer Information Record of IMMAI from Banco de Oro, Bonifacio Global City – One MacKinley Place Branch  (Pages 227 to 231, Court's Record)
"K"	Original copy of the Customer Account Record of IMMAI from Banco de Oro, Bonifacio Global City – One MacKinley Place Branch  (Page 232, Court's Record)
"K-1"	Original copy of Signature Card of IMMAI  (Page 233, Court's Record)
"L"	Original Copy Statement of Account of IMMAI for the month of April 2011  (Page 234, Court's Record)
"M"	Microfilm Copy of BDO Check No. 5302;
"O"	Microfilm Copy of the Dorsal portion of BDO Check No. 5302  (Page 236, Court's Record)
"P" to "P-3"	Certified True Copy from the original of the Client Information and Specimen Signature Card of Manuel N. Tabora from Land Bank of the Philippines, Solano Branch
"Q"	Certified True Copy from the original of the Signature Card of Manuel N. Tabora at LBP Solano Branch
"R"	Original copy of the Certified Statement of Account of Manuel N. Tabora for the month of April 2011
"S"	Certified true copy from the original of the Notice of Termination dated 5 December 2016
"T"	Original Copy of the Certification dated 9 November 2017 issued by Engr. Mario A. Ancheta, OIC, Regional Director, Mines and Geosciences Bureau, Regional Office, No. II.

On April 18, 2018, the Court resolved to admit all the exhibits offered by the prosecution, over some opposition filed by the defense.<sup>76</sup> The presentation of evidence by the defense followed.

**DEFENSE EVIDENCE**

<sup>76</sup> Records, Minutes of the Proceedings held on April 18, 2018, p. 405.

The defense presented as its witnesses the accused Tabora himself and Frank Levi Codillo-Ugsad.

**MANUEL NIEVES TABORA.** He testified in court on August 7, 2018. He introduced himself as “a suspended Assistant Provincial Budget Officer of the Province of Nueva Vizcaya.”<sup>77</sup> His testimony was offered by the defense “to refute the allegations that he committed the crimes charged, and likewise...to identify his counter-affidavit and other pertinent documents in relation to this case”<sup>78</sup> or cases, and to which the prosecution raised no objection and stipulated that witness “can identify the due execution and existence of his counter-affidavit” and “no cross-examination”<sup>79</sup> of the witness. During the hearing, Tabora identified his signature on his Counter-Affidavit<sup>80</sup> (Exhs. “1”, “1-a” to “1-c) which, according to him, he prepared himself, and he affirmed the truthfulness of his statements therein. Asked by the defense, “Mr. Tabora, you admitted that you received a check from the private complainant in the amount of P250,000.00?” he answered, “Yes, ma’am.” When asked further, “But you mentioned in your counter affidavit particularly no. 2 thereof that this payment was actually, that you actually turned over this amount to a certain Mr. Villasan?” he again replied, “Yes, ma’am.”<sup>81</sup> He testified that Mr. Villasan, “as introduced to him,” was a retired Regional Prosecutor of Region III. He added, “He [Villasan] was a visitor in the office of the governor[,] [S]ince aside from being the appointed Assistant Provincial Budget Officer, I was designated as the Acting Provincial Administrator wherein (sic) the absence of the Honorable Governor, Mr. Villasan was showed to my office, Ma’am,”<sup>82</sup> addressing defense counsel; that it was the first time he met Mr. Villasan and he did not know him personally. Mr. Villasan asked about “the possibility of granting small scale mining permit.” He described Mapile as someone “known to me having been one of the casual employee[s] of the Provincial Capitol, and actually I assisted his parents who were charged with large scale estafa when his parents were detained at the provincial jail.” Going back to the P250,000.00 BDO, he testified that the check was “actually” intended for Mr. Villasan, but, as he explained when asked by defense counsel, he only allowed himself to be the payee because, “Actually ma’am, Mr. Villaran (sic) convinced me that the check will be issued in my name since I know the managers of the banks in the province. However, the check was issued for the purposes of expenditures related to the arbitration group that they formed. I did not even looked at the contract signed by, between the complainant and Mr. Mapili (sic), but according to them[,] there is a group of arbitration. Now, problem

<sup>77</sup> TSN dated August 7, 2018, p. 5.

<sup>78</sup> *Id.*, p. 6.

<sup>79</sup> *Ibid.*

<sup>80</sup> The Counter-Affidavit of Manuel Tabora y Nieves appears on pp. 52-54 of the Records, not pp. 40-42 as manifested by defense counsel at the hearing on August 7, 2018.

<sup>81</sup> TSN dated August 7, 2018, p. 9.

<sup>82</sup> *Id.*, p. 10.

is... (interrupted)[.]”<sup>83</sup> He actually had two meetings with Shieldkret. First time was when Shieldkret was introduced to him. Second was when there was already a prepared contract between Shieldkret and Mr. Mapile. He was at that meeting because he “accompanied Mr. Mapili (sic) since Mr. Mapili (sic) is using one of the licenses of the still valid small scale mining license.”<sup>84</sup> He received the BDO check from complainant Mr. Steven Shieldkret himself. Mr. Villasan told him “they need the cash,” so Villasan asked him [Tabora] to talk to the bank manager, i.e., of the Landbank of the Philippines, that the clearing be waived. Tabora narrated, “However, when I went to the bank, the bank manager told me that they cannot waive the clearing so it should be deposited under my account. So what happened is, I withdrew the amount of P250,000.00 out of my personal savings to send to Mr. Villasan while the check is still under clearing.”<sup>85</sup> He sent the cash through “M Lhuiller” to Villasan’s residence in Barangay Bitas, Cabanatuan City, Nueva Ecija. When asked if he had evidence to prove it, he explained, “The problem is, I was not able to look into those deposit slip because when, before the end of the term of the governor, there was already an appointed provincial administrator, so I went back to my position as Assistant Provincial Budget Officer, the transferred documents might be the cause of the loss of those deposit slip[s].”<sup>86</sup> He even visited the office of M Lhuiller in N. Vizcaya to get proof of the money he had sent, but was told that their records were only kept for so many years and “they doubt if they can still provide me”<sup>87</sup> the record that he needed. He lost contact with Mr. Villasan since the P250,000.00 money transfer.

The prosecution did not conduct any cross-examination. The Court instead examined the witness. When quizzed about his earlier admission of being “a suspended government official,” Tabora disclosed, “Actually Your Honors, I was dismissed by the Honorable Ombudsman, in its order, I was dismissed [with] perpetual disqualification to hold any government office because of that case.”<sup>88</sup> He admitted it was an administrative case arising from the same facts involved in these cases.<sup>89</sup> He claimed no “personal”, much less “extra personal,” relationship with Mr. Villasan, as to warrant trusting him and even withdrew P250,000.00 from his savings account to advance the money to Mr. Villasan.<sup>90</sup> When queried further why he did such a “very unusual thing to accommodate” Mr. Villasan, he replied, “One of his convincing statement Your Honor is that my name will not be included in the contract, so I did not even bother to read the contract between them.”<sup>91</sup>

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<sup>83</sup> TSN dated August 7, 2018, p. 11.

<sup>84</sup> *Id.*, pp. 12-13.

<sup>85</sup> *Id.*, p. 13.

<sup>86</sup> *Id.*, p. 14.

<sup>87</sup> *Ibid.*, p. 14.

<sup>88</sup> *Id.*, p. 15.

<sup>89</sup> *Id.*, p. 16.

<sup>90</sup> *Ibid.*

<sup>91</sup> *Ibid.*

When told by the Court, he admitted that he cannot be named in the contract because he was an incumbent official. He denied any involvement at all in the subject transactions. Asked a second time why he advanced the money to Mr. Villasan, he said, "I trusted the check issued Your Honor to replace my fund."<sup>92</sup> Lastly, when asked why have such kind of trust on Sheildkret when the latter had just been introduced by Mr. Villasan, he responded, "Actually, Your Honor[,] it is only now that I am thinking of those things."

**ATTY. FRANK LEVI-CODILLO-UGSAD.** The parties stipulated that the witness was the notary public who notarized the Counter Affidavit of Krisjan Mapile dated March 19, 2012, which the defense marked as Exh. "5", and he can identify the said affidavit and his signature thereon. It appears on the face of the counter-affidavit that it was stamped received by the Office of the Ombudsman on April 2, 2012 in connection with OMB-L-C12-0008-A. The prosecution made a counter stipulation that "the witness has no personal knowledge on the facts stated in the counter affidavit of Krisjan Mapile and that he cannot testify on the veracity of the contents" thereof.<sup>93</sup> With the foregoing, the open court testimony of Atty. Ugsad was ordered dispensed with by the Court.<sup>94</sup>

The defense filed its Formal Offer<sup>95</sup> of documentary exhibits on October 29, 2018, viz.:

**Exhibits 1 with sub-markings**

Description: Counter-Affidavit of Manuel N. Tabora dated 19 March, 2012

**Exhibits 2<sup>1</sup>, 3<sup>2</sup>, 4<sup>3</sup>**

Description: Designation Order dated 4 April 2007, Personal DataSheet and Service Records of Manuel N. Tabora

**Exhibit 5**

Description: Counter-Affidavit of Krisjann Mapile dated 19 March 2012

**FINDINGS OF FACT**

Delving on the judicial affidavits of witnesses, including their direct testimonies, the stipulations and/or admission of the parties, the documents

<sup>92</sup> *Id.*, p. 17.

<sup>93</sup> See TSN dated October 18, 2018.

<sup>94</sup> Records, Order dated October 18, 2018, p. 462.

<sup>95</sup> Records, p. 465.

offered in evidence and other case records, the Court makes the following findings of fact.

Accused Tabora, during the time material to these cases, was the *acting* Provincial Administrator in the Province of N. Vizcaya, in addition to his regular function as incumbent Assistant Provincial Budget Officer. He was tasked to that *acting* job under Designation Order dated January 2, 2008, issued by then governor of the province, Gov. Luisa Lloren Cuaresma. Prior to that, he had been designated by the same governor as *officer-in-charge* of the Office of the Provincial Administrator, effective April 4, 2007. Under each designation, he was vested with "full authority in the management of the said office and shall be responsible to deliver the mandated function of a Provincial Administrator as defined in the Local Government Code."<sup>96</sup>

In year 2011, private complainant herein, IMMAI, as a corporation organized and existing under the laws of the Philippines with principal offices at Unit 45-C South, Pacific Plaza Towers, Pacific Avenue, Taguig City, and engaged in the business of trading with mineral products and by-products, as well as technical consultation and services on mining, ventured into N. Vizcaya to buy copper ores mined in the province for export.

Sometime that same year, the exact date unknown, and it appears to be only by chance, that a certain Mr. Filemon Villasan ("Villasan"), who wanted to see the governor, was referred instead and came to Tabora's office since the governor was not available. Villasan was introduced to Tabora as a retired Regional Prosecutor of Region III. On that occasion, Tabora recalls that Villasan asked about "the possibility of granting small scale mining permit."<sup>97</sup> Nothing else is offered in evidence as to what else transpired during that meeting.

Then, on April 12, 2011, Tabora, Villasan, a certain Krisjann Mapile, and two representatives of IMMAI, namely its President, Steven R. Shieldkret, and Corporate Secretary, Atty. Hermes A. Dichosa, had a meeting at Highlander Hotel in Solano, N. Vizcaya. It turned out that Villasan, according to Shieldkret, was the "first person" or contact he knew of the first time he visited N. Vizcaya earlier in April that year. IMMAI was scouting the province to buy copper ores for export, in connection with the company's business of trading in mineral products and by-products. The purpose of the meeting was to discuss the sale of copper ore coming from a mine site at Kasibu, N. Vizcaya and the contract details relative thereto. Villasan introduced Tabora to Shieldkret and Dichosa. Tabora introduced himself as the Provincial Administrator of N. Vizcaya and, according to Dichosa, "He told us that he will provide the Ore Transport Permit and

<sup>96</sup> Exhibits "C" and "D".

<sup>97</sup> Per the testimony of Mr. Tabora, TSN dated August 7, 2018, p. 13 The date they met each

Mineral Ore Export Permit to IMMAI if we will purchase the copper ore from Krisjan Mapile (sic) and upon payment of Consultancy/Handling Fee of Five Thousand Pesos per Wet Metric Ton of copper ore." Tabora introduced Mapile as his "assistant" who would handle the business for him. Mapile was an old acquaintance of Tabora. He was before a casual employee at the provincial capitol and once Tabora helped Mapile's parents when they were detained at the provincial jail.

A second meeting was held on April 19, 2011 at the same hotel. Mapile was accompanied by Tabora at that meeting because according to Tabora, "Mr. Mapile was using one of the business licenses of the still valid small scale mining."<sup>98</sup> At that meeting, Shieldkret, on behalf of IMMAI, and Mapile entered into a Fine Copper Ore Trial Lot(s) Sale/Purchase Agreement (Exh. "F"), wherein Mapile, as seller, and IMMAI, as buyer, agreed to "procure and/or produce and deliver Philippine origin fine copper ore, produced from ball mill processing facilities with copper range of 15 percent minimum to 40 percent. The average copper content per trial lot shall be approximately 25 percent or higher on average." As part of the agreement, it was provided that "[t]he initial trial (test) lot shall be a minimum of 50 WMT (wet metric ton), rounded to the next highest full container load based upon the minimum road requirements of either the Philippines or country of destination as advised by the buyer." In addition, it was stipulated that from the unit price in par. 5 of the Agreement, "a consultancy/handling fee of Php 5,000 per WMT [Wet Metric Ton] shall be deducted from the final WMT shipped." Shieldkret, together with Dichosa as co-bank signatory, issued in the name Tabora, "representing payment for consultancy/handling fee of Five Thousand Pesos (P5,000.00) per WMT as stipulated in the agreement," BDO Check No. 0005302 dated April 19, 2011 for Two Hundred Fifty Thousand Pesos (P250,000.00), computed as follows: P5,000.00 x 50 WMT = P250,000.00. Separate payments were paid to Mapile on various dates relative to the sale/purchase agreement, to wit: P2,000,000.00 on April 20; P1,000,000.00 on May 10; and P2,750,000.00 on May 11, all in 2011, for a total of P6,000,000.00, according to Shieldkret.

The deal ultimately fell through. Suffice it to state that there were serious disagreements between Shieldkret and Mapile on "the ore product delivery as well as any conclusive proof of the grade/specification to conform with the agreement."<sup>99</sup> Feeling aggrieved, IMMAI filed the Complaint before the OMB to seek redress against Tabora and Mapile. However, only the complaint against Tabora prospered and has now become the subject matter of the present cases. The OMB deemed that the problems arising from the sale/purchase agreement was covered by the arbitration clause in the contract.

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<sup>98</sup> TSN dated August 7, 2018, p. 13.

<sup>99</sup> See Note 55.

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## DISCUSSION AND RULING

### The Case for Violation of Sec. 3(c) of RA 3019

Section 3(c) 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

(c) Directly or indirectly requesting or receiving any gift, present or other pecuniary or material benefit, for himself or for another, from any person for whom the public officer, in any manner or capacity, has secured or obtained, or will secure or obtain, any Government permit or license, in consideration for the help given or to be given, without prejudice to Section thirteen of this Act.<sup>100</sup>

The elements of Section 3(c) violation are as follows:

- (1) The offender is a public officer;
- (2) He has secured or obtained, or would secure or obtain, for a person any government permit or license;
- (3) He directly or indirectly requested or received from said person any gift, present or other pecuniary or material benefit for himself or for another; and
- (4) He requested or received the gift, present or other pecuniary or material benefit in consideration for the help given or to be given.<sup>101</sup>

All the four (4) elements enumerated above are present in this case, i.e., SB-17-CRM-1161.

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<sup>100</sup> For immediate reference, Section 13 of RA No. 3019 provides. "*Suspension and loss of benefits.* – Any incumbent public officer against whom any criminal prosecution under a valid information under this Act or under Title 7, Book II of the Revised Penal Code or for any offense involving fraud upon the government or public funds or property whether as a simple or as a complex offense and in [whatever] stage of execution and mode of participation, is pending in court, shall be suspended from office. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension, unless in the meantime administrative proceedings have been filed against him.

"In the event that such convicted officer, who may have already been separated from the service, has already received such benefits he shall be liable to retribute the same to the government. [As amended by Batas Pambansa Bil. 195, March 16, 1982.] See Villaroman, *Laws and Jurisprudence on Graft and Corruption*, 2010 (3<sup>rd</sup> Ed.), p. 338

<sup>101</sup> Villaroman, p. 138, citing *Mendoza-Ong vs. Sandiganbayan*, G.R. No. 146368-69, October 23, 2003.

As to the first element. Accused Tabora was the incumbent Assistant Provincial Budget Officer and concurrently *acting* Provincial Administrator of N. Vizcaya during the time material to this case, hence, a public officer. It was also stipulated on by the parties.

As to the second (2<sup>nd</sup>) and third (3<sup>rd</sup>) element. The accused was well aware of the requirements of IMMAI in connection with its business plan to purchase for export mineral ores from N. Vizcaya, such as the need for Ore Transport Permit and Mineral Ore Export Permit. More than that, Tabora admitted by way of stipulation that, “[a]s OIC Provincial Administrator and member of the Provincial Mining Regulatory Board, accused Tabora has the authority to issue Ore Transport Permit (OTP) and Mineral Ore Transport Permit for the transportation of mineral ores.”<sup>102</sup> It was also attested by witness Atty. Hermes Dichosa that, “He [Tabora] told us he will provide the Ore Transport Permit and Mineral Ore Permit to IMMAI if we will purchase the copper ore from Krisjan Mapili (sic) and upon payment of Consultancy/Handling Fee of Five Thousand Pesos per Wet Metric Tons of copper ore.”<sup>103</sup> Such a claim by the witness is validated by the explicit provision in the Sale/Purchase Agreement for the payment of consultancy/handling fee amounting P250,000.00 paid to Tabora, equivalent to the value at P5,000.00 per wet metric ton computed as follows: 50 WMT x P5,000.00 = P250,000.00. The fact that Tabora received pecuniary or material benefit for himself is crystal clear. It is purely a ruse that he accepted the check issued in his name as a favor to Villasán, whom he barely knew and only per chance came to his office because the governor was not available at that time. BDO Check No. 0005302, issued in the name of Tabora, received, accepted and deposited by Tabora to his Landbank account, speaks volumes for itself. He claims the check was issued in his name because it was requested by Villasán “since I [Tabora] know the managers of the banks in the province”<sup>104</sup> and that Tabora should deposit it instead to his personal account, ask the bank manager to encash the check outright to avoid the delay entailed by the check-clearing process is a very shallow and incredible excuse. More so, on the ruse that “the check was issued for purposes of expenditures related to the arbitration group that they formed. I [Tabora] did not even looked at the contract signed by, between the complainant and Mr. Mapili (sic)[,] but according to them there is a group of arbitration (sic).”<sup>105</sup> It is remote that just when a contract was signed, the parties would fund an arbitration group and only the buyer at its own expense, would dole out cash for the expectancy of arbitration.

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<sup>102</sup> Note 10, Proposals for Stipulations, Part A, par 3; Records, p. 146.

<sup>103</sup> Note 66, Judicial Affidavit of Hermes A. Dichosa dated November 29; Records, pp. 280, 283.

<sup>104</sup> TSN dated August 7, 2018, p. 21.

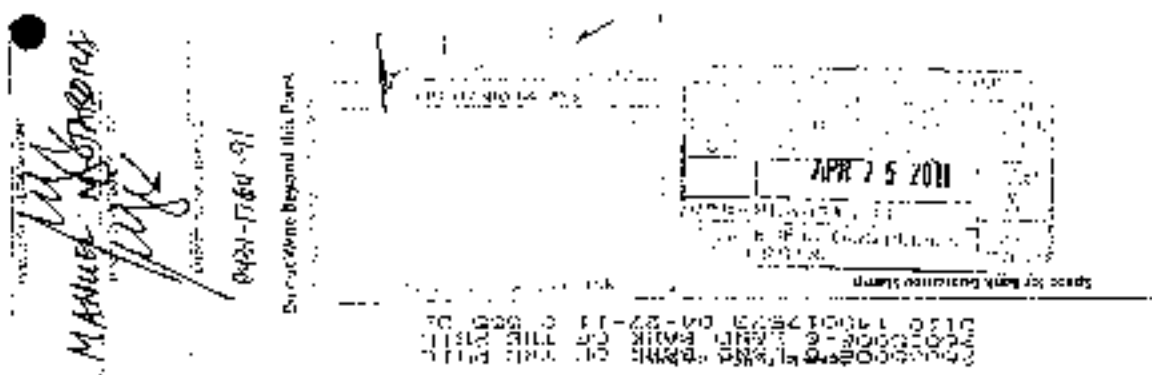
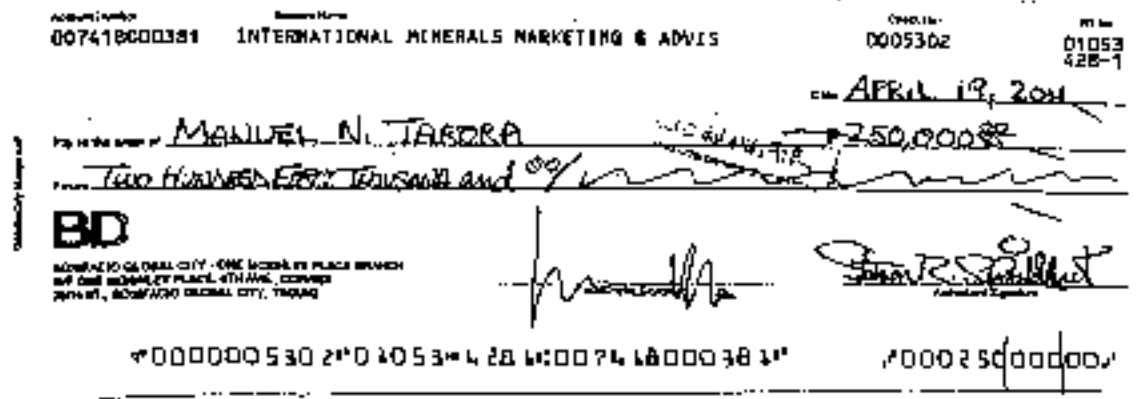
<sup>105</sup> *Ibid.*



The law is clear. It punishes one who receives such a "pecuniary" benefit "for himself or another." "Pecuniary," as defined in Black's Law Dictionary (6<sup>th</sup> ed.), means "[m]onetary; relating to money; financial; consisting of money or that which can be valued in money." The P250,000.00 that Tabora received is the pecuniary benefit that the law speaks about.

Following is a photo-image of BDO Check No. 0005302, dated April 19, 2011, under the Account Name of International Minerals Marketing & Advis[ing] for P250,000.00, issued in favor of payee, Manuel N. Tabora, marked as Exhibit "G", and the dorsal portion of thereof, marked as Exhibit "H", bearing the endorsement signature of Tabora, showing what appears as bank-stamped deposit date of April 25, 2011, to wit:

Exh. G (pa)  
Date: 4/19/11



Exh. H (pa)  
Date: 4/25/11

It appears BDO Check No. 0005302 was not immediately deposited into Tabora's account, which betrays his claim that it was immediately presented for payment, with request to the bank manager to dispense with the bank's "clearing" requirement – so he could then and there pay Villasana the cash proceeds thereof. The Court takes judicial notice that April 19, 2011 was a Tuesday and fell on Holy Week that year. There could have been no regular banking days the following Wednesday, Maundy Thursday and Good Friday of that week. Thus, it took Tabora until the following Monday – April 25, to make the deposit. The deposit on April 25, 2011 appears on

*Handwritten initials/signature*

the Land Bank Certification (Exh. "R"), covering Tabora's saving's account No. 0431-1764-91, showing recorded transactions for the period April 2011, to wit:



**LAND BANK OF THE PHILIPPINES**  
100% HOME REGISTERED  
Sole Depository of the Republic of the Philippines  
Solano, Nueva Vizcaya

**CERTIFICATION**

Exh. 'R' *gab*  
12/5/17

*This is to certify that Manuel N. Tabora, a resident of Purok 1, La Torre South, Bayombong, Nueva Vizcaya is maintaining a savings deposit with this Bank under account number 0431-1764-91 and has the following recorded transactions for the period April 2011, to wit:*

**Bank Statement**  
Account Name: Manuel N. Tabora  
Account Number: 0431-1764-91

Ending Balance March 31, 2011 **₱500,602.78**

Transaction Date	Description	Amount	Outstanding Balance
04.01.2011	Deposit	₱500,000.00	₱1,000,602.78
04.25.2011	Deposit	₱250,000.00	₱1,250,602.78
04.27.2011	Deposit	₱10,000.00	₱1,260,602.78
04.29.2011	Interest Earned	₱1,695.45	₱1,262,298.23
04.29.2011	Tax Withheld	₱339.09	₱1,261,959.14

Ending Balance April 29, 2011 **₱1,261,959.14**

*This certification is issued for whatever legal purposes it may serve. Given this 8<sup>th</sup> day of November, 2017 at Solano, Nueva Vizcaya.*

*Praxima L. Lagundi*  
**PRAxima L. LAGUNDI**  
Department Manager III

*gab*

The ending period, April 29, 2011 was a Friday and last business day for the month. The monthly transactions reckoned in the Bank Statement do not show any withdrawal which could have buttressed Tabora's claim that he sent cash to Villasan to cover the amount of the check that he claims were intended for Villasan.

As to the fourth (4<sup>th</sup>) element, the pivotal role that Tabora had, and for which he could not escape from, was his being then the *acting* Provincial Administrator of N. Vizcaya when the subject business transaction occurred. The Fine Copper Ore Trial Lot(s) Sale Purchase Agreement provides that "[t]he Seller shall be responsible for obtaining the Ore Transport Permit (OTP) and the Mineral Ore Export Permit (MOEP), and shall pay for any costs related thereto allowing of the legal export of the Product from the Republic of the Philippines."<sup>106</sup> IMMAI would definitely need the OTP and the MOEP to be able to legally export the mineral ore it was buying from Mapile. And Tabora was considered the pointman to help to get those permits. It was the obvious consideration that he was paid or given P250,000.00 by IMMAI, which they euphemistically called "consultancy/handling fee." As duly noted in the Resolution in OMB-L-C-12-0008-A, viz.:

Under R.A. 7160 or the Local Government Code (LGC), the provincial administrator's appointment is co-terminus with the provincial governor, hence the position has been declared as primarily confidential and imbued with a close intimate relationship with the office of the governor.

It behooves to note that the issuance of the OTP for the transport of mineral ores from small-scale mining areas is under the authority of the Provincial Mining Regulatory Board (PMRB). The provincial governor sits either as chairman or member of the PMRB. It can be reasonably deduced therefore that Shieldkret issued the check to Tabora believing that as provincial administrator, the latter could provide the needed permits in the course of his official duties or in connection with such transportation that may be affected (sic) by the functions of his office.<sup>107</sup>

The fact that the business transaction fell through or did not materialize to a satisfactory conclusion between the parties thereto is immaterial insofar as the culpability of Tabora is concerned for violation of Section 3(c) of the RA 3019. The crime charged against Tabora was consummated when he accepted the check and deposited the same to his account. It is preposterous to believe that he advanced or gave P250,000.00 of his own money to Villasan *gratis et amore*, assuming Villasan really had a share on that money. The P250,000.00 is not mere pittance for Tabora who was collecting or receiving a salary of P18,334.00 per month at that time, as

<sup>106</sup> Exhibit "F", Paragraph 12, Licenses /Permits.

<sup>107</sup> Records, OMB Resolution, p. 5, 12.

shown in his Service Record.<sup>108</sup> That he even went to the office of money remittance company, M Lhuiller, to get proof that he sent the money to Villasan, but records were no longer available, deserves, if anything, very scant consideration.

The Case for Violation of  
Section 7(d) of RA 6713

Section 7(d) of RA 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees provide:

**Section 7. Prohibited Acts and Transactions.** – In addition to acts and omissions of public officials and employees now proscribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

xxx

(d) Solicitation or acceptance of gifts. Public officials and employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value from any person in the course of their official duties or in connection with any operation being regularly regulated by, or any transaction which may be affected by the functions of their office. (underscoring supplied)

It appears that violation of Sec. 7(d) of RA 6713 is very much akin in coverage or scope to that of Sec. 3(c) of RA 3019, which prohibits: "(c) Directly or indirectly requesting or receiving any gift, present or other pecuniary or material benefit, for himself or for another, from any person for whom the public officer, in any manner or capacity, has secured or obtained, or will secure or obtain, any government permit or license, in consideration for the help given or to be given, without prejudice to Section thirteen of this Act." (Underscoring supplied.) While in 3(c) of RA 3019, the phrase "requesting or receiving" is used, Sec. 7(d) uses "solicit or accept." In common parlance, "requesting" and to "solicit" would mean the same thing, such as to ask for something. In fact, in Webster's *All-In-One* Dictionary & Thesaurus (2010 ed.), the verb "solicit" is defined to mean "to approach with a request or plea." (Underscoring supplied.) In *Black's Law Dictionary* (6<sup>th</sup> ed.), it means "to ask for the purpose of receiving." While the object of the solicitation or request in Sec. 7(d) enumerates "gift, gratuity, favor, entertainment, loan or anything of monetary value," and Sec. 3(c) mentions of "gift, present or other pecuniary or material benefit," the two provisions have a common defining object which is "anything of monetary value"

<sup>108</sup> Exhibits "B" for the prosecution and "4" for the defense.

under Sec. 7(d), while Sec. 3(c) speaks of "pecuniary or material benefit." What is pecuniary relates to money, and *vice versa*. While under Sec. 7(d), the prohibited act happens "in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office, while Sec. 3(c) specifically covers "secured or obtained, any Government permit or license, in consideration for the help given or to be given", such as scope could fall within the wider coverage of Sec. 7(d).

Relatedly, it should be noted that under Section 11, prescribing penalties for the offenses covered under RA 6713, it provides that:

**Section 11. Penalties.** - Any public official or employee, regardless of whether or not he holds office or employment in a casual, temporary, holdover, permanent or regular capacity, committing any violation of this Act shall be punished with a fine not exceeding the equivalent of six (6) months' salary or suspension not exceeding one (1) year, or removal depending on the gravity of the offense after due notice and hearing by the appropriate body or agency. If the violation is punishable by a heavier penalty under another law, he shall be prosecuted under the latter statute. Violations of Section 7, 8, or 9 of this act shall be punishable with imprisonment not exceeding five (5) years or fine not exceeding five thousand pesos (5,000), or both, and, in the discretion of the court of competent jurisdiction, disqualification to hold public office. (Underscoring supplied.)

As to penalties, Sec. 9 of RA No. 3019 provides:

**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 six years and one month not more than fifteen 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.

Any complaining party at whose complaint the criminal prosecution was initiated shall in case of conviction of the accused, be entitled to recover in the criminal prosecution with priority over the forfeiture in favor of the Government, the amount of money or the thing he may have given to the accused, or the fair value of such thing.

Following Sec. 11 of RA 6713, in relation to Sec. 9 of RA 3019, accused Tabora should only have been prosecuted for violation of Sec. 3(c) under RA 3019 which carries a heavier penalty between the two statutes. The fine and suspension, including possible removal from office, carries less weight or not heavier than the penalties imposable under Sec. 9 of RA 3019.

**WHEREFORE**, in view of the foregoing, the Court finds accused **Manuel Nieves Tabora**, in criminal case **SB-17-CRM-1161**, guilty beyond

reasonable doubt of violation of Section 3(c) of RA 3019, as amended, and hereby sentences him to an indeterminate penalty of six (6) years and one (1) month, as minimum, up to eight (8) years, as maximum, imprisonment. He is ordered to pay the sum of Two Hundred Fifty Thousand Pesos (P250,000.00), with interest until fully paid to private complainant International Minerals Marketing & Advising, Inc., as civil liability.

The case against Manuel Nieves Tabora in criminal case **SB-17-CRM-1162** for violation of Sec. 7(d) of RA No. 6793 is **DISMISSED**. The bail bond posted by the accused in this case is ordered released, subject to the usual accounting and auditing requirements.

**SO ORDERED.**

  
**RAFAEL R. LAGOS**  
Associate Justice  
Chairperson

**WE CONCUR:**

  
**MARIA THERESA V. MENDOZA-ARCEGA**  
Associate Justice

  
**MARYANN E. CORPUS-MAÑALAC**  
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.

  
**RAFAEL R. LAGOS**  
Chairperson, Fifth Division

**CERTIFICATION**

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's foregoing *Attestation*, it is 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

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