

Republic of the Philippines
OFFICE OF THE OMBUDSMAN

CARLO M. BATALLA,

Complainant,

-versus

Case Nos. _____

For: Violation of Secs. 3 (e) and (g) of R.A. 3019; Secs. 89 and 338 of R.A. 7160; Sec. 10 of R.A. 9184; Sec. 88 of P.D. 1445 and Article 217 of the Revised Penal Code.

LUIS RAYMUND F. VILLAFUERTE, JR., MARIO T. ALICAWAY, LETICIA L. ALIORDE, FORTUNATO C. PEÑA, BERNADETTE G. CARLOS, JAIME M. LITADA, JR., BERNARDO A. PRILA, SANTIAGO V. PAN, JR., MA. LIZERNA D. MOLAVE, and MA. EVA M. RUBIO,

Respondents.

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COMPLAINT-AFFIDAVIT

Complainant CARLO M. BATALLA, of legal age, Filipino, married and residing at Sipocot, Camarines Sur, being under oath, depose and respectfully states:

The Parties

1. Complainant CARLO M. BATALLA is of legal age, Filipino and with residential address at Sipocot, Camarines Sur, where he may be served with summons, pleadings, orders and other processes by this Honorable Office.
2. Respondent LUIS RAYMUND F. VILLAFURTE, JR. ("Respondent Villafuerte") is of legal age, Filipino and a resident of Libmanan, Camarines Sur where he may be served with summons, pleadings, orders and other processes by this Honorable Office. In 2006, he served as Camarines Sur's Provincial Governor.
3. Respondent MARIO T. ALICAWAY ("Respondent Alicaway") is of legal age, Filipino and with postal address at Provincial Capitol Complex, Cadlan, Pili, Camarines Sur, where he may be served with summons, pleadings, orders and other processes by this Honorable Office. In 2006, he served as Camarines Sur's Provincial Treasurer.
4. Respondent LETICIA L. ALIORDE ("Respondent Aliorde") is of legal age, Filipino and with postal address at Provincial Capitol Complex, Cadlan, Pili, Camarines Sur, where she may be served with summons, pleadings, orders and other processes by this Honorable Office. In 2006, she served as Camarines Sur's Provincial Auditor.



5. Respondent FORTUNATO C. PEÑA (“Respondent Peña”) is of legal age, Filipino and with postal address at Provincial Capitol Complex, Cadlan, Pili, Camarines Sur, where he may be served with summons, pleadings, orders and other processes by this Honorable Office. In 2006, he served as Camarines Sur’s Provincial Budget Officer. He is now the incumbent Provincial Vice-Governor.

6. Respondent BERNADETTE G. CARLOS (“Respondent Carlos”) is of legal age, Filipino and with postal address at Provincial Capitol Complex, Cadlan, Pili, Camarines Sur, where he may be served with summons, pleadings, orders and other processes by this Honorable Office. In 2006, she served as Chairman of the Bids and Awards Committee.

7. Respondent JAIME M. LITADA, JR., (“Respondent Litada”) is of legal age, Filipino and with postal address at Provincial Capitol Complex, Cadlan, Pili, Camarines Sur, where he may be served with summons, pleadings, orders and other processes by this Honorable Office. In 2006, he served as member of the Bids and Awards Committee.

8. Respondent SANTIAGO V. PAN, JR., (“Respondent Pan”) is of legal age, Filipino and with postal address at Provincial Capitol Complex, Cadlan, Pili, Camarines Sur, where he may be served with summons, pleadings, orders and other processes by this Honorable Office. In 2006, he served as member of the Bids and Awards Committee.

9. Respondent BERNARDO A. PRILA (“Respondent Prila”) is of legal age, Filipino and with postal address at Provincial Capitol Complex, Cadlan, Pili, Camarines Sur, where he may be served with summons, pleadings, orders and other processes by this Honorable Office. In 2006, he served as member of the Bids and Awards Committee.

10. Respondent MA. LIZERNA D. MOLAVE (“Respondent Molave”) is of legal age, Filipino and with postal address at Provincial Capitol Complex, Cadlan, Pili, Camarines Sur, where he may be served with summons, pleadings, orders and other processes by this Honorable Office. In 2006, she served as head of the Bids and Awards Committee Technical Working Group.

11. Respondent MA. EVA M. RUBIO (“Respondent Rubio”) is of legal age, Filipino and with postal address at Barangay La Purizima, Pili, Camarines Sur, where she may be served with summons, pleadings and other processes by this Honorable Office.

Statement of the Case

12. This complaint is instituted against Respondent Villafuerte who in 2006 served as Governor of the Province of Camarines Sur for violation of R.A. 3019, R.A. 7160, R.A. 9184, P.D. 1445 and Article 217 of the Revised Penal Code (Malversation). The other Respondents are impleaded in the instant case because of their indispensable participation in defrauding the Province of Camarines Sur and malversing the P7,493,030.00 subject matter of the complaint.

Statement of the Case

13. Respondent Villafuerte is the duly elected Governor of Camarines Sur in 2006. His term as chief executive of the province has been characterized with one controversy after another. One particular transaction which created so much uproar among the residents of Camarines Sur was the provincial government’s purchase of Seven Million Nine Hundred Seventy Four Thousand Five Hundred (P7,974,500.00) Pesos worth of GI sheets in December of 2006.

14. Sometime in December 2006, in a financial and compliance Audit dated May 18, 2007, the Commission on Audit (COA) found out that, Respondent Villafuerte approved the Purchase Request for GI sheets valued at Seven Million



Nine Hundred Seventy Four Thousand Five Hundred (P7,974,500.00) Pesos from Respondent Rubio who is doing business under the trade name Kaipaboom Trading Center, copy of the said audit report is hereto attached as **ANNEX "A"** and made part hereof.

15. As stated in the Purchase Request No. 1407 dated December 13, 2006, the said GI sheets were for donation/distribution to families who were severely affected by the onslaught of typhoon Reming which ravaged the province on November 30, 2006.

16. On 20 December 2006, Purchase Order No. 1043 was approved by the Respondents. The Purchase Order states that the Province of Camarines Sur will purchase twenty five thousand (25,000) units of corrugated GI sheets gauge 26 x length 18 and at a cost of Three Hundred Eighteen Pesos and Ninety Eight Centavos (P318.98) per unit. The total cost for the 25,000 GI sheets is Seven Million Nine Hundred Seventy Four Thousand Five Hundred (P7,974,500.00) Pesos. The terms and conditions, particularly on the delivery of the items, were not included in the Purchase Order.

17. The plight of the typhoon victims did not seem to deter the Respondents from making a quick buck out of the procurement of the said GI sheets.

18. Pursuant to the Purchase Order, a Disbursement Voucher¹¹ was executed by the Respondents which allowed the Province of Camarines Sur to issue Check No. 1439562 on 22 December 2006 in favor of Ma. Eva M. Rubio amounting to Seven Million Four Hundred Ninety Six Thousand and Thirty (P7,496,030.00) Pesos net of tax.

19. Respondent Rubio is the proprietor of Kaipaboom Trading Center, the purported supplier of the GI sheets.

20. Curiously, the transaction with Respondent Rubio did not go through the Bids and Awards Committee (BAC) thereby violating Section 10 of R.A. 9184 which provides, to wit:

“Competitive Bidding. – All procurement shall be done through Competitive Bidding, except as provided for in Article XVI of this Act.”

21. Respondent Villafuerte violated this provision when he approved the Purchase Order and the Disbursement Voucher knowing that the disbursement did not follow the prescribed bidding procedure.

22. Respondent Alicaway, as the Provincial Treasurer during that time, also had the corresponding obligation in Section 470 (d) (1) and (2) of the Local Government Code provides, to wit:

“(d) The treasurer shall take charge of the treasury office, perform the duties provided for under Book II of this Code, and shall:

(1) Advise the governor or mayor, as the case may be, the sanggunian and other local government and national officials concerned regarding disposition of local government funds and on such other matter relative to public finance;”



23. Respondent Aliorde, as the Provincial Accountant, had the obligation, as stated in Section 474 (b) (5) of the Local Government Code provides, to wit:

“(b) The accountant shall take charge of both the accounting and internal audit services of the local government unit concerned and shall:

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(5) Review supporting documents before preparation of vouchers to determine completeness of requirements;”

(Underscoring supplied)

24. Respondent Peña, as the Provincial Budget Officer, had the obligation, pursuant to Section 475 (b) (1) and (6) of the Local Government Code, to wit:

“(b) The budget officer shall take charge of the budget office and shall:

(1) Prepare forms, orders, and circulars embodying instructions on budgetary and appropriation matters for the signature of the governor or mayor, as the case may be;

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(6) Coordinate with the treasurer, the accountant, and the planning and development coordinator for the purpose of budgeting;”

25. Respondent Carlos, Litada, Prila, Pan and Molave as members of the Bids and awards committee had the obligation to follow the prescribed bidding procedures under Republic Act No. 7160 and Republic Act No. 9184.

25. Notwithstanding the checks and balances in the Local Government Code, the irregularity of the transaction managed to elude Respondents Villafuerte, Alicaway, Aliorde, Peña, Carlos, Litada, Prila, Pan and Molave.

26. The Respondent public officers violation of the rules was not limited to their failure to follow the prescribed bidding procedures. Considering the typhoon victims’ immediate need for the GI sheets, the same should have been delivered to the Provincial Government immediately. However, the GI sheets were only delivered one (1) month after payment was made by the Provincial Government.

27. To make matters worse, Respondent Rubio even delivered the GI sheets on a piecemeal basis, on the following dates:

(1) January 23, 2007;

(2) January 24, 2007;



- (3) January 25, 2007;
- (4) January 28, 2007 and
- (5) January 29, 2007.

Copies of Delivery Receipt Nos. 0101, 0107, 0117, 0124 and 0127 are hereto attached as **ANNEX “B1” to “B5”** and are made parts hereof.

28. The GI sheets were intended to help Camarines Sur residents repair their houses which were damaged by Typhoon Reming. While it is reasonable to assume that the rehabilitation of Camarines Sur after the disaster would last for more than a month, it was illogical for the Provincial Government to consider buying GI sheets only from Respondent Rubio when, in fact, there were several hardware stores in Camarines Sur which could immediately supply the needed GI sheets for the typhoon victims. Clearly, the Respondents only intended to favor Respondent Rubio for this transaction, notwithstanding the delay which it may cause in bringing relief to Camarines Sur typhoon Reming’s victims.

29. Furthermore, it appears from the abovementioned delivery receipts that Respondent Rubio delivered 25,000 GI sheets which measure Gauge 26 x Length 10 when the Purchase Order No. 1043 clearly states that the Provincial Government of Camarines Sur ordered and paid for GI sheets which measure Gauge 26 x Length 18.

30. Aside from the foregoing irregularities, there is also serious doubt as to whether the GI sheets were actually delivered to the Typhoon Reming victims because the favored supplier Respondent Rubio was apparently selected solely as a conduit for the purpose of procuring the alleged 25,000 pieces GI sheets.

31. In a letter dated June 25, 2008, herein affiant inquired on the financial capability of Respondent Rubio to supply the Province of Camarines Sur of GI sheets of such volume. Respondent Rubio’s failure to respond fortify our suspicion that Kaipaboom Trading Center is nothing but a ghost business entity, copy of said letter is hereto attached as **ANNEX “C”** and made part hereof.

32. On July 1, 2008, herein affiant delivered a privilege speech at the Sangguniang Panlalawigan informing the province of Camarines Sur relative to the existence and alleged disposition by Respondent Villafuerte of the 25,000 GI sheets which the office of Respondent Villafuerte allegedly distributed in response to the calamity wrought by Typhoon Reming on November 30, 2006, copy of said speech is hereto attached as **ANNEX “D”** and made part hereof.

33. In the course of herein affiant delivery of the said July 1, 2008 privilege speech, Board Member Darius S. Nopra stood up to interpellate the herein affiant. Preparatory to his interpellation, Hon. Nopra attested to the receipt by the province of Camarines Sur of the 25,000 GI Sheets from mysterious sources and admitted that he was a recipient of a tranche thereof in the distribution of the said 25,000 GI sheets. Prior to adjournment, herein affiant reminded Board Member Nopra to furnish herein affiant and the Sangguniang Panlalawigan the particulars of his alleged share of said GI sheets.

34. On July 11, 2008, herein affiant sent a letter to Board Member Darius S. Nopra officially requesting for his liquidation report and statement with respect to the GI sheets coursed thru him for distribution to typhoon Reming’s calamity victims, copy of said letter is hereto attached as **ANNEX “E”** and made part hereof.



35. On this same date of July 11, 2008, herein affiant also sent a letter to Atty. Joselito F. Figuracion, the Secretary of the Sangguniang Panlalawigan to effect the necessary communication to Board Member Nopra with respect to the liquidation report of his GI sheets share and likewise herein affiant requested for a copy of the minutes of the session, copy of said letter is hereto attached as **ANNEX “F”** and made part hereof.

36. On July 21, 2008, herein affiant sent a letter to Engr. Edgar A. Cuya, the officer in charge of the Provincial General Services Office of Camarines Sur requesting for the Liquidation report of Board Member Darius S. Nopra with respect to his allocation of GI sheets he received as an aftermath of the November 30, 2006 Typhoon Reming, copy of said letter is hereto attached as **ANNEX “G”** and made part hereof.

37. Respondent Villafuerte, Alicaway, Aliorde, Peña, Carlos, Litada, Prila, Pan and Molave, in their haste to make a quick buck out of the misery of the hapless victims of typhoon Reming didn’t even require Respondent Rubio to issue official receipts in acknowledgment of the payment she received from the provincial government, thus raising doubt whether the Bureau of Internal Revenue collected the taxes out of this despicable transaction.

38. The Provincial Government failed to present a distribution list, with names of the alleged recipients of these 25,000 GI sheets. The Provincial General Services Office failed to present a liquidation report with respect to Board Member Nopra’s share of GI sheets. Board Member Nopra failed to present his distribution list, Respondent Rubio failed to issue official receipts thus bolstering our suspicion that this transaction is nothing but a robbery of public funds.

Cause of Action

39. It is clear from the foregoing allegations that Respondents Villafuerte, Alicaway, Aliorde, Peña, Carlos, Litada, Prila, Pan and Molave violated Sections 3 (e) and (g) of R.A. 3019 (Anti-Graft and Corrupt Practices Act). Sections 3 (e) and (g) o R.A. 3019 provides, to wit:

“Sec. 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:

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(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 partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees o offices or government corporations charged with the grant of licenses or permits or other concessions.

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(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.”

(Underscoring supplied)



40. In the case at bar, the Respondent public officers approved the purchase of GI sheets from Respondent Rubio notwithstanding the fact that the transaction did not go through public bidding. The purchase of the GI sheets did not fall under any of the exceptions in Article XVI of R.A. 9184 and as such, there was no justification for the Provincial Government of Camarines Sur to exclude other prospective suppliers of GI sheets in the province.

41. The unwarranted advantage given by the Respondent public officers in favor of Respondent Rubio became more evident when advance payment was made in favor of the latter. Respondent Rubio was paid by the Provincial Government on 22 December 2006 and yet Respondent Rubio, who was seemingly unmindful of the plight of the typhoon victims, was only able to deliver the items after one (1) month.

42. The Respondent Villafuerte, Alicaway, Aliorde, Peña, Carlos, Litada, Prila, Pan and Molave's act of paying for the GS sheets in advance clearly violated Section 338 of the Local Government Code which provides, to wit:

"Prohibitions against Advance Payments. – No money shall be paid on account of any contract under which no services have been rendered or goods delivered.

43. The Respondent public officers cannot argue that they did away with public bidding in this case because of the typhoon victims' urgent need for decent shelter. The fact that the Respondent public officers did not even insist for Respondent Rubio to immediately deliver the GI sheets show that the interest of the typhoon victims was not of paramount importance to the Respondents.

44. Respondent Villafuerte, Alicaway, Aliorde, Peña, Carlos, Litada, Prila, Pan and Molave's act of choosing Respondent Rubio among legitimate suppliers of construction materials in Camarines Sur in spite of her inability to address the typhoon victims' need for GI sheets clearly show that the former intend to give the latter undue and unwarranted advantage.

45. The Respondent public officers' act of paying Respondent Rubio in advance also indicates the undue advantage given to the latter. Because of the advance payment, the agreement between the Respondents may also be classified as a transaction grossly disadvantageous to the Province of Camarines Sur.

46. Furthermore, the Provincial Government's failure to object to Respondent Rubio's delivery of GI sheets (Gauge 26 x Length 10) which clearly did not correspond to the GI sheets described in the Purchase Order (Gauge 26 x Length 18) is another proof that the transaction was indeed grossly disadvantageous to the government.

47. Based on the foregoing, it is clear that the Respondents should be held accountable for violation of Sections 3 (e) and (g) of R.A. 3019, Section 10 of R.A. 9184 and Section 89 and 338 of the Local Government Code, Section 88 of P.D. 1445 and Article 217 of the Revised Penal Code.

Preventive Suspension

48. The Respondent public officials are still occupying various positions in the Camarines Sur Provincial Government. To this day, they have the opportunity to influence possible witnesses to this anomalous transaction or manipulate the documents relevant to this Complaint.

49. The allegations made and the documents appended to the instant complaint show that the evidence of the Respondent Villafuerte, Alicaway, Aliorde, Peña, Carlos, Litada, Prila, Pan and Molave's guilt for violating R.A. 3019, R.A. 9184, R.A. 7160, P.D. 1445 and Article 217 of the Revised Penal Code is strong. As such, this Honorable Office should preventively suspend the Respondent public officials from their respective positions.



50. Section 24 of R.A. 6770 provides, to wit:

“Preventive suspension. – The Ombudsman or his Deputy may preventively suspend any officer or employee under his authority pending an investigation, if in his judgment the evidence of guilt is strong, and (a) the charge against such officer or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; (b) the charges would warrant removal from the service; and (c) the respondent’s continued stay in office may prejudice the case filed against him.”

51. Similarly, in the case of *Governor Josie Castillo-Co vs. Hon. Robert Barbers, et al.*,^[2] the Supreme Court ruled that:

“[] the conditions required to sustain her preventive suspension have been met in this case. These conditions are:

- (1) That the evidence of guilt is strong; and
- (2) That any of the following circumstances are present:
 - (a) the charge against such officer or employee involves dishonesty, oppression, or grave misconduct or neglect in the performance of duty;
 - (b) the charges would warrant removal from the service; or
 - (c) the respondent’s continued stay in office may prejudice the case filed against him.”

52. The foregoing conditions are present in the instant case, to wit:

(1) The evidence of Respondent public officials’ violation of R.A. 3019, R.A. 9184 and R.A. 7160, P.D. 1445 and article 217 of RPC is strong;

(2) The following circumstances are present:

(2a) The Respondent is being charged with violation of Sections 3 (e) and (g) of R.A. 3019, an offense which clearly involves dishonesty.

(2b) R.A. 3019 provides that persons found guilty of the offense shall also suffer the penalty of perpetual disqualification from public office; and

(2c) The Respondents’ continued stay in office may prejudice the instant case. Even before filing of this complaint, the undersigned Complainant already found it difficult to obtain the documents which may be used to prosecute the Respondents. More so, if an official investigation is initiated by this Honorable Office in order to look into the Respondents’ deeds.

53. As such, the Respondent Villafuerte, Alicaway, Aliorde, Peña, Carlos, Litada, Prila, Pan and Molave should be preventively suspended from office pending investigation of the instant complaint.

54. The undersigned Complainant is executing this Complaint-Affidavit in order to attest to the truthfulness of the foregoing.



CARLO M. BATALLA

Complainant

SUBSCRIBED AND SWORN TO before me this _____ by the Affiant after he has satisfactorily proven his identity by presenting his Driver's license *ID No. EO2-97-033883*, issued on *SEPTEMBER 29, 2015* at Naga City.

Doc. No. _____;

Page No. _____;

Book No. _____;

Series of 2015.

