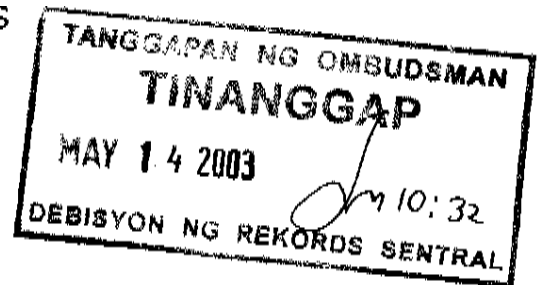


REPUBLIC OF THE PHILIPPINES
OFFICE OF THE OMBUDSMAN
QUEZON CITY



CONSUMER COMPLAINT CENTER, INC.,
duly represented herein by its President,
VICENTE F. GAMBITO, VICENTE F. GAMBITO
in his personal capacity and ARIEL T. LIM,
Complainants,

- versus -

OMB Case No. _____
For: Plunder [RA 7080] and
Violation of Section
3(e), RA 3015 [Anti-
Graft and Corrupt
Practices Act
as amended

ALFONSO G. CUSI, General Manager
Philippine Ports Authority [PPA],
JOHN DOES and MARY ROES,
Respondents.

X-----X

COMPLAINT-AFFIDAVIT

WE, VICENTE F. GAMBITO and ARIEL T. LIM, both of legal age, Filipinos and residing at c/o Consumer Complaint Center Inc. No. 14824 Dian Street, Makati City and Unit 50-F, St. Dominic Bldg., 50 Timog Avenue, Quezon City, after being first duly sworn according to law, hereby depose and state:

1. We file this complaint in our respective personal capacity, or in behalf of Consumer Complaint Center, Inc. insofar as I, Vicente F. Gambito is concerned, pursuant to valid and existing board resolution therefor, a photocopy of the resolution is attached hereto as Annex "A".

2. We are executing this affidavit to complain against and accuse the following respondents, namely:

<u>Name</u>	<u>Position</u>	<u>Address</u>
ALFONSO G. CUSI	General Manager Philippine Ports Authority	PPA Head Office Port Area, Manila
JOHN DOES AND MARY ROES	-	other PPA officers and administrative personnel involved in the subject charges prescinding from the anomalous compromise agreement whose identities are presently unknown to complainant, but once known shall be disclosed in due course in furtherance hereof

where they may be served notice and processes respectively, for the following crimes and offenses:

2.1 PLUNDER as defined and penalized under RA No. 7080, otherwise known as the "PLUNDER LAW"; and

2.2 VIOLATION OF Section 3(e), RA No. 3019, otherwise known as the "Anti-Graft and Corrupt Practices Act, as amended".

3. Respondents, conspiring, confederating and cooperating with each other, committed the crimes charged under the following pretenses, schemes, charade and/or pantomime, as follows:

3.1 On or about 17 February 1998, the Philippine Ports Authority (PPA), purportedly after due bidding held on 30 May 1997, contracted on an "AS IS, WHERE IS" the services of Blue Crown Hydro to manage, operate and maintain, for a period of fifteen (15) years, its North Harbor Water Works Distribution System business, situated along Marcos Road, from Pier 2 to Terminal 16, PMO - North Harbor, to continue selling and

program to prevent its deterioration. Further, the **CONTRACTOR shall immediately undertake the necessary repairs on any damaged portion of the waterworks distribution system and facilities.** All expenses incurred in repairing, replacing and restoring the waterworks distribution system or any part thereof including any pavement which has been damaged as a result of the repairs or operation of the system shall be for the account of the CONTRACTOR";

- e. "Section 12. Expansion of the System. The **CONTRACTOR** shall, at its own expense and subject to the approval of the Board of Directors of the Authority, **expand the North Harbor Waterworks Distribution System to future commercial establishments at North Harbor and to additional berths and facilities** which may be constructed by the AUTHORITY";
- f. "Section 14. "xxx xxx xxx During the effectivity, the CONTRACTOR shall insure for the duration of this CONTRACT, at its own expense and for the benefit and in the name of the AUTHORITY, **the North Harbor Water Distribution System and all facilities, installations existing or to be constructed and operated by the CONTRACTOR** against loss or damages with the Government Services Insurance System, in an amount not less than the replacement value of the facilities. Proceeds from such insurance coverage shall be utilized to restore the damaged or destroyed facilities or installations in accordance with the AUTHORITY's approved program of repair or reconstruction";
- g. "Section 15. Water Consumption During Emergencies and System Losses. In case of fire, the CONTRACTOR shall allow, free of charge, fire engines to withdraw water as may be necessary from its hydrants.

Further cost of water from systems losses shall be for the sole account of the CONTRACTOR."

3.3 That the NHWDS had been delivered by the PPA and duly accepted by Blue Crown Hydro was well acknowledged and confirmed per Section 2 of the contract, without objection or qualification by the latter. In fact, it is confirmed by the PPA Notice to Proceed dated 24 February 1998 was duly served on

Blue Crown Hydro, similarly without any objection or qualification by the latter.

3.4 Indeed, under the Contract dated 17 February 1998, Blue Crown Hydro was obligated to pay the PPA and undertake the following to enhance and expand the NHWDS, to wit:

- a. "Section 5. Government Share and Water Cost. In consideration of the rights and privileges granted the CONTRACTOR, the CONTRACTOR shall, upon signing at this CONTRACT, pay to the AUTHORITY the amount of **TEN MILLION PESOS (P10,000,000.00)**. Likewise, the CONTRACTOR shall pay the AUTHORITY a minimum amount of **FOUR MILLION NINE HUNDRED THOUSAND PESOS (P4,900,000.00) per annum**, representing government share of P2.72 per cubic meter for 1,800,000 cubic meter sales in one year, to be remitted in twelve (12) equal monthly installments of **FOUR HUNDRED EIGHT THOUSAND THREE HUNDRED THIRTY THREE PESOS AND 88/100 (P408,333.88)** not later than the 5th day of the following month for the duration of this CONTRACT at the Cashiering Finance Unit, PMO-North Harbor without need of demand.";
- b. "Section 6. Performance Bond. The CONTRACTOR shall, during the effectivity of this CONTRACT, post in favor of the AUTHORITY a **Performance Bond in the amount of FOURTEEN MILLION TWO HUNDRED FIFTEEN THOUSAND FIVE HUNDRED PESOS (P14,215,500.00)** to be issued by and renewed annually with the Government Service Insurance System pursuant to the Administrative Order No. 33 dated 25 August 1987 of the President of the Republic of the Philippines and shall guarantee the full and faithful compliance by the CONTRACTOR with each and every term, stipulation and condition of this CONTRACT and the prompt payment of all amounts to be paid by the CONTRACTOR whether on account of rights and privileges herein granted or for losses, injuries or damages that may be sustained by the AUTHORITY or any person or persons whomsoever, or damage suffered to any property including wharves, piers and other premises utilized, occupied by or under the control of the CONTRACTOR, its agents and employees and the AUTHORITY or any interested person or persons whomsoever, shall be entitled to and may enforce

the liability of the CONTRACTOR upon said performance bond.

The performance bond may be released by the AUTHORITY upon expiration or termination of this CONTRACT provided that it has no more claims against the CONTRACTOR.";

- c. "Section 11. Maintenance and Repair of the Facility. The CONTRACTOR shall be solely responsible for **maintaining** the North Harbor Waterworks Distribution System **in operational condition at all times. It shall institute a regular maintenance program to prevent its deterioration. Further, the CONTRACTOR shall immediately undertake the necessary repairs on any damaged portion of the waterworks distribution system and facilities.** All expenses incurred in repairing, replacing and restoring the waterworks distribution system or any part thereof including any pavement which has been damaged as a result of the repairs or operation of the system shall be **for the account of the CONTRACTOR.**";
- d. "Section 12. **Expansion of the System.** The **CONTRACTOR** shall at its own expense and subject to the approval of the Board of Directors of the Authority, expand the North Harbor Waterworks Distribution System to future commercial establishments at North Harbor and to additional berths and facilities which may be constructed by the AUTHORITY."

3.5 Evidently from the contract date on 17 February 1998 till 15 March 1999, Blue Crown Hydro failed to comply, hence was in breach of its above duties and obligations under the contract in that:

- a. Despite the 50% operational capacity of the NHWDS, Blue Crown Hydro failed to pay the PPA the guaranteed annual minimum PPA share in the amount of **P4,900,000 per year** or a minimum total of **P73,500,000 at the end of the 15 year contract** period;
- b. Presumably, Blue Crown Hydro has likewise failed to post the required annual GSIS Performance Bond in the amount of P14,215,500 per year;

- c. Worse, we have received reliable information and so allege that Blue Crown Hydro has failed to produce and deliver its promised tools, equipment and gears as per Section 7, as well as introduce and "acquire new equipment to complement the existing inventory or replace such equipment" as the PPA would direct;
- d. Also, we reasonably believe based on reliable information that Blue Crown Hydro has failed to maintain the NHWDS in operational condition at all times; and
- e. Worst of all, Blue Crown Hydro has failed to expand the NHWDS to future commercial establishments and other users.

3.6 To relieve, exculpate and set Blue Crown Hydro free from its accruing monetary and economic obligations under the contract, Blue Crown Hydro, which has apparently been selling water at 50% capacity of the NHWDS without remitting anything to PPA, in conspiracy, cooperation and confederation with respondent Cusi, systematically launched a pretense, scheme, charade or pantomime to terminate the contract to relieve it from its duties and obligations thereunder and on top of that, abstract and plunder money from the PPA, as follows:

- a. Without any objection or qualification from Blue Crown Hydro, the Contract was executed by PPA and Blue Crown Hydro on 17 February 1998 under which the PPA's delivery of the NHWDS was duly acknowledged by Blue Crown Hydro on as "AS IS, WHERE IS" basis.
- b. Additionally, the PPA Notice to Proceed was issued and received by Blue Crown Hydro on 24 February

1998, without any objection or qualification from the latter.

- c. Suddenly, on 09 July 1999, it was made to appear that Blue Crown Hydro had sued the PPA for the latter's alleged failure to immediately deliver the NHWDS in "good operating condition" to Blue Crown Hydro for which the latter asked the following damages:

a. Unrealized income as at 30 June 1999	-	P9,032,100
b. Remote Economic Loss (capital and expenses)	-	8,894,400
c. Moral damages	-	1,000,000
d. Exemplary damages	-	1,000,000
e. Attorney's fees	-	500,000

or a total claimed damages at P20,426,500, a photocopy of the Complaint with Annexes is attached Annex "C".

Curiously and for the first time, Blue Crown Hydro had attached to its complaint its purported letters to the PPA whereby it was made to appear that starting 15 March 1999 or almost one (1) year from the contract date on 17 February 1998, Blue Crown Hydro had purportedly written the PPA, either through its former General Manager Juan Peña or Port Manager Aristedes Alcalde, that it had not yet obtained possession of the NHWDS in "good operating condition." [Please see Annexes "D" to "J" inclusive of Complaint- Annex "C"].

d. Correctly so, the PPA filed its Answer to the complaint stating the following good, valid and strong defenses, both factual and legal, as follows:

i. "Plaintiff has no cause of action against defendant. Contrary to plaintiff's allegations, defendant has turned-over the NHWDS to plaintiff as early as February 17, 1998 when the parties executed the Contract for the supply of water to vessels and barges docked at North Harbor. Section 2 of the Contract provides that:

"Subject. The AUTHORITY hereby delivers and the CONTRACTOR accepts the North Harbor Waterworks Distribution System installed along the Marcos Road, from Pier 2 to Terminal 16, PMO-North Harbor, which shall include the water master meter, secondary meters, water pipes, hydrants and provision, more particularly described in Annex "D", hereto attached and made an integral part of this Contract."
(underscoring supplied)

ii. To further show that the NHWDS has been properly turned-over to plaintiff is defendant's Notice to Proceed dated February 24, 19898, which is duly served upon plaintiff;

iii. Plaintiff is coming to court with unclean hands, As of this date, the NHWDS is 50% operational and plaintiff has been supplying water to defendant's concessionaires at the North Harbor and collecting water fees from said customers. However, despite earning revenues from said NHWDS, plaintiff has not been remitting to defendant the government's share which is a clear violation of Section 5 of the Contract, which states:

"Section 5. Government Share and Water Cost. In consideration and privileges granted the CONTRACTOR, the CONTRACTOR shall, upon signing of this CONTRACT, pay to the AUTHORITY the amount of TEN MILLION PESOS (P10,000,000.00). Likewise, the CONTRACTOR shall pay the AUTHORITY a minimum amount of FOUR MILLION

NINE HUNDRED THOUSAND PESOS (P4,900,000.00) per annum, representing government share of P2.72 per cubic meter for 1,800,000 cubic meter sales in one year, to be remitted in twelve (12) equal monthly installments of FOUR HUNDRED EIGHT THOUSAND THREE HUNDRED THIRTY THREE PESOS and 33/100 (P408,333.33) not later than the 5th day of the following month for the duration of this CONTRACT at the Cashiering Finance Unit, PMO-North Harbor without need of demand."

- iv. Any delay in the FULL operation of the NHWDS is mainly due to plaintiff's failure to implement the terms and conditions of the Contract, without fault on the part of defendant. The failure of plaintiff to immediately commence operation of the NHWDS resulted in the deterioration, through ordinary tear and wear, of the water pipes at the NHWDS but to show good faith, defendant opted to have said water pipes repaired at its expense;
- v. If it is the flow of the water supply that plaintiff is harping about, defendant is not at fault as the water supply at the NHWDS is completely dependent upon the Metropolitan Waterworks and Sewerage System (MWSS) which plaintiff is fully aware of. Despite repeated demands by defendant upon MWSS to open the main valve at the NHWDS to allow water supply therein, MWSS unjustifiably refuses to do so;
- vi. This fact is not alien to plaintiff. Truth to tell, when the Lawyers Against Monopoly and Poverty (LAMP) filed a civil case against plaintiff and defendant at the Regional Trial of Manila, Branch 36, entitled as "Lawyers Against Monopoly and Poverty, et al., vs. Philippine Ports Authority and Blue Crown Hydro Services, Inc.", docketed as Civil Case No. 98-88844, plaintiff and defendant conducted several meetings with the officials and officers of MWSS regarding the failure of MWSS to open the main valve at the NHWDS."

for which the PPA counterclaimed the following damages:

- aa. Blue Crown Hydro's non-remittance of the guaranteed minimum at P4,900,000 per

annum or share whichever is higher as per contract;

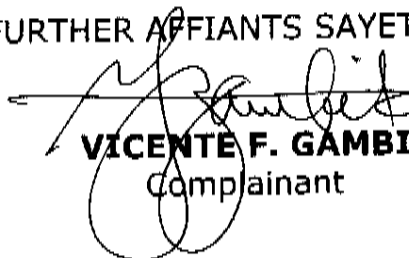
- bb. Moral damages of P500,000;
- cc. Attorney's Fees of P200,000 a photocopy of the PPA Answer dated 03 September 1999 is attached hereto as Annex "D".
- e. Issues having been joined via the PPA's Answer which raised good, valid and strong factual and legal defenses, the litigation between the PPA and Blue Crown Hydro however, for unknown reasons, did not proceed much less decided by the court upon due trial.
- f. Instead, on 27 March 2003, respondent Cusi and his cohorts executed a purported Compromise Agreement with Blue Crown Hydro, which he also purportedly caused to be approved by the PPA Board per its Resolution No. 1927 dated 23 September 2002, at which respondents, for reasons known only to Cusi and the PPA, agreed to a mutual termination of the Contract dated 17 February 1998, a photocopy of the Compromise Agreement is attached hereto as Annexes "E" and "E-1".
- g. On 08 April 2003, the court had apparently approved the compromise agreement and rendered judgment in accordance with its terms which by its nature is immediately final and executory, a photocopy of the Decision is hereto attached as Annex "F".

i. Under the terms of the purported compromise agreement, respondent Cusi and his cohorts effectively plundered the PPA and the Government a total amount of P143,926,500, and/or at the least gave Blue Crown Hydro unwarranted contractual monetary and economic benefits, broken down as follows:

- aa. Respondent Cusi and his cohorts unilaterally waived and forfeited its expected revenues from the project at the minimum guaranteed amount of P4,900,000 per year or at total of **P73,500,000 for 15 years as per contract, more or less;**
- bb. Worse, respondent Cusi and his cohorts waived and forfeited Blue Crown Hydro's stipulated introduction of **tools, equipment and gears as** well as the **substantial expansion and maintenance cost** of the NHWDS which can reasonably be estimated in the amount of at least **P50,000,000;** and
- cc. Worst of all, respondent Cusi and his cohorts had fraudulently and illegally agreed, without due hearing and incomplete disregard of its strong and valid factual and legal defenses, that the PPA would pay Blue Crown Hydro a total amount of **P44,177,853** or P23,751,353 more than the amount of P20,426,500 that Blue Crown Hydro claims against the PPA under its complaint which is utterly mind boggling and incredible.


4. We attest to the truth of the foregoing based on our personal knowledge and/or authentic documents.

FURTHER AFFIANTS SAYETH NAUGHT.


VICENTE F. GAMBITO
Complainant


ARIEL T. LIM
Complainant

SUBSCRIBED AND SWORN to before me this 14th day of May 2003 at San Francisco. I further certify that I have personally examined the affiants and that I am satisfied that he has executed this Complaint-Affidavit and has understood the contents hereof of his own personal knowledge.


MYRTE E. CUNANAN
INVESTIGATING PROSECUTOR

ANNEX" A "

SECRETARY'S CERTIFICATE

KNOW ALL MEN BY THESE PRESENTS:

This is to certify that during the special meeting of the Board of Trustees of Consumer Complaints Center, Inc. held on May 6, 2003 at 1824 Dian Street, Makati City, wherein a quorum was present, the Board of Trustees adopted and approved the following:

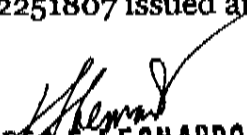
RESOLUTION NO. 02-2003

RESOLVE, as it is hereby RESOLVED, that Mr. Vicente F. Gambito, President, be, as he is hereby authorized, to file and prosecute criminal, administrative and/or civil actions against Alfonso G. Cusi, General Manager, Philippine Ports Authority, the members of its Board of Directors and its other officers and administrative personnel for "Plunder (RA 7080) and Violation of Section 3(e), RA 3015 (Anti-Graft and Corrupt Practices Act as amended", and such other cases as may be appropriate, before the Office of the Ombudsman, the courts and other government agencies concerned as the evidence may warrant.

Certified Correct:


MINA C. GATDULA
Assistant Corporate Secretary

SUBSCRIBED AND SWORN TO before me this 6th day of May 2003 affiant exhibited to me her Community Tax Certificate No. 12251807 issued at Manila on January 14, 2003.


MA. THERESA F. LEONARDO
NOTARY PUBLIC
UNTIL DECEMBER 21, 2003
PTI NO: 9985667
ISSUED ON JANUARY 29, 2002
ISSUED AT: PASAY CITY

Doc. No. 155;
Page No. 31;
Book No. 1;
Series of 2003.