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ADMINISTRATIVE ORDER NO. 93

**DISMISSING FROM THE SERVICE, WITH FORFEITURE OF RETIREMENT AND OTHER BENEFITS, NICANOR P. JACINTO III, CHAIRMAN OF THE PHILIPPINE RACING COMMISSION, FOR GRAVE MISCONDUCT, NEGLIGENCE OF DUTY, INEFFICIENCY AND INCOMPETENCE IN THE PERFORMANCE OF OFFICIAL DUTIES, AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE**

This pertains to the administrative charge against Nicanor P. Jacinto III, Chairman of the Philippine Racing Commission (hereinafter, "Philracom"), for grave misconduct, neglect of duty, inefficiency and incompetence in the performance of official duties, and conduct prejudicial to the best interest of the service.

Respondent Nicanor Jacinto III was preventively suspended for a period of ninety (90) days, under a Memorandum dated 12 May 1993, signed by the Chief Presidential Legal Counsel, on the basis of the Report of the Fact-Finding Committee (hereinafter, "Fact-Finding Committee") created pursuant to Memorandum Order No. 125 dated March 20, 1993, which was tasked to investigate, and submit its report and findings to the President on, certain reported anomalies within the Philracom involving, among others, the alleged mishandling of declaration fees and prizes of the day collection (hereinafter, "Declaration Fund"), and prize-switching.

Respondent Jacinto was informed that the Philracom Investigating Committee (hereinafter, "Committee") created pursuant to Memorandum Order No. 130 dated May 12, 1993, which was tasked with the investigation of the charges levelled against certain officials and employees of the Philracom, will investigate the administrative charges levelled against him; that he was required to submit to the Committee his verified Answer to said charges within ten (10) days therefrom; and, that his failure to do so will be construed as a waiver on his part to submit an Answer or to be heard, in which case the Committee shall deem the case submitted on the basis of the aforementioned report and other documents at hand.

On 4 June 1993, Respondent Jacinto was served, through counsel, with a notice of hearing scheduled on 14 June 1993.

In his Answer filed, through counsel, on 11 June 1993, Respondent Jacinto denied all the charges preferred against him and in support thereof he alleged that the Declaration Fund are

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not public funds, but are private funds; that, assuming arguendo that such Fund is public in character, his acts should be considered as having been done in good faith; and that, since the persons who allegedly witnessed the alleged switching of prizes in the 13 September 1992 PCSO Sweepstakes and PCSO Sponsored Stakes Races have not filed a complaint, Respondent Jacinto should not be called upon to respond thereto.

The Declaration Fund consists of the declaration fees paid by horseowners as a guarantee or commitment of their horses' actual participation in a particular race. Between January 1986 to October 1992, it is estimated that the two racing clubs, Manila Jockey Club, Inc. and Philippine Racing Club, Inc., collected revenues covering declaration fees/prizes of the day in the amount of P16.4 Million.

The issues having been joined, the Committee conducted a series of hearings to receive the evidence of both the Prosecution and Respondent Jacinto.

At the 14 June 1993 hearing, the ground rules for the hearings of the administrative case were adopted, upon agreement of the parties. The next hearing was set on 24 June 1993.

At the 24 June 1993 hearing, Respondent Jacinto's counsel was furnished with a copy of the Affidavit of Rafael R. Lagos, Chairman of the Fact-Finding Committee.

On 25 June 1993, the Prosecution presented Rafael R. Lagos as its lone witness; but due to lack of material time, the presentation of the Prosecution's evidence was not finished. It was continued and terminated on 1 July 1993.

In the said 1 July 1993 hearing, the Prosecution made its verbal Formal Offer of Evidence -- to which offer of evidence, Respondent Jacinto's Counsel made a verbal manifestation that he will file a written formal Opposition thereto.

The Prosecution presented the following evidence:

- 1. Exhibit "A" - Affidavit of Atty. Lagos
- 2. Exhibit "B" - The Fact-Finding Committee Report
- 3. Exhibit "C" - Transcripts of proceedings conducted by the Fact-Finding Committee
- 4. Exhibit "D" - Details of the disbursements made against the Declaration Fund
- 5. Exhibit "E" - Philracom Position Paper and its sub-markings

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On 6 July 1993, Respondent Jacinto filed before the Committee his Opposition to the Prosecution's Formal Offer of Evidence alleging that the evidence offered by the Prosecution is hearsay and self-serving because its witness had no personal knowledge of the facts stated in his Affidavit considering that he learned the same only from statements given him by third persons who were not even presented or cross-examined by the former during the Committee proceedings.

On 9 July 1993, the Committee issued an Order admitting the Prosecution's Offer of Evidence.

On 14 July 1993, Respondent Jacinto filed a Motion for Reconsideration of the aforesaid Order, claiming that the admission of the Prosecution's evidence is tantamount to depriving him of his right to cross-examine the witnesses against him thereby violating his constitutional right to due process. Respondent Jacinto reiterated his claim that the Affidavit of Rafael Lagos cannot be admitted in evidence because it is self-serving and its contents are hearsay.

On 19 July 1993, the aforesaid Motion for Reconsideration was denied by the Committee for lack of merit.

On 21 July 1993, Respondent Jacinto filed a Special Civil Action for Certiorari with a prayer for a writ of preliminary injunction and restraining order before the Regional Trial Court of Manila, Branch VI, docketed therein as SP No. 93-66841.

On 22 July 1993, the aforesaid Regional Trial Court issued a restraining Order thereby temporarily restraining/enjoining the Chairman and members, as well as the Prosecutor, of the Committee from proceeding in any way with Administrative Case Nos. 010-93 and 020-93 until the Court will have determined whether or not a writ of preliminary injunction will be issued.

On 11 October 1993, after the lapse of the TRO, the Committee issued an order setting the instant case for another hearing on 15 October 1993, 2:30 P.M. at which time Respondent Jacinto was directed to submit his position paper/sworn statement, in lieu of his direct testimony. But at said scheduled hearing, instead of complying with the Committee's order as contained in the Notice of Hearing dated 11 October 1993, Respondent Jacinto, through counsel, merely requested for the deferment of the hearing until after the injunction case is resolved.

Said request was vigorously opposed by the Prosecution on the ground that Respondent Jacinto has violated the status quo by his announced assumption into office at the Philracom last 22 September 1993, as well as the previous agreement of the parties that "upon resumption of hearing, no further request for extension/resetting shall be entertained by the Investigating Committee."

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Finding merit in the Opposition of the Prosecution, the Committee considered the case submitted for resolution.

This Office agrees with the findings of the Committee, with respect to the procedural matters, as follows:

"1. Respondent Jacinto's allegation that he has been denied his constitutional right to due process -- particularly the right to cross-examine the witnesses against him, is baseless and unfounded.

"2. On the contrary, Respondent Jacinto was adequately afforded his right to due process. He was always notified of the hearings conducted by the Committee. He was also given every opportunity to defend himself, present his controverting evidence, and cross-examine the witnesses against him.

"3. If Respondent Jacinto failed to present his side, he has only himself to blame.

"During the hearings conducted by the Committee, Respondent Jacinto has always been represented by counsel. He has all the chances to confront and cross-examine the witnesses against him. This, he or his counsel did not do. Instead, Respondent Jacinto's counsel merely kept on harping about the inadmissibility of Chairman Lagos' testimony allegedly for being hearsay and self-serving.

"4. But well established is the rule that all that due process requires is an opportunity to be heard (U.P. Board of Regents V. Auditor General, 30 SCRA 5), for the essence of due process is simply an opportunity to be heard or as applied in administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of (PLDT V. NLRC, 175 SCRA) (underscoring supplied).

"Similarly, it was held that there was no denial of due process where petitioner had many opportunities and had been afforded adequate hearing to argue his case (Pulido V. Lazaro, 158 SCRA 107).

"5. Anent the claimed inadmissibility of Chairman Lagos' testimony for being allegedly hearsay and self-serving, it is well settled that hearsay evidence is generally held admissible in administrative proceedings, at least for limited purposes. It may be used for the purpose of supplementing or explaining any direct evidence (2 Am Jur. 2d 189).

"6. Moreover, the reception of hearsay evidence incompetent in judicial proceedings does not necessarily

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deny a fair hearing or vitiate the proceedings or invalidate an Order (Idem., p. 190)."

This Office further agrees with the findings of the Committee with respect to substantive matters as follows:

"1. Respondent Jacinto admits that indeed he made or authorized several withdrawals and disbursements from the Declaration Fund (pp. 7-9, TSN, 2 April 1993; Fact-Finding Committee).

"2. But he denies any liability for said withdrawals and disbursements arguing that aforesaid Declaration Fund is a private, not public, fund considering that by practice it has been treated as "private fund" since the time of then Philracom Chairman Nemesio Yabut who issued a Resolution, dated 7 August 1979, declaring that part of said Fund may be made payable to the Racing Clubs; that said practice was known and accepted by the COA, through its resident Auditor (State Auditor Melecio Aguirre), and; that said Fund is owned by the Racing Clubs -- only their disbursements were coursed through Philracom.

"3. Respondent Jacinto's categorization of the Declaration Fund as a private fund, is erroneous and misleading.

"4. The Philracom Declaration Fund is in law "public or government fund" inasmuch as "government funds includes public money of every sort and other resources pertaining to any agency of the government" (Sec. 3(2), PD No. 1445; 1 Sec. 2(2), Title 1(B), Book V, 1987 Administrative Code (underscoring supplied).

"5. Since the Philracom is an "agency of the government" -- it is an agency directly under the Office of the President for administrative supervision, all its "resources" are public or government funds especially in the absence of a provision in its Charter authorizing the establishment of any other kind of funds, e.g. revolving fund, special fund, etc.

"6. Furthermore, the characterization of said Declaration Fund as public fund has been made earlier by Philracom's first Chairman, Eduardo Cojuangco, Jr. (1974-78), who remitted the amounts collected therefrom to the National Treasury as part of its revenue.

"7. Contrary to Respondent Jacinto's gratuitous claim that "there was no law or regulation categorically stating that said fund is public fund", P.D. 1445, particularly Sec. 3(2) thereof, promulgated on 11 June

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1978, explicitly classified the aforesaid Fund as a public or government fund.

"8. Respondent Jacinto's reliance on the 7 August 1979 Resolution as the basis of the withdrawals and disbursements made or authorized from the Declaration Fund and his allegation that said Fund should be treated as a private fund, is misplaced and of no comment.

"The only disbursements authorized from the aforesaid Declaration Fund, by Board Resolution No. 79, were for the following exclusive purposes:

1. Publicity of Philracom-organized stakes races;
2. Expenses for seminars and/or clinics organized by the Philracom for racing stewards, jockeys, horse trainers and/or horse owners;
3. Establishment of a School for Jockeys;
4. Such other similar projects which the Philracom may from time to time authorize.

"Nowhere in the aforesaid Resolution is there mention about the Fund being a private fund.

"Moreover, even granting that said Resolution in fact legally converted part of the Fund from public to private, still the withdrawals and disbursements made were in fact violative of the same Resolution, for payment of salaries and allowances to the Board of Stewards and Board of Judges; bonuses to Philracom officers and employees, purchases of certain Philracom supplies and equipment, etc. are not included in the above enumeration.

"9. Respondent Jacinto's assertion that COA knew and accepted "their" classification of the Declaration Fund as a private fund, is devoid of merit.

"It was only on 11 January 1993 when COA issued its official statement on the subject, in reply to the request of the Chairman of the House Committee on Games and Amusement for a legal opinion on the nature of the aforesaid Fund. And COA's categorical positions is that the Declaration Funds is public, not private.

"But the questioned withdrawals and disbursements made or authorized by Respondent Jacinto occurred as early as March 1990, when the latter was appointed Chairman of Philracom.

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"10. Similarly, Respondent Jacinto's allegation that State Auditor Melecio Aguirre admitted the "private" character of the Fund, is without basis.

"What Auditor Aguirre admitted is just the "claims and insistence" by the Philracom and the Racing Clubs that the said Fund is private, hence, he was not able to audit it (Exh. "E" - 28, p. 12. TSN, March 31, 1993, Fact-Finding Committee)

"11. Respondent Jacinto's claim that the Declaration Fund is owned by the Racing Clubs, hence, private fund, deserves scant consideration.

"The Racing Clubs themselves, through their respective presidents, admit that they have "no say in the funds" and the one "who owns the funds and disburse them" is Philracom, (pp. 6; 11, TSN, March 31, 1993, Fact-Finding Committee).

"Moreover, the Fund is "disbursable" for Philracom purposes only (vide, Board Resolution No. 79, supra).

"The only reason why said Fund remained in the hands of the Racing Clubs is precisely because of the aforementioned Board Resolution which authorized the Racing Clubs to retain and even spend it but only for any of the four (4) specific purposes enumerated thereunder.

"12. Neither can Respondent Jacinto escape any liability for the switching of prizes in the 13 September 1992 PCSO sweepstakes and PCSO sponsored stakes races simply because not one of the persons who may have witnessed the irregularity has filed a complaint.

"With or without any complaint, Respondent Jacinto should be held liable -- if his culpability on this charge is proven.

"However, his direct participation or conspiracy in the switching of prizes during the aforesaid event has not been clearly established.

"But his omission, as the Chairman of Philracom, and his failure to stop the commission of this patent irregularity during an event he himself personally witnessed and wherein his horse participated, amount to neglect of duty, and inefficiency and incompetence in the performance of official duties".

Based on the foregoing, this Office finds Respondent Nicanor P. Jacinto III GUILTY of grave misconduct, neglect of duty, inefficiency and incompetence in the performance of official

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duties, and conduct prejudicial to the best interest of the service.

WHEREFORE, premises considered, Nicanor P. Jacinto III is hereby DISMISSED from the government service with forfeiture of retirement and other benefits.

DONE in the City of Manila, this 6<sup>th</sup> day of November in the year of Our Lord, Nineteen Hundred and Ninety-Three. 14



By the President:



TEOFISTO T. GUINGONA, JR.  
Executive Secretary