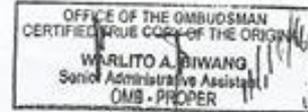




Republic of the Philippines  
**OFFICE OF THE OMBUDSMAN**  
Office of the Deputy Ombudsman for Luzon  
Agham Road, Diliman, Quezon City 1104



**MELECIO J. GO**  
President and Representative of  
Sargasso Construction and Development  
Corporation

**VOLUNTEERS AGAINST CRIME AND CORRUPTION**

Represented by:  
**DANTE LA. JIMENEZ**  
Founding Chairman and President  
**MARTIN B. DINO**  
Chairman

*Complainants,*

- versus -

OMB-L-C-15-0035  
For: Violation of Section 3(e) and  
(f) of the Republic Act No.  
3019

OMB-L-A-15-0046  
For: Violation of Section 5(a) of  
Republic Act No. 6713; Abuse  
of Authority

**CARMENCITA O. REYES [SG 30]**  
Governor

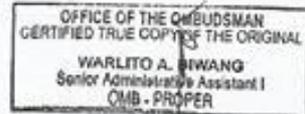
**ROMULO A. BACORRO, JR. [SG28]**  
Vice-Governor

**NORMA J. RICOHERMOSO [SG 27]**  
**HAROLD Y. RED [SG27]**  
Both Sangguniang Panlalawigan Member

**MARIE FE V. GALVEZ-GARCIA [SG 26]**  
Provincial Legal Officer

All of the Provincial Government of Marinduque

**NOEL M. CHUA**  
Private Individual  
Small-Scale Mining Representative



**ERIBERT R. ALMONTE**  
Private Individual  
Large-Scale Mining Representative

**RENATO M. SAPUNGAN**  
Private Individual  
Baya-Man, Non-Government Organization Representative

All members of the Provincial Mining Regulatory Board

**MIGUEL ONGSIAKO**  
Private Individual

*Respondents.*

x ----- x

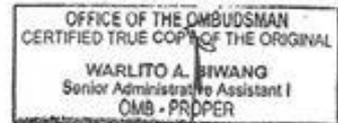
### JOINT RESOLUTION

This resolves the complaint for violation of Section 3(e) and (f) of Republic Act No. (RA) 3019<sup>1</sup> and Section 5(a) of RA 6713<sup>2</sup> and Abuse of Authority filed on February 9, 2015 by Melecio J. Go (complainant Go), President and authorized representative of Sargasso Construction and Development Corporation (SCDC) and the Volunteers Against Crime and Corruption (complainant VACC), represented by Dante La. Jimenez and Martin B. Dino, against the following:

Name of Respondent	Position
<b>Public Respondents</b>	
CARMENCITA O. REYES (Reyes)	Governor, Marinduque
ROMULO A. BACORRO, JR. (Bacorro)	Vice-Governor, Marinduque
NORMA J. RICOHERMOSO HAROLD Y. RED (SP members)	Sangguniang Panlalawigan (SP) members, Marinduque
MARIE FE V. GALVEZ-GARCIA (Garcia)	Provincial Legal Officer, Marinduque
<b>Private Individuals</b>	
NOEL M. CHUA	Members of the Provincial

<sup>1</sup> Anti-Graft and Corrupt Practices Act.

<sup>2</sup> Code of Conduct and Ethical Standards for Public Officials and Employees.



ERIBERT R. ALMONTE RENATO M. SAPUNGAN (collectively, respondent PMRB members), <sup>3</sup> MIGUEL ONGSIAKO (Ongsiako)	Mining Regulatory Board (PMRB)
---	-----------------------------------

Complainant Go is the President of SCDC, which was awarded the Contract for the Marinduque Airport Development Project by the Department of Transportation and Communications (DOTC).<sup>4</sup> In connection therewith, SCDC applied for a commercial sand and gravel permit with the Provincial Mining Regulatory Board (PMRB) of Marinduque, which respondents Ongsiako and Garcia allegedly refused to issue. Complainant Go then sent a letter<sup>5</sup> to respondents Bacorro and SP members requesting that the delay in the development of the Marinduque Airport be investigated. Not getting any response, he sent another letter<sup>6</sup> asking for their action on the said project. On July 28, 2014, respondent Bacorro finally sent a reply<sup>7</sup> informing complainant Go that his letters were referred to the PMRB for comment.

Follow-up letters<sup>8</sup> from the DOTC were also sent to respondent Reyes regarding the status of the SCDC's permit application but respondents refused and continue to refuse to issue the permit. Complainants aver that the refusal to issue the permit was due to the intervention of respondent Ongsiako, a nephew of respondent Reyes, who is pushing for another contractor to take over the project.

<sup>3</sup> Impleaded by Memorandum dated February 20, 2015, records, pp. 38-39.

<sup>4</sup> Project – Continuation of Concreting of Runway, records, pp. 14-16.

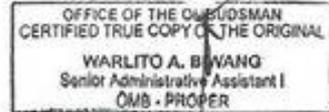
<sup>5</sup> Records, pp. 22-23.

<sup>6</sup> *Id.*, p. 24.

<sup>7</sup> *Id.*, p. 25.

<sup>8</sup> *Id.*, pp. 21-22.

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In another incident, respondents prevented Guadalupe Enterprises from supplying aggregates to SCDC causing delay in the construction of the project.

Respondents<sup>9</sup> deny the charges, claiming as follows:

Respondent Reyes<sup>10</sup> avers that the PMRB is under the direct supervision and control of the Department of Environment and Natural Resources (DENR). It has the ministerial duty to accept permit applications and forward the same to the Office of the Governor for her disposition once complete with all the required supporting documents. The Governor, on the other hand, in her discretion, may or may not sign and issue the permit. Up to the filing of this complaint, however, she has not yet received the application of SCDC. She further avers that according to Maria Fe Laceda,<sup>11</sup> complainant Go submitted an incomplete application, with only the Barangay Clearance<sup>12</sup> and Individual Project Program of Works as supporting documents and without complying with the other mandatory documentary requirements.<sup>13</sup> Laceda also pointed out that complainant Go failed to disclose in the application the volume of gravel and sand that SCDC proposes to extract, thus making it impossible to assess the amount of sand and gravel fees to be imposed by the government.

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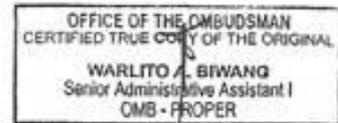
<sup>9</sup> Except Ongsiako who did not file any counter-affidavit.

<sup>10</sup> Records, pp. 76-93.

<sup>11</sup> *Id.*, pp. 88-90, Support staff of PMRB.

<sup>12</sup> *Id.*, p. 19, Issued by Barangay Captain Romualdo San Jose, Barangay Mangiliol, Gasan, dated April 1, 2014.

<sup>13</sup> DENR Administrative Order No. (AO) 96-40, Section 74 - The Consolidated Implementing Rules and



Respondent Bacorro<sup>14</sup> avers that the duties and responsibilities of the Vice-Governor do not include the issuance of a commercial sand and gravel permit. Nonetheless the SP, acting as a collegial body, endorsed complainant Go's letter to the PMRB for comment.<sup>15</sup>

Respondents Red and Ricohermoso<sup>16</sup> aver that the SP has no direct control or supervisory authority over the PMRB, which body was created under RA 7076 or the People's Small-Scale Mining Act of 1991 and is under the direct control of the DENR Secretary. Nonetheless, the SP indorsed the letter of complainant Go to the PMRB for the latter to answer and provide an explanation before the SP decides on the request for investigation on the matter. They also claim that the issuance of a commercial sand and gravel permit does not fall within the jurisdiction of the SP.

Respondent Garcia<sup>17</sup> avers that she was nominated by respondent Reyes as the latter's representative to the PMRB but the DENR has not yet issued the Special Order appointing the members of the PMRB. She also claims that the authority to issue the requested permit is vested upon the Governor.

Respondents Chua, Almonte and Sapungan aver that they are private individuals who were nominated as representatives of different sectors to the PMRB.<sup>18</sup> They claim that to date, they have not yet received the signed Special Order formalizing their appointment as members of the PMRB. As

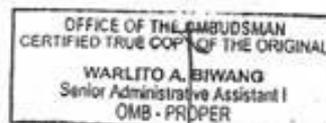
<sup>14</sup> Records, pp. 94-109

<sup>15</sup> Records, p. 109.

<sup>16</sup> *Id.*, pp. 61-68

<sup>17</sup> *Id.* p. 59

<sup>18</sup> Chua as representative of small scale miners; Almonte of large scale miners and Sapungan, of an



such, they are not authorized to act on any concern that may be brought to the attention of the PMRB.

The parties, except respondent Ongsiako, submitted their position papers where they reiterated their allegations and defenses.<sup>19</sup> The parties also submitted their respective Reply<sup>20</sup> and Rejoinder.<sup>21</sup>

This Office resolves to dismiss the complaint.

The power to issue commercial sand and gravel permits is exclusively vested upon the Governor<sup>22</sup> to whom the PMRB forwards applications for said permits.<sup>23</sup> In this case, however, the PMRB could not act on SCDC's application because complainant Go submitted only two documents in support of his application, one of which was the Barangay Clearance which was subsequently revoked.<sup>24</sup> Complainants did not refute respondents' claim that SCDC did not comply with the other mandatory requirements provided under DENR AO No. 96-40, particularly Section 74. Neither did SCDC indicate the volume of sand and gravel applied for in the application form for the proper computation of taxes.

Considering the incomplete entries in the application and the non-submission of other requirements filed before the PMRB, complainant Go's

<sup>19</sup> Respondent Reyes, records, pp. 264-286; Complainant, pp. 290-324

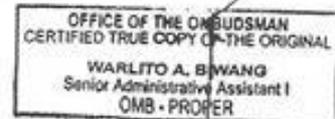
<sup>20</sup> Records, pp. 120-160.

<sup>21</sup> *Id.*, pp. 162-169.

<sup>22</sup> Local Government Code, Section 138- Tax on Sand, Gravel and Other Quarry Resources; Philippine Mining Act of 1995, RA 7942, Section 46. Any qualified person may be granted a permit by the Provincial Governor to extract and remove sand and gravel x x x.

<sup>23</sup> DENR AO No. 96-40 Section 70.

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application was not processed<sup>25</sup> and thus, was not forwarded to the Office of the Governor for her approval. Hence, the allegation that respondent Reyes deliberately refused to issue the permit to SCDC has no basis.

Complainant Go's arguments that: (1) SCDC should be issued a gratuitous permit because its project is of public use and that SCDC was merely continuing an old project that was previously issued a permit; and (2) the members of the PMRB were constituted as early as December 2010 and therefore authorized to perform duties and functions of the PMRB in a "hold-over" capacity, are untenable.

The provision relating to gratuitous permits does not apply to either complainant Go or SCDC because neither of them is a government entity/instrumentality.<sup>26</sup> Neither can Go or SCDC apply for a private gratuitous permit because a requirement is that the sand and gravel extracted be for personal, not commercial use.<sup>27</sup> In addition, commercial sand and gravel permits are for the exclusive use and benefit of the original permit holder and cannot be transferred or assigned to another without the prior written approval by the Provincial Governor.<sup>28</sup>

Regarding the alleged inaction of respondents Chua, Almonte and Sapungan, a certification<sup>29</sup> was issued by the DENR-Mines and Geosciences Bureau, stating that said respondents and respondent Garcia, whose names

<sup>25</sup> DENR AO No. 96-40, Section 74: Any application with incomplete mandatory requirements shall not be accepted.

<sup>26</sup> DENR AO No. 96-40 Section 73 (a) provides that any government entity/instrumentality in need of quarry, sand and gravel in the construction of infrastructure for public use may apply for a government gratuitous permit.

<sup>27</sup> *Id.*, Section 73 (b).

<sup>28</sup> DENR AO No. 96-40, 0 10Section 80, par. A (1).

<sup>29</sup> *Id.* by Edwin M. Mojares, OIC, Office of Regional Director IV-B, MCB, records, p. 174.



appeared in the official website of the Bureau, have not yet assumed their office as PMRB members since their nomination on October 23, 2013. It also states that as nominees, they could not and should not enter into any transaction relative to the issuance of any permit nor perform the duties and functions as the PMRB of Marinduque pending the issuance of the Special Order by the DENR Secretary appointing them as such. Hence, the PMRB nominees are justified in not acting on the application of complainant Go.

As for respondents Bacorro, Ricohermoso and Red, it is clear that the SP does not have the power to issue licenses or permits such as the one applied for by SCDC.<sup>30</sup> Records also show that said respondents acted on complainant Go's letters by referring the same to the PMRB for comment within the 15 working-day period mandated by law.<sup>31</sup> Hence, the claimed allege inaction of respondents Bacorro, Ricohermoso and Red should likewise fail.

On the basis of the foregoing discussion, there is also no substantial evidence to hold respondents administratively liable.

**WHEREFORE**, the complaint for violation of Section 3(e) and (f) of Republic Act No. (RA) 3019 and Section 5(a) of RA 6713 and Abuse of Authority against respondents CARMENCITA O. REYES, ROMULO A. BACORRO, JR., NORMA J. RICOHERMOSO, HAROLD Y. RED, MARIE FE V. GALVEZ-GARCIA, NOEL M. CHUA, ERIBERT R. ALMONTE, RENATO M. SAPUNGAN and MIGUEL ONGSIAKO is **DISMISSED.**

<sup>30</sup> Local Government Code, Section 468 - Power, Duties, Functions and Compensation of the Sangguniang Panlalawigan.

OFFICE OF THE OMBUDSMAN  
CERTIFIED TRUE COPY OF THE ORIGINAL  
YVARTITO A. SEWANG  
Senior Administrative Assistant I  
OMB - PROPER

**SO ORDERED.**

**Quezon City, Philippines, September 1, 2015.**

  
**JANE S. ONG**

Graft Investigation and Prosecution Officer II

Reviewed by:

  
**ADORACION A. GBADA** 10/14/15  
Director, EIO-B

Approved ~~Disapproved~~<sup>32</sup>



  
**CONCHITA CARPIO MORALES**

Ombudsman 16 21/16

JSO/lia

Copy Furnished:

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No. 11 Annapolis St., Greenhills, San Juan City 1503

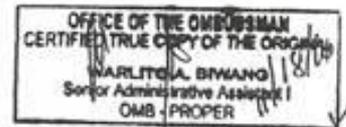
**Volunteers against Crime and Corruption (VACC)**

Represented by:

**DANTE La. JIMENEZ**  
Founding Chairman and President  
**MARTIN B. DINO**  
Chairman  
Unit 601 Pacific Corporate Center

<sup>32</sup> The Dispositive portion reads:

**WHEREFORE**, the complaint for violation of Section 3(e) and (f) of Republic Act No. (RA) 3019 and Section 5(a) of RA 6713 and Abuse of Authority against respondents CARMENCITA O. REYES, ROMULO A. BACORRO, JR., NORMA J. RICOHERMOSO, HAROLD Y. RED, MARIE FE V. GALVEZ-GARCIA, NOEL M. CHUA, ERIBERT R. ALMONTE, RENATO M. SAPUNGAN and MIGUEL ONGSIAKO is **DISMISSED**.



131 West Avenue, Quezon City 1104

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Provincial Governor  
Office of the Provincial Governor  
Provincial Capitol Building, Boac, Marinduque 4900

**ROMULO A. BACORRO, JR.**  
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or  
Office of the Provincial Vice-Governor  
Provincial Capitol Building, Boac, Marinduque 4900

**NORMA I. RICOHERMOSO**  
Barangay Pag-asa, Sta. Cruz, Marinduque 4902  
or  
Provincial Capitol Building, Boac, Marinduque 4900

**HAROLD Y. RED**  
Barangay Banahaw, Sta. Cruz, Marinduque 4902  
Or  
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**MARIE FE V. GALVEZ-GARCIA**  
Provincial Legal Officer  
Provincial Capitol Building, Boac, Marinduque 4900

**NOEL M. CHUA**  
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Quezon St., Gitnang Bayan, Mogpog, Marinduque 4901

**ERIBERT R. ALMONTE**  
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Large-Scale Mining Representative  
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Baya-Man,  
Non-Government Organization  
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