

ORLANDO ANGELO A. SANTOS, COMPLAINANT, VS.ATTY. MA. VIVIANE CACHO-CALICDAN, RESPONDENT.

A.C. NO. 5395. September 19, 2006

Ponente: TINGA, J.

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TINGA, J.:

This administrative case stemmed from a Complaint-Affidavit[1] filed by Orlando Angelo A. Santos (complainant) on 28 December 2000 for disbarment against Atty. Ma. Viviane Cacho-Calicdan (respondent).

Estifanio Biasura (Biasura) filed criminal and administrative cases against complainant, a Land Management Officer IV of the Regional Office No. 1 of the Department of Environment and Natural Resources (DENR). Said cases were assigned to respondent, a Graft Investigation Officer II of the Office of the Ombudsman, who acted as the hearing officer in the administrative case against complainant. Complainant was eventually found guilty by the Office of the Deputy Ombudsman for Luzon on 5 October 2000 of violating Section 7, par. (d) in relation to Section 3, par. (d) of Republic Act (R.A.) No. 6713[2] and meted a penalty of six (6) months' suspension without pay.

In his Complaint-Affidavit, complainant alleges several irregularities against respondent committed in the course of the hearing of his complaint. Complainant claims that while he was in the process of conducting his cross-examination on Biasura during the formal investigation of the administrative complaint, respondent uttered to complainant, "You concentrate in proving your innocence." The utterance allegedly manifested respondent's partiality to Biasura.

Complainant further accuses respondent of falsifying court records. Complainant alleges that respondent, in collusion with the court stenographer, altered the transcript of proceedings taken on 25 June 1998 by deleting what exactly transpired during the hearing. Complainant avers that during the hearing, respondent suspended the cross-examination then being conducted by complainant on Biasura, only to be postponed later but on condition that complainant would be allowed to continue his unfinished cross-examination. However, the transcript instead stated that the hearing of 25 June 1998 was merely reset to 5 August, omitting mention of the stipulation that complainant would be allowed to resume his cross-examination.

At the next scheduled hearing on 5 August 1998, complainant failed to appear and instead filed a motion to dismiss on the ground that a criminal complaint based on violation of R.A. No. 6713 was then pending before the Sandiganbayan. In an Order[3] dated 27 August 1998, respondent denied the motion to dismiss. However, the same order also stated that complainant had already waived his right to further cross-examine Biasura. This order is being cited by complainant to bolster his claim that respondent committed the falsification earlier adverted to.

Complainant moved for reconsideration of the Order of 27 August 1998, contending that he never manifested that he was waiving his right to further cross-examine Biasura and that the order denied him of his constitutional right to confront his accuser. In his motion for reconsideration, complainant expressed his desire to continue with the cross-examination on certain material points, to wit: (1) Biasura's testimony on the circumstances when the

alleged demands were made; (2) Biasura's claim that he was granted/awarded by the DENR Regional Office No. 1 an approved survey plan of Lot No. 20206, San Fabian Cadastre; (3) Biasura's claim that complainant blatantly refused to give copies of a Decision dated 21 April 1993 and a report related thereto; and (4) glaring inconsistencies in Biasura's accounts during the direct examination and those made in his Complaint-Affidavit and Reply/Comment.[4]

In an Order[5] dated 24 September 1998, respondent granted complainant's motion. He was however advised to limit his cross-examination to the facts stated by Biasura. In the same order, respondent nonetheless found it necessary to stress the following points:

- (a) That herein respondent (complainant) already subjected complainant (Biasura) to cross-examination with respect to point (1) of his Motion for Reconsideration.
- (b) Points (2) and (3) are not covered by complainant's direct examination.
- (c) Point (4). The inconsistencies, if ever there is (sic), between the testimony of complainant during the direct examination and his complaint affidavit and Reply-Comment in the criminal complaint as already explained, during the last hearing is not within the scope of the administrative hearing. The direct examination of the complainant, as the transcript showed, only covered the allegations with respect to herein respondent Santos, that he made solicitations from the complainant in the form of money and piece of land in exchange for a favorable decision and when respondent's demand was not fully given, the Decision dated April 21, 1993 in favor of complainant was subsequently reversed.[6]

Complainant takes issue with the foregoing conclusions of respondent. In particular, he argues that points (2) and (3) were actually covered by the direct examination according to the transcript of stenographic notes.

In addition, complainant avers that on the day of the hearing on his motion for reconsideration, respondent did not take action on the motion and instead left the office early. Complaint further asserts that the 24 September 1998 order was issued despite knowledge of the existence of the motion for respondent to inhibit from the case.[7]

Mention must be made that on 30 September 1998, complainant filed a motion for respondent to inhibit herself from conducting the administrative proceedings. The motion was granted and the case was re- assigned to Graft Investigation Officer Joaquin F. Salazar (Salazar).

In her Comment,[8] respondent submits that the statements she allegedly uttered neither convey bias or partiality to Biasura. She asserts that in the course of complainant's cross-examination, the questions propounded by the latter dealt with the alleged activities of Biasura which were not at issue in the case and were moreover not testified to during the direct examination.[9]

On the issue of falsification, respondent insists there was no false declaration or falsification committed. She explains that the proposal to set aside the hearing adverted to by complainant was made off-record; hence, it was not incorporated in the transcript of stenographic notes.

Respondent denies having belatedly acted on complainant's motion for reconsideration. She contends that as of the date of the hearing on the motion for reconsideration, she has yet to receive a copy of the motion from the Records Division and the other parties have yet to file their respective comments.

At this point, it is noteworthy to mention that prior to the filing of the present disbarment complaint, complainant lodged a complaint before the Civil Service Commission on 19 July 1999 charging respondent, together with her stenographer, Joel Barja Ativo, and Salazar for falsification of records and grave misconduct. The complaint was referred to the Office of the Ombudsman.

In a Fact-Finding Report[10] dated 31 August 1999, the Deputy Ombudsman for Luzon dismissed the case for

lack of merit. Dealing extensively with the issues raised by complainant, the Report advanced the following observations:

The alleged alterations in the transcripts are likewise unfounded, since they are plain and simple typographical errors which would only highlight the real issues in this case which is the act of soliciting money in exchange for a favorable decision. Evidently, this was done by herein-complainant in his naked attempt to evade the real issues against him and to delay the administration of justice. Moreover, all the points raised by the complainant are entirely baseless and tainted with malice. The records and the actions of respondent hearing officer are regular and in accordance with established rules of procedure. It appears from the evaluation of the undersigned that this complaint was designed to harass herein respondents in order to derail the proceedings against him and this proves to be beneficial to his interest and advantage. As it is, complainant is up [sic] to set a dangerous trend that whoever hearing officer that will not take his side will end up a victim of a complaint before any other forum. Lastly, the entire proceedings were all set aside by the new hearing officer and an entirely new proceeding is now on-going.

In view of the foregoing, there was no falsification that we can speak of and neither are respondents liable for Grave Misconduct as the elements of corruption, clear intent to violate the law or flagrant disregard of established rules are not manifested.[11]

The Report was approved by then Ombudsman Aniano Desierto on 1 October 1999.

The complaint in the case was referred to the Integrated Bar of the Philippines (IBP) for investigation. In its Order dated 7 March 2002, three areas of concern were identified to be the subject of the administrative complaint, namely: (1) Order of 24 September 1998, (2) utterances made by respondent during the hearings, and (3) alleged intervention of respondent in the preparation of the transcript of stenographic notes of the 25 June 1998 hearing.[12] Thereafter, the IBP, in its Investigation Report[13] dated 28 February 2003, recommended the dismissal of the complaint for lack of merit. The IBP ruled, thus:

A careful scrutiny of the assailed Order dated September 24, 1998 contains guidelines issued by Respondent Calicdan, consistent with her functions as Hearing Officer/Ombudsman Investigator. In issuing the same, Respondent Calicdan acted without malice and criminal intent. Good faith is evident on her part, considering that the subject Order was mainly for the orderly conduct of the administrative case she was presiding over.

The Fact-Finding Report dated August 31, 1999 of the Ombudsman in the administrative complaint filed by Complainant Santos against Respondent Calicdan, on the very same matters subject of this disbarment case, is comprehensive, and clearly point to the innocence of Respondent Calicdan with respect to the charge for falsification.[14]

Upon review of the records, the Court is in full accord with the findings and conclusion of the IBP.

A lawyer may be disbarred or suspended from practice for any deceit, malpractice, gross misconduct in office, grossly immoral conduct, conviction of a crime involving moral turpitude, violation of the lawyer's oath, willful disobedience of any lawful order of a superior court, or willful and unauthorized appearance for a party to a case, as specified in Section 27, Rule 138 of the Rules of Court. A deceitful act, in particular, constitutes a violation of Rule 10.01 of the Code of Professional Responsibility, which provides:

A lawyer shall not do any falsehood nor consent to the doing of any in court; nor shall he mislead, or allow the court to be misled by any artifice.

Nonetheless, the power to disbar must be exercised with great caution.[15] In disbarment proceedings, the case against the respondent must be established by clear, convincing, and satisfactory proof, the burden of which rests upon the complainant.[16] Only a clear case of misconduct that seriously affects the standing and character of the

lawyer as an officer of the Court and as a member of the bar will warrant disbarment.[17]

In the instant case, complainant failed to substantiate his charges of falsification, to establish the basis of respondent's disbarment. He claimed that during the hearing on 25 June 1998, respondent merely suspended the cross-examination being conducted by the former on Biasura. Complainant accused respondent of altering the transcript of proceedings by making it appear that the hearing was reset to 5 August and complainant was required to submit his position paper.[18] The complainant, in questioning the veracity of the transcript of the proceedings, failed to present evidence that the said transcript has been altered. Against his bare allegations, the presumption that official duty has been regularly performed prevails. Otherwise stated, it is presumed that a public official properly and regularly discharges his duties, or performs act required by law; in accordance with the law and the authority conferred on him; and that he will not do any act contrary to his official duty or omit to do anything which such duty may require.[19] Accordingly, we uphold the assailed transcript of proceedings as the faithful and accurate recording of all matters that transpired during the 25 June 1998 hearing.

The alleged omissions in the said transcript were reflected in the 27 August 1998 Order, the integrity of which complainant also assails in his Complaint-Affidavit. It appears that the IBP did not dwell on the 27 August 1998 Order, focusing instead on the validity of the 24 September 1998 Order. This notwithstanding, we can conclude with comfort that no irregularity attaches to the 27 August 1998 Order, as well. The statement therein that complainant had waived his right to further cross-examine Biasura and that the parties were to submit their respective position papers does not contradict the transcript which, absent any evidence disputing its veracity, stands as the official record of what had transpired during the hearing.

Even assuming that there is a grain of truth in complainant's allegations regarding the transcript of the hearing and the 27 August 1998 Order, it should be noted that the alleged irregularities ultimately did not work to complainant's prejudice. This was because in the 24 September 1998 Order, respondent affirmed the right of the complainant to continue his cross-examination of Biasura, the very right which complainant purports to have been infringed upon by reason of the transcript and the 27 August 1998 Order.

We now turn to the remaining issues as identified by the IBP in its March 2002 Order - whether the alleged utterances by respondent to complainant warrant administrative sanction against her, and whether any irregularity attaches to the 24 September 1998 Order.

Complainant has accused respondent of unduly favoring Biasura when the latter made the following remark: "You concentrate in proving your innocence." There is no evidence on record that respondent unduly favored Biasura. Respondent, in her Comment, averred that the aforesaid statements, if ever uttered, neither convey bias nor partiality. She explained that the cross-examination questions propounded by him did not deal with the issue in the said case, as they did not address the matter subject of Biasura's testimony on direct examination. It bears noting that complainant, a layman, was not assisted by a lawyer during the proceedings before the Deputy Ombudsman. Therefore, it is safe to conclude that complainant is not versed with rules of procedure. It could be said that respondent was merely guiding complainant on how to pose the proper questions, in no way exhibiting bias against his cause. In fact, in the Order[20] of 24 September 1998, respondent reminded complainant to limit his cross-examination only to the facts testified to by Biasura.

Finally, we see no taint of irregularity in the Order of 24 September 1998. It should be recalled that almost all of complainant's questions in the cross-examination before the Ombudsman were objected to by the counsel for the opposing party; thus, respondent deemed it fair to give leeway to complainant by proposing to suspend the proceedings. The Order of 24 September 1998 did allow complainant to continue his cross-examination of Biasura, but advised him to limit his cross-examination to the facts testified to by Biasura. The four points

stressed by respondent in the 24 September 1998 Order are merely reflective of this concern. We agree with the IBP that the questioned order only manifests

respondent's good faith in the performance of her duties as a hearing officer. The assailed guidelines were precisely issued to ensure the orderly conduct of the proceedings.

We agree with the finding of the Ombudsman, shared by the IBP, that bad faith and malice had attended the filing of the present complaint. In view of his suspicion of bias on the part of respondent, the filing of the motion to inhibit would have sufficed. And yet, despite respondent's inhibiting herself from further conducting the administrative proceedings against him, complainant still proceeded to file an administrative case before the Civil Service Commission against respondent and, subsequently, the disbarment complaint before this Court.

Based on the foregoing, complainant failed to establish by substantial evidence that respondent committed the imputed acts to justify administrative sanction.

WHEREFORE, the complaint is DISMISSED.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Carpio Morales, and Velasco, Jr., JJ., concur.

[1] Rollo, pp. 5-7.

[2] Entitled "An Act Establishing a Code of Conduct and Ethical Standards for Officials and Employees."

[3] Rollo, pp. 8-9.

[4] Id. at 36.

[5] Id. at 41-42.

[6] Id. at 41.

[7] Id. at 230-231.

[8] Id. at 52-56.

[9] Id. at 54.

[10] Id. at 277-285.

[11] Id. at 283.

[12] Id. at 408.

[13] Id. at 485-488.

[14] Id. at 487.

[15] Ramos v. Ngaseo, A.C. No. 6210, 9 December 2004, 445 SCRA 529; Santiago v. Rafanan, A. C. No. 6252, 5 October 2004, 440 SCRA 91.

[16] Berbano v. Barcelona, A.C. No. 6084, 3 September 2003, 410 SCRA 258, 264, citing Concepcion v. Fandiño, Jr., 334 SCRA 136, 142 (2000).

[17] Dantes v. Dantes, A.C. No. 6486, 22 September 2004, 438 SCRA 582, 590.

[18] Rollo, pp. 5-6.

[19] Herrera, Oscar M., Remedial Law VI, 1999 ed., citing 31 C.J.S. 798.

[20] Supra note 4.

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