

**RE: RIVARA’S COMPOUND HOMEOWNERS ASSOCIATION,
REPRESENTED BY ITS PRESIDENT, MR. JESUS L. LLANTADA
COMPLAINANT, VS. MR. FRANCIS A. CERVANTES, RESPONDENT.**

A.M. NO. 2006-18-SC. September 05, 2006

Ponente: TINGA, J.

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TINGA, J.:

This is an administrative complaint filed by the Rivara’s Compound Homeowners’ Association (the Association), through its President, Mr. Jesus L. Llantada,[1] against respondent Francis H. Cervantes (Cervantes), Records Officer I, Records Division, Office of Administrative Services (OAS), Office of the Court Administrator (OCA), for Grave Misconduct, Dishonesty and Breach of Trust.

Complainant Llantada, in the sixty-four (64) page Complaint,[2] states that Rivara Compound at Santan St., Fortune, Marikina City is under the Community Mortgage Program (CMP) wherein monthly amortizations are collected by the Association from the member-homeowners to be remitted and paid to the CMP-Social Housing Finance Corporation. Complainant claims that while respondent Cervantes served as President of the Association, he conspired with its Treasurer not to remit and thereafter misappropriate the collections made by the Association. According to complainant, the following amounts have been misappropriated:

1.

Unremitted monthly amortizations 8,287.55

2.

Penalties for delinquent payments 24,641.50

3.

Documentary stamps 226,095.48

4.

Membership fees 67,500.00

5.

Subdivision survey fees 208,000.00

6.

Equity Payments 372,235.93

P906,760.46[3]

Moreover, complainant avers that respondent Cervantes, during his incumbency, never caused a full audit of the Association's books nor made the same available to its members in violation of the Association's by-laws. He also did not submit any of the books, records, and financial statements to the Housing and Land Use Regulatory Board (HLURB). Under respondent Cervantes's leadership, the Association did not even conduct regular monthly and annual meetings.[4] Further, complainant accuses him of withholding from member-homeowners "Award Certificates" for lots awarded to them.[5]

Complainant also alleges that at the moment respondent Cervantes is not even a member in good standing of the Association as he refuses to pay his Association dues among others and does not attend the monthly meetings.[6]

Complainant states that he and the other member-homeowners already made several demands on respondent Cervantes for the return of the misappropriated amounts to no avail. Instead, respondent Cervantes allegedly responded with a threat that he will file a case of harassment against complainant and the other member-homeowners if they continue demanding reimbursement. This he stated with the reminder that he is "[s]omebody working in the Supreme Court, he could send anyone to jail if he wants." In fact, complainant adds, respondent Cervantes was elected President of the Association because he had made the misrepresentation in 1999 that he is a lawyer working with the Supreme Court. [7]

Complainant prays for (1) the dismissal of respondent Cervantes from service for the above-stated charges; (2) the return of the allegedly misappropriated amounts; and (3) the turn-over of all the financial records, documents and properties of the Association allegedly still in respondent Cervantes's possession to the Association's Treasurer.[8]

Respondent Cervantes in his Comment[9] dated 8 May 2006, vehemently denies the allegations against him. He seeks the dismissal of the instant complaint for being unfounded, fallacious, and beyond the jurisdiction of the Court as the allegations do not involve his official functions.[10]

Complainant in his Reply[11] informs the Court that a criminal case for estafa has been filed against respondent Cervantes before the Office of the Prosecutor of Marikina City. He also mentions the padlocking or closing without a court order of the house of a certain Arlene Perillo (Perillo) on 5 May 2006, which case is the central subject of the Supplemental Complaint[12] in which complainant alleges that respondent Cervantes's basis of his claim over Perillo's property was made in violation of the Marikina Settlement Code of 2001.[13] In the Supplemental Complaint, complainant also avers that respondent Cervantes made overconfident comments that the administrative charges against him are already dismissed because the investigating officers of the case, namely, Atty. Edwin Andrada and Atty. Marissa Villarama, are respectively his 'kumpadre' and patroness.

In his Rejoinder[14] dated 9 June 2006, respondent Cervantes asserts that in truth Perillo mortgaged her property to him and as she failed to settle her obligations, he was constrained to file a case for estafa against her before the local barangay.[15] Respondent Cervantes reiterates his previous submission that the allegations made against him are mere fabrications and prays for the dismissal of the complaints filed against him.

In her Memorandum[16] dated 15 August 2006, Atty. Eden T. Candelaria, Deputy Clerk of Court and Chief Administrative Officer, found that the acts of dishonesty and grave misconduct leveled against respondent Cervantes, done as they were in his capacity as President of the Association, are in no way related to his official functions as employee of the Court. While the acts may make out a criminal case for estafa under the Revised Penal Code, such acts generally cannot ripen to administrative offenses until respondent Cervantes is adjudged criminally guilty thereof.

The other allegations of the complaint, however, were considered for further investigation. Llantada and another witness, Aquiliza Gutierrez, a resident of the subdivision and Acting Vice-President of the Association, testified to support the allegations.

Atty. Candelaria found the allegation that respondent Cervantes has misrepresented himself as a lawyer working with the Court to be wanting in probative value. On the other hand, the allegation that respondent Cervantes heralded his connections with Atty. Andrada and Atty. Villarama was established by substantial evidence. Atty. Candelaria reported in part as follows:

The allegation is worthy of belief. This Office could not ponder why the complainant was able to get the names of Atty. Andrada and Atty. Villarama in particular, in the same manner, that his membership in the SC Choir came to the knowledge of Mr. Llantada, Ms. Gutierrez and other residents of Rivara Compound, and its relation to the case at bar.

It is not amiss to state that Atty. Villarama has not in any manner took (sic) part in any stage of the investigation of the instant complaint, in the same way that Atty. Andrada's being under the CID, this Office, would impinge on the outcome of the investigation of the case. The overriding fact is that the names and the other information would not have come to the knowledge of the complainant as well as his witness, had the same not actually been uttered by Mr. Cervantes. To this Office, the latter's claim that it was impossible for one to utter the full names of their "connections" in a mundane sort of gathering is not unlikely to happen. On the contrary, to this Office, the uttering of at least the complete name or names of certain "personalities" just like what Mr. Cervantes did although he denied the same, is to make other people aware of who those people are, their connections with them, and in particular, what can those people do by virtue of their positions or place in the society. At any rate, what were actually alleged as their names were "ATTY. EDWIN ANDRADA" and "[]ATTY. MARISSA VILLARAMA" (sic). In the case of Atty. Villarama, it was not the latter's full name that was uttered since it was "Marissa" while her real first name is "Ma. Luisa" although she is known to some as "Marissa." [17]

Atty. Candelaria made the following recommendations, to wit:

- the Complaint, insofar as the civil and criminal aspects attributed to the acts of Mr. Francis H. Cervantes in his then capacity as President of the Rivara's Compound Homeowner's Association and all matters raised in connection therein, be dismissed for lack of jurisdiction, without prejudice to the re-filing of the appropriate administrative charge based on the judgment in the Criminal Case for Estafa; and,
- for having been found guilty of Simple Misconduct, this being his first offense and considering his length of service and very satisfactory performances in his job, as well as humanitarian consideration, Mr. Francis H. Cervantes be imposed the penalty of REPRIMAND with a warning that a violation of similar acts in the future shall be dealt with more severely. [18]

Simple misconduct is punishable by one (1) month and one (1) day to six (6) months of suspension for the first offense and dismissal for the second offense. But, considering that respondent Cervantes has been employed by the Court since 1997 and has been receiving very satisfactory performance ratings, Atty. Candelaria lowered the penalty and believed that the penalty of reprimand is in order. [19]

Except for the penalty, the recommendation of Atty. Candelaria is well-taken.

The Court cannot take cognizance of a number of the allegations leveled against respondent Cervantes being of the nature that should properly be threshed out in a court or agency clothed with jurisdiction. Besides, the propriety of the imposition of administrative sanctions would depend on the outcome of the case or cases, if any is filed. At the moment, it is premature to determine whether respondent Cervantes should be held administratively liable for the alleged dishonesty and grave misconduct.

However, we believe as we agree with the recommendation of the OAS, that respondent Cervantes should be reproved for publicizing his connections with the alleged investigating officers of the instant case and for trumpeting the power that he purportedly wields as an employee of the Court. The Court cannot overstate the need for circumspect and proper behavior on the part of the court employees.[20] It is well to recall our ruling in *Re: Disciplinary Action Against Antonio Lamano, Jr. of the Judgment Division, Supreme Court*, [21] to wit:

Government officials and employees, more specifically those employed in the Judiciary, are bound by the highest standards of propriety and decorum to maintain the people's respect and faith in the Judiciary. Such dictates apply not only between the said personnel and the public but among co-workers as well. Any transgression or deviation from the established norm of conduct, work related or not, amounts to a misconduct. Any scandalous behavior or any act that may erode the people's high esteem for the Judiciary is considered an act unbecoming an employee of the Judiciary.[22]

By reason of the nature and function of the Supreme Court, officials and employees of the highest court of the land must live up to the strictest standards of honesty, uprightness and integrity in the public service. The image of a court of justice is mirrored in the conduct, official or otherwise, of the personnel who work thereat, from the highest Justice to the lowest personnel. Court employees are enjoined to adhere to the exacting standards of morality and decency in their professional and private conduct in order to preserve the good name and integrity of the court of justice.[23]

Respondent Cervantes failed to meet this exacting standard. His actuation, although made in a private gathering, has stained the image of his public office. Like any member of the Judiciary, respondent is expected to be a model of fairness and honesty not only in all his official conduct but also in his personal actuations, including business and commercial transactions. Any conduct that would be a bane to the public trust and confidence reposed on the Judiciary shall not be countenanced.[24]

Indeed, the Court finds respondent Cervantes guilty of simple misconduct. Misconduct is defined as any unlawful conduct on the part of a person concerned in the administration of justice prejudicial to the rights of parties or to the right determination of the cause. It generally means wrongful, improper or unlawful conduct motivated by a premeditated, obstinate or intentional purpose.[25]

Section 52 B (2) of the Uniform Rules on Administrative Cases in the Civil Service[26] imposes the penalty of suspension for one (1) month and one (1) day to six (6) months for the first offense of simple misconduct. A second offense is punishable by dismissal. For displaying conduct that casts a blight on the image of the judiciary, we deem that the penalty of suspension of one (1) month and one (1) day without pay would be a sufficient penalty for respondent Cervantes' offense.

WHEREFORE, respondent Francis H. Cervantes, Records Officer I, Records Division, Office of Administrative Services, Office of the Court Administrator is hereby **SUSPENDED** without pay for a period of one (1) month and one (1) day. He is further **WARNED** that

the commission of the same or similar acts in the future will be dealt with more severely by this Court.

SO ORDERED.

Panganiban, C.J., Puno, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Capio Morales, Callejo, Sr., Azcuna, Chico-Nazario, and Velasco, Jr., JJ., concur.
Corona, J., on leave.

[1] Pursuant to the Association's Board Resolution No. 020, Series of 2006, Mr. Llantada has been duly authorized to file the instant administrative complaint.

[2]Rollo, pp. 191-254.

[3]Id. at 1, 231, 234, 235, 236, 240.

[4] Id. at 244.

[5]Id. at 244-245.

[6] Id. at 246.

[7]Id. at 245.

[8]Id. at 2, 250.

[9] Id. at 167-172.

[10]Id. at 172.

[11] Id. at 52-60.

[12] Id. at 143-146.

[13] Id. at 143-144.

[14] Id. at 35-42.

[15] Id. at 35-36, 38.

[16] Id. at 1-9.

[17] Id. at 6.

[18]Id. at 8-9.

[19]Id. at 8.

[20] See Administrative Complaint for Non-payment of Debt against Nahren Hernaez, 443 Phil. 697, 704 (2003); In Re: Complaint for Failure to Pay Just Debts Against Esther T. Andres, A.M. No. 2004-40-SC, 1 March 2005, 452 SCRA 654, 663.

[21] 377 Phil. 364 (1999).

[22]Id. at 367.

[23] Re: Administrative Case for Dishonesty Against Elizabeth Ting, Court Sec. I & Angelita C. Esmerio, Clerk III, Off. Clerk of Court, A.M. No. 2001-7-SC & No. 2001-8-SC, 22 July 2005, 464 SCRA 1, 15.

[24] In Re: Complaint for Failure to Pay Just Debts against Esther T. Andres, A.M. No. 2004-40-SC, 1 March 2005, 452 SCRA 654. 663-664.

[25] Office of the Court Administrator v. Paderanga, Adm. Matter No. RTJ-01-1660, 25 August 2005, 468 SCRA 21, 35.

[26] Resolution No. 991936, which repealed or modified accordingly Rule XVI of the Omnibus Rules Implementing Book V of Administrative Code of 1987.

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