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DOJ Secretary Guevarra clarifies arbitrability of government construction contracts without arbitration clause





Newly inducted PDRC member
Atty. Grace Pulido-Tan (former
COA chair) raising her question
to DOJ Secretary Guevarra.



DOJ Secretary
Guevarra responds to
the query of Atty. Tan.

During the open forum at the PDRCI 2018 general membership meeting where he was guest speaker, DOJ Secretary Menardo I. Guevarra clarified in his reply to a query by former Commission and Audit chairman Grace Pulido-Tan that resort to arbitration is deemed written in government construction contracts without any arbitration clause, because this was expressly mandated by the Government Procurement Act (Republic Act No. 9184) and its 2016 Revised Implementing Rules and Regulations.

Secretary Guevarra pointed out, however, that the Construction Industry Arbitration Commission should request an official DOJ Opinion on the matter.  

WHAT'S INSIDE

PART 2

COA review of final awards against the Philippine government

By: Remy Rose A. Alegre¹

Part 1 discussed money claims based on final arbitral awards against the Philippine government. In this issue, the author will discuss the COA's authority to review final arbitral awards.

COA's authority to review adjudicated money claims

The COA's power to settle all claims and debts due from the Government applies only to *liquidated* claims, those determined or readily determinable from vouchers, invoices, and such other papers within reach of accounting officers (*Euro-Med Laboratories Phil., Inc. v. Prov. of Batangas*, 495 SCRA 301 (2006); "*Euro-Med*"). In a concurring opinion, then Associate Justice, now Chief Justice, Teresita Leonardo-de Castro explained that before the Government parts with public funds or property, the claim against it must be fixed, definite or settled. Otherwise, the Government may be holding itself liable for unfounded or baseless claims. The power to settle a liability of the Government entails the disbursement of public funds or property, which is subject to stringent rules to safeguard against loss or wastage of such funds or property that are so vital to the delivery of basic public goods and services. Not the least of these rules is Article VI, Section 29(1) of the Constitution, which states that "[n]o money shall be paid out of the Treasury except in pursuance of an appropriation made by law" and §4 of the Government Auditing Code of the Philippines, which also provides that "Government funds or property shall be spent or used solely for public purposes." [*Strategic Alliance Dev't Corp. v. Radstock Securities, Ltd.*, 607 SCRA 413, 536 (2009)]

Once the claim is liquidated, however, the court's jurisdiction ceases and the COA acquires primary jurisdiction over the money claim, even if the decision has become final and executory and a writ of execution has been issued. The allowance or disallowance of adjudicated money claims is for COA to decide, subject only to the remedy of appeal by petition for *certiorari* to the Supreme Court (*NPC DAMA, supra*). Trial courts have no authority to direct the immediate withdrawal of garnished funds from the depository



banks of the government, and by authorizing the withdrawal of garnished funds, the trial court acts beyond its jurisdiction and all its orders and issuances are void and of no legal effect [*Star Special Watchman and Detective Agency v. Puerto Princesa City*, 722 SCRA 66 (2000); "*Star Special Watchman*"]. A money claim against the Government involves compliance with applicable auditing laws and rules on procurement, which matters are not within the usual area of knowledge, experience and expertise of most judges but within the special competence of COA auditors and accountants. Thus, it is proper, out of fidelity to the doctrine of primary jurisdiction, for trial courts to dismiss a complaint for collection of a money claim (*Euro-Med, supra*).

In the more recent case of *Department of Environment and Natural Resources v. United Planners Consultants, Inc.*, 751 SCRA 389, 409 (2015), the Supreme Court clarified that the primary jurisdiction of COA over money judgments against the government extends to final arbitral awards. A claimant who prevails in the arbitration must first seek the approval of the COA before it can recover its monetary claim against the Department of Environment and Natural Resources, despite finality of the arbitral award confirmed by the Regional Trial Court pursuant to the Special ADR Rules.

¹ The author is grateful to Atty. Cristina Montes for her valuable inputs. Atty. Montes is counsel for United Planners Consultants, Inc. (UPCI) in *Department of Environment and Natural Resources v. United Planners Consultants, Inc.*, 751 SCRA 389 (2015).

COA has no power to modify arbitral awards

However, the COA's review of a final and executory arbitral award does not allow it to change, amend, modify or reverse a ruling rendered by an arbitral tribunal in favor of a claimant after due proceedings were held. The general jurisdiction of the COA under the Government Auditing Code to "settle all debts or claims of any sort due from ... the Government" is limited to the accounting settlement of the adjudicated claim or, as explained in *Euro-Med*, the compliance with applicable auditing laws and rules on procurement. In *NPC DAMA*, the Supreme Court held that the list of illegally dismissed employees and the computation of their separation benefits were subject to the COA's validation and audit procedures. As a result, the trial court's initial computation of P62 billion due to the dismissed employees was reduced to P8.4 billion after COA's evaluation.

If the COA finds that the money claim is covered by an appropriation and that the claimant is entitled to payment pursuant to the final award, it shall order the respondent to comply with the award. Otherwise, if there is no appropriation to cover the award, it shall direct the respondent to pass an appropriation law or ordinance or other specific statutory authority [*Rallos v. City of Cebu*, 704 SCRA 378 (2013)]. In case of failure by respondent to do so, the claimant may compel the enactment of an appropriations law through a petition for *mandamus* (*Star Special Watchman, supra*).


The modification of a final and executory arbitral award also conflicts with the time-honored doctrine of immutability of final judgment, which states that a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect (*Philippine Airlines, Inc. v. Airline Pilots Ass'n of the Phils.*, G.R. No. 200088, Feb. 26, 2018). Under this rule on immutability of judgments, COA is barred from overturning or amending an unfavorable but final award against a government entity.

In *Uy v. Commission on Audit*, 328 SCRA 607 (2000), the Supreme Court held that the COA, in the exercise of its broad power to audit, cannot set aside the Merit Systems Protection Board's final decision requiring Provincial Government of Agusan del Sur to pay the backwages of its illegally dismissed employees. The High Court held that "final judgments may no longer be reviewed or in any way modified directly or indirectly by a higher court, not even by the Supreme Court, much less by any other official, branch or department of Government" (*Id.*, at 617).

The current law on arbitration, Republic Act 9285 (2004), the "Alternative Dispute Resolution Act of 2004," adopted the UNCITRAL Model Law of 1985 and its policy of non-intervention on the substantive merits of arbitral awards. In a 1998 opinion, the

Supreme Court affirmed that "(a)s a rule, the award of an arbitrator cannot be set aside for mere errors of judgment either as to the law or as to the facts. Courts are without power to amend or overrule merely because of disagreement with matters of law or facts determined by the arbitrators. They will not review the findings of law and fact contained in an award, and will not undertake to substitute their judgment for that of the arbitrators, since any other rule would make an award the commencement, not the end, of litigation. ..." [*Asset Privatization Trust v. Court of Appeals*, 300 SCRA 579, 601-02 (1998)]. This means that an arbitral award is final and binding and a party to an arbitration is precluded from filing an appeal or a petition for certiorari questioning the merits of an arbitral award (Special ADR Rules, Rule 19.7).

In a recent case, the Supreme Court declared itself without jurisdiction to review the merits of an arbitral award: "There is no law granting the judiciary authority to review the merits of an arbitral award. If we were to insist on reviewing the correctness of the award ..., it would be tantamount to expanding our jurisdiction without the benefit of legislation. This translates to judicial legislation—a breach of the fundamental principle of separation of powers." [*Freuhauf Electronics Phils. Corp. v. TEAM*, 810 SCRA 280, 319 (2016)] Whether or not the arbitral tribunal correctly passed upon the issues is irrelevant. Regardless of the amount of the sum involved in a case, a simple error of law remains a simple error of law. Courts are precluded from revising the award in a particular way, revisiting the tribunal's findings of fact or conclusions of law, or otherwise encroaching upon the independence of an arbitral tribunal. In other words, simple errors of fact, of law, or of fact and law committed by the arbitral tribunal are not justiciable errors in this jurisdiction (*Id.*).

If courts, with their broad power of judicial review under the Constitution, cannot amend or modify final awards in arbitration, then all the more should COA have no such authority since its statutory authority is limited to the audit settlement of money claims. 

About the Author

Atty. Alegre is a litigation associate at Castillo Laman Tan Pantaleon & San Jose, where she practiced since she was admitted to the Philippine Bar in 2015. She obtained her B.A. Political Science degree, magna cum laude, from the University of the Philippines. She also obtained her law degree, cum laude, from the same university. She was a member of the board of editors of the Philippine Law Journal Volume 87.



MEMBER SPOTLIGHT

Justice Teresita V. Diaz-Baldos is the Chairperson of the Construction Industry Arbitration Commission. She recently retired as Associate Justice of the Sandiganbayan anti-graft court.



Justice Baldos is an alumna of the University of Santo Tomas, having obtained both her Bachelor of Laws and Bachelor of Arts, magna cum laude, degrees from the pontifical university.


After graduating from law school in 1970, she worked for one year as a stenographer of the Board of Examiners (now, Professional Regulation Commission) until she passed the bar examinations in 1971.

Upon becoming a member of the Philippine bar, she worked as Legal Officer of the Land Registration Commission (now, Land Registration Authority) before transferring to the Supreme Court, where she worked as Technical Assistant, Associate Attorney, and Attorney IV until 1984 in the Office of then Associate Justice (later Chief Justice) Ramon C. Aquino.

After more than a decade in the Supreme Court, she proceeded to the Office of the Tanodbayan (now, Office of the Ombudsman) as a prosecutor until 1994.

On April 7, 1994, she was appointed Presiding Judge of the Third Regional Trial Court (RTC), Malolos, Bulacan, and started her career as a magistrate. As an RTC judge, she was awarded the Best Decision RTC Level by the Philippine Women Judges Association on March 12, 1999 and had been a consistent finalist in the 1999, 2000, and 2003 Awards for Judicial Excellence, as well as in the 2003 Centennial Awards for Region III.

She was appointed in October 2003 to the Sandiganbayan, where she served for almost thirteen years until her compulsory retirement in July 2016 as the Chairperson of the graft court's Second Division. Upon retirement, she received the UST TOTAL (The Outstanding Thomasian Alumni) Award for Law and Justice in November 2016.

Justice Baldos is a member of the Board of Trustees of the UST Law Alumni Foundation, Inc. 



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