

MALACAÑANG
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 152

IMPOSING THE PENALTY OF DISMISSAL FROM THE SERVICE WITH FORFEITURE OF ALL THE BENEFITS UNDER THE LAW OF BUREAU OF INTERNAL REVENUE (BIR) REGIONAL DIRECTOR OSMUNDO G. UMALI

This Office is in receipt of the Resolution by the Presidential Commission Against Graft and Corruption (Commission) issued on September 23, 1994 on the administrative cases against Bureau of Internal Revenue (BIR) Regional Director Osmundo G. Umali for alleged violations of internal revenue laws and regulations committed by the respondent during his incumbency as Regional Director for Manila from November 29, 1993 to March 15, 1994 and for Makati from March 16, 1994 until August 3, 1994, to wit:

- A. Issuance of Letters of Authority (LAs) to investigate taxpayers despite the ban on investigations as ordered in Revenue Memorandum Order No. 31-93. In numerous cases, revenue officers whose names appeared in the LA's as investigating officers were unaware that such LA's were issued to them. He issued LA's to favored revenue examinees such as his Secretary, Natividad Feliciano;
- B. Termination of tax cases without the submission of the required investigation reports, thus exempting the same from examination and review;
- C. Terminated cases with reports were submitted directly to and approved by respondent Umali without being reviewed by the Assessment Division, thus, eliminating the check and balance mechanism designed to guard against abuses or errors;
- D. Unlawful issuance of LA's to taxpayers who were



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thereafter convinced to avail of the BIR's compromise and abatement program under RMO 's 45-93 and 54-93, for which the taxpayers were made, for a monetary consideration, to pay smaller amounts in lieu of being investigated;

- E. Despite the devolution of the authority to issue LA's from Regional Directors to the Revenue District Officers under RMO 26-94, dated April 14, 1994, respondent Umali continued to issue antedated LA's in absolute defiance of the aforesaid issuance, using old LA's requisitioned by him when still Regional Director of San Pablo Region. In one instance, he issued a termination letter bearing the San Pablo Region letter-head even when he was already Makati Regional Director; and
- F. In his attempt to cover up his tracks and to muddle the real issue of his violations of the ban in the issuance of LA's and basic revenue rules and regulations, respondent enlisted the support of other regional directors for the purpose of questioning the reorganization process being undertaken in the Bureau, particularly the devolution/decentralization of the functions of the Bureau.

The dispositive portion of the Commission's 35-page Resolution states:

"From all the foregoing, this Office summarizes its findings as follows:

1. On the First Charge - Respondent issued 176 Letters of Authority in gross disobedience to and in violation of RMOs 31-93 and 27-94.
2. On the Second Charge - There is insufficient evidence to establish respondent's responsibility for violation of RMO 5-86 and 37-94 as charged.
3. On the Third Charge - There is sufficient evidence of a prima facie case of falsification of official documents as defined in Art. 171, par. 2 and 4 of the Revised Penal Code, against respondent for the issuance of 9 LA's stating therein the names of Revenue Examiners who were unaware of the LA's and who did not investigate the

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tax cases, each LA being a separate offense.

4. On the Fourth Charge - There is insufficient evidence of wrong-doing by respondent arising from or on the occasion of the Office audit of FEP Company. However, respondent violated RMO 27-94 as well as the ban on the issuance of LA's and the investigation of tax cases under RMO 31-93. The reinvestigation of the tax case of FEP is also recommended to the BIR.
5. On the Fifth Charge - There is insufficient evidence that respondent violated any law or regulation by the "hasty termination" of the tax cases cited in this charge. In view of the on-going investigation by the BIR Audit Team to review "in-depth" the hasty closed tax cases, it would be premature at this time to rule on this charge until the result of the in-depth review are known.
6. On the Sixth Charge - There is insufficient evidence to support this charge against respondent. The alleged five "favorites" named in the charge are not parties to this proceeding, so this Commission does not rule on their alleged responsibility.
7. On the Seventh Charge - There is sufficient evidence of a prima facie case of falsification of official documents against respondent for ante-dating the four LA's cited in the charge, each LA constituting a separate offense, under Art. 171(4) of the Revised Penal Code.
8. On the Ninth (sic) Charge - There is sufficient evidence to support a prima facie case of falsification of an official document under Art. 171 (4) of the Revised Penal Code against respondent in the tax case of Richfield International Corp., Inc., for indicating a false date on the letter of termination he issued to the company. There is however insufficient evidence against respondent in the other tax case of Jayson Auto Supply Co.
9. On the Ninth Charge - There is sufficient evidence of a prima facie case of

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falsification of official documents in each of the two tax cases cited in his charge, under the provisions of Art. 171(4) of the Revised Penal Code, as the dates of the Termination Letters were false.

- 10. On the Tenth Charge - Respondent, by his own admission, violated RMO 36-87 requiring turn over of all properties and forms to his successor upon transfer as head of office, and RMO 27-94 requiring the surrender of all unused old forms of Letters of Authority. The Commission notes the defiant attitude of respondent, as expressed in his admission, towards valid and legal orders of the BIR, and his propensity to defy and ignore such orders and regulations.
- 11. On the Eleventh Charge - The Commission refrains from making a finding on this charge which involves the question of validity of Regional Memorandum Order 3-94 issued by respondent. The question is for the Commissioner of Internal Revenue to address and resolve.
- 12. On the issue raised by respondent re- the Memorandum/Petition to the Commissioner signed by Regional Directors, of whom respondent was the spokesman when it was submitted and discussed, the Commission agrees with respondent that no law, rule or regulation was violated.

In support of its findings, the Commission adduced the following evidence in its Resolution:

"ON THE FIRST CHARGE - ISSUANCE OF LA'S IN VIOLATION OF THE BAN --

The first charge against respondent is that he issued LA's during the period covered by the ban. The audit uncovered 35 LA's issued by respondent in Manila (November 29, 1993 to March 15, 1994), and 141 in Makati (March 16, 1994 to August 3, 1994). Copies of the LA's signed and issued by the respondent during the ban are attached to the



Progress Audit Report (Annexes 1 and 2). Their genuineness and authenticity are not questioned by respondent. All the LA's violated the ban as shown on the date of issuance. However, respondent claims that the LA's in question were "actually signed and issued by his Revenue District Officer, with the respondent's approval being ministerial".

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It can be seen [from RR No. 004730513] that respondent, the Regional Director, signed as the issuing official of the LA, which is a formal letter addressed to the taxpayer; while the Revenue District Officer, Beltran A. Dy, signed under "Recommended by:". Respondent's claim that his approval was ministerial is not supported by the form and contents of the LA's. He cannot escape culpability by imputing graver responsibility on his subordinates Beltran A. Dy.

Again, he claimed that the ban was lifted by implication by RMO 26-94 dated April 11, 1994 (Annex C of Progress Report). This Memorandum sets down, among others, rules for the issuance of LA's and specifically provides in Section E thereof that LA's should be issued and approved by the Revenue District Officer, and only for the tax returns which correspond with the selection criteria outlined in the authority to issue LA's. A review of the entire Order did not show any indication to repeal or modify RMO 31-93, or to lift the ban. x x Respondent further claims that the ban was lifted by implication by Revenue Travel Authorization Order (RTAO) No. 72-93 dated November 11, 1993 which ordered the reassignment of all 19 Regional Directors, and by other RTAO's which completed the reorganization/reshuffling of personnel. This claim cannot be taken seriously. The reorganization of the Bureau of Internal Revenue does not consist merely in the reshuffling of personnel, but includes changes in policies, procedures, etc.

Respondent also questioned the fairness and wisdom of the ban. This is a matter of his opinion, which is not relevant to the question of whether or not the Memorandum or the ban was legally in effect.

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ON THE THIRD CHARGE -- THAT LA'S WERE ISSUED UNDER THE NAMES OF REVENUE OFFICERS (RO'S) WHO DISCLAIMED KNOWLEDGE OF SUCH ASSIGNMENTS TO INVESTIGATE THE TAX CASES STATED THEREIN.

Four Revenue Examiners executed sworn statements (Annexes 4, 4A and 4B) denying that they were assigned by respondent to investigate, and did not investigate, cases under LA's issued by respondent during the ban, though they are named in the LA's as the investigating officers:

1. RO Bienvenido M. Villegas
LA No. 0088176B dated Feb. 22, 1994 addressed to Henry King (Henry Trading)

LA No. 0088162B dated Feb. 8, 1994 addressed to Remal Enterprises, Inc.

LA No. 0088161B dated Feb. 25, 1994 addressed to Richfield International, Inc.

LA No. 00494934RR dated March 1, 1994 addressed to Merriam and Webster Bookstore, Inc.

LA No. 00494936RR no date addressed to Manila Pest Control Co., Inc.

LA No. 00494947RR dated Feb. 25, 1994 addressed to TW and Co.

LA No. 0510999RR dated Feb. 25, 1994 addressed to Golden Exim Trading and Commercial Corp.
2. RO Thelma F. Monge and Supervisor Teresita Sanchez

LA No. 0124031 dated Feb. 3, 1994 addressed to JTKC Realty Corporation.
3. RO Carmelo D. San Ramon, Jr.

LA No. 0088139B dated Feb. 3, 1994 addressed to Good Morning Co.

Respondent's defense is that he should not be blamed if these examiners suffer loss of memory. He claims that the failure of the examiners to recall

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some of the LA's issued to them does not warrant a conclusion that respondent used the names of said Revenue Officers without their knowledge, and that such accusation should be based on facts and not pure speculation.

The sworn statements of the four revenue officials denying knowledge and participation in the audit under the LA's issued by respondent (during the ban) support the charge, which can no longer be considered "pure speculation". Respondent had ample opportunity to examine these sworn statements and could have refuted them if they were false, by some evidence besides bare denial.

The LA is an official document which is presented to the taxpayer and carries with it the authority of Government. Copies are filed with BIR official archives as part of the record of each tax case. Naming Revenue Examiners on the LA as the the ones who would conduct the tax examination/audit, when the said officials were unaware of it, and in fact did not participate in the audit, destroys the trustworthiness and credibility of this important official document. This is an act which falls within the purview of paragraphs 2 and 4 of Article 171 of the Revised Penal Code, which provides:

"ART. 171. Falsification by public officer, employee or notary or ecclesiastic minister. -- The penalty of prision mayor and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

x x x

2. Causing it to appear that persons have participated in any act or proceeding when they did not act (sic) in fact so participate;

x x x

4. Making untruthful statements in a narration of facts;



x x x"

The Commission finds that there is sufficient evidence of a prima facie case of falsification of official documents by respondent, each falsified LA cited above constituting a separate offense, under Art. 171 of the Revised Penal Code.

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ON THE SEVENTH CHARGE -- DIRECTOR UMALI ISSUED ANTE-DATED LA'S TO SUPERSEDE LA'S ISSUED BY RDO'S TO THE SAME TAXPAYER.

Complainant cited four specific cases where respondent issued LA's which were ante-dated, as follows:

1. LA RR No. 0088004 dated March 22, 1994 issued to investigate the withholding and all internal revenue taxes of Mindanao Textile Corporation of Makati for 1992, naming Revenue Officers Dionisio Lumagui and Natividad Feliciano as the authorized examiners, signed by respondent as Regional Director (Annex 8 to Audit Progress Report). However, this particular LA was received by respondent on April 4, 1994 as shown on the copy of the Invoice and Receipt of Accountable Forms signed by Natividad Feliciano, Revenue Officer I, Director's Office (Attached to Annex A). Among the LA forms listed were two pads, Letter of Authority (RR) with Serial Numbers 0088001-0088100 and 6 pads, Letter of Authority (RR) Serial Numbers 0088201-0088500.
2. LA RR No. 0088162 B dated February 8, 1994 issued to investigate the income, VAT, withholding and other taxes of Remal Enterprises of Manila for 1992, naming Revenue Officer Bienvenido Villegas as the examiner, signed by respondent (Annex 9-Remal). This LA was received by respondent under a Requisition and Issue Voucher dated February 22, 1994, signed by respondent himself (Annex 10-A). It was part of 10 pads of Letter of Authority (RR) Serial Numbers 0088001B - 0088500 B.
3. LA RR No. 0088139 B dated February 3, 1994 issued to investigate the income, business, withholding and other taxes of Good Morning

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Company, Tabora, Manila, naming Revenue Officer Carmelo San Ramon and Supervisor Greg M. Martin as the examiners, signed by respondent (Annex 9, Good Morning).

This LA came from the same series of LA's issued to respondent in number 2 above.

4. LA No. 0510999 RR dated February 25, 1994 issued to investigate the Income, business, and other taxes of Golden Exim Trading and Commercial Corporation, Room 115 Li Seng Yap, Barraca St. Tondo, Manila, naming Revenue Officer Bienvenido Villegas of SID, Manila as the examiner, and signed by respondent.

This LA came from a series of 2 pads of LA's with Serial Numbers (RR) 0510901 - 0511000 under an Invoice and Receipt of Accountable Forms dated May 02, 1994 to respondent, Regional Director of Makati, and signed by Natividad C. Feliciano, Revenue Officer I, Director's Office (Annex 10-B of Audit Progress Report).

Respondent was Regional Director of Makati on May 02, 1994, while this LA was issued for a company in Barraca St., Tondo, Manila. Revenue Officer B. Villegas was then assigned in the SID, Manila. He disowned under oath any knowledge of this LA and denied that he investigated the case (Annex 4 of Audit progress Report).

Respondent did not respond to this charge. In light of the evidence cited in each of the above cases, there is little room for doubt that the LA's were ante-dated. In other words, the date indicated on each LA as the date it was made, signed/issued, was false. Since the LA forms were received by respondent on specific dates of receipt, the ante-dating was not a simple error, but was deliberately done considering the long interval between the dates on the LA's and the dates the forms were later actually received by respondent.

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This Commission finds that there is sufficient evidence of a prima facie case of falsification of official documents by respondent, each falsified LA constituting a separate offense.

ON THE NINTH (sic) CHARGE -- TERMINATION LETTERS WERE ISSUED BY DIRECTOR UMALI BEFORE THE PAYMENT OF

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DEFICIENCY TAXES IN VIOLATION OF RMO 5-86 AND 28-83.

Two tax cases are cited under this charge:

1. In the case of Jayson Auto Supply, the Termination Letter was dated March 11, 1994 (Annex 13-A), and the ATAP date indicated was also March 11, 1994. The date of validation was not indicated on the letter. However the ATAP (Annex 12) shows the bank's validation stamp date as March 14, 1994.
2. In the case of Richfield International, Inc., the termination letter (Annex 13) dated March 15, 1994 indicated the date of validation of payment on March 24, 1994.

Respondent answered this charge under VII, page 9 of his Memorandum. He explained that the discrepancy between the date of the termination letter and the date of payment was due to the early preparation of the letter, so that its date was not necessarily the date of release. Sometimes the typist forgot later on to type the date of validation of payment. He avers that since that taxes due were actually paid by the taxpayer, there was no prejudice to the government, and that the error did not render the investigation irregular.

Respondent's explanation is acceptable for the first case, that of Jason (sic) Auto Supply Co., Inc., where the termination letter was dated March 11th, the ATAP was dated also on March 14th (sic), though this is shown on the ATAP but not mentioned on the Letter of Termination.

But respondent's explanation is not satisfactory for the second case of Richfield where the Letter of Termination was dated March 15th and the validation of payment was shown as March 24th. It was impossible to know in advance on March 15th that payment would be validated on March 24th, nine days later, when respondent was already transferred to Makati. Since the validation date of March 24th was furnished by the Bank which accepted payment on that date, the March 15th date of the letter of termination was false. The letter could not have been properly issued before March 24th, and it was ante-dated to the last day of respondent's assignment in Manila.

The Commission therefore finds that there is

sufficient evidence of prima facie case of falsification of an official document against respondent in the case of Richfield; that there is no similar finding on the Jayson case.

ON THE NINTH CHARGE -- TERMINATION LETTER TO SOME MANILA TAXPAYERS WERE ANTE-DATED BY DIRECTOR UMALI TO CONFORM TO HIS INCUMBENCY AS REGIONAL DIRECTOR OF MANILA.

Two cases are cited in this case, to wit:

1. The termination letter dated March 15, 1994, signed and issued by respondent to TW and Co. of Manila (Annex 14-A). It is indicated thereon that the Authority to Accept Payment (SN 29950) was dated March 15, 1994, and that the validation or confirmation of payment by the bank was March 17, 1994.

2. The termination letter dated March 15, 1994 signed and issued by respondent to Lepanto Builders Inc. of Sampaloc, Manila (Annex 15). The letter clearly indicated that the authority to accept payment was dated March 15, 1994, while the validation or confirmation by the bank was March 30, 1994.

Both cases were terminated ostensibly on the last day of respondent's assignment in Manila. In the first case, the tax payment on March 17th was stated on the letter of termination dated March 15th. In the second case, the tax payment on March 30th was stated on the letter of termination dated March 15th.

Respondent did not respond to this charge specifically. He did not explain the discrepancy appearing on the very face of the Letters of Termination.

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The falsification in the three tax cases, Richfield, TW and Co., and Lepanto Builders, is only on the date of the Letter of Termination. By dating the letters falsely at March 15th, the signature of the respondent thereon would falsely conform to the last day of his assignment in Manila.

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ON THE TENTH CHARGE -- LA's REQUISITIONED IN 1991 BY DIRECTOR UMALI WHILE STILL THE REGIONAL DIRECTOR OF RR 4-C, SAN PABLO CITY, WERE NOT TURNED OVER TO HIS SUCCESSOR BUT WERE ISSUED IN MANILA IN 1994. (Please see Annex H)

RMO No. 36-87 (Annex H) dated November 10, 1987 requires all transferred heads of offices to turn over to his incoming successor all property as well as official records within 20 days after effectivity of transfer order.

RMO No. 27-94 dated April 14, 1994 (Annex C) under part III thereof, requires the surrender of all unused old forms of Letter of Authority not later than April 30, 1994, the use of which was discontinued. In part II, guidelines for the use of the new LA forms are prescribed.

Respondent is charged with failure to surrender old unused LA forms in his possession, such as those issued to him while Regional Director at San Pablo City, which he continued to use in Manila.

Respondent's answer to this charge is brief (VIII, page 10 of his Memorandum). He impliedly admitted the charge, but claims that failure to turn over LA forms to his successor did not prejudice the government; that forms are the same and valid everywhere; that he simply avoided bureaucratic technicalities or requisitioning, surrendering and requisitioning all over again the same forms; that anyway, nothing is lost to the government.

The Commission notes from the answer the defiant attitude of respondent towards valid and legal orders of the BIR, and his propensity to defy and ignore such orders and regulations.

The Commission finds this charge against respondent established by his own admission.

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Finally, respondent asserts that there is no accusation in the audit report that he has committed any act of graft and corruption (XI page 11 of Memorandum); that the charges against him are only procedural in nature, etc.

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Respondent's assertion is incorrect. This Commission is not bound by the classification of the charges by the parties. It will make its findings according to the legal import of the acts and/or omissions proven by the evidence of record, and under the applicable laws. Indeed, respondent is charged with violating rules and procedures prescribed by administrative orders duly issued by higher authority, yet the acts and omissions involved in the violations may also contravene existing penal laws.

The Anti-Graft and Corrupt Practices Act, (RA 3019), provides in its Sec. 3 (a):

"Sec. 3. Corrupt Practices of Public Officers. In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

a. Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter, or allowing himself to be persuaded, induced, or influenced to commit such violation or offense."

An offense of public officers involving violation of an administrative order is found in Art. 231 of the Revised Penal Code as follows:

"Art. 231. Open Disobedience. -- Any judicial or executive officer who shall openly refuse to execute the judgment, decision, or order of any superior authority made within the scope of the jurisdiction of the latter and issued with all the legal formalities, shall suffer the penalties of arresto mayor in its medium period to prision correctional in its minimum period, temporary special disqualification in its maximum period and a fine not exceeding 1,000 pesos."

In the present case, respondent was found to have issued over the period of the ban, 176 LA's each in violation of RMO 31-93 and 27-94. Respondent clearly disobeyed and refused to carry out the ban prescribed in the said Revenue Administrative Orders. Accordingly, he also violated the provisions of Art. 231 of the Revised Penal Code, above, each time he issued an LA in disobedience to the Revenue Administrative Orders.

With respect to Sec. 3(a) of the Anti-Graft and Corrupt Practices Law, quoted above, the LA dated February 13, 1994 which respondent issued to M.Y. San Biscuits, Inc. x x x is cited by way of a specific instance for its application.

The LA was signed by respondent as regional director. It was also signed by Beltran A. Dy, Revenue District Officer, as the recommending officer. In the first paragraph of respondent's discussion (I, page 3 of Respondent's Memorandum), he averred that "almost all of the LA's attributed to herein respondent were actually signed and issued by his Revenue District Officer, with the respondent's approval being purely ministerial." This LA was issued in violation of the ban; both respondent and Beltran Dy were aware of the ban under RMO 31-93. While the LA states that Beltran Dy was the recommending official, respondent claims that Dy was the official who signed and issued the same, and his approval of the banned LA was only ministerial. In the language of Sec. 3(a) above, respondent wanted it understood that it was he who was influenced, induced, or pressured by Beltran Dy to sign the banned LA in violation of RMO 31-93. However, it does not matter who between them pressured, induced, or influenced the other, because under Sec. 3(a), both the "inducer", "influencer" or "pressurer" and the induced, influenced or pressured officials are equally penalized.

Then Section 9(a) of the same Anti-Graft Law provides:

"Sec. 9. Penalties for violations. --
(a) Any public officer or private person committing any of the unlawful acts or omissions enumerated in Sections 3, 4, 5 and 6 of this Act shall be punished with



imprisonment for not less than six years and one month nor more than fifteen years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income."

From the foregoing, respondent is liable under Sec. 3 (a) and subject to the penalties provided for in Sec. 9(a) of the Anti-Graft and Corrupt Practices Law, (RA 3019) for each LA issued in violation of the RMOs.

The Commission makes no pronouncement on Beltran A. Dy who is not a respondent in this case. No pronouncement is also made on the Revenue Officers named in the same LA as the authorized examiners of M.Y. San Biscuits, Inc., since they are also not respondents.

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This Commission rejects respondent's contention that the Audit Progress Report did not charge him with graft and corruption and that the charges against him are all procedural in nature. The Commission is not bound by the classification of the charges by the parties.

Acts and omissions in violation of administrative orders and regulations may also contravene existing penal laws. Thus, respondent's violations of Revenue Administrative Orders also violated the provisions of Art. 171 of the Revised Penal Code on falsification of official documents in some cases, and of Art. 231 of the Revised Penal Code defining and penalizing the offense of disobedience by refusing to obey the lawful orders of superior authority. In the present case, respondent is also liable for issuing 176 LA's, each in disobedience to lawful orders.

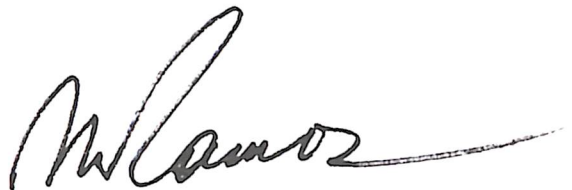
Again, under the Anti-Graft and Corrupt Practices Act (RA 3019), Sec. 3(a), respondent may be held liable for persuading, inducing or influencing another public official to violate the Revenue Administrative Order banning the issuance of Letters of Authority, or for allowing himself to be persuaded, induced, or influenced to commit the violation. Some 176 LA's were issued in violation of RMO 31-93, each of which is a separate violation".

We have reviewed the records and we find the charges substantiated. Accordingly, as recommended by the Presidential Commission Against Graft and Corruption, respondent OSMUNDO G. UMALI is hereby dismissed from the service with forfeiture of all benefits under the law.


Done in the City of Manila, this 6th day of October, in the year of Our Lord, nineteen hundred and ninety four.

SO ORDERED.

Manila, Philippines



By the President:



TEOFISTO T. GUINGONA, JR.
Executive Secretary