



REPUBLIC OF THE PHILIPPINES  
**SENATE ELECTORAL TRIBUNAL**  
COA-NCR Bldg., Batasan Road, Quezon City

FRANCIS N. TOLENTINO,  
Protestant,

SET Case No. 001-16

-versus-

LEILA M. DE LIMA,  
Protestee.

X-----X

**RESOLUTION NO. 16 – 101**

Before the Tribunal is a *Motion for Partial Reconsideration* [of Resolution 16-97 dated 20 February 2018] filed by Protestant Francis N. Tolentino on 02 March 2018, praying for the exclusion from the revision proceedings scheduled on 05 March 2018 the ballot boxes which were delivered to the Tribunal by the respective custodians in compliance with Resolution No. 16-83 dated 22 November 2017, namely:

1. Nine (9) ballot boxes delivered by the Municipal Treasurer of Pagbilao, Quezon; and
2. One (1) ballot box delivered by the Assistant City Treasurer of Calbayog City, Western Samar.

In his Motion, it is Protestant's position that the integrity, security and authenticity of the aforesaid ballot boxes were already compromised and therefore cannot be relied upon. He decried the fact that he did not receive any notice or information on when said ballot boxes will be transported and subsequently delivered; that in keeping with due process, he should have been represented during the retrieval of the ballot boxes subject of his protest and be well-informed of the chain of custody.

Protestant claims that it is absolutely unconvincing that pertinent election officials could have innocently or even negligently mistaken in turning over ballot boxes used during the 2013 elections to the SET Collection Team instead of the

2016 ballot boxes considering the difference in their respective appearances which are easily recognizable. He went on to describe what he called as the glaringly different physical appearances of the ballot boxes as follows:

*"It is noteworthy that the first set of ballot boxes turned over to the SET Collection Team were colored black with a protrusion akin to a "chimney" while the 2016 ballot boxes have white body and black lid or cover."<sup>1</sup>*

Protestant Tolentino went on to declare that " there is no way for a prudent man not to conclude that the circumstances are way, way beyond inadvertence and with the strongest possibility to reach the realm of intent and malice upon deeper probe."<sup>2</sup>

We rule to DENY the Motion for the following reasons:

*First.* Resolution No. 16-83 dated 22 November 2017 which required the respective custodians to bring to the SET offices the ballot boxes containing the 2016 ballots and election documents, within a period of fifteen (15) days from receipt of the Resolution, was served on the Protestant's counsel of record on 27 November 2017. Had he wanted to send representatives during the delivery of the subject ballot boxes, the aforesaid resolution could have alerted the Protestant to make the proper coordination. The Pagbilao ballot boxes were delivered on 06 December 2017, while the ballot box from Calbayog City was delivered on 11 December 2017. He had more than enough time to send his representatives. His protestation is rather too late.

There seems to be a need to apprise the Protestant that in instances where incorrect ballot boxes were turned over to the SET Collection Teams, it is standard practice for the Tribunal to order the custodians to deliver to the Tribunal the correct ballot boxes at their own expense. Requiring them to spend for the transport of the ballot boxes not only serves as their penalty for the mistake that had been committed but also relieves the Protestant from further spending for the retrieval of the correct ballot boxes. This practice had been in place since the 1995 case of *Pimentel, Jr. vs. Honasan, et. al.* (SET Case No. 001-95). This procedure does not infringe the parties' rights to substantive and procedural due process.

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<sup>1</sup> Motion for Partial Reconsideration, p. 3

<sup>2</sup> *Ibid.* p. 4

Rule 45 of the 2013 SET Rules provides:

*Rule 45. When Ballot Boxes and Election Documents Brought before the Tribunal. – Where the allegations in a protest, counter or protest so warrant, or whenever in its judgment the interest of justice so demands, the Tribunal shall order to be brought before it the ballot boxes containing the ballots, the corresponding keys, automated precinct count machine and consolidation machines, the electronic data storage devices, list of voters with voting records, book of voters, certified copies of the statements of votes by the board of canvassers concerned, and other documents used in the election. Once retrieved, these shall be kept and held secure, in the care and custody of the Canvass Board Service, in such storage areas as may be authorized by the Tribunal.” (Emphasis and underscoring supplied)*

There is nothing from the foregoing provision which gives the parties the right to be represented during the retrieval process for the provision itself allows the direct delivery of the contested ballot boxes by the official custodians, in this case, by the Municipal Treasurers of Pagbilao, Quezon and Calbayog City, Western Samar. The Tribunal allows representation as a matter of discretion.

Without prejudging the outcome of the revision proceedings, the turn over of the ballot boxes used during the 2013 elections to the SET Collection Team, instead of the 2016 ballots boxes, is nothing unusual to the Tribunal. These incidents had occurred in so many instances in the past. These normally happen when there are no external markings on the ballot boxes; the security seals which contain serial numbers may have been broken and/or detached; the lack of space in the storage room to properly identify and segregate the ballot boxes; and other similar circumstances.

*Second.* Protestant's conclusion on the appearance of the ballot boxes that were turned over to the SET Collection Team has no factual basis. He presumed that the ballot boxes that were retrieved during the collection activity were colored black. Resolution No. 16-83 dated 22 November 2017 stated otherwise. A reading thereof would clearly show that, for both Pagbilao and Calbayog City, the ballot boxes were translucent white and looked similar with the ones used during the 2016 National and Local Elections, for which reason the Collection Teams accepted the turn over.

Indeed, it is incumbent upon the SET Collection Teams to ascertain the identity of the ballot boxes. However, absent any external markings on the ballot boxes as to the precinct numbers, they have to rely on the custodians of the ballot boxes. The Tribunal, or the Collection Teams for that matter, does not have a listing of the serial numbers of the security seals used during a particular election.

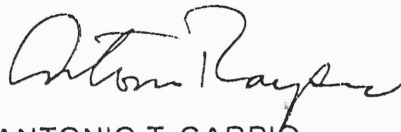
*Third.* There is no better way to determine whether the integrity, security and authenticity of the ballots and elections documents contained in the subject ballot boxes had been compromised or preserved than to open the ballot boxes and subject the same to the revision process. It is during this period that the parties' representatives are afforded the opportunity to observe not only the external condition but also the contents of the ballot boxes.

Further, the Tribunal and the parties herein will be able to ascertain during the revision proceedings if indeed the ballot boxes that were delivered to the Tribunal contained the correct ballots. The findings during revision taken together with the explanations submitted, respectively, by the Municipal Treasurer of Pagbilao and by the Assistant City Treasurer of Calbayog City relative to the incident in question will be determinative whether further actions need to be undertaken.

IN VIEW OF THE FOREGOING, the Executive Committee of the Tribunal Resolves to DENY Protestant Tolentino's *Motion for Partial Reconsideration* [of Resolution No. 16-97 dated 20 February 2018] for lack of merit.

SO ORDERED.

05 March 2018.



ANTONIO T. CARPIO  
Senior Associate Justice  
Chairperson

*Teresita Leonardo de Castro*  
TERESITA J. LEONARDO-DE CASTRO  
Associate Justice  
Member

*Lucas P. Bersamin*  
LUCAS P. BERSAMIN  
Associate Justice  
Member