

REPUBLIC OF THE PHILIPPINES  
SANDIGANBAYAN  
QUEZON CITY

*A.*  
**ESTELA TERESITA C. ROSETTE**  
Executive Clerk of Court III  
First Division  
*Enr. 4/27/07*

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,  
Plaintiff,

Criminal Case No: 26038 and 26039  
FOR: Violations of Section 3(g) of  
Republic Act No. 3019

- versus -

**ROSALINDA U. MAJARAIS, and**  
Director  
Department of Health  
City of Manila

PRESENT:

Leonardo-De Castro, *PJ.*, Chairperson  
Peralta, and  
Gesmundo, *JJ.*

**MARIANO M. SAMOLDE,**  
Proprietor  
Philippine Medical Dental Specialist  
Sta. Cruz, City of Manila,  
Accused.

Promulgated:

*April 27, 2007*

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**DECISION**

LEONARDO-DE CASTRO, *PJ.*

Rosalinda U. Majarais and Mariano M. Samolde are charged with two counts of violation of Section 3(g) in relation to Section 3(e) of Republic Act (R.A.) No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act. The accusatory portions of the informations are quoted as follows:

**Criminal Case No. 26038**

That on or about April 10, 1995, or for sometime prior or subsequent thereto, in the City of Manila, Philippines and within the jurisdiction of this Honorable Court, above-named accused Rosalinda Majarais, a public officer, being then the Director of Regional field Office for NCR-Department of Health, while in the performance of her official functions and acting with evident bad faith and manifest partiality, conspiring and confederating with one another, together with accused Mariano Samolde, owner/proprietor of Philippine Medical Dental Specialist (PMDS), did then and there willfully, unlawfully and criminally enter into a grossly disadvantageous negotiated contract with PMDS for the purchase of 150 sets of Glass Ionomer Type IX at P2,270.00 per set, or in the total amount of P340,500.00 when in truth and in fact the item is available at International Casting Supply Center (Intercast) at P900.00 per set or a total price of P135,000.00, thereby causing undue injury and damages to the government in the amount of P205,500.00, representing the difference between the price offered by PMDS and Intercast and at the same time giving unwarranted benefit, preference or advantage to PMDS.

**Criminal Case No. 26039**

That on or about November 29, 1995, or for sometime prior or subsequent thereto, in the City of Manila, Philippines and within the jurisdiction of this Honorable Court, above-named accused Rosalinda Majarais, a public officer, being then the Director of Regional field Office for NCR-Department of Health, while in the performance of her official functions and acting with evident bad faith and manifest partiality, conspiring and confederating with each another, together with accused Mariano Samolde, owner/proprietor of Philippine Medical Dental

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Specialties (PMDS), did then and there willfully, unlawfully and criminally enter into a grossly disadvantageous negotiated contract for the purchase of 100 sets of Glass Ionomer Type IX at P2,270.00 per set, or in the total amount of P227,000.00 when in truth and in fact the item is available at International Casting Supply Center (Intercast) at P900.00 per set or a total price of P90,000.00, thereby causing undue injury and damages to the government in the amount of P137,000.00, representing the difference between the price offered by PMDS and the Intercast and at the same time giving unwarranted benefit, preference or advantage to PMDS.

Accused Majarais was arraigned<sup>1</sup> on November 22, 2001 while accused Samolde was arraigned<sup>2</sup> on August 23, 2002. Both accused pleaded not guilty to the charges against them.

The pre-trial conferences of the parties followed. The prosecution filed its *Pre-Trial Brief*<sup>3</sup> dated May 30, 2002; while accused Majarais and Samolde filed their respective *Pre-Trial Brief*<sup>4</sup> dated July 23, 2002; and *Pre-Trial Brief*<sup>5</sup> dated August 30, 2002. On December 10, 2002, the Court issued the *Pre-Trial Order*<sup>6</sup> containing the parties' joint stipulation of facts, which is quoted verbatim as follows:

#### PRE-TRIAL ORDER

When these cases were called for pre-trial, all accused were present together with their counsels, Atty. Bernardo V. Cabal for accused Rosalinda U. Majarais and Atty. Aurora Salva Bautista for accused Mariano Samolde. Ombudsman Prosecutor Julieta Zinnia A. Niduaza and accused Rosalinda U. Majarais and Mariano Samolde, assisted by their counsels, Atty. Bernardo V. Cabal and Atty. Aurora Salva Bautista, submitted their "JOINT STIPULATION OF FACTS" dated 10 December 2002, quoted hereunder:

#### I STIPULATION OF FACTS

1. That at all times relevant to this case, accused Rosalinda U. Majarais was a public officer being the Regional Director of the regional Office of the National Capital Region of the Department of Health (DOH-NCR) and accused Mariano Samolde was a private individual, being the Proprietor of the Philippine Medical Dental Specialists (PMDS);
2. That on March 28, 1995, Dr. Evelyn Felarca, OIC-Technical Division of DOH-NCR, requested the acquisition of 500 sets of glass Ionomer Type IX for the use of District Health Offices in the National Capital Region;
3. That said request was granted by accused Rosalinda U. Majarais, who was then the Director of Department of Health Regional Field Office for NCR, when she noted

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<sup>1</sup> Record, pages 125-126

<sup>2</sup> Id. at 238 and 239

<sup>3</sup> Id. at 174-195

<sup>4</sup> Id. at 202-221

<sup>5</sup> Id. at 248-255

<sup>6</sup> Id. at 290-298.

Handwritten initials and signatures: "JC" and "A" (with a large flourish).

- that the NCR-Field Office had zero stock position based on the Stock Position Sheet issued by Ms. Yolanda N. Victoria, the then Officer-in-Charge of the Supply Section of NCR-Field Office;
4. That on April 10, 1995, the DOH-NCR issued Purchase Order No. 95-083 to Philippine Medical Dental Specialists (PMDS) for the purchase of 150 sets of Glass Ionomer Type IX at a unit cost of P2,270.00;
  5. That said Purchase Order was duly approved by accused Majarais who, relying in good faith on the results of the verification of her subordinates on the matter, certified that (a) PMDS was the exclusive distributor of Glass Ionomer Type IX and that (b) it had no available substitute in the market, and that (c) there were no sub-dealers offering the lowest price;
  6. That in a Memorandum dated April 26, 1995 addressed to accused Majarais, Mr. Robert P. Joven pointed out that the price offered by PMDS for Glass Ionomer Type IX at P2,270.00/set may be availed of at P900.00/set from a distributor, International Casting Supply Center;
  7. That attached to the aforementioned Memorandum of Mr. Joven to accused Majarais was a letter dated April 21, 1995 of Mr. Augusto Garcia, Sales Manager of Intercast, addressed to the Director, Regional Field Office for NCR, Department of Health, Manila in which Intercast clarified its quotation by saying that the price of P900.00 per set it earlier offered in the canvass sheet was for the economy pack, and further informed DOH that sales transactions in the future would be handled by PMDS, their exclusive dealer to government entities;
  8. That upon receipt of the aforementioned Memorandum from Mr. Joven, accused Majarais scribbled a marginal note thereon reading "PURCHASE IS FOR FURTHER STUDY. HOLD P.O. IF ALREADY SIGNED" to hold in abeyance the processing of the transaction;
  9. That on May 9, 1995, the DOH-NCR, through Mr. Robert P. Joven, requested other suppliers to submit their bids for Glass Ionomer Type IX. However, out of the four (4) suppliers, namely: Metrolink Resources Corp., Sapphire Pharmaceutical and Medical Supply, Philippine Medical Specialists (PMDS) and Dajara Trading and Supply who invited to make an offer, only PMDS submitted a quotation, and offered to supply the product at P2,270.00/set;
  10. That upon delivery, the first 150 sets were inspected by Mr.(sic)Yolanda Victoria and by the DOH-NCR Inspection Committee, and after the items were found to be in accordance with the specifications stipulated under the contract, the DOH-NCR Field Office paid PMDS the sum of P331,213.64, net of withheld taxes;
  11. That the payment was evidenced by D.V. No. 1269-95-07-90 which was approved by accused Marajais upon certification by Honacio D. Cabrera and Philip F. Du, DOH-NCR's Administrative Officer and Accountant, respectively;

*Handwritten initials and signature:*  
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A

12. That on November 29, 1995, upon due recommendation from the OIC-Supply Section of DOH-NCR Field Office, another purchase order was issued to PMDS by accused Majarais for 100 sets of Glass Ionomer Type IX.

II

The prosecution and the defense stipulate on the following documentary exhibits:

EXHIBIT	FOR PROSECUTION	FOR DEFENSE
For Criminal Case No. 26038:  Requisition and Issue Voucher dated March 28, 1995, for 500 sets of Glass Ionomer Type IX (Altraumatic Restorative Treatment)	"A"	"1"
Stock Position Sheet indicating a zero inventory for Glass Ionomer Type IX (Altraumatic Restorative Treatment)		"1-A"
Certification dated March 28, 1995 issued by International Casting Supply Center stating that PMDS is the exclusive distributor for DOH and other government offices.		"1-B"
Purchase Order No. 95-083 dated April 10, 1995 for 150 sets and not 500 sets of Glass Ionomer Type IX (Altraumatic Restorative Treatment) at P2,270.00/set	"B"	"2"
Memorandum of Roberto P. Joven dated April 26, 1995 addressed to Dr. Rosalinda Majarais	"C"	"3"
Marginal note and initial of accused Majarais on Exhibit "C" / "3" which reads: "Purchase is for further study. Hold P.O. if already signed."	"C-a"	"3-a"
The first two (2) attachments to the April 26, 1995 Memo of Mr. Joven to accused Majarais, namely, the Canvass Sheet dated April 20, 1995 submitted by Intercase for Glass Ionomer Type IX (Altraumatic Restorative Treatment) for 200 sets at P900.00/set	"D"	"4"
The second of the two (2) attachments to the April 26, 1995 Memo of Mr. Joven to accused, namely, the letter dated April 21, 1995 submitted by International Casting Supply Center (Intercast) addressed to the Director of the Regional Office for DOH-NCR	"E"	"5"

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Canvass Sheet dated May 9, 1995 submitted by Metrolink Resources Corp. for 500 sets Glass Ionomer Type IX (Altraumatic Restorative Treatment) with a typewritten note that the request for quotation be addressed to its exclusive distributor in Government – Phil. Medical Dental Specialists at #426 P. Gomez St., Quiapo, Manila	"F"	"6"
Canvass Sheet dated May 9, 1995 from Sapphire Pharma for 500 sets of the requisitioned item	"G"	"7"
Canvass Sheet dated May 9, 1995 from Dajara Trading and Supply for 500 sets of the requisitioned item	"H"	"8"
Canvass Sheet dated May 9, 1995 from Phil. Medical Dental Specialists for 500 sets of the requisitioned item bearing the handwritten quotation of P2,270.00/set	"I"	"9"
Tabulation of the names of suppliers which submitted Canvass Sheets for the requisitioned item	"J"	"10"
Sales Invoice dated July 12, 1995 issued by Phil. Medical Dental Specialists (PMDS) for 150 sets Glass Ionomer Type IX (Altraumatic Restorative Treatment) at P2,270.0/set	"K"	"11"
Disbursement Voucher No. D-1269-95-07-90 representing payment for the purchase of 150 sets Glass Ionomer Type IX covering P.O. 95-088 dated April 10, 1995 in the amount of P331,213.64 duly approved by accused Majarais.	"L"	"12"

The prosecution and the Defense reserve the right to present and mark additional documentary exhibits during the trial on the merits.

III

The prosecution will present one or two witnesses.

IV

ISSUE STIPULATED ON

Whether or not injury and/or damage was caused to the Government as a result of the purchase of the Glass Ionomer Type IX (Altraumatic Restorative Treatment) from Philippine Medical Dental Specialists.

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On joint motion of the parties, the pre-trial is deemed terminated. This pre-trial order shall bind the parties, limit the trial to matters not disposed of and control the course of the action during the trial on the merits, unless modified by the Court to prevent manifest injustice.

xxx    xxx    xxx

Subsequently, accused Sarnolde filed a *Supplement to the Joint Stipulation of Facts* dated January 13, 2003, which states as follows:

Xxx    xxx    xxx

1. That it came to the attention of undersigned counsel that the Glass Ionomer Type IX (Altraumatic Restorative Treatment) has three (3) sizes, classified as:
  - a) Regular size
  - b) Economy size
  - c) Mini-pack
2. The above three (3) classifications vary as to size, weight and content, as follows:
  - a) Regular size costs P2,270.00 per pack
  - b) Economy size costs P900.00 per pack
  - c) Mini-pack costs P600.00 per pack
3. This classification was mentioned in its Pre-Trial Brief which fact must be incorporated in the Joint Stipulation of Facts submitted earlier.

It is therefore requested that the three (3) classification of Glass Ionomer Type IX be included on page 7 to be marked as follows:

EXHIBIT	FOR PROSECUTION	FOR DEFENSE
Regular size of Glass Ionomer Type IX (Altraumatic Restorative Treatment)		"b"
Product sample of economy pack		"c"
Product sample of mini-pack		"c"

Xxx    xxx    xxx

Accused Majarais manifested<sup>7</sup> that she has no objection to the additional stipulation of facts as proposed by accused Samolde. The prosecution likewise manifested in open court, its conformity to the said proposals<sup>8</sup>. The Court granted the *Supplement to the Joint Stipulation of Facts* in an *Order*<sup>9</sup> dated June 10, 2003. The *Pre-Trial Order* was accordingly amended to include the additional stipulation of facts as proposed by accused Samolde.

<sup>7</sup> MANIFESTATION dated March 12, 2003; Record, page 325

<sup>8</sup> Order dated June 10, 2003; Id. at 335

<sup>9</sup> Supra

Thereafter, the prosecution manifested that it is dispensing with its presentation of testimonial evidence and will be resting its case after formally offering its documentary evidence. The prosecution subsequently formally offered its documentary evidence consisting of exhibits "A" to "Q" with submarkings. Accused Samolde also formally offered his documentary evidence consisting of exhibits "A" to "T". Accused Majarais offered no documentary evidence. In an *Order*<sup>10</sup> dated January 20, 2004, the Court admitted all the evidence offered by the prosecution and accused Samolde. Both accused did not present any testimonial evidence.

These cases were submitted for decision after the failure of the parties to file their respective memoranda within the period given by the Court in the *Order*<sup>11</sup> dated June 10, 2003 which is quoted hereunder as follows:

Xxx    xx.c    xxx

Acting on the manifestation of Prosecutor Niduaza that she does not intend to present testimonial evidence and that the prosecution will be ready to rest its case after formally offering its documentary exhibits, the prosecution, as prayed for, is granted a period of twenty (20) days from today within which to submit its formal offer of documentary exhibits, and the accused a period of twenty (20) days within which to submit their comments on the said formal offer, after which, the formal offer shall be deemed submitted for resolution. Upon receipt of the resolution on the formal offer of the prosecution, the accused, is granted, as prayed for, a period of twenty (20) days within which to submit their formal offer of documentary exhibits, and the prosecution is given five (5) days from receipt of the formal offer of the accused to comment thereon, after which, the said formal offer shall be deemed submitted for resolution. **The parties are directed to file simultaneously within a period of thirty (30) days from receipt of the resolution on the formal offer of evidence of the accused, their respective memoranda, after which, the case shall be deemed submitted for decision.**

### EVIDENCE OF THE PARTIES

The documentary evidence for the prosecution and the purpose for which each is offered are quoted from its *Formal Offer of Evidence*<sup>12</sup> dated July 1, 2003 as follows:

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<sup>10</sup> Id. at 375:

"Acting on the prosecution's Formal Offer of Evidence dated July 1, 2003 and accused Mariano Samolde's Formal Offer of Evidence dated September 16, 2003, the Court hereby resolves to ADMIT the following: (1) prosecution's Exhibits "A", "B", "B-1", "C", to "Q" to which the accused interposed no objection; and (2) accused Samolde's Exhibits "A" to "T" which were not objected to by the prosecution."

<sup>11</sup> Supra

<sup>12</sup> Id. at 336-360



EXHIBITS

NATURE

"A" Certified true copy of Request and Issue Voucher dated March 28, 1995 approved by Rosalinda U. Majarais, Director IV, Regional Field Office for NCR

Purpose:

To prove that the OIC-Technical Division of DOH-NCR requested for the acquisition of 500 sets of Glass Ionomer Type IX for the use of the District Health Officer in the National Capital Region. Said request was approved by accused Majarais, who was then the Director of DOH Regional Field Office for NCR.

"B" Certified true copy of Purchase Order No. 95-083 dated April 10, 1995.

"B-1" Certification signed by Director Rosalinda U. Majarais.

Purposes:

1. To prove that Purchase Order No. 95-083 covering 500 sets of Glass Ionomer Type IX was issued on April 10, 1995 by DOH-NCR in favor of Philippine Medical Dental Specialties (PMDS) for the purchase of said item at P2,270.00 per set.

2. To prove that in the said Purchase Order, Director Majarais certified that PMDS was the exclusive distributor of Glass Ionomer Type IX and that it has no substitute available, neither was there a sub-dealer offering the same product in the market.

"C" Certified true copy of Memorandum dated April 26, 1995 addressed to Director Majarais signed by Robert P. Joven.

Purposes:

1. To prove that Mr. Robert P. Joven, herein private complainant in the aforementioned case brought to the attention of accused Majarais that Glass Ionomer Type IX is available for sale at International Casting Supply Center (Intercast) for P900.00 per set.

2. To prove further that Mr. Joven proposed that a verification be conducted first to determine the prevailing market price of the product and the existence of the economy pack.

"D" Certified true copy of Canvass Paper dated April 20, 1995 quoted by Intercast.

Purpose:

To prove that Intercast was among those who responded by sending back the canvass sheet and indicating thereon that Glass Ionomer Type IX is available for sale at P900.00 per set.

"E" Certified true copy of a letter dated April 21, 1995 from International Casting Supply (Intercast)





Purpose:

To prove that the Sales Manager of Intercast recanted its offer by claiming that the price earlier offered in the canvass sheet is that of economy pack and informed DOH that sales transactions in the future will be handled by PMDS as their exclusive dealer to government offices.

- "F" Certified true copy of Canvass Sheet dated May 9, 1995 signed by the representative of Metrolink Resources Corp. with annotation, to wit:  
"Kindly refer to our exclusive distributor in Gov't. – Phil. Medical Dental Specialties x x x"
- "G" Certified true copy of Canvass Sheet dated May 9, 1995 signed by a representative of Sapphire Pharmaceutical & Medical Supply.
- "H" Certified true copy of Canvass Sheet dated May 9, 1995 signed by a representative of Dajara Trading & Supply.
- "I" Certified true copy of Canvass Sheet dated May 9, 1995 signed by a representative of Philippine Medical Dental Specialties.
- all canvassed by Robert P. Joven
- "J" Tabulation of the names of suppliers which submitted Canvass Sheets for the requisitioned items.

Purpose:

To prove that while the purchase order of Glass Ionomer Type IX was on process, Robert P. Joven, DOH-NCR's Supply Officer, sent out canvass sheets to different dental suppliers in order to determine the prevailing price of the said item in the market.

- "K" Certified true copy of Sales Invoice No. 9801 dated July 12, 1995 issued by Philippine Medical Dental Specialties.
- "L" Certified true copy of Disbursement Voucher No. D1269-95-07-90 payable to Philippine Medical Dental Specialties representing payment for the purchased of 150 sets of FUJI GLASS IONOMER TYPE IX in the amount of P331,213.64 approved by Director Rosalinda U. Majorais.

Purpose:

To prove that out of the 500 sets requested, 150 sets were delivered on July 12, 1995 to DOH. The DOH-NCR paid PMDS the value of the item amounting to P340,500.00 as evidence by D.V. No. D1269-95-07-90 which was approved by accused Majorais.

- "M" Certified true copy of Purchase Order No. 95-291 dated November 29, 1995 addressed to Philippine Medical Dental Specialties covering 350 sets of Glass Ionomer Altraumatic Restorative Treatment Type IX, approved by Director Rosalinda U. Majorais.

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- "N" Certified true copy of Requisition and Issue Voucher dated November 27, 1995 covering 350 sets of Glass Ionomer Altraumatic Restorative Treatment Type IX, approved by Director Rosalinda U. Majarais.
- Purpose:  
To prove that another purchase order was issued on November 29, 1995 to PMDS by accused Majarais for 350 sets of the same Glass Ionomer.
- "O" Certified true copy of Disbursement Voucher No. D1269-96-01-161 payable to Philippine Medical Dental Specialties representing payment for the purchase of 100 sets of Glass Ionomer Restorative Treatment in the amount of P218,745.45 approved by Director Rosalinda U. Majarais.
- "P" Certified true copy of Sales Invoice No. 9975 dated 12-29-95 issued by Philippine Medical Dental Specialties.
- Purpose:  
To prove that out of the 350 sets ordered, only 100 sets amounting to P227,000.00 were delivered.
- "Q" Certified true copy of a letter dated January, 1995 from GC International Corporation
- Purpose:  
To prove that GC International Corporation certify METROLINK, a member of the INTERCAST Supply Center as their sole importer and Distributor in the Philippines to sell all their dental products.

The documentary evidence for accused Samolde and the purpose for which each is offered are quoted from his *Formal Offer of Evidence*<sup>13</sup> dated September 16, 2003 as follows:

EXHIBIT	DESCRIPTION	PURPOSE
"A"	Requisition and Issue Voucher dated March 28, 1995 for 500 sets of Glass Type IX.	To prove that there was requisition and issue Voucher for 500 sets of Ionomer Type IX approved at P2,000.00 per set by Rosalinda U. Majarais, Director IV, Regional Field Office for NCR.
"B"	Purchase Order No. 95-083 dated April 10, 1995 for 150 sets (not 500) for Glass Ionomer Type IX (Altraumatic Restorative	To prove that Purchase Order No. 95-083 covering 500 sets of Glass Ionomer Type IX was issued on

<sup>13</sup> Id. at 366-370



- Treatment) at P2,270.00 per set. This was approved. April 10, 1995 by DOH-NCR in favor of Phil. Medical Dental Specialties (PMDS) for the purchase of said item at P2,270.00 per set.
- "C" Xerox copy of the Memorandum dated April 26, 1995 addressed to Dr. Majarais, Director IV, signed by Robert P. Joven, Supply Officer. To prove that private complainant, Mr. Joven brought the attention of accused Dr. Majarais that Glass Ionomer Type IX is available for sale at International (InterCast) for P900.00 per set.
- "D" Xerox copy of canvass paper dated April, 1995 quoted by InterCast. To prove that InterCast responded to request for canvass indicating that Glass Ionomer Type IX is available at P900.00 per set.
- "E" Xerox copy of the letter of International Casting Supply Center (InterCast) dated April 21, 1995. To prove that the Manager of InterCast clarified that the P900.00 indicated in their canvass is of the Economy type and informed DOH that sales transactions in the future will be handled by Phil. Medical Dental Specialties (PMDS) as their exclusive dealer in government offices.
- "F" Xerox copy of Canvass Sheet of Metrolink Resources Corporation. To prove that the case was referred to PMDS as the lone government distributor of the product.
- "G" Xerox copy of Canvass Sheet of Sapphire Pharmaceutical & Medical Supply. To prove that Sapphire Pharmaceutical & Medical Supply has no available product of this kind.
- "H" Xerox copy of Canvass Sheet dated May 9, 1995 Dajara Trading Supply. To prove that Dajara Trading Supply has no available supply of the product requisitioned.
- "I" Xerox copy of Canvass Sheet May 9, 1995 of Phil. Medical Dental Specialties (PMDS). To prove that Phil. Medical Dental Specialties has available supply of the product at 2,270 per pack.

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| "J" | Tabulation of the names of suppliers which submitted Canvass Sheets for the requisitioned items.   | To prove that while the purchase order of Glass Ionomer Type IX was on process, Robert P. Joven, DOH-NCR's Supply Officer, sent out canvass sheets to different dental suppliers in order to determine the prevailing price of the said item in the market. |
| "K" | Sales Invoice No. 9801 dated July 2, 1995 issued Phil. Medical Dental Specialties.   | To prove that out of the 500 sets requisitioned 150 sets were delivered on July 12, 1995 to DOH.  |
| "L" | Disbursement Voucher in favor of Phil. Medical Dental Specialties.   | To prove the payment to PMDS the 150 sets of Fuji Glass Ionomer Type IX as per P.O. No. 95-083 dated April 10, 1995 in the amount of P331,213.64  |
| "M" | Purchase Order No. 95-291 dated Nov. 29, 1995 addressed to Phil. Medical Dental Specialties covering 300 sets of Glass Ionomer Altraumatic Restorative Treatment, Type IX approved by Director Majarais. | To prove that there was further requisition in favor of PMDS for 500 sets of the product.   |
| "N" | Requisition and Issue Voucher dated Nov. 27, 1995 covering 350 sets of the product, Ionomer Type IX approved by Dir. Majarais.   | To prove another requisition of the same product was made in favor of PMDS.   |
| "O" | Disbursement Voucher No. D-1269-9601-161 payable to Phil. Medical Dental Specialties covering the purchase of 100 sets of the product in the amount of P218,745.45 approved by Dir. Majarais.            | To prove that out of the 350 sets requisitioned only 100 sets were delivered.   |
| "P" | Sales Invoice No. 9975 dated 12-29-95 issued by Philippine Medical Dental Specialties.   | To prove that the 100 sets of the product were paid in the amount of P227,000.00.   |
| "Q" | Certificate of Appointment of GC International Corporation issued to Metrolink a member of Intercast Suply as sole distributor and importer of the Philippines of all products from GC Mfg.              | To prove that Metrolink, a member of Metrocast Supply Center is the sole importer and distributor in the Philippines to sell dental products.   |

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| "R" | The box of Glass Ionomer, Fuji IX with one (1) set, original packing with applicator, 10g. powder; 10g liquid (8.0ml) Fuji varnish 5g at P2,270.00 a pack. This includes 3% withholding tax and additional cost for delayed payment.   | To prove that the Glass Ionomer Fuji IX has varying sizes and cost. Exh. E for example, cost P2,270.00.        |
| "S" | The box containing the product sample of Economy pack of Glass Ionomer Type IX as described above, except that the content differ, thus-powder, 5g; liquid 4g (3.2ml); fuji varnish. This is priced at P600.00 a pack, excluding 3% withholding tax and additional expense for late payment. | To prove that the Glass Ionomer Fuji IX has inferior quality which cost P600.00. This is the economy size kit. |
| "T" | The box containing the product sample minipack of Glass Ionomer Fuji IX, completed with applicator, the description as above except the content which is 5g powder 3g liquid (2.4ml) cost is 600 a pack, excluding 3% withholding tax and additional expense for late payment.               | To prove the existence of the mini pack size of Ionomer Fuji IX which cost only P300.00.                       |

### ISSUES

Based on the PRE-TRIAL ORDER the parties agreed to submit only one issue for trial, which is *"(w)hether or not injury and/or damage was caused to the Government as a result of the purchase of the Glass Ionomer Type IX (Altraumatic Restorative Treatment) from Philippine Medical Dental Specialists?"*

### FINDINGS AND CONCLUSION

The informations state that the accused are charged with the offense of violation of Section 3(g) in relation to Section 3(e) of R.A. No. 3019 as amended. The elements of Section 3(g)<sup>14</sup> of R.A. No. 3019 are as follows:

- a. the offender is a public officer;

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<sup>14</sup> Morales v. People (385 SCRA 259, 273) and Marcos v. Sandiganbayan 297 SCRA 95, 107 (1998)

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- b. who enters into a contract or transaction on behalf of the government; and
- c. the contract or transaction is grossly and manifestly disadvantageous to the government.

The elements of Section 3(e)<sup>15</sup> of R.A. No. 3019 are as follows:

1. The accused is a public officer or private person charged in conspiracy with him;
2. Said public officer commits the prohibited acts during the performance of his official duties or in relation to his public position;
3. He causes undue injury to any party, whether the government or private party;
4. Such undue injury is caused by giving unwarranted benefits, advantage or preference to such parties; and
5. The public officer has acted with manifest partiality, evident bad faith or gross inexcusable negligence.

It appears from the joint stipulation of facts that the following elements of the offense are undisputed:

- 1) Accused Majarais is a public officer and that the acts for which she is being charged were committed during the performance of her official duties or in relation to her public position;
- 2) Accused Samolde, is a private person charged in conspiracy with a public officer; and that,
- 3) Accused Majarais entered into the assailed contracts/transactions (i.e. approved the assailed Purchase Orders) on behalf of the government.

Without any testimonial evidence or even a memorandum to fully explain its contentions, the Court could only rely on the stipulations and the documentary evidence proffered by the prosecution to determine whether or not the above-mentioned elements of the offense do exist.

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<sup>15</sup> Cabrera, et.al. v. Sandiganbayan G.R. No. 162314-17 (October 25, 2004)



A perusal of the prosecution's documentary evidence, however, fails to show the presence of the essential elements of the offenses charged against the accused. The documentary evidence proves factual circumstances that have already been admitted by the parties such as the request for the acquisition of 500 sets of Glass Ionomer Type IX for use by the district health offices of the NCR which request was approved by accused Majarais; that accused Majarais approved the purchase of, initially 150 sets of Glass Ionomer Type IX from PMDS for P2,270.00 per pack, which upon delivery were duly paid and that subsequently another purchase for 150 sets was approved by accused Majarais, which upon delivery were also duly paid for by the DOH.

The prosecution's documentary evidence have not substantiated the allegations of "grossly disadvantageous contract". While the prosecution's Exhibit "D", which is a certified true copy of a DOH canvass paper dated April 20, 1995, indicates that glass ionomer sets are available from another supplier, International Casting Supply Center (Intercast) at a less expensive price than that offered by PMDS, this does not *per se* prove that the purchase orders from PMDS were grossly and manifestly disadvantageous to the government *especially* since another document, Exhibit "E" belies that contention. Exhibit "E" is a letter dated April 21, 1995 from one Mr. Augusto Garcia, Office Sales Manager of International Casting Supply Center, explaining that the quoted price of P900 per set that he submitted to the DOH on April 20, 1995, was for an **economy pack** consisting of the following specifications:

"POWDER	====	5 gms.
"LIQUID	====	5 gms.
"VARNISH	====	2 ml."

The above specifications do not comply with the requirements of the requesting office, DOH-NCR, which as can be gleaned from its Requisition and Issue Voucher (Exh. "A", for the prosecution or Exh. "1", for the defense) consist of the following "**10 g. powder, 5 g. varnish, 10 g. liquid, mixing pad & spatula universal color, Japan, 3000 kil**". Considering Intercast's clarification that the quoted price of P900/set refers to an economy pack, the specifications of which fall below that required by the end-user, its offer is no longer comparable to that of PMDS' offer. It would be unreasonable to conclude that the contracts with PMDS are grossly disadvantageous to the government absent comparable price quotations of the exact supply requested. The foregoing exhibits also negate the accusation of "undue injury and/or damage caused to the Government".

uc

OR

As to the allegations of "evident bad faith" and "manifest partiality" on the part of accused Majarais, in the case of *Reyes v. Atienza*, 470 SCRA 670 (2005)<sup>16</sup> the Honorable Supreme Court clarified that "(b)ad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud. (*Speigel v. Beacon Participations*, 8 NE 2<sup>nd</sup> Series, 895, 1007) It contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill-will for ulterior purposes (*Air France v. Carrascoso*, 18 SCRA 155, 166-167) Evident bad faith connotes a manifest deliberate intent on the part of the accused to do wrong or cause damage". Also in the aforementioned case, "manifest partiality" was defined as "a clear, notorious or plain inclination or predilection to favor one side rather than the other." Nowhere in the prosecution's documentary evidence was it shown that accused Majarais' approval of the purchase orders pertaining to PMDS was for a "dishonest purpose" or imputes of a "conscious wrongdoing" on her part or a clear predilection to favor PMDS.

In the Joint Stipulation of Facts, the prosecution itself admits that accused Majarais approved the said purchase order **in good faith**, relying on the results of the verification made by her subordinates, who certified, among others as to the exclusive distributorship by PMDS of Glass Ionomer Type IX. Thus:

"That said Purchase Order was duly approved by accused Majarais who, relying in good faith on the results of the verification of her subordinates on the matter, certified that (a) PMDS was the exclusive distributor of Glass Ionomer Type IX and that (b) it had no available substitute in the market, and that (c) there were no sub-dealers offering the lowest price;" (paragraph 5, Joint Stipulation of Facts)

Moreover, on paragraph 8 of the said Joint Stipulation of Facts, the prosecution concedes that "upon receipt of the aforementioned Memorandum from Mr. Joven, accused Majarais scribbled a marginal note thereon reading "PURCHASE IS FOR FURTHER STUDY. HOLD P.O. IF ALREADY SIGNED" to hold in abeyance the processing of the transaction". Such facts duly admitted by the prosecution contradict its allegations of evident bad faith or manifest partiality on the part of accused Majarais.

The Court also notes that two suppliers, Intercast<sup>17</sup> and Metrolink<sup>18</sup> have even acknowledged that PMDS is their exclusive distributor/ exclusive dealer to government entities. The prosecution casts doubt on the credibility of the other suppliers' statements

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<sup>16</sup> Citing *Marcelo v. Sandiganbayan* 185 SCRA 346, 349 (1990)

<sup>17</sup> Exhibit "E" for the prosecution and Exh. "5" for the defense

<sup>18</sup> Exh. "F" for the prosecution and Exh. "6" for the defense



*As*  
**ESTELA TERESITA C. ROSETT**  
*Executive Clerk of Court III*  
*First Division*  
*4/27/07*

recognizing the exclusive dealership of PMDS to government entities or the existence of different kinds of Glass Ionomer sets (i.e. economy pack). However, the prosecution did not present any witness, specifically the representative of the said suppliers, to verify the truth as to their statements so that the Court can determine with certainty the extent of PMDS' exclusive dealership. In order to prove the availability of other suppliers, the prosecution offered Exhibit "Q", which is a letter dated January 1995 purportedly from a certain Edwin J. Balchin of GC International Corporation, indicating that said corporation certified Metrolink as its sole importer and distributor in the Philippines to sell dental products but said certification does not specify whether said dental products include the specific Glass Ionomer Type IX subject of the assailed purchase orders.

As to the allegation of conspiracy between accused Majarais and accused Samolde, considering the dictum that conspiracy must be shown as clearly and conclusively as the commission of the crime itself<sup>19</sup>; the Court finds that the evidence adduced by the prosecution, limited as they are to documents showing the alleged disparity in prices of the two suppliers, failed to prove the existence of conspiracy.

**WHEREFORE**, in view of the foregoing, this Court hereby finds that the prosecution has failed to establish beyond reasonable doubt the guilt of accused Rosalinda U. Majarais and Mariano M. Samolde for Violation of Section 3(g) in relation to Section 3(e) of R.A. No. 3019, as amended, and accordingly **ACQUITS** them of the said offense. They are likewise absolved from any civil liability since the facts from which such civil liability may arise have not been shown to exist.

The Hold Departure Order<sup>20</sup> issued against them on June 8, 2000 is hereby ordered **LIFTED**. Notify the Bureau of Immigration.

The bonds posted by the accused for their provisional liberty are hereby ordered **CANCELLED** and the cash bond<sup>21</sup> of accused Samolde is hereby ordered **RELEASED** to said accused upon presentation of the original receipt evidencing payment thereof and subject to the usual accounting and auditing procedures.

**SO ORDERED.**

*mtc*  
**TERESITA J. LEONARDO – DE CASTRO**  
Presiding Justice  
Chairperson

<sup>19</sup> People v. Castillo, 377 SCRA 314


<sup>20</sup> Record, page 63

<sup>21</sup> Record, pages 233-234

*H*  
*r*

WE CONCUR:

  
DIOSDADO M. PERALTA  
Associate Justice

  
ALEXANDER G. GESMUNDO  
Associate Justice

#### ATTESTATION

I attest that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
TERESITA J. LEONARDO-DE CASTRO  
Chairperson, First Division

#### CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
TERESITA J. LEONARDO-DE CASTRO  
Chairperson, First Division