Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

BANGKO SENTRAL NG PILIPINAS,	**G.R. No. 201069**
Petitioner,	Present:
- versus -	GESMUNDO, *C.J.*, CAGUIOA, CARANDANG, ZALAMEDA, *and* GAERLAN, *JJ.*
OFFICE OF THE OMBUDSMAN and BENJAMIN M. JAMORABO,*	
Respondents.	Promulgated:
	JUN 16 2021

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DECISION

GAERLAN, *J.*:

The Case

This petition for *certiorari*[1] under Rule 65 of the Rules of Court assails the following issuances of the Office of the Ombudsman in Case No. OMB-C-C-09-0465-I: 1) February 9, 2011 Resolution dismissing the complaint filed by the *Bangko Sentral ng Pilipinas* (BSP) against private respondent Benjamin M. Jamorabo (Jamorabo) for lack of probable cause;[2] and 2) July 28, 2011 Order denying the motion for reconsideration filed by the BSP.[3]

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* Also referred to in the records as Benjamin Daniel M. Jamorabo. *Rollo*, p. 168.

1 Id. at 3-35.

2 Id. at 38-45; prepared by Graft Investigation and Prosecution Officer II Alteza A. Añoso, reviewed by Graft Investigation and Prosecution Officer III Aleu A. Amante, and approved by Ombudsman Ma. Merceditas N. Gutierrez, with the favorable recommendation of Acting Assistant Ombudsman Mary Susan S. Guillermo.

3 Id. at 47-50A; prepared by Graft Investigation and Prosecution Officer II Alteza A. Añoso, reviewed by Director Moreno F. Generoso, and approved by Overall Deputy Ombudsman Orlando C. Casimiro, with the favorable recommendation of Assistant Ombudsman Aleu A. Amante.

The Facts

Petitioner BSP is the constitutionally mandated[4] central monetary authority of the Philippines, created through Republic Act (R.A.) No. 7653.[5] Jamorabo was a former Bank Officer I in the BSP's Supervision and Examination Sector (SES). As earlier mentioned, BSP filed a complaint dated August 11, 2009,[6] against Jamorabo before the Office of the Ombudsman for violation of Section 27(d) of R.A. No. 7653 and BSP Office Order No. 423, series of 2002, for obtaining a loan with the Rural Bank of Kiamba, Sarangani, Inc. (RBKSI) while he was conducting the regular examination of said bank from July 6 to 22, 2006. The complaint alleged the following:

> 3. The investigation of the OSI revealed that, during the RBKSI examination, specifically on 17 July 2006, Mr. Jamorabo took out an unsecured loan in the amount of P200,000 with RBKSI. He promised RBKSI's president Cornelio T. Falgui [Falgui], and manager, William C. Nero [Nero] (Affidavit, attached as Annex ___ together with all the supporting documents), that he would settle the loan prior to the next BSP general examination of RBKSI, which is conducted every two-year interval, so that the loan would no longer be in RBKSI's books. According to Mr. Nero, Mr. Falgui had wanted to turn down the application, but could not do so because he feared he might offend Mr. Jamorabo.
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> 4. For a loan of such amount, RBKSI would normally require from the borrower a collateral, presentation of documentary proof of income, and credit investigation. Mr. Jamorabo's loan, however, did not undergo the ordinary processes and was approved without him offering a collateral. He convinced Mr. Nero that he would just issue post-dated checks payable to RBKSI.
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> 5. Mr. Jamorabo issued a total of eight personal post-dated checks, six in the amount of P30,000 and two in blank, drawable against his checking account maintained at the Philippine National Bank ("PNB")-Central Bank ("CB") Service Unit-Manila, representing eight payments for his quarterly amortizations of P30,000. The first amortization was due 17 October 2006.
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> 6. It must be emphasized that in the loan documents, Mr. Jamorabo did not indicate his name as the principal borrower but the name of his wife, Marites B. Jamorabo (Marites). He made himself as her co-maker. He, however, was the one who filled out and signed the loan documents, including signing in the name of his wife. Ms. Marites B. Jamorabo neither went to the bank nor signed any loan documents.
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> 7. On 18 July 2006, Mr. Nero deposited, through inter-bank transaction at PNB-Santiago Boulevard Branch, General Santos City, the

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4 CONSTITUTION, Article XII, Section 20.
5 The New Central Bank Act
6 *Rollo*, pp. 52-55.

net proceeds of the loan in the amount of P198,000 into the savings account of Mr. Jamorabo maintained at PNB-CB Service Unit-Manila.

8. When the loan became due, he was able to pay only the first and second amortizations and only after his first check had already "bounced" for the reason that it was drawn against insufficient funds ("DAIF"). His first and second amortizations were due on 17 October 2006 and 17 January 2007, respectively, but he remitted his loan payment only on 9 February 2007 to RBKSI's depositary bank ("Equitable-PCI Bank") via inter-bank deposit at Equitable-PCI Bank in Bacoor, Cavite, and after requesting RBKSI not to deposit his second check.

9. When his third amortization became due, Mr. Jamorabo began calling RBKSI's cashier, Aurora Cagas, advising her not to deposit his check dated 17 April 2007 representing payment for his third amortization. His communication with the bank, however, suddenly stopped even after his check dated 17 July 2007 representing payment for his fourth amortization became due.

10. In September 2007, Mr. Nero decided to deposit in RBKSI's depositary bank Mr. Jamorabo's check dated 17 April 2007 representing payment for his third amortization. The check was dishonored for the reason that Jamorabo's checking account was already closed as of 17 September 2007. Mr. Nero sent a text message to Mr. Jamorabo urging him to pay his loan but Mr. Nero did not receive any reply. Mr. Nero also tried calling Mr. Jamorabo's cellular phone but the same could no longer be contacted. Considering that Mr. Jamorabo's checking account was already closed, Mr. Nero decided not to deposit the rest of Mr. Jamorabo's checks. Mr. Falgui thought of suing Mr. Jamorabo, but he died in July 2008 without a case having been filed.

11. Sometime in December 2008, Mr. Nero received a cell phone call from Mr. Jamorabo using a different number. Mr. Jamorabo informed the manager that he would settle his loan account with RBKSI and instructed the Manager to text to him the outstanding balance of his loan. Mr. Jamorabo also reasoned out that he failed to make good his checks because he was sent for further studies by the BSP to Malaysia.

12. Despite the promise, Mr. Jamorabo did not pay his loan.

13. On 14 to 29 April 2009, the Anti-Money Laundering Specialist Group, SES, conducted a regular examination of RBKSI. Taking this as an opportunity, Mr. Nero divulged Mr. Jamorabo's loan to the examiner-in-charge. The examiner-in-charge informed the manager that Mr. Jamorabo had just retired from the BSP and advised the manager to write a letter to Mr. Willie Asto, Managing Director of Financial Accounting Department of the BSP, requesting assistance in deducting from Mr. Jamorabo's retirement benefits the outstanding balance of his loan amounting to P210,829.49 as of 23 April 2009.

14. The loan is undeniably Mr. Jamorabo's loan even if he deceptively misrepresented that the principal borrower was his wife. As positively disclosed by Mr. Nero, there was no Ms. Marites Jamorabo who appeared in the bank and signed the loan documents. Be that as it may,

> having signed as a co-maker, in the eyes of the law, he is also considered a principal borrower being jointly and severally liable for payment of the loan.
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> 15. Thus, when he took out the loan on 17 July 2006, during which period the RBKSI was under his examination, he clearly committed a violation of Section 27(d) of R.A. No. 7653. x x x[7]

The complaint was docketed as a criminal case[8] and preliminary investigation was conducted thereon. On November 17, 2009, the Ombudsman ordered Jamorabo to submit his counter-affidavit.[9] On December 10, 2009, Jamorabo complied with the anti-graft agency's order by submitting his own affidavit together with the affidavits of his witnesses, his wife Marites, and his sister-in-law, Honeyve Montecalvo.[10]

In dismissing the complaint, the Ombudsman ruled that a violation of R.A. No. 7653, Section 27(d) and BSP Office Order No. 423, series of 2002 does not entail criminal liability; hence Jamorabo can only be held administratively liable. However, since Jamorabo had already retired from government service on December 31, 2008,[11] before the complaint was filed, he cannot be sanctioned anymore.[12] The anti-graft agency also ruled that Jamorabo cannot be held liable for violating Section 3(e) of R.A. No. 3019 because the BSP failed to prove any injury, loss or damage to the government caused by Jamorabo's acts, since he was able to pay the loan in full.[13] Finally, the Ombudsman held that the officers of RBKSI were also at fault for approving Jamorabo's loan application. Given the high standards of diligence expected from banks, RBKSI's officers should have exercised extreme caution in processing Jamorabo's loan application. Furthermore, they reported the incident only in 2009; almost three years after Jamorabo availed of the loan.[14]

The BSP sought reconsideration[15] but the Ombudsman rendered the assailed July 28, 2011 order affirming the dismissal of the complaint. The Ombudsman maintained that Jamorabo can no longer be administratively sanctioned because the case against him was filed *after* he had retired from government service and that full payment of the loan in question negated the existence of undue injury.

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7 Id. at 53-54.
8 Id. at 112.
9 Order dated November 17, 2009, id. at 81-82.
10 Id. at 13, 83-88.
11 Id. at 11, 84.
12 Resolution dated February 9, 2011, id. at 43.
13 Id. at 43-44.
14 Id. at 44.
15 Id. at 89-94.

On April 3, 2012, the BSP filed the present petition for *certiorari*.[16] On June 18, 2012, this Court ordered respondents to file their respective comments on the petition;[17] however, only the Office of Ombudsman complied.[18] During the pendency of the case, it was discovered that Jamorabo had migrated to Canada with his family on April 14, 2010, with no intention of returning to the Philippines;[19] hence, the Court dispensed with his comment.[20] On April 24, 2013, the BSP filed its reply. The issues having been joined, the Court now resolves the following questions posed by the pleadings:

1) What liabilities arise from a violation of R.A. No. 7653, Section 27(d)?

2) Can Jamorabo still be held administratively liable even if the present complaint was filed after his retirement from government service?

3) Is there a *prima facie* case for Section 3(e) of R.A. No. 3019 against Jamorabo?

The Court's Ruling

The petition is partially meritorious. While this Court respects the wide latitude given to the Office of the Ombudsman in the exercise of its investigatory and prosecutorial powers,[21] it is likewise this Court's power and duty to set aside the rulings of the Ombudsman if such rulings are tainted with grave abuse of discretion.[22]

Violation of R.A. No. 7653, Section 27(d) gives rise to both administrative and criminal liability.

Section 27(d) of R.A. No. 7653 is composed of two parts: a general

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16 Id. at 2.

17 Resolution dated June 18, 2012, id. at 98.

18 Id. at 112-124.

19 Report of the BSP Security, Investigation, and Transport Department dated June 25, 2013, id. at 166; Certification from the Bureau of Immigration dated June 20, 2013, id. at 167; Resolution dated November 13, 2013, id. at 173.

20 Resolution dated July 29, 2015, id. at 185.

21 *Beltran v. Sandiganbayan*, G.R. No. 201117, January 22, 2020; *Morales v. Ombudsman Carpio Morales, et al.*, 791 Phil. 539, 553 (2016).

22 *Presidential Commission on Good Government v. Gutierrez*, G.R. No. 193398, June 3, 2019; *Presidential Commission on Good Government v. Navarro-Gutierrez, et al.*, 772 Phil. 91, 100 (2015); *Presidential Ad Hoc Fact-Finding Committee on Behest Loans, et al. v. Hon. Desierto, et al.*, 664 Phil. 16, 20 (2011); *Brito v. Ombudsman for Luzon*, 554 Phil. 112 (2007); *Esquivel v. Hon. Ombudsman*, 437 Phil. 702, 713-714 (2002); *Posadas v. Ombudsman*, 395 Phil. 601 (2000); *Garcia-Rueda v. Pascasio*, 344 Phil. 323,326-327 (1997); *Camanag v. Guerrero*, 335 Phil. 945 (1997); *Ocampo IV v. Ombudsman*, 296-A Phil. 770, 775 (1993).

rule and a proviso. The first part of the provision states the general rule: BSP personnel are not allowed to "*[borrow] from any institution subject to supervision or examination by the Bangko Sentral x x x unless said borrowings are adequately secured, fully disclosed to the Monetary Board, and x x x subject[ed] to such further rules and regulations as the Monetary Board may prescribe.*" The second part, or the proviso, further qualifies this rule with a second, more specific prohibition: "***That personnel of the supervising and examining departments are prohibited from borrowing from a bank under their supervision or examination.***" This qualification to the general rule is specifically targeted at the BSP personnel who do the actual work of supervising and examining banks, and who are absolutely prohibited from borrowing from banks under their supervision or examination.

The absolute and unqualified ban on borrowings by the BSP's supervision and examination personnel was removed by R.A. No. 11211,[23] which amended Section 27(d) as follows:

> SEC. 27. *Prohibitions.* — In addition to the prohibitions found in Republic Act Nos. 3019 and 6713, personnel of the Bangko Sentral are hereby prohibited from:
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> x x x x
>
> (d) borrowing from any institution subject to supervision or examination by the Bangko Sentral unless said borrowing is transacted on an arm's length basis, fully disclosed to the Monetary Board, and shall be subject to such rules and regulations as the Monetary Board may prescribe.

Nevertheless, the provision, as amended, maintains the general rule in R.A. No. 7653: BSP personnel cannot borrow loans from entities that are subject to the BSP's supervision or examination, unless the conditions set forth in the provision are met.

To penalize violations thereof, R.A. No. 7653 contains a general penal clause, which is essentially retained in R.A. No. 11211, *viz.*:

Original text	As amended
Section 36. Proceedings Upon Violation of This Act and Other Banking Laws, Rules, Regulations, Orders or Instructions. – Whenever a bank or quasi-bank, or **whenever any person or entity willfully violates**	SEC. 36. Proceedings upon Violation of This Act and Other Banking Laws, Rules, Regulations, Orders or Instructions. – Whenever a bank, quasi-bank, including their subsidiaries and affiliates engaged in

[23] Enacted into law on February 14, 2019.

this Act or other pertinent banking laws being enforced or implemented by the Bangko Sentral or any order, instruction, rule or regulation issued by the Monetary Board, **the person or persons responsible for such violation shall unless otherwise provided in this Act be punished** by a fine of not less than Fifty thousand pesos (P50,000.00) nor more than Two hundred thousand pesos (P200,000.00) or by imprisonment of not less than two (2) years nor more than ten (10) years, or both, at the discretion of the court.	allied activities or other entity which under this Act or special laws is subject to Bangko Sentral supervision or **whenever any person or entity willfully violates this Act** or other pertinent banking laws being enforced or implemented by the Bangko Sentral or any order, instruction, rule or regulation issued by the Monetary Board, **the person or persons responsible for such violation shall unless otherwise provided in this Act be punished** by a fine of not less than Fifty thousand pesos (P50,000.00) nor more than Two million pesos (P2,000,000.00) or by imprisonment of not less than two (2) years nor more than ten (10) years, or both, at the discretion of the court.

Read together, Sections 27(d) and 36 categorically provide that BSP personnel who borrow from institutions under BSP supervision or examination without complying with the requisite former provision shall be penalized by a fine or imprisonment, or both, at the discretion of the court. Thus, the Ombudsman committed a glaring mistake amounting to grave abuse of discretion when it ruled that a violation of R.A. No. 7653, Section 27(d) entails administrative liability only. A cursory reading of the statute *in its entirety* clearly shows that Section 27(d) is a penal provision, a violation of which gives rise to criminal liability,[24] apart from the administrative liability imposed by BSP Office Orders No. 423,[25] series of 2002; and No. 860, series of 2007;[26] and the Uniform Rules on Administrative Cases in the Civil Service.[27] Settled is the rule that wrongful acts or omissions of public officers

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24 "Penal laws are those acts of the Legislature which prohibit certain acts and establish penalties for their violations; or those that define crimes, treat of their nature, and provide for their punishment." *Inmates of the New Bilibid Prison, Muntinlupa City v. De Lima*, G.R. No. 212719, June 25, 2019; *Hernandez v. Albano*, 125 Phil. 513, 520-521 (1967); *Lorenzo v. Posadas*, 64 Phil. 353 (1937).

25 *Rollo*, pp. 75-77.

26 Id. at 78-79.

27 Under Section 50, paragraph A of the Uniform Rules on Administrative Cases in the Civil Service (URACCS) grave misconduct is a ground for dismissal from the civil service. In turn, grave misconduct is "the **transgression of some established and definite rule of action**, more particularly, **unlawful behavior** or gross negligence **by a public officer coupled with** the elements of corruption, **willful intent to violate the law or to disregard established rules.**" *Fajardo v. Corral*, G.R. No. 212641, July 5, 2017. Furthermore, Jamorabo's act of taking out a loan with a bank under his examination also violates Section 50, paragraph A, no. 9 of the URACCS (contracting loans from persons with whom the employee's office has business relations).

may give rise to civil, criminal, and administrative liability, each of which is separate and distinct from the other.[28]

In the case at bar, there is no dispute that: 1) Jamorabo was one of the BSP personnel assigned to conduct the examination of RBKSI from July 5 to 22, 2006; and 2) Jamorabo, as co-maker[29] for his wife, took out a 200,000-peso loan from RBKSI during the examination period thereof.[30] However, in view of our finding that Section 27(d) is a penal provision, the repeal by R.A. No. 11211 of the absolute prohibition on borrowings by BSP supervision and examination personnel should be given retroactive effect in favor of Jamorabo, pursuant to Article 22 of the Revised Penal Code.[31] Consequently, Jamorabo's loan with RBKSI can no longer be considered a *per se* violation of Section 27(d); rather, its compliance with the requisites of Section 27(d), as amended, must be ascertained.

Jamorabo's loan does not meet the requisites of Section 27(d), as amended.

As earlier mentioned, to be permissible under Section 27(d), loans taken out by BSP personnel with institutions undergoing BSP examination must now satisfy three requisites: 1) conduct of the transaction on arm's length basis; 2) full disclosure to the Monetary Board; and 3) compliance with rules and regulations prescribed by the Monetary Board. Jamorabo's transaction with RBKSI does not meet any of these requisites.

An arm's-length transaction is defined as follows: "*one between two parties, however closely related they may be, conducted as if the parties were strangers, so that no conflict of interest arises*;"[32] one made "*in good faith in the ordinary course of business by parties with independent interests.... The standard under which unrelated parties, each acting in his or her own best interest, would carry out a particular transaction*;"[33] or "*dealings between*

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28 *Ramiscal v. Commission on Audit*, 819 Phil. 597, 610 (2017); *Office of the Court Administrator v. Ret. Judge Tandinco, et al.*, 773 Phil. 141, 157 (2015); *Fajardo v. Office of the Ombudsman, et al.*, 693 Phil. 269, 271 (2012).

29 A co-maker is "[o]ne who participates jointly in borrowing money on a promissory note; esp., one who acts as surety under a note if the maker defaults." Black's Law Dictionary (9th ed.) 302 (2009)

30 Affidavit of Benjamin Magdato Jamorabo, *Rollo*, p. 83. February 9, 2011 Resolution, id. at 43-44; Promissory note and Co-maker's statement signed by Benjamin M. Jamorabo, id. at 64-65.

31 REVISED PENAL CODE, Article 22 states: *Retroactive effect of penal laws.* — Penal laws shall have a retroactive effect insofar as they favor the persons guilty of a felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same. *See People v. Parel*, 44 Phil. 437, 438 (1923); *People v. Moran*, 44 Phil. 387, 395 (1923); *United States v. Parrone*, 24 Phil. 29, 32 (1913).

32 Black's Law Dictionary (9th ed.) 1635 (2009).

33 *In re U.S. Medical, Inc.*, 531 F.3d 1272 (2008), fn. 4. See also *Commissioner of Internal Revenue v. Filinvest Development Corporation*, 669 Phil. 323 (2011).

two parties who are not related or not on close terms and who are presumed to have roughly equal bargaining power; not involving a confidential relationship."[34] The principle is closely related to the concept of undue influence, *viz.*:

> The notion of dealings at arm's length featured in the somewhat related doctrine of "undue influence" that was developed in the courts of equity. A description of this doctrine is given by Lord Penzance in Parfitt v. Lawless where he says:
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> > In equity persons standing in certain relations to one another-such as parent and child, man and wife, doctor and patient, attorney and client, confessor and penitent, guardian and ward-are subject to certain presumptions when transactions between them are brought in question; and if a gift or contract made in favour of him who holds the position of influence is impeached by him who is subject to that influence, the Courts of equity cast upon the former the burthen of proving that the transaction was fairly conducted as if between strangers.
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> The courts of equity have refused to limit the relationships from which the presumption of abuse of position or confidence might arise. The doctrine of undue influence in equity also applies to situations involving strangers outside any special relationship. For instance, where a mortgagor of property has conveyed to a mortgagee and is infirm and illiterate and has no independent legal advice "the onus of justifying the transaction, and shewing that it was a right and fair transaction, is thrown upon the mortgagee." The noteworthy point about the use of the phrase "not at arm's length" in equity was that it referred to a straight tug-of-war between one subject and another and was not a three-way affair between two subjects and the state itself. The purpose of equitable intervention into these transactions was to prevent one subject from taking unfair advantage of another subject. Where transactions were tainted with the suggestion of undue influence the party on whom the onus was cast might bring in adequate evidence to the contrary in order to support the transaction.[35]

Clearly, the arm's length standard adopted in Section 27(d) means that BSP personnel must transact with BSP-examined institutions in such a way that they will not be able to utilize their position to gain undue influence with, or more favorable terms from, the target institution.[36] In this case, there is *prima facie* evidence of Jamorabo's violation of the arm's-length standard in his dealing with RBKSI. RBKSI's general manager, Nero, positively identified Jamorabo as the prime mover behind the loan. Jamorabo approached Nero *during RBKSI's examination period* and told the latter that

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34 *Gould v. Bank of New York Mellon*, 123 F. Supp. 3d 197 (2015), citing Black's Law Dictionary (10th ed. 2014).

35 Walter C. Newman, *Legal Use of the "Arm's Length" Concept*, 11 U. TORONTO L.J. (No. 1) 139 (1955). Citations omitted, underscoring supplied.

36 See 2018 Manual of Regulations for Banks, Sec. X136(3).

he wanted to "*avail for himself*" a loan of ₱200,000.00.[37] Since the amount was beyond Nero's authority to approve, he accompanied Jamorabo to meet with RBKSI's president, Falgui, who wanted to deny the loan application but was afraid to do so, for fear of offending Jamorabo.[38] Jamorabo personally filled out and signed the loan documents, but wrote in his wife's name as principal borrower. Jamorabo's wife, the supposed principal borrower, never went to RBKSI to personally process her supposed application.[39] Nero suggested that Jamorabo designate one of his co-examiners as a co-maker, but Jamorabo flatly stated that his colleagues will not agree to do so.[40] Jamorabo admits that he took out the loan *during RBKSI's examination period* but claims that his team had already finished the examination when he approached Nero to inquire about availing a loan with RBKSI.[41] Furthermore, the loan did not undergo the bank's standard credit investigation and security procedure, for it was not backed by real security;[42] and was hastily approved. Per Jamorabo's narration, he approached Nero about taking out a loan with RBKSI after the actual examination of RBKSI had ended on July 16, 2006,[43] and the loan was approved the next day, on July 17, 2006.[44] Taken together, the timing and the circumstances surrounding the loan transaction indicate that Jamorabo's position as examiner-in-charge of RBKSI unduly influenced the speedy facilitation thereof, in violation of the arm's-length principle.

Furthermore, Jamorabo did not disclose the loan to the BSP, in violation of the express provision of Section 27(d) and BSP regulations. As stated in the BSP's complaint, it discovered the loan only in April 2009, during the succeeding periodic examination of RBKSI, after Nero divulged the loan to the examiner-in-charge[45] and to the Managing Director of the BSP's Financial Accounting Department, and after the spouses Jamorabo defaulted on the loan.[46] Tellingly, Jamorabo's affidavit is completely silent on whether he disclosed the loan to the BSP. His complete silence on the matter betrays his awareness of the illegality of the transaction he entered into with RBKSI. Had he disclosed the loan in any manner to his superiors, he could have very easily said so in his affidavit; but he did not, since he knew full well that the transaction was absolutely prohibited under the then-prevailing law. The foregoing facts clearly make out a prima facie case for violation of Section 27(d) in relation to Section 36 of R.A. No. 7653 against Jamorabo;

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37 Affidavit of William Nero *y* Campos, *rollo*, p. 56.

38 Id.

39 Id. at 57. In his affidavit, Jamorabo alleged that his wife was able to sign on the borrower fields of the loan forms. Affidavit of Benjamin Magdato Jamorabo, id. at 84.

40 Id.

41 Affidavit of Benjamin Magdato Jamorabo, id. at 83.

42 When Nero told Jamorabo that RBKSI requires large loans to be secured by real property, Jamorabo convinced Nero to accept his offer of issuing post-dated checks, Affidavit of William Nero *y* Campos, id. at 56.

43 Affidavit of Benjamin Magdato Jamorabo, id. at 83

44 *Rollo*, pp. 60-61, 66-67.

45 Id. at 54.

46 Id. at 74.

and the Ombudsman committed grave abuse of discretion in ruling that Jamorabo cannot be held criminally liable therefor.

Jamorabo can still be held administratively liable even if the charge against him was filed after his retirement.

The BSP argues that Jamorabo can still be held administratively liable for his loan transaction with RBKSI even if the complaint was filed before the Ombudsman almost eight months after Jamorabo's retirement from government service. It cites the cases of *Pagano v. Nazarro, Jr.*[47] *(Pagano)*, *Baquerfo v. Sanchez*[48] *(Baquerfo)*, and *Office of the Ombudsman v. Andutan*[49] *(Andutan)* in support of the proposition that "the crux of administrative liability is not only the incumbency of a government official but also that: first, the act complained of must have been done during one's stint in the government; and second, administrative sanctions, other than dismissal, may still be meted out despite separation from service."[50]

The BSP's contentions have been passed upon and expressly rejected in one of the very cases it cited in support thereof. In *Andutan* the Court held:

> To recall, we have held in the past that a public official's resignation does not render moot an administrative case that was filed prior to the official's resignation. In *Pagano v. Nazarro, Jr.*, we held that:
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> > In *Office of the Court Administrator v. Juan* x x x, this Court categorically ruled that the precipitate resignation of a government employee charged with an offense punishable by dismissal from the service does not render moot the administrative case against him. Resignation is not a way out to evade administrative liability when facing administrative sanction. The resignation of a public servant does not preclude the finding of any administrative liability to which he or she shall still be answerable x x x.
>
> Likewise, in *Baquerfo v. Sanchez*, we held:
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> > Cessation from office of respondent by resignation x x x or retirement x x x neither warrants the dismissal of the administrative complaint filed against him while he was still in the service x x x nor does it render said administrative case moot and academic x x x. The jurisdiction that was this

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47 560 Phil. 96 (2007).
48 495 Phil. 10 (2005).
49 670 Phil. 169 (2011).
50 *Rollo*, p. 21.

> Court's at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased in office during the pendency of his case x x x. Respondent's resignation does not preclude the finding of any administrative liability to which he shall still be answerable x x x.

However, the facts of those cases are not entirely applicable to the present case. In the above-cited cases, **the Court found that the public officials - subject of the administrative cases - resigned, either to prevent the continuation of a case already filed or to pre-empt the imminent filing of one. Here, neither situation obtains.**

The Ombudsman's general assertion that Andutan pre-empted the filing of a case against him by resigning, since he "knew for certain that the investigative and disciplinary arms of the State would eventually reach him" is unfounded. First, Andutan's resignation was neither his choice nor of his own doing; he was forced to resign. Second, Andutan resigned from his DOF post on July 1, 1998, while the administrative case was filed on September 1, 1999, exactly one (1) year and two (2) months after his resignation. The Court struggles to find reason in the Ombudsman's sweeping assertions in light of these facts.

What is clear from the records is that Andutan was forced to resign more than a year before the Ombudsman filed the administrative case against him. Additionally, even if we were to accept the Ombudsman's position that Andutan foresaw the filing of the case against him, his forced resignation negates the claim that he tried to prevent the filing of the administrative case.

Having established the inapplicability of prevailing jurisprudence, we turn our attention to the provisions of Section VI of CSC Memorandum Circular No. 38. **We disagree with the Ombudsman's interpretation that "[a]s long as the breach of conduct was committed while the public official or employee was still in the service x x x a public servant's resignation is not a bar to his administrative investigation, prosecution and adjudication." If we agree with this interpretation, any official - even if he has been separated from the service for a long time - may still be subject to the disciplinary authority of his superiors, ad infinitum.** We believe that this interpretation is inconsistent with the principal motivation of the law - which is to improve public service and to preserve the public's faith and confidence in the government, and not the punishment of the public official concerned. Likewise, if the act committed by the public official is indeed inimical to the interests of the State, other legal mechanisms are available to redress the same.

The possibility of imposing accessory penalties does not negate the Ombudsman's lack of jurisdiction.

The Ombudsman suggests that although the issue of Andutan's removal from the service is moot, there is an "irresistible justification" to "determine whether or not there remains penalties capable of imposition, like bar from

re-entering the public service and forfeiture of benefits." Otherwise stated, since accessory penalties may still be imposed against Andutan, the administrative case itself is not moot and may proceed despite the inapplicability of the principal penalty of removal from office.

We find several reasons that militate against this position.

First, **although we have held that the resignation of an official does not render an administrative case moot and academic because accessory penalties may still be imposed, this holding must be read in its proper context.** In *Pagano v. Nazarro, Jr.*, indeed, we held:

> A case becomes moot and academic only when there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits of the case x x x. The instant case is not moot and academic, despite the petitioner's separation from government service. Even if the most severe of administrative sanctions - that of separation from service - may no longer be imposed on the petitioner, there are other penalties which may be imposed on her if she is later found guilty of administrative offenses charged against her, namely, the disqualification to hold any government office and the forfeiture of benefits. x x x

Reading the quoted passage in a vacuum, one could be led to the conclusion that the mere availability of accessory penalties justifies the continuation of an administrative case. This is a misplaced reading of the case and its ruling.

Esther S. Pagano - who was serving as Cashier IV at the Office of the Provincial Treasurer of Benguet - filed her certificate of candidacy for councilor four days after the Provincial Treasurer directed her to explain why no administrative case should be filed against her. The directive arose from allegations that her accountabilities included a cash shortage of P1,424,289.99. She filed her certificate of candidacy under the pretext that since she was deemed ipso facto resigned from office, she was no longer under the administrative jurisdiction of her superiors. Thus, according to Pagano, the administrative complaint had become moot.

We rejected Pagano's position on the principal ground "that the precipitate resignation of a government employee charged with an offense punishable by dismissal from the service does not render moot the administrative case against him. Resignation is not a way out to evade administrative liability when facing administrative sanction." **Our position that accessory penalties are still imposable - thereby negating the mootness of the administrative complaint - merely flows from the fact that Pagano pre-empted the filing of the administrative case against her.** It was neither intended to be a stand-alone argument nor would it have justified the continuation of the administrative complaint if Pagano's filing of candidacy/resignation did not reek of irregularities. Our factual findings in Pagano confirm this, viz.:

> At the time petitioner filed her certificate of candidacy, petitioner was already notified by the Provincial Treasurer

> that she needed to explain why no administrative charge should be filed against her, after it discovered the cash shortage of P1,424,289.99 in her accountabilities. Moreover, she had already filed her answer. To all intents and purposes, the administrative proceedings had already been commenced at the time she was considered separated from service through her precipitate filing of her certificate of candidacy. Petitioner's bad faith was manifest when she filed it, fully knowing that administrative proceedings were being instituted against her as part of the procedural due process in laying the foundation for an administrative case. x x x

Plainly, *our justification for the continuation of the administrative case - notwithstanding Pagano's resignation - was her "bad faith" in filing the certificate of candidacy, and* ***not the availability of accessory penalties.***[51]

As clearly illustrated by the foregoing passage, *Andutan* upholds the general rule that the separation of a public officer from the government service forecloses the filing of administrative charges against such public officer.[52] The continuing validity and binding effect of administrative proceedings after the resignation or voluntary separation of the respondent public officer is based not on the availability of accessory penalties but on the bad faith attendant to such resignation or voluntary separation. Contrary to the BSP's assertion, *Pagano* and *Baquerfo* do not depart from these principles. In *Pagano* and *Baquerfo* the administrative charges were filed before the erring public officers resigned, and this Court held that their resignation did not serve as a bar to the continuation of administrative proceedings against them, since the jurisdiction of the administrative tribunal had already attached even ***before*** the respondents were separated from the service.[53] In *Andutan*, the administrative case against Andutan was filed more than one year ***after*** his separation from the service; hence, the Court ruled that he can no longer be administratively charged.

However, the holding in *Andutan* is premised on the finding that Andutan was involuntarily separated from the service by virtue of a directive from the Executive Secretary.[54] Based on the aforequoted passage in *Andutan*, separation from the service is not an absolute bar to the filing of an administrative charge if the public officer voluntarily separated from the service to "pre-empt the imminent filing" thereof.[55] That is precisely what

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51 *Office of the Ombudsman v. Andutan*, supra note 49 at 183-188. Citations, original emphases and original underscoring omitted; new emphases, italics and underscoring supplied.

52 *Office of the Court Administrator v. Ret. Judge Tandinco, et al.*, supra note 28; *Office of the Court Administrator v. Grageda*, 706 Phil. 15, 21 (2013); *Re: Missing Exhibits and Court Properties in Regional Trial Court, Branch 4, Panabo City, Davao Del Norte*, 705 Phil. 8, 14 (2013).

53 See also *Vilchez v. Free Port Service Corporation*, 763 Phil. 32, 41 (2015): citing *Office of the Ombudsman v. Dechavez*, 721 Phil. 124 (2013); *Mendoza v. Tiongson*, 333 Phil. 508 (1996); *Perez v. Judge Abiera*, 159-A Phil. 575 (1975).

54 *Office of the Ombudsman v. Andutan*, supra note 49 at 173, 184-185.

55 Id. at 184.

happened in *Office of the Court Administrator v. Juan*,[56] where the public officer tendered his resignation a day after confessing to the commission of an administrative offense. The administrative proceedings were formally initiated two months after he tendered his resignation, which this Court did not accept, *viz.*:

> The CZ Pistol was discovered missing during the hearing on 7 May 2003 in the criminal case for Parricide when the defense counsel requested the production of the CZ Pistol. It was only on 19 May 2003 that respondent confessed that he took the CZ Pistol with its magazine and cartridges. During the investigation on the missing CZ Pistol, respondent failed to appear despite notices sent to him. Respondent's refusal to appear before the investigating judge, and his precipitate resignation from the service, are clear indicia of guilt. Respondent's act of taking the CZ Pistol constitutes dishonesty and grave misconduct.
>
> Under Section 22, Rule IV of the Civil Service Rules, dishonesty and grave misconduct are grave offenses punishable by dismissal from the service even if it is the first offense. **Respondent's resignation does not render the case moot. Resignation is not a way out to evade administrative liability when a court personnel is facing administrative sanction.**[57]

In the present case, it is undisputed that Jamorabo *voluntarily retired* from government service effective December 31, 2008,[58] or a mere four (4) months before RBKSI's next regular examination on April 2009.[59] Having failed to fulfill his personal promise to RBKSI president Falgui that the loan would be settled prior to the next regular examination of RBKSI, Jamorabo suddenly separated himself from government service before the said examination. Having been a bank examiner for 21 years,[60] it is reasonable to presume that Jamorabo knew of RBKSI's upcoming regular examination, and that he was wise to the possibility of RBKSI reporting the still unpaid loan to the BSP in the course thereof. This is bolstered by the report of the BSP's Investigation and Intelligence Division finding that Jamorabo had started applying for a Canadian Permanent Resident Visa as early as June 2008.[61] Given the suspicious timing and the circumstances surrounding his *voluntary* retirement from the service, coupled with his actual departure from the Philippines in April 2010,[62] barely four months after the loan was finally settled by his wife and sister-in-law,[63] this Court finds that Jamorabo's voluntary separation from government service was calculated to pre-empt the charges that will inevitably result from the discovery of the illicit loan he

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56 478 Phil. 823 (2004).
57 Id. at 828-829. Emphasis and underscoring supplied.
58 *Rollo*, pp. 25, 84.
59 Id. at 25.
60 Id. at 25, 83.
61 Id. 166-168.
62 Id.
63 According to Marites and Honeyve, the loan was fully paid on December 1, 2009. Affidavits of Marites Bonsobre Jamorabo and Honeyve B. Montecalvo, id. at 85-88.

entered into. As it turned out, RBKSI did report the loan to the BSP in the very next examination period; and the complaint against Jamorabo was filed shortly thereafter. All told, the Ombudsman committed grave abuse of discretion in ruling that Jamorabo could no longer be held administratively liable. Likewise, the Ombudsman also committed grave abuse of discretion when it docketed Jamorabo's case as a purely criminal investigation, without pursuing the administrative aspect thereof. The Ombudsman must therefore proceed with the determination of Jamorabo's administrative liability for violation of the Central Bank Act and other pertinent government regulations in connection with the loan he contracted with RBKSI.

There is no prima facie case for violation of R.A. No. 3019, Section 3(e) against Jamorabo.

Section 3 of R.A. No. 3019 enumerates and defines the corrupt practices of public officers which are outlawed and penalized by said law. Paragraph (e) of said provision embraces two different acts: "causing any undue injury to any party", and "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." Jurisprudence treats these two different acts as two different modes of committing the same offense; therefore, an accused violates Section 3(e) by committing either one or both of the said acts.[64]

In the case at bar, the Ombudsman correctly found that Jamorabo could not be held liable for violating Section 3(e) through the first mode because the loan had been paid in full. Well settled is the rule that in a prosecution for violation of Section 3(e) through causing undue injury, proof of actual injury or damage must be shown.[65] Contrary to the BSP's position,[66] "*undue injury in Sec. 3(e) cannot be presumed even after a wrong or a violation of a right has been established.*"[67] While Jamorabo's loan is indeed a violation of R.A. No. 7653, the BSP was unable to show how such violation caused actual damage or injury to any party, much less to RBKSI.

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64 *Tupaz v. Office of the Deputy Ombudsman for the Visayas*, G.R. No. 212491-92, March 6, 2019; *Valencerina v. People*, 749 Phil. 886, 890-891 (2014); *Ampil v. Office of the Ombudsman, et al.*, 715 Phil. 733, 758-759 (2013); *Sison v. People*, 628 Phil. 573, 584-585 (2010); *Republic of the Philippines v. Hon. Desierto*, 516 Phil. 509, 513-514 (2006).

65 *People v. Sandiganbayan (Fourth Division), et al.*, 769 Phil. 378, 385-386 (2015); *Alvarez v. People*, G.R. No. 192591, July 30, 2012; *Vergara v. The Hon. Ombudsman, et al.*, 600 Phil. 26, 44-45 (2009); *Llorente, Jr. v. Sandiganbayan*, 350 Phil. 820, 836-837 (1998); *Pecho v. Sandiganbayan*, 308 Phil. 120, 139-140 (1994).

66 In its petition (*Rollo*, p. 28), the BSP asserts that Jamorabo's violation of the prohibition of borrowings by BSP examiners constitutes, by itself, undue injury to the government.

67 *Llorente, Jr. v. Sandiganbayan*, supra at 837-838.

The BSP argues that Jamorabo should still be charged with violating Section 3(e) through the second mode. It argues that Jamorabo's loan arrangement with RBKSI conferred the latter with the unwarranted benefit of escaping BSP detection and sanction for the unauthorized loan, specifically by deliberately designating his wife as the principal borrower and scheduling the loan payments before the next scheduled regular examination of RBKSI.[68] On this point, We approvingly cite the Ombudsman's findings:

> As for the alleged giving of unwarranted benefits to the bank, this Office finds the same unmeritorious. There was no showing of any concrete benefit given to the Rural Bank of Kiamba, Inc. at the time respondent's loan was granted. The bank officers' silence or inaction over the matter resulting in the non-discovery of the loan, cannot be considered an unwarranted benefit but rather an irregular act or lapse of judgment on their part.[69]

It bears repeating that both Nero and Falgui – who were the general manager and the president of RBKSI, respectively – objected to Jamorabo's loan application.[70] As alleged in Nero's affidavit, Falgui only approved the loan out of fear of offending Jamorabo.[71] Furthermore, RBKSI did not really gain the benefit of escaping detection since it reported the loan to the BSP in the course of its next regular examination.

WHEREFORE, the present petition is **GRANTED**. The February 9, 2011 Resolution and the July 28, 2011 Order of the Office of the Ombudsman in Case No. OMB-C-C-09-0465-I are hereby **REVERSED** and **SET ASIDE** insofar as these absolved respondent Benjamin M. Jamorabo of criminal and administrative liability for violation of Section 27(d) in relation to Section 36 of Republic Act No. 7653. The Office of the Ombudsman is hereby **ORDERED** to: 1) **FILE** before the proper court the necessary information for violation of Section 27(d) in relation to Section 36 of Republic Act No. 7653, as amended, against Benjamin M. Jamorabo; and 2) **INITIATE** administrative proceedings against Benjamin M. Jamorabo in accordance with this Decision.

SO ORDERED.

SAMUEL H. GAERLAN
Associate Justice

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68 *Rollo*, p. 142.
69 Id. at 50.
70 Affidavit of William Nero y Campos, id. at 56.
71 Id.

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

CERTIFICATION

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

ALEXANDER G. GESMUNDO
Chief Justice