



Republic of the Philippines
Supreme Court
 Manila

EN BANC

RAPHAEL C. FONTANILLA,
 Petitioner,

G.R. No. 209714

Present:

SERENO, C.J.,
 CARPIO,
 VELASCO, JR.,
 LEONARDO-DE CASTRO,
 BRION,
 PERALTA,
 BERSAMIN,
 DEL CASTILLO,*
 PEREZ,
 MENDOZA,
 REYES,
 PERLAS-BERNABE,
 LEONEN,
 JARDELEZA,** and
 CAGUIOA, JJ.

- versus -

**THE COMMISSIONER PROPER,
 COMMISSION ON AUDIT,**
 Respondent.

Promulgated:

June 21, 2016

[Handwritten Signature]

X-----X

DECISION

BRION, J.:

We resolve the petition for review on *certiorari*¹ filed by Dr. Raphael C. Fontanilla (*Dr. Fontanilla*) to assail the September 18, 2013 ruling² of the Commission on Audit (COA) Proper in Decision No. 2013-137. This COA

* On Official Leave.

** No Part.

¹ *Rollo*, pp. 3-17. The petition is filed under Rule 45 of the Rules of Court.

² Id. at 20-24. Unanimously signed and approved by Chairperson Ma. Gracia M. Pulido Tan and Commissioners Heidi L. Mendoza and Rowena V. Guanzon.

[Handwritten Signature]

decision affirmed the June 25, 2009 decision³ of the Adjudication and Settlement Board (*ASB*).

Antecedents

Dr. Fontanilla is the Schools Division Superintendent of the Department of Education (*DepEd*) in South Cotabato.⁴ Under his supervision was Ms. Luna V. Falcis, the Division's designated Special Disbursing Officer (Clerk II).⁵ Falcis had the duty, among others, to encash checks for the *DepEd*'s expenses and activities.⁶

On August 30, 2007, Falcis, together with a co-worker, went to the Land Bank of the Philippines, Koronadal City Branch, to encash a check for **Php 313,024.50**.⁷ After completing the transaction, they took a public utility tricycle in going back to their office. On their way, three men blocked their path and at gunpoint grabbed the envelope containing the money. The robbers then sped away in a motorcycle.⁸

Falcis reported the incident to the police. In their investigation report, the police remarked that Falcis regularly goes to the bank without a security escort, which emboldened the suspects to commit the robbery.⁹

After the robbery was reported to the COA Resident Auditor of the *DepEd* South Cotabato Division,¹⁰ Falcis filed with the COA Audit Team Leader (*ATL*) a request for relief from money accountability (*request for relief*).¹¹

The *ATL* investigated the incident and found that Falcis failed to exert extra care and due diligence in handling the encashment; she did not request a security escort and the use of a government vehicle. The *ATL* forwarded its findings to the Regional Legal and Adjudication Office (*COA Regional Office*) for further study.¹²

The *COA* Regional Office concurred with the *ATL* findings and elevated Falcis's request for relief to the Adjudication and Settlement Board (*ASB*) of the *COA* National Office, for final disposition.¹³

³ Id. at 59-62. Decision No. 2009-075.

⁴ Id. at 20.

⁵ Id. at 29.

⁶ Id. at 54.

⁷ Id. at 25.

⁸ Id. at 20.

⁹ Id. at 42.

¹⁰ Id. at 25. Letter dated August 31, 2007.

¹¹ Id. at 39. Letter dated November 21, 2007.

¹² Id. at 56. Endorsement dated November 26, 2007.

¹³ Id. at 58. Indorsement dated June 10, 2008.

The ASB's Findings

The ASB denied Falcis's request for relief based on the finding that she had been negligent, thus, liable for the amount of money lost.¹⁴ The ASB cited Section 105 (2) of Presidential Decree No. 1445 or the *Government Auditing Code of the Philippines (Audit Code)*, which states:

Section 105. Measure of liability of accountable officers.

xxx

- (2) Every officer accountable for government funds shall be liable for all losses resulting from the unlawful deposit, use, or application thereof and for all losses attributable to negligence in the keeping of the funds.

The ASB also ruled that Dr. Fontanilla is jointly and solidarily liable with Falcis under Section 104 of the Audit Code which makes the head of the agency accountable because he did not exert the required diligence:

Section 104. Records and reports required by primarily responsible officers. The head of any agency or instrumentality of the national government or any government-owned or -controlled corporation and any other self-governing board or commission of the government shall exercise the **diligence of a good father of a family** in supervising accountable officers under his control to prevent the incurrence of loss of government funds or property, **otherwise he shall be jointly and solidarily liable with the person primarily accountable** therefor... [emphasis ours]

In the words of the ASB, *Dr. Fontanilla did not make any effort to correct the situation by closely supervising Falcis, providing the needed guidelines, transport, and escort for the lowly clerk to handle big amounts of money*, thus failing to meet the standards required under Section 104. The dispositive portion of the ASB's decision reads:

WHEREFORE, in view of the foregoing, and considering the recommendation of the COA officials concerned, the instant request for relief from money accountability is hereby DENIED for lack of merit. **Ms. Falcis and the Schools Division Superintendent at the time of the robbery, Dr. Raphael C. Fontanilla, are jointly and solidarily liable for the amount lost.**¹⁵ [emphasis ours]

Falcis moved for the reconsideration of the ruling.¹⁶ Dr. Fontanilla, on the other hand, moved for intervention, exclusion, and reconsideration.¹⁷

In his motion, Dr. Fontanilla claimed that he was *denied due process*. He explained that there was *no notice*, he was *not ordered to participate in*

¹⁴ Id. at 60.

¹⁵ Id. at 61.

¹⁶ Id. at 63-66. Motion for Reconsideration dated November 27, 2009.

¹⁷ Id. at 67-72. Dated September 8, 2009.

the proceedings nor was he given a chance to present his side. He asserted that, effectively, the COA did not acquire jurisdiction over his person; thus, any adjudication against him must necessarily be without any legal force.¹⁸

Dr. Fontanilla stressed that he was never a party to the case. He was informed of his liability only when Falcis gave him a photocopy of the decision. He thus prayed that he should be allowed to intervene to explain his side.¹⁹

In sum, Dr. Fontanilla asked the ASB to reconsider its decision and declare void the finding of his liability *until such time that he is allowed to defend himself at a hearing as contemplated by the principles of due process.*²⁰

The COA Proper's Decision

The COA treated Dr. Fontanilla's motion for intervention, exclusion, and reconsideration as an appeal from the ASB's decision.²¹

The COA held that Dr. Fontanilla had not been denied administrative due process; Dr. Fontanilla was properly given the chance to be heard (and was thus accorded due process) when the COA entertained his motion/appeal; the COA, on the other hand, also had the opportunity to correct the ASB's decision.²²

On the issue of negligence, the COA held that Dr. Fontanilla failed to observe the diligence of a good father of a family. He is presumed to be knowledgeable of the transactions made by his subordinates. It is highly improbable that a large amount of money could be withdrawn without his knowledge. The COA opined that although robbery can ordinarily be considered a *force majeure*, its happening can be prevented by complying with the minimum requirements of prudence.²³

In sum, the COA found that Falcis and Dr. Fontanilla did not exercise precautionary measures necessary to safeguard the money withdrawn from the bank.²⁴ The dispositive portion of the COA decision reads:

WHEREFORE, in view of the foregoing, the instant appeal is hereby **DENIED** for lack of merit. Accordingly, ASB Decision No. 2009-075 dated June 25, 2006, is hereby **AFFIRMED**.²⁵

¹⁸ Ibid.
¹⁹ Id. at 67-70.
²⁰ Id. at 71.
²¹ Id. at 20-24; *Supra* note 2.
²² Id. at 22.
²³ Id. at 23.
²⁴ Ibid.
²⁵ Ibid.



The Petition

Dr. Fontanilla now assails the COA decision on the sole ground that he has been denied due process.²⁶ He underscores that the COA proceedings stemmed from Falcis's (and not his) request for relief. He explains that in the entire length of the proceedings, he was not given the opportunity to explain his side.

Dr. Fontanilla traces the steps that led to the COA's finding that he is solidarily liable for the loss of government fund:

1. Falcis filed the request for relief with the ATL on **August 31, 2007**. As Falcis's superior, he "noted" the request for relief.
2. The ATL took cognizance of the request for relief. The ATL did not require him to comment.
3. On **November 26, 2007**, the ATL forwarded the request for relief to the COA Regional Office for further study. The ATL did not rule on his liability nor mention his participation in the incident.
4. On **June 10, 2008**, the COA Regional Office affirmed the ATL's findings. The COA Regional Office did not require him to comment. Again, the decision was silent on his liability.
5. The COA Regional Office elevated the request for relief to the ASB - COA National Office. The ASB denied it on **June 25, 2013**. Notably, the ASB, without requiring him to comment or explain his side, held him jointly and solidarily liable with Falcis. This was the *first time* that the COA touched on his liability. In fact, this was the *first time* the COA mentioned him at all.
6. He learned of his liability through Falcis when the latter gave him a photocopy of the ASB decision. He did not receive an *official copy* of the ASB decision.
7. He then filed his motion for intervention, exclusion, and reconsideration.
8. The COA denied his motion (that it be treated as an appeal) and affirmed the ASB decision finding him liable.²⁷

Based on this recital, Dr. Fontanilla insists that he was not given the chance to explain his side during the entire fact-finding process. From

²⁶ Id. at 7.

²⁷ Id. at 7-11.



August 31, 2007 (the date of filing of the *request for relief*) to September 18, 2013 (the date of the COA proper decision) – *a span of almost six years* – the COA did not inform him of the possibility that he could be held solidarily liable. He therefore did not have the chance to defend himself against any liability.

From the ASB decision, he filed his *motion for intervention* (to allow him to participate in the proceedings), for *exclusion* (to forestall the imposition of liability until he is allowed to defend himself), and for *reconsideration* (of the ASB - COA decisions for denial of due process).²⁸

Finally, Dr. Fontanilla argues that the fact that the COA entertained his motion/appeal did not cure the lack of due process. He explains that he merely asked the COA to first allow him to present his side before it rules on his liability; he did not ask the COA to rule on the merits based solely on his motion to intervene. That he filed (and the COA *entertained*) the motion for intervention, exclusion, and reconsideration did not mean that he had been given the opportunity to be heard. On the contrary, the COA did not hear him out on the merits of his defense before finding him liable.²⁹

Dr. Fontanilla thus prays that we annul and set aside the COA decision.

The COA's Comment

The COA, through the Office of the Solicitor General, argues that Dr. Fontanilla availed of the wrong remedy. Sections 1 and 2, Rule 64, in relation to Section 1, Rule 65 of the Rules of Court, provide that decisions and resolutions of the COA are reviewable by this Court, not *via* an appeal by *certiorari* under Rule 45, but through a petition for *certiorari* under Rule 65.³⁰

In any case, the COA submits that had the petition been filed under Rule 65, it would still fail considering that Dr. Fontanilla does not allege any grave abuse of discretion on the part of the COA.³¹

On the issue of due process, the COA submits that Dr. Fontanilla's motion for intervention, exclusion, and reconsideration effectively cured the alleged denial of due process.³²

Issues

The petition raises the following issues:

²⁸ Id. at 12.
²⁹ Id. at 12-15.
³⁰ Id. at 101-104.
³¹ Id. at 104.
³² Id. at 105.



1. Did Dr. Fontanilla avail of the wrong remedy? If so, is there basis to liberally apply the Rules of Court?
2. Was Dr. Fontanilla denied due process?

Our Ruling

We grant the petition.

Dr. Fontanilla availed of the wrong remedy but, in a proper case, the Court can liberally apply the Rules of Court.

Dr. Fontanilla did not use the correct remedy when he filed an appeal by *certiorari* under Rule 45 of the Rules of Court.

Article IX-A, Section 7 of the Constitution provides that decisions, orders, or rulings of the COA may be brought to this Court on *certiorari* by the aggrieved party. This is echoed by Section 2, Rule 64, of the Rules of Court, which states that a judgment or final order or resolution of the COA may be brought by the aggrieved party to this Court on *certiorari* under Rule 65.³³

Based on these rules, we could have dismissed the petition outright.

The gravity, however, of Dr. Fontanilla's claim of violation of his right to due process compelled us to examine the merit of his petition; the Court itself would compound the violation of Dr. Fontanilla's right to due process if indeed such violation took place and we would brush it aside because of a technical procedural reason. Under the scales of justice, technical procedural rules pale in comparison and are outweighed by substantive violations affecting the bill of rights.

In our examination of the petition and the records, we found that although the petition does not expressly use the technical terms "*grave abuse of discretion*" and "*errors of jurisdiction*," Dr. Fontanilla's claim that the COA did not give him the chance to explain his side, *if true*, would characterize the COA's act as grave abuse of discretion.³⁴ Thus, requiring the COA to comment was the more appropriate course of action to take, rather than to summarily deny the petition.³⁵

³³ *Verzosa, Jr. v. Chairman Caraque of the Commission on Audit*, 660 Phil. 131, 158 (2011).

³⁴ It has been held that the denial of due process results in loss or lack of jurisdiction. See *Robinsons Bank Corporation v. Hon. Gaerlan, et al.*, G.R. No. 195289, September 24, 2014, 736 SCRA 414, citing *Landbank of the Philippines, v. Pagayatan*, 659 Phil. 198 (2011); *People v Court of Appeals*, 368 Phil. 169. (1999).

³⁵ *Rollo*, p. 75. Resolution dated December 3, 2013.

Having said these, we stress that the Constitution and the Rules of Court limit the permissible scope of inquiry in Rules 64 and 65 *certiorari* petitions only to *errors of jurisdiction* or *grave abuse of discretion*. Hence, unless tainted with grave abuse of discretion, the COA's simple errors of judgment cannot be reviewed even by this Court.³⁶

With this standard as our guide, we now proceed to resolve Dr. Fontanilla's petition on the issue of whether he had indeed been denied of due process when the COA found him negligent and thus solidarily liable for the funds the government lost through robbery.

The COA gravely abused its discretion when it denied Dr. Fontanilla of due process.

We highlight the following undisputed facts:

1. ***Dr. Fontanilla noted and signed Falcis's letter***³⁷ informing the COA Resident Auditor of the robbery. Thus, as early as August 31, 2007, the COA had already been notified of Dr. Fontanilla's position as Falcis' superior.
2. The results of the ATL's investigation³⁸ ***did not mention Dr. Fontanilla or his supposed role in the incident***. Dr. Fontanilla was mentioned for the *first time* when the ASB, with the recommendation of the COA Regional Office,³⁹ denied the *request for relief*. Not only did the ASB deny the request for relief, it also concluded that Dr. Fontanilla was negligent and solidarily liable with Falcis without previously informing him that he could be held liable.
3. In his motion for intervention, exclusion, and reconsideration with the COA, Dr. Fontanilla alleged that the ASB did not give him the chance to defend himself before declaring him solidarily liability for the amount lost from the robbery. There, ***he asked permission to intervene in the proceedings*** and be given the opportunity to defend himself.
4. The COA treated his motion as an appeal from the ASB decision and brushed aside his claim of violation of due process. It ruled that the fact that his appeal was entertained meant that he was accorded due process. ***Without requiring or allowing Dr. Fontanilla to submit a memorandum or calling***

³⁶ *Reblora v. Armed Forces of the Philippines* G.R. No. 195842, June 18, 2013, 698 SCRA 727.

³⁷ *Supra* note 10.

³⁸ *Rollo*, p. 57.

³⁹ *Supra* note 15.

the parties for oral arguments,⁴⁰ the COA held Dr. Fontanilla solidarily liable.

Thus, Dr. Fontanilla maintains that his right to due process was violated. The COA counters that his motion for intervention, exclusion, and reconsideration effectively cured the defect in the proceedings.

We reject the COA's reasoning.

While we have ruled in the past that the filing of a motion for reconsideration cures the defect in procedural due process because the process of reconsideration is itself an opportunity to be heard,⁴¹ this ruling does not embody an absolute rule that applies in all circumstances. *The mere filing of a motion for reconsideration cannot cure the due process defect, especially if the motion was filed precisely to raise the issue of violation of the right to due process and the lack of opportunity to be heard on the merits remained.*⁴²

In other words, if a person has not been given the opportunity to squarely and intelligently answer the accusations or rebut the evidence presented against him,⁴³ or raise substantive defenses through the proper pleadings before a quasi-judicial body (like the COA) where he or she stands charged, then a due process problem exists. This problem worsens and the denial of his most basic right continues if, in the first place, he is found liable without having been charged and this finding is confirmed in the appeal or reconsideration process without allowing him to rebut or explain his side on the finding against him.

Time and again, we have ruled that the essence of due process is the *opportunity to be heard*. In administrative proceedings, one is heard when he is accorded a *fair and reasonable opportunity* to explain his case or is given the chance to have the ruling complained of reconsidered.⁴⁴

Contrary to the COA's posturing, it did not pass upon the merit of Dr. Fontanilla's claim that he was denied due process. Instead of asking Dr. Fontanilla to explain his side (by allowing him to submit his memorandum or calling for an oral argument as provided under Rule X, Section 3 of the COA Rules of Procedure), the COA concluded *right away* that the motion

⁴⁰ Rule X, Section 3 of the COA Rules of Procedure provides: "Upon motion by a party, or *motu proprio*, the **Commission Proper may call for oral arguments of the parties** before the Commission Proper en banc subject to such limitation of time and issues as the Commission may prescribe. **In lieu of oral arguments, the parties may be allowed to submit their respective memoranda** within fifteen (15) days from notice thereof." (*emphasis supplied*)

⁴¹ See *Cuerdo v. COA*, 248 Phil. 886 (1988), citing *Marieta Y. Figueroa v. Securities and Exchange Commission*, 245 Phil. 648 (1988); *Benito Rosales, et al. v. Court of Appeals*, 247-A Phil. 437 (1988).

⁴² *Office of the Ombudsman v. Reyes*, 674 Phil. 416 (2011).

⁴³ *Ibid.* Also, in *Gutierrez v. COA*, G.R. No. 200628, January 13, 2015, 745 SCRA 435, we ruled that a party is given an opportunity to be heard if he was able to state his **substantive defenses** in the pleadings filed before the COA and this court.

⁴⁴ *Besaga v. Spouses Acosta*, G.R. No. 194061, April 26, 2015, citing *Vivo v. Pagcor*, G.R. No. 187854, November 12, 2013, 709 SCRA 276, 281.

for intervention, exclusion, and reconsideration had effectively cured the alleged denial of due process. The COA failed or simply refused to realize that Dr. Fontanilla filed the motion precisely for the purpose of participating in the proceedings to explain his side.

We cannot tolerate this flippant view of administrative due process in this case or in any other case.

We stress that administrative due process also requires the following: 1) A finding or decision by a competent tribunal that is ***supported by substantial evidence***, either presented at the hearing or at least contained in the records or disclosed to the parties affected; 2) The tribunal must act on its own independent consideration of the law and facts of the controversy and ***not simply accept the view of a subordinate in arriving at a decision***; and 3) The tribunal should in all controversial questions, render its decision ***in such a manner that the parties to the proceeding can know the various issues involved*** and the reason for the decision rendered.⁴⁵

In the present case, not only did the COA deny Dr. Fontanilla's plea to be heard, it proceeded to confirm his liability on reconsideration without hearing his possible defense or defenses.

We cannot overstate that the root of Dr. Fontanilla's liability is his supposed negligence in failing to properly supervise Francis. The COA arrived at this finding solely because the robbery had taken place. In the words of the COA, *Dr. Fontanilla did not make any effort to correct the situation by closely supervising Falcis, providing the needed guidelines, transport, and escort for the lowly clerk to handle big amounts of money.*

The COA held that⁴⁶ Dr. Fontanilla was presumed to be knowledgeable of the transactions entered into by his subordinates. With such a large amount involved, the COA found it improbable that he did not know about the transaction. He must have known of the withdrawal, but he failed to exercise the diligence required.⁴⁷

How the COA came to these conclusions without requiring Dr. Fontanilla to explain his side disturbs us. Its conclusions all the more arouse disquiet since the COA confirmed the ASB's initial and already unilateral findings.

The records of the case fail to sufficiently provide explanations that would mitigate the harshness of the unfairness that took place. The stark reality is that Dr. Fontanilla now stands before us without having been previously allowed to defend himself against the liability unilaterally imposed on him. In response, the OSG simply presents to us its shallow

⁴⁵ See *Air Manila, Inc. v. Hon. Balatbat, et al.*, 148 Phil. 502 (1971); *Garcia v. Executive Secretary*, 116 Phil. 344 (1962); *Ang Tibay v. Court of Industrial Relations*, 69 Phil. 635, 642-644 (1940).

⁴⁶ *Rollo*, p. 61.

⁴⁷ *Id.* at 22.

view of the rule that a motion for reconsideration is sufficient compliance with a due process deficiency, without bothering to examine the root reason for this jurisprudential ruling and why it does not apply to Dr. Fontanilla's circumstances. We thus have no recourse but to conclude that the COA's ruling was attended by grave abuse of discretion.


WHEREFORE, premises considered, we **GRANT** the petition and **SET ASIDE** the September 18, 2013 decision of the Commission on Audit Proper in Decision No. 2013-137, insofar as it held Dr. Raphael C. Fontanilla jointly and solidarily liable for the loss of Php 313,024.50 through robbery.

We **ORDER** the Commission on Audit to direct Dr. Fontanilla to file his memorandum containing his evidence, or to call for oral arguments that would allow him to present his evidence. In either case, both parties shall be heard before the COA can proceed to rule on the question of Dr. Fontanilla's liability.

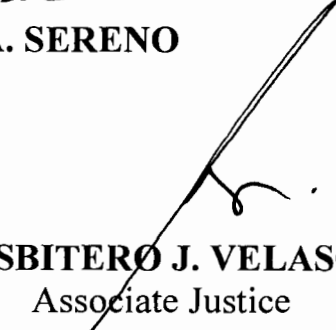
SO ORDERED.


ARTURO D. BRION
 Associate Justice

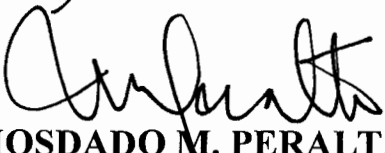
WE CONCUR:

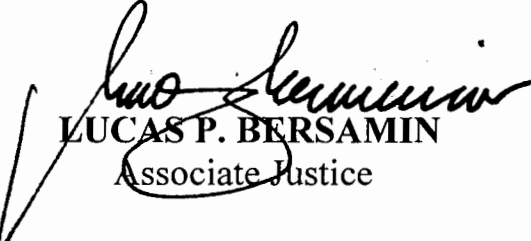

MARIA LOURDES P. A. SERENO
 Chief Justice


ANTONIO T. CARPIO
 Associate Justice


PRESBITERO J. VELASCO, JR.
 Associate Justice


TERESITA J. LEONARDO-DE CASTRO
 Associate Justice



DIOSDADO M. PERALTA
 Associate Justice

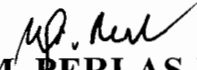

LUCAS P. BERSAMIN
 Associate Justice

(On Official Leave)
MARIANO C. DEL CASTILLO
 Associate Justice



JOSE PORTUGAL PEREZ
 Associate Justice


JOSE CATRAL MENDOZA
 Associate Justice

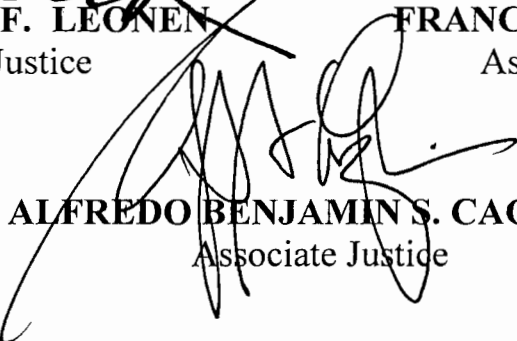

BIENVENIDO L. REYES
 Associate Justice


ESTELA M. PERLAS-BERNABE
 Associate Justice


MARVIC M.V.F. LEONEN
 Associate Justice



FRANCIS H. JARDELEZA
 Associate Justice

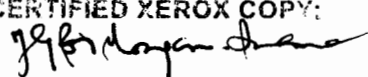
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ALFREDO BENJAMIN S. CAGUIOA
 Associate Justice

CERTIFICATION

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


MARIA LOURDES P. A. SERENO
 Chief Justice

CERTIFIED XEROX COPY:

FELIPA B. ANAMA
 CLERK OF COURT, EN BANC
 SUPREME COURT