

Republic of the Philippines
Department of Justice
National Prosecution Service
OFFICE OF THE CITY PROSECUTOR
Makati City

INVESTIGATION DATA FORM

OFFICE OF THE CITY PROSECUTOR

To be accomplished by the Office

DATE RECEIVED

NOV 20 2013

NPS DOCKET NO.:

13 K 4279

(stamped and initialed)

Time Received

Assigned to:

Receiving Staff

Date Assigned:

To be accomplished by complainant/counsel/law enforcer
(Use back portion if space is not sufficient)

COMPLAINANT/S: Name, Sex, Age & Address

RESPONDENT/S: Name, Sex, Age & Address

JAN ROBERT GUSTAFSSON

Swedish

25A Amorsolo East Tower, Rockwell Center,

Makati City or

20th Flr., Zuellig Bldg., Makati Ave. cor. Paseo Ave., Makati City

SYLVIA BERNADETTE GONZALES DE GUZMAN

American and Spanish

2 Embassy Gardenhomes, T. Benitez Street,

West Triangle, Quezon City

SHERWIN QUIAMBABO

Filipino and Canadian

Unit 3906N Joya Lofts & Tower,

Rockwell Center, Makati City

MARIA ARLEEN ALDABA

Filipino

11 Sampaloc Place, Ayala West Grove Height, Silang, Cavite

LAW/S VIOLATED:

ESTAFA under Article 315 (2) (a) or Qualified Theft
under Article 310 of the Revised Penal Code

DATE & TIME OF COMMISSION:

March 2012 to January 2013

WITNESS/ES: Name & Address

PLACE OF COMMISSION:

Makati City

1. Has a similar complaint been filed before any other office? *
2. Is this complaint in the nature of counter-affidavit? *
3. Is this complaint related to another case before this office? *

YES ___ NO ☒

YES ___ NO ☒ If yes, indicate details below.

YES ___ NO ☒ If yes, indicate details below.

I.S. No.:

Handling Prosecutor:

CERTIFICATION *

I CERTIFY, under oath, that all the information on this sheet are true and correct to the best of my knowledge and belief, that I have not commenced any action or filed any claim involving the same issues in any court, tribunal, or quasijudicial agency, and that if I should thereafter learn that a similar action has been filed and/or is pending, I shall report that fact to this Honorable Office, within five (5) days from knowledge thereof.

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 20____, in

Wilhelmar M. Parredo Go
ASSISTANT CITY PROSECUTOR

*1, 2, 3 and Certification need not be accomplished for inquest cases

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF JUSTICE
NATIONAL PROSECUTION SERVICE
Office of the City Prosecutor
MAKATI CITY

[REDACTED]

Complainant,

- versus -

NPS Docket No. _____
For: Estafa under Article 315 (2) (a) or
Qualified Theft under Article 310 of the
Revised Penal Code

**JAN ROBERT GUSTAFSSON,
SYLVIA BERNADETTE
GONZALES DE GUZMAN,
SHERWIN QUIAMBAO and
MARIA ARLEEN ALDABA,**
Respondents.

x-----x

COMPLAINT-AFFIDAVIT

I, [REDACTED] of legal age, Filipino, and with postal address at the 25th Floor, Yuchengco Tower 1, RCBC Plaza, 6819 Ayala Avenue, Makati City, respectfully complain against Jan Robert Gustafsson, Sylvia Bernadette Gonzales de Guzman, Sherwin Quiambao and Maria Arleen Aldaba for Estafa under Article 315 (2) (a) or Qualified Theft under Article 310 of the Revised Penal Code, and after having been duly sworn to in accordance with law, respectfully state:

1. Complainant is a corporation duly organized and validly existing under Philippine laws, with principal office at Cagayan Economic Zone Authority (CEZA) Complex, Sta. Ana, Cagayan.¹

2. I am a [REDACTED] which conducted a forensic audit on complainant. I was duly authorized by complainant's Board of Directors to institute the instant criminal complaint and to represent complainant herein.²

¹ A copy of complainant's Amended Articles of Incorporation is hereto attached and made integral part hereof as **Annex "A."**


² A copy of the *Secretary's Certificate* dated 20 November 2013 is hereto


3. Respondents are all of legal age. The other pertinent details of respondents are as follows:

NAME	NATIONALITY	LAST KNOWN ADDRESS
Jan Robert Gustafsson	Swedish	25A Amorsolo East Tower, Rockwell Center, Makati City - or - 20 th Flr., Zuellig Bldg., Makati Ave. cor. Paseo Ave., Makati City
Sylvia Bernadette Gonzales de Guzman	American and Spanish	2 Embassy Gardenhomes, T. Benitez Street, West Triangle, Quezon City
Sherwin Quiambao	Filipino and Canadian	Unit 3906N Joya Lofts & Tower, Rockwell Center, Makati City
Maria Arleen Aldaba	Filipino	11 Sampaloc Place, Ayala West Grove Height, Silang, Cavite

4. Respondents may be served with *subpoena* and other processes of this Honorable Office at their foregoing addresses.

5. As 

 and in the course of a forensic audit on complainant, I reviewed all the pertinent records of certain suspicious and irregular transactions, including the transactions complained of herein, as well as conducted interviews.

6. The  found, based on the records, that:

7. Respondents Gustafsson, de Guzman, Quiambao and Aldaba used to be complainant's Managing Director, Director, Finance Manager and Chief Financial Officer, respectively.

7.1 Respondents Gustafsson and Quiambao had the attached and made integral part hereof as **Annex "B."**

duty to approve or authorize the issuance of payment vouchers to pay legitimate, legal, valid and demandable obligations of complainant. Conversely, the "approval" or "authorization" of illegitimate, illegal, invalid or non-demandable obligations was beyond the scope of their functions.

7.2 It was incumbent upon respondent Aldaba to ensure that corporate funds are spent only for legitimate, legal, valid and demandable obligations of complainant.

8. Respondents Gustafsson, de Guzman and Quiambao were joint signatories in complainant's various bank accounts maintained with BDO Unibank, Inc. (BDO), Pacific Star, Makati Branch located at the Ground Floor Pacific Star Building, Sen. Gil Puyat Avenue corner Makati Avenue, Makati City.

8.1 Respondents Gustafsson, de Guzman and Quiambao had the duty to issue and draw corporate checks to pay legitimate, legal, valid and demandable obligations of complainant. The payment of illegitimate, illegal, invalid or non-demandable obligations was beyond the scope of their functions.

9. Sometime in late March 2012, respondent Gustafsson presented to complainant for reimbursement a tape receipt dated 25 March 2012 purportedly issued by Cobadiz Enterprises, Inc., owner of Harbor View Restaurant, in the amount of P10,218.85 but the amount he actually claimed for reimbursement was P10,500.00.³

10. Payment Voucher No. BDOPV03-117-2012 dated 27 March 2012 for various reimbursements in favor of respondent Gustafsson, including the claim for reimbursement above.⁴

11. Respondents de Guzman and Quiambao drew and issued Check No. 0425403 dated 27 March 2012 in favor of respondent Gustafsson from complainant's Checking Account No. 003568015497 maintained with BDO Pacific Star, Makati Branch.⁵

3 A copy of the invoice is hereto attached and made integral part hereof as **Annex "C."**

4 A copy of the payment voucher is hereto attached and made integral part hereof as **Annex "D."**

5 A copy of the check is hereto attached and made integral part hereof as **Annex "E."**

12. Respondent Gustafsson caused the check to be deposited to a certain Account No. 3560119531 on 29 March 2012.⁶

13. Sometime in January 2013, respondent Gustafsson presented to complainant for reimbursement a credit card charge invoice for an expense made on 25 March 2012 at Harbor View Restaurant in the amount of P10,218.85, which was the very same expense that he previously claimed and was already reimbursed by complainant above, albeit respondent actually claimed and complainant actually paid more.⁷

13.1 In doing so, respondent Gustafsson falsely represented to complainant that he was entitled to reimbursement when, in truth and in fact, he was not because he already claimed reimbursement therefor and complainant already paid the same.

14. Payment Voucher No. BDOPV01-161-2013 dated 31 January 2013 for various reimbursements in his favor, including the claim for reimbursement above.⁸

14.1 The issuance of the payment voucher was *ultra-vires* because the supposed obligation to reimburse was baseless.

15. Since the claim for reimbursement was baseless, it was incumbent upon respondent Aldaba to flag, stop or disallow such payment with corporate funds. But respondent Aldaba did not do so, thereby allowing the payment to be effected..

15.1 Respondent Aldaba's omission or inaction was not approved or authorized by, and was contrary to the instruction of, complainant.

16. Respondents Gustafsson and de Guzman drew and issued Check No. 0587406 dated 24 January 2013 in favor of respondent Gustafsson from complainant's Checking Account No. 003568015497 maintained with BDO Pacific Star, Makati Branch.⁹

⁶ *Supra*.

⁷ A copy of the invoice is hereto attached and made integral part hereof as **Annex "F."**

⁸ A copy of the payment voucher is hereto attached and made integral part hereof as **Annex "G."**

⁹ A copy of the check is hereto attached and made integral part hereof as **Annex "H."**

16.1 Complainant relied on the credit card charge invoice submitted by respondent Gustafsson and other false pretexts, and, without them, complainant would not have paid the claim for reimbursement.

16.2 The drawing and issuance of the corporate check was also *ultra-vires* as the supposed obligation of complainant to reimburse respondent Gustafsson was non-existent and a sham.

17. Respondent Gustafsson caused the check to be encashed on 28 January 2013 at BDO Pacific Star, Makati Branch.¹⁰

18. Respondents acted in conspiracy with one another in "authorizing" the issuance of the payment voucher, not flagging, stopping or disallowing the payment voucher, and drawing and issuing the corporate check to pay a baseless claim for reimbursement. Each individual respondent would not have been able to carry out the fraud or theft without the direct participation or indispensable cooperation of the others.

19. I was advised by my counsel that respondents may be indicted for Estafa under Article 315 (2) (a) of the Revised Penal Code, which provides in part:

ART. 315. Swindling (estafa). — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

xxx xxx xxx

[P]rovided that in the four cases mentioned, the fraud be committed by any of the following means:

xxx xxx xxx

(2) By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneous with the commission of the fraud:

(a) By using a fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits;

xxx xxx xxx

20. All of the essential elements of the foregoing offense were

¹⁰ *Supra*.

present, to wit:

- i) there must be false pretense, fraudulent act or fraudulent means – respondents falsely represented to complainant, by submitting the invoice and through other false pretexts, that they were entitled to reimbursement when, in truth and in fact, they were not;
- ii) such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud – respondents submitted the invoice and made other false pretexts prior to the issuance of the payment voucher, and the drawing, issuance and encashment of the corporate check;
- iii) the offended party must have relied on the false pretense, fraudulent act or fraudulent means, that is, he must have been induced to part with his money or property because of the false pretense, fraudulent act or fraudulent means – complainant relied on the invoice submitted by respondents and other false pretexts, and, without them, complainant would not have issued the payment voucher, and drawn and issued the corporate check to respondents; and
- iv) as a result thereof, the offended party suffered damage – complainant drew and issued the corporate check in the amount of P10,218.85 to respondents, and respondents were able to encash the same, even in the absence of any legal and valid obligation to do so, to complainant's damage and prejudice; and
- v) the drawing, issuance and encashment of the corporate check were performed in Makati City, within the territorial jurisdiction of this Honorable Office.¹¹

21. I was advised by my counsel that respondents may also be indicted for Qualified Theft under Article 310 in relation to

¹¹ *Uy vs. People*, 564 SCRA 542, 558-559 (2008).

Articles 308 and 309 of the Revised Penal Code.

21.1 Article 308 of the Revised Penal Code provides:

Art. 308. Who are liable for theft. — Theft is committed by any person who, with intent to gain but without violence against, or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent.

Theft is likewise committed by:

1. Any person who, having found lost property, shall fail to deliver the same to the local authorities or to its owner;
2. Any person who, after having maliciously damaged the property of another, shall remove or make use of the fruits or object of the damage caused by him; and
3. Any person who shall enter an inclosed estate or a field where trespass is forbidden or which belongs to another and without the consent of its owner, shall hunt or fish upon the same or shall gather fruits, cereals, or other forest or farm products.

21.2 Article 309 of the Revised Penal Code provides:

Art. 309. Penalties. — Any person guilty of theft shall be punished by:

1. The penalty of *prision mayor* in its minimum and medium periods, if the value of the thing stolen is more than 12,000 pesos but does not exceed 22,000 pesos; but if the value of the thing stolen exceeds the latter amount, the penalty shall be the maximum period of the one prescribed in this paragraph and one year of each additional ten thousand pesos, but the total of the penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.
2. The penalty of *prision correccional* in its medium and maximum periods, if the value of the property stolen is more than 6,000 pesos but does not exceed 12,000 pesos.
3. The penalty of *prision correccional* in its minimum and medium periods, if the value of the property stolen is more than 200 pesos but does not exceed 6,000 pesos.
4. *Arresto mayor* in its medium period to *prision correccional* in its minimum period, if the value of the property stolen is over 50 pesos but does not exceed 200

pesos.

5. *Arresto mayor* in its full extent, if such value is over 5 pesos but does not exceed 50 pesos.

6. *Arresto mayor* in its minimum and medium periods, if such value does not exceed five pesos.

7. *Arresto menor* or a fine not exceeding 200 pesos, if the theft is committed under the circumstances enumerated in paragraph 3 of the next preceding article and the value of the thing stolen does not exceed 5 pesos. If such value exceeds said amount, the provisions of any of the five preceding subdivisions shall be made applicable.

8. *Arresto menor* in its minimum period or a fine not exceeding 50 pesos, when the value of the thing stolen is not over 5 pesos, and the offender shall have acted under the impulse of hunger, poverty, or the difficulty of earning a livelihood for the support of himself or his family.

21.3 Article 310 of the Revised Penal Code provides:

Art. 310. Qualified theft. — The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article, if committed by a domestic servant, or with grave abuse of confidence, or if the property stolen is motor vehicle, mail matter or large cattle or consists of coconuts taken from the premises of a plantation, fish taken from a fishpond or fishery or if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance.

22. All of the essential elements of the offense of Theft under Article 308 of the Revised Penal Code were present in the instant case, to wit:

- i) there was taking of personal property – the amount of P10,218.85 was deducted from complainant's corporate checking account in Makati City, within the territorial jurisdiction of this Honorable Office, and credited to respondents to pay a non-existent and bogus obligation;
- ii) the property belonged to another – the funds deducted belonged to complainant, not respondents;
- iii) the taking was done with intent to gain – which is

presumed from the unlawful taking of personal property belonging to another, and, in fact, the money has not been returned to complainant;

- iv) the taking was done without the consent of the owner – the “authorization” of the issuance of the payment voucher, the non-disallowance thereof, and the drawing and issuance of the corporate check were *ultra-vires*, and beyond the functions of respondents as corporate officers and signatories; thus, these acts were performed by respondents without the approval, authority and consent of complainant; and
- v) the taking was accomplished without the use of violence against or intimidation of persons or force upon things.¹²

23. The theft herein was qualified under Article 310 of the Revised Penal Code by the circumstance that it was committed with grave abuse of confidence. Respondents, who formerly occupied high-ranking positions and acted as authorized signatories of complainant, gravely abused the trust and confidence reposed in them, and violated their fiduciary duties when they colluded in processing a reimbursement for, issuing payment vouchers, and drawing and issuing corporate checks to pay, non-existent and bogus obligations.

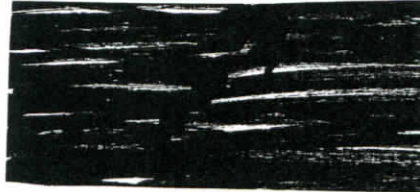
24. I am executing this *Complaint-Affidavit* to attest to the truth of the foregoing and to support complainant's criminal complaint against respondent for Estafa under Article 315 (2) (a) and Qualified Theft under Article 310 of the Revised Penal Code.

25. Complainant has not commenced any other action or proceeding involving the same criminal liability or issue in the Supreme Court, the Court of Appeals, or any other court, tribunal or quasi-judicial agency.

26. To the best of my knowledge, no other action or proceeding is pending in the Supreme Court, the Court of Appeals, or any other court, tribunal or quasi-judicial agency.

¹² Reyes, Luis B. *The Revised Penal Code Criminal Law*. 2012 Eighteenth Revised Edition. Book Two, p. 732; citing *U.S. vs. de Vera*, 43 Phil. 1000 and *People vs. Yusay*, 50 Phil. 598.

27. If I should thereafter learn that a similar action or proceeding has been filed or is pending in the Supreme Court, the Court of Appeals, or any other court, tribunal or quasi-judicial agency, I undertake to report such fact within five (5) days therefrom to this Honorable Office.



CERTIFICATION

20 NOV 2013 SUBSCRIBED AND SWORN TO before me this
I hereby certify that I have personally examined
the affiant, and that I am satisfied that the foregoing *Complaint-
Affidavit* was freely and voluntarily executed by him.

Wilhelmina Parredo Go
ASSISTANT CITY PROSECUTOR

ASSISTANT CITY PROSECUTOR