

TAN, MARIETTA U.

Re: Leave of Absence; Effect of
Exoneration from Administrative Case

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RESOLUTION NO. 021396

Marietta U. Tan, Executive Vice-President and Chief Operating Officer, Small Business Guarantee and Finance Corporation (SBGFC), Makati City, seeks a ruling on the propriety of the alleged deduction from her leave credits of her 30-day leave of absence incurred for the period February 9, 2000 to March 9, 2000. Allegedly, Tan was forced to take a leave of absence for the period following the advice of the Department of Trade and Industry (DTI) Secretary Manuel A. Roxas and the Board of Directors of the SBGFC, to pave the way for the conduct of the investigation relative to the administrative complaint lodged against her.

Tan likewise requests the Commission to clarify the effect of said forced leave of absence on her exoneration from the administrative charges leveled against her. It was represented that Tan was absolved by the SBGFC Board of said charges after due investigation, except for Insubordination and Disrespect of Authority which, however, was set aside in CSC Resolution No. 00-2536 dated November 6, 2000.

In an Order dated January 18, 2002, the Commission requested Secretary Manuel A. Roxas to comment on Tan's letter. On February 14, 2002, the DTI, through Atty. Virgilio A. Sevandal, Director, Office of Legal Affairs filed an urgent motion for extension of time to file comment. Said motion was granted by the Commission in an Order dated March 6, 2002.

On March 8, 2002, the DTI submitted its comment wherein it states, as follows:

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"2. That on February 8, 2002, the undersigned addressed a memorandum to Ms. Alice Sy, VP, Administrative Service Group, SBGFC, requesting for their comment thereon, copy attached hereto as Annex "A".

"3. That on February 21, 2002, Ms. Sy submitted her written comment, attached hereto as Annex "B";

"4. The undersigned hereby adopts said comment of Ms. Alice Sy as an integral part of this Comment,

for the purpose of complying with the Honorable Commission's 18 January 2002 Order;

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thus: The comment of Alice Sy, Vice President, Administrative Service Group, SBGFC, alluded to by Atty. Sevandal states,

"With reference to your memorandum dated February 8, 2002 which we received February 14, 2002, hereunder are the chronological facts of the case based on documents made available to HRMD.

"Ms. Marietta U. Tan, former Executive Vice President and Chief Operating Office (sic) of SBGFC, filed on February 10, 2000 a leave of absence effective February 9, 2000 for a maximum period of one month (Annex A).

"The Board, in its Resolution No. 593 series of 2000, approved the application of Ms. Tan for a leave of absence from February 09 up to March 09, 2000.

"An investigating committee made up of external parties was created by the Board to look into the charges made by Chairman and President Jose S. Orosa against EVP/COO Tan.

"The Investigating Committee submitted its report on June 15, 2000 to the Board affirming the charges of Insubordination and disrespect for authority while dismissing the other charges for lack of sufficient evidence.

"Acting on the findings of the Investigating Committee, the Board, in a decision dated July 14, 2000, imposed a maximum penalty of suspension for one (1) year, citing the aggravating circumstances of taking undue advantage of official position and commission of more than one offense and in various counts.

"On November 06, 2000, the Civil Service Commission ordered the reinstatement of Ms. Tan to her former position of Chief Operating Officer, finding no substantial evidence to establish the guilt of Ms. Tan.

"SBGFC complied with above CSC Resolution No. 002536. With the reinstatement of Ms. Tan, all salaries, benefits as well as accrued leave of absence for the period she was under suspension were restored.

"The leave of absence of Ms. Tan incurred for February 9, to March 9, 2000 remained

deducted from her leave credits. Please note that these do not form part of the penalty imposed on her by the Board for charges for which she was subsequently absolved by the Civil Service Commission. We shall, however, abide by whatever decision the Civil Service Commission may arrive at regarding this case."

Records show that on January 20, 2000, Jose S. Orosa, Chairman and President of the SBGFC filed a complaint against Tan for Dishonesty, Concealment and/or Entering Into Contracts Disadvantageous to the Government, Grave Misconduct/Oppression, Falsification of Official Document, Disclosing or Misusing Confidential or Classified Information Officially Known to EVP Tan, et al. and Insubordination and Disrespect for Authority.

In a Memorandum dated February 10, 2000 addressed to the Board of Directors of the SBGFC, Tan filed her leave of absence effective February 9, 2000 for a maximum period of one month. Said memorandum reads, as follows:

"Pursuant to your directive during the meeting held today, February 10, 2000, for both Chairman Orosa and the undersigned to go on leave, I am filing my leave effective February 9, 2000 as agreed upon, for a maximum of one month.

"In the interest of the service and to preserve the integrity of the Small Business Guarantee and Finance Corporation, I am abiding by your decision that I file my leave of absence in the meantime that the investigation is being conducted by the respective Investigating Committees on charges and counter charges filed by Chairman Orosa and the undersigned against each other."

From the tenor of Tan's memorandum, the SBGFC Board of Directors directed her to go on leave for a period of one month to give the investigating committee a free hand in investigating the charges Orosa lodged against Tan.

As represented by VP for Administrative Service Group Alice L. Sy, the SBGFC Board, in its Resolution No. 593, series of 2000 approved the application of Tan for a leave of absence from February 9, 2000 to March 9, 2000. In a decision dated July 14, 2000, the SBGFC Board of Directors dismissed all the charges against Tan except for the charge of Insubordination/Disrespect, where she was meted the penalty of one (1) year suspension.

Tan appealed said Decision finding her guilty of Insubordination and Disrespect for Authority to the Commission. Finding no substantial evidence to establish the guilt of Tan, the Commission in CSC Resolution No. 00-2536 dated November 6, 2000, set aside the SBGFC's decision and ordered the SBGFC to reinstate Tan to her former position as Chief Operating Officer. SBGFC complied with the ruling of the Commission to reinstate Tan. As represented by Sy, with the reinstatement of Tan, all the salaries, benefits as well as accrued leave of absence for the period she was under suspension were restored. However, the leave of absence incurred by Tan from February 9, 2000 to March 9, 2000, (the period she was on leave to pave the way for the conduct of investigation) remained deducted from her leave credits.

Hence, Tan requests a ruling on the propriety of the deduction from her accumulated leave credits of the 30-day leave

of absence incurred during the period February 9, 2000 to March 9, 2000 *vis-a-vis* her exoneration from the charges imputed against her.

Tan alleged that she was forced to go on leave for the period February 9 to March 9, 2000 following the advice of DTI Secretary Roxas and the Board of Directors of the SBGFC to pave the way for the conduct of the investigation lodged against her. She further stressed that since she was completely exonerated from the charges imputed against her, the period she was allegedly forced to go on leave should be restored.

The Commission cannot subscribe to such view. Tan's exoneration from the acts imputed against her has nothing to do with her act of going on leave of absence. It is worth mentioning that even though she was completely exonerated from the charges imputed against her, the fact remains that she was formally charged with several offenses. Let it be stressed, too, that going on leave is a voluntary act of an employee. In Tan's case, no proof was ever adduced that Tan was indeed forced to go on leave. If indeed, she was forced to do so, Tan should have gone on leave under protest. However, Tan did not. Tan's act of going on leave of absence from February 9 to March 9, 2000 is indicative of her willingness to go on leave of absence.

If it is true that she was directed to take a leave of absence, it was a mutual agreement between Tan and the DTI and SBGFC management. Said mutual agreement between them is geared towards the conduct of an impartial investigation that redounds to the best interest and integrity of the service. Thus, Tan is said to have consented to the management's advice for her to go on leave of absence from February 9 to March 9, 2000.

WHEREFORE, the Commission hereby rules that the leave of absence from February 9 to March 9, 2000 incurred by Marietta U. Tan remains deducted from her accumulated leave credits. Said leave of absence was undertaken to pave the way for the conduct of an impartial investigation that redounds to the best interest and integrity of the service.

Quezon City, OCT 18 2002

(Signed)
J. WALDEMAR V. VALMORES
Commissioner

(Signed)
KARINA CONSTANTINO-DAVID
Chairman

(Signed)

JOSE F. ERESTAIN, JR.
Commissioner

Attested by:

(Signed)
ARIEL G. RONQUILLO
Director III

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