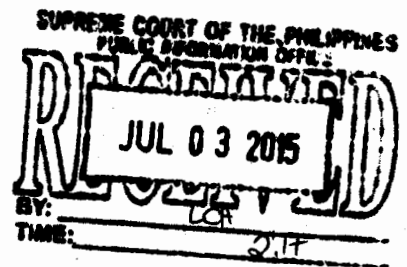




Republic of the Philippines  
Supreme Court  
Manila

EN BANC  
NOTICE



Sirs/Mesdames:

*Please take notice that the Court en banc issued a Resolution dated JUNE 23, 2015, which reads as follows:*

**“G.R. No. 202733 (DEVELOPMENT BANK OF THE PHILIPPINES V. COMMISSION ON AUDIT, JANET D. NACION, DIRECTOR IV, LEGAL SERVICES SECTOR OF COA, AND THE SUPERVISING AUDITOR OF THE DEVELOPMENT BANK OF THE PHILIPPINES)** – In its Decision dated September 30, 2014, the Court affirmed Decision No. 2011-055 and Resolution No. 2012-099, dated August 17, 2011 and July 12, 2012, respectively, of the Commission on Audit (COA) affirming Notice of Disallowance No. BOD-2006-003 (2005) of the Supervising Auditor of the Development Bank of the Philippines (DBP) disallowing the amount of ₱1,574,121.62 consisting of ₱678,992.76 and ₱895,128.86 for the reimbursement of travel expenses of former DBP Chairman Vitaliano N. Nañagas II and former Director Eligio V. Jimenez, respectively, on the basis of the absence of clearance thereon from the Office of the President. The dispositive portion reads:

**WHEREFORE**, premises considered, the instant petition is **DENIED**. The Decision No. 2011-055 and Resolution No. 2012-099, dated August 17, 2011 and July 12, 2012, respectively, of the Commission on Audit (COA) are hereby **AFFIRMED**.

On October 30, 2014, the DBP moved for a reconsideration on the following grounds: (1) The purported careless and irresponsible manner with which Chairman Nañagas and Director Jimenez conducted themselves has not been shown to have amounted to bad faith as would be sufficient to overcome the presumption of regularity of public officials; (2) The foreign travels of Chairman Nañagas and Director Jimenez redounded to the benefit of the DBP and the country; (3) The other persons being held liable – members of the DBP Board – should not be held personally and solidarily liable with the payees for they had no participation in the processing of the subject disbursement vouchers. The approval of the DBP Board of the subject travels is separate and distinct from the purported failure of the payees to obtain prior presidential approval; and (4) The Certifying Officer


and Approving Officer should not be held solidarily liable with the payees on the basis alone of their signatures appearing on the Disbursement Vouchers for having acted in good faith.

After filing their Motions for Extension of Time to File Comment for five (5) days from April 18, 2015, or until April 23, 2015, and for another five (5) days from April 23, 2015, or until April 28, 2015, the COA filed their Comment on April 28, 2015, insisting that Chairman Nañagas' and Director Jimenez' invocation of good faith is unwarranted in view of their blatant disregard of a plain and simple provision of law, which amounts to gross negligence, making them liable for the refund thereof. Such liability cannot be condoned simply because their foreign travels were allegedly beneficial to the DBP and the country.

As for the liability of the other DBP officials, the COA distinguishes between the former members of the DBP Board, Officers of the Office of the Corporate Secretary, and the Certifying and Approving Officers. With respect to the former Members of the DBP Board and the Officers of the Office of the Corporate Secretary, the COA agrees with the DBP that they should not be held liable for the return of the disallowed reimbursement of the travel expenses considering that their participation was limited to the approval of the subjects travels, having no hand in the processing of the disbursement vouchers.

As for the Certifying and Approving Officers, however, the COA maintains that they cannot escape liability on the mere pretext that they were simply implementing Board Resolution No. 0004 dated January 9, 2004 and Board Resolution No. 0242 dated August 8, 2003 for said resolutions provided that existing accounting and auditing rules, as well as the mandatory COA requirements, must be observed in processing reimbursements. In this regard, the COA cited the General Appropriations Act (*GAA*) of 2003, reenacted for C.Y. 2004, which specifically provides that the reimbursement of official travel expenses of government officials shall be subject to the provisions of Executive Order (*EO*) Nos. 248 and 248-A. Moreover, as Section 43, Chapter V, Book VI of the Administrative Code of 1987 provides, that "every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received." Thus, the COA asserts that the Certifying and Approving Officers cannot be allowed to escape their liability in view of the clear qualifications imposed by law and related issuances.

After a review of the Motion for Reconsideration and the Comment thereto, the Court finds no compelling reason to depart from its decision that Chairman Nañagas' and Director Jimenez' blatant disregard of the law cannot be deemed as a mere lapse in judgment consistent with the



presumption of good faith. Their outright violation of a plain and uncomplicated order, which has long been in effect as early as 1995, almost a decade before their respective travels, amounts to gross negligence, making them liable for the refund thereof.<sup>1</sup>

However, as both the DBP and the COA contend, the former Members of the DBP Board and the Officers of the Office of the Corporate Secretary should not be held personally and solidarily liable with the payees for they had no participation in the processing of the subject disbursement vouchers, having merely approved of the subject travels.

Nevertheless, the Court is in agreement with the DBP insofar as the Certifying and Approving Officers are concerned. It has been ruled in the past that officers who relied on the validity of resolutions issued by the Board, believing that they were merely implementing the same, cannot be held liable for the return of disallowed amounts.<sup>2</sup> In this case, while the resolutions provided that existing accounting and auditing rules as well as the mandatory COA requirements must be observed in processing reimbursements, the same refers to the procedure the officers must observe in making the reimbursement, not to the actual entitlement of DBP Chairman Nañagas and Director Jimenez to the same. Stated differently, as far as the Certifying and Approving Officers were concerned, the subject travels were approved by the Board of Directors, necessitating reimbursement thereof. Whether or not the Board's resolution approving the subject travels in compliance with the requirement of prior approval from the President of the Philippines was valid was beyond their authority to pass upon. Thus, the resolution of the Board was sufficient basis for their disbursement of the travel expenses.<sup>3</sup> Indeed, it would be rather unjust to hold the Certifying and Approving Officers solidarily liable with the payees for the return of the disallowed reimbursement for they were merely implementing the resolution made by the Board in good faith and in the discharge of their duties, functions, and responsibilities.

**WHEREFORE**, the Motion for Reconsideration is **PARTIALLY GRANTED**. The former Members of the DBP Board, namely, Alexander B. Magno, Floro F. Oliveros, Jaime S. Dela Rosa, Rey Magno Teves, Fernando T. Barican, Officers and Staff of the DBP Office of the Corporate Secretary, namely, Maria L. Ramos and Lutgarda C. B. Peralta, as well as the Certifying and Approving Officers, who are all being held solidarily liable with former DBP Chairman Vitaliano N. Nañagas II and former Director Eligio V. Jimenez for the return of the amount subject of the disallowance, are relieved therefrom. Chairman Nañagas and Director Jimenez shall, therefore, be solely liable for the return of the disallowed reimbursement in the amount of ₱1,574,121.62 consisting of ₱678,992.76



<sup>1</sup> *Executive Director Casal v. Commission on Audit*, 538 Phil. 634, 644 (2006).

<sup>2</sup> *GSIS, et al. v. COA, et al.*, G.R. No. 162372, October 19, 2011.

<sup>3</sup> *Buscaino v. Commission on Audit*, 369 Phil. 886, 904 (1999).

and ₱895,128.86, respectively.” Velasco, Jr. and Brion, JJ., on leave.  
Jardeleza, J., no part. (adv21)

Very truly yours,

  
**ENRIQUETA E. VIDAL**  
Clerk of Court 

- *over* -

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